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Highlights

57078 **Television** FCC proposes to change requirements for operation of subscription television service.

57041 **Loan Programs—Veterans** VA decreases maximum interest rates on guaranteed mobile home loans, home and condominium loans, and home improvement loans.

57037, 57038 **Loan Programs—Housing** HUD/FHC changes interest rates on mortgage insurance and home improvement loans. (2 documents)

57133 **Grant Programs—Education** HHS/CDC announces availability of funds for educational programs in occupational safety and health for fiscal year 1982.

57067 **Communications** FCC proposes to reduce separation between satellites in orbit and proposes more stringent earth station antenna performance standards.

57256 **Community Development Block Grants** HUD/CPD established policies and procedures for State Community Development Block Grant Program. (Part IV of this issue)

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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.

Highlights

57042 **Insurance** VA allows higher interest rates to be paid to beneficiaries of U.S. Government Life Insurance and National Service Life Insurance and authorizes payment of dividends for certain types Veterans' Reopened Insurance.

57124 **Natural Gas** DOE/EIA publishes alternative fuel price ceilings and incremental price threshold.

57051 **Railroads** ICC revises application procedures on substitution of motor carriers for abandoned rail service.

57050 **Radio and Television** FCC implements seven and five year radio and television broadcast license term provisions.

57253 **Mines** Labor/MSHA announces priorities for review of safety related regulations on metal and nonmetal mining and milling operations. (Part III of this issue)

57105 **Imports** CITA waives export visa requirements for cotton, wool, and man-made fiber textile and apparel products from Macau.

57105 CITA establishes import controls on certain cotton and wool apparel products from Sri Lanka.

57137 **Regulatory Flexibility** HUD issues plan for periodic review of regulations.

57246 **Minimum Wages** Labor/ESA/W&H publishes minimum wages for Federal and federally assisted construction. (Part II of this issue)

57103 **Antidumping** Commerce/ITA gives notice of final results of administrative review on pig iron from East Germany.

57066 **Regulatory Flexibility Agenda** FMC

57211 **Privacy Act Document** Treasury.

57213 **Sunshine Act Meetings**

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57253 **Part III, Labor/MSHA**
57256 **Part IV, HUD/CPD**

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 334; Lemon Reg. 333, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 22–28, 1981, and increases the quantity of lemons that may be shipped during the period November 15–21, 1981. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 22, 1981, and the amendment is effective for the period November 15–21, 1981.

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

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on November 17, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

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

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

1. Section 910.634 is added as follows:

§ 910.634 Lemon Regulation 334.

The quantity of lemons grown in California and Arizona which may be handled during the period November 22, 1981, through November 28, 1981, is established at 220,000 cartons.

2. Section 910.633 Lemon Regulation 333 (46 F.R. 55920) is revised to read as follows:

§ 910.633 Lemon Regulation 333.

The quantity of lemons grown in California and Arizona which may be handled during the period November 15, 1981, through November 21, 1981, is established at 260,000 cartons.

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

Dated: November 20, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-33866 Filed 11-19-81; 11:55 am]

BILLING CODE 3410-02-M

7 CFR Part 971

Lettuce Grown in Lower Rio Grande Valley in South Texas; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This continuing regulation will impose container, pack, and inspection requirements on shipments of lettuce grown in the Lower Rio Grande Valley in South Texas. Standardizing trading practices will improve marketing efficiency, promote orderly marketing of such lettuce, and help provide better quality lettuce at reasonable prices to consumers.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Analysis relating to this final rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it will not measurably affect costs for the directly regulated handlers.

Marketing Agreement No. 144 and Marketing Order No. 971 regulate the

handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Notice was published in the October 29 **Federal Register** (46 FR 53430) regarding the proposal. It afforded interested persons an opportunity to file written comments by November 13, 1981. None was filed.

This rule is based upon the recommendations made by the committee at its public meeting in McAllen, Texas, on October 8, 1981.

These container and pack requirements are in accord with the generally accepted commercial practices of the South Texas lettuce industry of packing specified numbers of heads of lettuce in specific sized containers limited to those found acceptable to the trade for safe transportation of the lettuce, and will prevent deceptive practices.

These standardization and marketing efficiency types of regulation will have no measurable effect on the quantity of lettuce shipped from South Texas, nor will there be discernable effect on U.S. retail lettuce prices. This regulation should enable the South Texas lettuce industry to better compete with major lettuce producing areas in California and Arizona by ensuring the use of containers and packs acceptable to buyers.

In addition the South Texas lettuce industry is accustomed to operating on a six day shipping week. A six day shipping week has proven adequate for five days distribution in terminal markets, therefore "packaging holidays" on Sundays will promote more efficient and orderly marketing. However, handlers will be permitted, with the approval of the committee, to package lettuce on Sunday and on Christmas day whenever the committee finds that distribution is inadequate, or that crop damage is imminent.

No purpose would be served by regulating the containers or pack or requiring the inspection and assessment of insignificant quantities of lettuce. Therefore, each person is exempt from such requirements for up to two cartons—or the equivalent—of lettuce per day.

Provisions with respect to special purpose shipments, including export, are designed to meet the different requirements for export and noncommercial domestic trade. Because of the production area's proximity to the Mexican border, Mexican buyers have been accustomed to acquiring small lots of production area lettuce for their home market. These buyers use lettuce which fails to meet the pack and container requirements. Inasmuch as such shipments have a negligible effect on the domestic market, they should be permitted if certain safeguard requirements are met.

The requirements contained in this handling regulation, effective December 1, 1981, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. However, the same requirements have been imposed each season since 1972. The change to issue regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations will probably continue to change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this change could result in a reduction in operational costs to the committee and the government. Although the final regulation will be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 971.50 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250, before November 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of South Texas lettuce would tend to effectuate the declared policy of the act.

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

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

§ 971.321 [Removed]

Section 971.321 (45 FR 79004, November 28, 1980) is hereby removed and a new § 971.322 is added as follows:

§ 971.322 Handling regulation.

During the four month period beginning on December 1 and ending on March 31 each season no person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b) and (c) of this section, or unless such lettuce is handled in accordance with paragraphs (d) or (e) of this section. Further, no person may package lettuce during the above period on any Sunday, or on Christmas Day unless approved in accordance with paragraph (f) or this section.

(a) *Containers.* Containers may be only the following depth, width and length respectively:

(1) Cartons with inside dimensions of 10 inches x 14¼ inches x 21⁹⁄₁₆ inches (designated as carrier container No. 7303), or

(2) Cartons with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container No. 7306), or

(3) Cartons with inside dimensions of 14 inches x 9¾ inches x 21 inches (designated as carrier container No. 7313), or

(4) Cartons with inside dimensions of 10¾ inches x 16⅛ inches x 21½ inches (designated as carrier container No. 7312—flat pack).

(5) Such other types and sizes of containers that may be approved by the committee for testing provided that the handling of lettuce in such containers shall be subject to prior approval and under the supervision of the committee.

(b) *Pack.* (1) Lettuce heads, packed in containers No. 7303, 7306, or 7313; if wrapped may be packed only 18, 20, 22, 24, or 30 heads per container; if not wrapped, only 18, 24, or 30 heads per container.

(2) Lettuce heads in container No. 7312 may be packed only 24 or 30 heads per container.

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate has been issued for it, except when relieved of such

requirement by paragraphs (d) or (e) of this section.

(2) No handler may transport by motor vehicle, or cause such transportation of, any shipment of lettuce for which inspection is required unless each such shipment is accompanied by a copy of an appropriate inspection certificate or shipment release form (SPI–23) furnished by the inspection service verifying that such shipment meets the pack and container requirements of this section. A copy of such inspection certificate or shipment release form shall be available and surrendered upon request to authorities designated by the committee.

(3) For administration of this part, such inspection certificate or shipment release form required by the committee as evidence of inspection is valid for only 72 hours following completion of inspection, as shown on such certificate or form.

(d) *Minimum quantity.* Any person may handle up to, but not to exceed two cartons or the equivalent of lettuce a day without regard to inspection, assessment, container and pack requirements. This exception shall not be applied to any shipment of over two cartons of lettuce.

(e) *Special purpose shipments.* The assessment, container, pack, and inspection requirements of this section shall not be applicable to shipments as follows:

(1) For relief, charity, experimental purposes, or export to Mexico, if a handler presents a Certificate of Privilege for such lettuce prior to handling it, pursuant to §§ 971.120–971.125; and

(2) For export to Mexico, if the handler of such lettuce loads and transports it in a vehicle bearing Mexican registration (license).

(f) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing lettuce on Christmas or on any Sunday may be modified or suspended to permit the handling of lettuce provided such handling complies with the procedures and safeguards specified by the committee.

(g) *Definitions.* (1) "Wrapped" heads of lettuce refers to those which are enclosed individually in parchment, plastic, or other commercial film and then packed in cartons or other containers.

(2) Other terms used in this section have the same meaning as when used in Marketing Agreement No. 144 and this part.

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

Dated: November 17, 1981, to become effective December 1, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-33581 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records; Contact Representatives Within the Definition of Immigration Officer

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: As an extension of the INS Up-Front Adjudication Test, this rule amends 8 CFR 103.1(q) to include Miami District Office contact representatives within the definition of Immigration Officer. This amendment delegates to such contact representatives the authority to adjudicate applications and petitions filed by aliens and citizens for benefits under the Immigration and Nationality Act, as amended. Up-Front Adjudication (UFA) is a streamlined procedure under which volumes of certain categories of routine, approvable applications and petitions are adjudicated immediately upon receipt. INS has decided to expand the test of the Up-Front Adjudication procedure to Miami in order to determine its impact on a large, high volume district.

EFFECTIVE DATE: November 16, 1981.

FOR FURTHER INFORMATION CONTACT:

For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

For specific information: Roger J. Lucas, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536, Telephone: (202) 633–3242.

SUPPLEMENTARY INFORMATION:

Background

Up-Front Adjudication (UFA) is a streamlined procedure under which volumes of certain categories of routine, approvable applications and petitions are adjudicated immediately upon receipt. UFA was tested in the Boston and Houston District Offices of INS and found to be an efficient procedure which sped the delivery of immigration benefits to qualified applicants at a much lower cost to the Government than traditional INS case handling methods. The UFA procedure also resulted in fewer status inquiries and public complaints about delay in the adjudication of cases.

INS has decided to expand the test of the Up-Front Adjudication procedure to Miami in order to determine its impact on a large, high volume district. As a part of this test, contact representatives will adjudicate routine cases, including extensions of stay, issuance of re-entry permits, and refugee travel documents. This amendment provides Miami district office contact representatives with the delegated authority to adjudicate cases.

Drafting Information

The author of this amendment was Roger J. Lucas, Adjudications Division, Office of the Associate Commissioner, Examinations, Immigration and Naturalization Service.

Compliance with the provisions of 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary and impractical because of the time limitation and because the amendment affects only agency organization and procedure.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only agency organization which is of benefit to the public.

This rule is exempt from the requirements of E.O. 12291 as provided for by section 1(a)(3) of the Executive Order because it relates solely to agency organization.

Accordingly, the following amendment is made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. In § 103.1, paragraph (q) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention guard, investigator, general attorney, paralegal specialist, or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the

powers and duties of such officer as specified by the Act, or this chapter. For the purpose of expanding the INS Up-Front Adjudication Test, applications examiners and contact representatives at the Miami District Office are designated as immigration officers authorized to exercise the powers and duties in the Act, or the Chapter.

* * * * *

(Secs. 103 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103)

Dated: November 16, 1981.

Doris M. Meissner,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 81-33507 Filed 11-19-81; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

Brucellosis Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation relating to the payment of indemnity for breeding swine destroyed because of brucellosis. This action is needed to provide more equitable compensation to owners of such swine and to encourage them to eradicate brucellosis from their herds more expeditiously. The intended effect of this action is the prompt elimination of infected breeding swine herds and thus a reduced probability that brucellosis will spread.

EFFECTIVE DATE: December 12, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. G. H. Frye, USDA, APHIS, VS, Federal Building, Room 804, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION: This action has been reviewed in conformance with Executive Order 12291, and has been determined to be not a "major rule." The Department has determined that this rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and should have no adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because no more than 225 small entities own breeding swine herds which are found to be infected with brucellosis each year. This compares with 135,000 small entities which own breeding swine herds. Therefore, this final rule will annually affect less than .2 percent of the small entities which own breeding swine herds, and there will not be a substantial number of small entities affected by this action.

On Monday, July 6, 1981, there was published in the **Federal Register** (46 FR 34805-34806), a proposed amendment to the regulations (9 CFR Part 51) relating to the payment of indemnity for breeding swine destroyed because of brucellosis. This action was necessary in order to provide more equitable compensation to owners of such swine and to encourage them to eradicate brucellosis from their herds more expeditiously.

A 60-day comment period was provided for receipt of comments which expired on September 4, 1981. A total of four comments were received from: (1) Virginia Farm Bureau Federation; (2) Illinois Farm Bureau, Illinois Agricultural Association; (3) Illinois Department of Agriculture, Division of Meat, Poultry and Livestock Inspection; and (4) American Farm Bureau Federation. All were in support of the proposal.

Brucellosis is a contagious, infectious, and communicable disease which affects animals and man and is caused by bacteria of the genus Brucella. A Cooperative State-Federal Brucellosis Eradication Program to eliminate brucellosis from cattle and swine of the United States is being carried out in each of the various States. Among the tools being used to eradicate brucellosis in the various States is the testing of cattle and swine herds for brucellosis with identification and destruction of reactor animals.

The Secretary of Agriculture has authority (21 U.S.C. 114a) to indemnify owners of animals for losses caused by the destruction of brucellosis affected or exposed animals. Presently, an indemnity payment of $25 per head for registered, inbred, and hybrid breeding swine or $10 per head for all other breeding swine is the maximum that can be paid under the applicable regulation (9 CFR 51.3(b) (1), (2) and (3).

It appears that these rates are not adequate under current economic conditions and do not provide sufficient incentive to producers to cooperate in carrying out the program procedures necessary to eliminate brucellosis from a herd or area. This final rule will correct the apparent inequities in compensation and improve owner participation by amending § 51.3(b) (1), (2) and (3) to permit indemnity payments of up to $50 per head for registered, inbred, or hybrid breeding swine and up to $25 per head for all other breeding swine.

These other alternatives were considered: (1) Make no revision. The Department did not select this alternative because it was not responsive to the problem. (2) Pay an indemnity equal to the difference between the market value of the swine destroyed and salvage value of the swine destroyed. The Department did not select this alternative because it would be too costly. (3) Prohibit salvage of swine and require destruction by burning or burial and pay an indemnity equal to full market value of the swine destroyed. The Department did not select this alternative because it would be too costly and could cause environmental problems. This would also preclude the use of the meat for human consumption. There is no reason why such meat cannot be used for human consumption since the brucellosis organism is not retained in those parts of the animal consumed by humans.

On June 27, 1980, § 51.3(a) regarding the payment of indemnity for cattle, was amended by adding a footnote 4 to set forth the criteria which the Deputy Administrator uses to determine whether to authorize federal indemnity payments at maximum rates. These same criteria are used by the Deputy Administrator to determine whether to pay maximum rates of indemnity for breeding swine destroyed because of brucellosis. Therefore, this final rule amends the first sentences in § 51.3(b) (1), (2) and (3) to make footnote 4 applicable to the payment of indemnity for swine destroyed because of brucellosis. Further, this final rule amends footnote 4 to add § 51.3(b) (1), (2) and (3) to the list of sections under which the Deputy Administrator shall authorize applicable maximum or percentage rates.

Prior to payment of indemnity for cattle destroyed because of brucellosis under § 51.3(a) and breeding swine destroyed because of brucellosis under § 51.3(b), proof of destruction must be furnished to the Veterinarian in Charge.

The June 27, 1980, amendment to § 51.3(a) added a footnote 5 which sets forth a list of documents any of which shall be accepted as proof of destruction by the Veterinarian in Charge. These same documents are acceptable as reasonably reliable evidence that swine have been destroyed. Therefore, this final rule amends the last sentences in § 51.3(b) (1), (2) and (3) to make footnote 5 applicable to the proof of destruction which must be furnished to the Veterinarian in Charge for swine destroyed because of brucellosis.

The Department is amending the regulation as proposed.

PART 51—CATTLE DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, Part 51, Title 9, Code of Federal Regulations, is amended in the following respects:

§ 51.3 [Amended]

1. In § 51.3(b), the first sentences in paragraphs (1), (2) and (3) are amended to add a reference to footnote 4 after the word "authorize".

2. In § 51.3(b), the second sentences in paragraphs (1), (2) and (3) are amended to read: The indemnity shall not exceed $50 per head for registered, inbred, and hybrid swine, and shall not exceed $25 per head for all other breeding swine.

3. In § 51.3(b), the last sentences in paragraphs (1), (2) and (3) are amended to add a reference to footnote 5 after the word "destruction".

4. In part 51, the introductory text of footnote 4 up to the colon is amended to read:

[4] The Deputy Administrator shall authorize payment of federal indemnity by the Department at the applicable maximum percentage and per head rate in § 51.3(a) and the applicable maximum per head rate in § 51.3(b).

* * * * *

(Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130 (21 U.S.C. 111–113, 114, 114a–1, 120, 121, 125, 134b) 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 16th day of November 1981.

John W. Walker,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 81-33505 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 584

[No. 81-677]

Delegation of Authority Regarding Holding Company Activities

November 12, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board has delegated to its Supervisory Agents the authority to approve, subject to specified conditions, (1) acquisitions by savings and loan holding companies or other companies of institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation, (2) certain services and activities proposed to be undertaken by a multiple savings and loan holding company, and (3) certain management interlocks. These amendments will streamline the processing of applications that do not present significant legal or policy considerations.

EFFECTIVE DATE: November 17, 1981.

FOR FURTHER INFORMATION CONTACT: Richard L. Little (202–377–6452) or Kenneth F. Hall (202) 377–6466), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: These amendments to the Board's regulations governing savings and loan holding companies (12 CFR Parts 583–589) delegate to the Board's Supervisory Agents the authority of the Federal Savings and Loan Insurance Corporation ("FSLIC") to object to certain activities proposed to be undertaken by multiple savings and loan holding companies, to approve certain acquisitions of FSLIC-insured institutions, and to approve certain management interlocks. Previously, applications for all such activities, acquisitions and interlocks has to be reviewed by the Corporation in Washington, D.C.

The amendments also pre-approve certain extensions of credit by a subsidiary insured institution to a third party on the security of property purchased from the institution's wholly-owned service corporation. Formerly, all such extensions of credit were permissible only with the prior written approval of the Corporation.

The Board believes these amendments will greatly streamline the processing of applications that do not involve questions of law and policy that the Board has not formally addressed. The pre-approval of certain extensions of credit also should reduce the number of applications required to be processed by the Corporation. These changes will permit more efficient use of the Board staff's time.

Multiple Savings and Loan Holding Company Activities

The amendment to § 584.2–1(c)(1) provides that notice of a multiple savings and loan holding company's intent to engage in any of the activities prescribed by paragraph (b) of the section shall henceforth be filed with the Supervisory Agent rather than with the Board's Office of Examinations and Supervision. If the Supervisory Agent determines that the undertaking of any such activity should be prohibited, he will, within the specified time period after receipt of the notice, forward the notice to the Corporation for its concurrence. The amendment also empowers the Supervisory Agent to extend the time period for objecting to a proposed activity and to request that the holding company provide additional information about the activity.

Transactions with Affiliates

Section 584.3(a)(4) is amended to permit a subsidiary insured institution to extend credit to a third party on the security of property acquired from a wholly-owned service corporation without the prior written approval of the Corporation if three conditions are met. First, the third party may not be affiliated with the insured institution. Second, the credit terms may not be preferential, and must conform to the institution's normal lending guidelines. Finally, the security property must never previously have been legally or beneficially owned by any savings and loan holding company or any affiliate thereof.

The amendments retain the existing authority to make such extentions of credit with the prior written approval of the Corporation. The regulation provides that the Corporation shall grant approval if the extension of credit would not be detrimental to the institution or its accountholders, or to the insurance risk of the Corporation, and would not be a means of facilitating the sale of property of an affiliate.

The final regulation also amends § 584.10(c)(1) to delete the previous requirement that application form H–(d)(1) be used for all applications filed under § 584.3(a)(4). Instead, application is to be made by letter.

Acquisitions

A new paragraph (g) is added to § 584.4 that delegates authority to the Supervisory Agent to approve acquisitions of insured institutions if certain conditions are met. Specifically, any acquisition must meet the following conditions:

(1) The company proposing to make the acquisition is solvent;

(2) The company's debt-to-equity ratio compares favorably with the ratios of other companies in the same line of business;

(3) The company will service its debt without receiving dividends from the acquired insured subsidiary in excess of 50 percent of the subsidiary's net income per year on a cumulative basis and the company agrees in writing that it will not receive dividends from the acquired subsidiary in excess of that amount;

(4) The company agrees in writing that it will ensure the subsidiary insured institution meets the minimum reserve requirements applicable to institutions insured for twenty years or more, as set out in § 563.13 of this chapter, and, where necessary, will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with the requirements;

(5) The Supervisory Agent determines that the financial and managerial resources and future prospects of both the company and the insured institution are such that the acquisition would not be detrimental to the insured institution and would not increase the Corporation's insurance risk;

(6) No subsidiary institution of the acquiring company received on its most recent examination a rating less than satisfactory with regard to its compliance with the Community Reinvestment Act and regulations issued thereunder;

(7) The acquisition is not substantially protested; and

(8) The acquisition does not raise any significant issues of law or policy on which the Corporation has not taken a formal position.

In addition, where the acquisition falls under paragraphs (a)(1) or (a)(2) or the acquisition would be of two or more insured institutions under paragraph (b) of § 584.4, the following conditions must also be met:

(1) The Supervisory Agent determines that the acquisition will serve the convenience and needs of the insured institution's local community.

(2) The institution to be acquired has assets of less than $100,000,000, or all subsidiary institutions of the acquiring company, after the acquisition, would have total assets of less than $500,000,000;

(3) All subsidiary institutions of the acquiring company, after the acquisition, would hold less than ten percent of the total savings accounts (including savings accounts under $100,000 held by commercial banks) held by all financial institutions in any county (or similar political subdivision) in which both the institution to be acquired and any other subsidiary insured institutions of the acquiring company have offices;

(4) All subsidiary insured institutions of the acquiring company, after the acquisition, would hold less than twelve percent of the total savings accounts (including savings accounts of under $100,000 held by commercial banks) held by all financial institutions in each county (or similar political subdivision) in which the institution to be acquired has an office;

(5) All subsidiary insured institutions of the acquiring company would account for less than ten percent of the total residential mortgage loans made, based on mortgage recording data or such other evidence as is available, in each county (or similar political subdivision) in which both the institution to be acquired and any other subsidiary insured institution of the acquiring company have offices; and

(6) All subsidiary insured institutions of the acquiring company would account for less than twelve percent of the total residential mortgage loans made in each county (or similar political subdivision) in which any institution to be acquired has an office.

The final regulation provides that the percentages in subparagraphs (3), (4), (5), and (6), above shall be fifteen percent if the Supervisory Agent, prior to giving approval, obtains the concurrence of the Board's Office of General Counsel in the Agent's determination that the proposed acquisition(s) will not violate the antitrust laws. The regulation also delegates to the Supervisory Agent the authority to approve the issuance or assumption of debt incurred as a direct result of an acquisition approved by the Agent. The standards set forth in § 584.6 relating to approval of debt by the Corporation must be adhered to by the Supervisory Agent. Transactions that include a merger of insured institutions may be approved under delegated authority in accordance with § 584.4(g) and the Board's merger regulations (12 CFR 546.2, 563.22).

The Board takes this opportunity to eliminate from paragraphs (a) and (e) of § 584.4 language that no longer has any application. Specifically, the final regulation deletes references in those paragraphs to requirements that had to be fulfilled within one year of the date of enactment of the Holding Company Act (February 14, 1968).

Filing Prior to Excepted Acquisition

Section 584.4–1 of the holding company regulations provided that any company other than an S&L holding company that proposes to acquire an insured institution without the Corporation's prior written approval (pursuant to § 584.4(b)(2)) must demonstrate to the Corporation that the proposed acquisition falls within the exception. The Corporation was given 60 days to determine whether the proposed acquisition was indeed excepted.

The final regulation provides that the filing required of the acquiring company should be sent to the Supervisory Agent. It also permits the acquisition unless within 60 days the Supervisory Agent or the Board's Office of General Counsel determines the acquisition is not excepted.

Approval of Management Interlocks

The final regulation also delegates to the Supervisory Agent the authority to approve certain management interlocks that would otherwise be prohibited under § 584.9(b). Such approval, however, may be given only if the interlock is not prohibited under Part 563f of the Board's regulations, which implements the Management Interlocks Act, and if the Supervisory Agent determines the interlock would be unlikely to have an anti-competitive effect and would not be objectionable on supervisory grounds.

The Board finds that notice and public procedure with respect to the amendments pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 are unnecessary because (1) the amendments relieve restriction by streamlining the application procedures for various holding company activities, and (2) they amend rules governing agency procedures regarding the processing of holding company applications. The Board also finds that the thirty-day delay of the effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

Accordingly, the Board hereby amends Part 584, Subchapter F, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

1. Section 584.2–1 is amended by revising paragraph (c)(1) to read as follows:

§ 584.2–1 Services and activities of multiple savings and loan holding companies.

* * * * *

(c) *Procedures for commencing services or activities.* (1) Before a multiple savings and loan holding company or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section, either *de novo* or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the Corporation. The original and one copy of such notice shall be filed with the Supervisory Agent. The activity or service may be commenced unless, before the close of the calendar-day period stipulated in the next sentence, the Supervisory Agent finds that the activity or service proposed would not be, in the circumstances, a proper incident to the operations of insured institutions or would be detrimental to the interests of savings account holders therein. The period shall be 30 calendar days after the date of receipt of such notice, in the case of a *de novo* entry, or 60 calendar days, in the case of an acquisition of a going concern. If the Supervisory Agent makes either finding within the applicable calendar-day period, the notice and finding(s) shall be forwarded immediately to the Corporation for its review, and the activity or service may be commenced within the calendar-day period set forth in the next sentence unless the Corporation concurs in the Supervisory Agent's finding. The period shall be 30 calendar days after the date of receipt of the notice and finding(s) in the case of a *de novo* entry, or 60 calendar days in the case of an acquisition of a going concern. The Supervisory Agent or the Corporation may extend the appropriate calendar-day period for a period not to exceed 15 calendar days. The Supervisory Agent or the Corporation may request additional information from such holding company or subsidiary after receipt of notice, but neither the Supervisory Agent nor the Corporation must consider additional information forthcoming from the holding company or subsidiary as a result of such a request if the information is received less than 10 calendar days before the end of the original or extended calendar-day period. The Supervisory Agent or the Corporation may permit such holding company or subsidiary to commence the activity at an earlier date.

* * * * *

2. Section 584.3 is amended by revising paragraph (a)(4) to read as follows:

§ 584.3 Transactions with affiliates.

(a) *Prohibited transactions.* * * *

* * * * *

(4) Make any loan, discount or extension of credit to (i) any affiliate (other than to a service corporation subsidiary of such insured institution, to the extent a Federal savings and loan association would be permitted by § 545.9–1(c) of this chapter to extend credit to its service corporation subsidiary) except in a transaction authorized by paragraph (a)(7)(i) of this section, or (ii) any third party on the security of any property acquired from any affiliate, or with knowlege that the proceeds of the extension of credit, or any part thereof, are to be paid over to or utilized for the benefit of any affiliate. However, a subsidiary insured institution may make a loan, discount or extension of credit to a third party on the security of property acquired from a wholly owned service corporation of such institution if (A) the third party is not affiliated with the insured institution, (B) the credit terms are not preferential and conform to the institution's normal lending guidelines, and (C) the security property has never previously been legally or beneficially owned by any savings and loan holding company or affiliate thereof, or if the insured institution obtains the prior written approval of the Corporation. The Corporation shall grant approval if, in its opinion, such a loan, discount or extension of credit would not be detrimental to the interests of savings account holders in the insured institution or to the insurance risk of the Corporation with respect to such institution, and would not be a means of facilitating the sale of property purchased from any savings and loan holding company or any affiliate thereof other than such service corporation, or of property previously legally or beneficially owned by any other savings and loan holding company or affiliate thereof;

* * * * *

3. Section 584.4 is amended by revising paragraphs (a)(3) and (a)(4) and paragraph (e), redesignating paragraph (g) as paragraph (h) and adding new paragraph (g), to read as follows:

§ 584.4 Acquisitions.

(a) *Acquisitions by a savings and loan holding company.* * * *

* * * * *

(3) Acquire by purchase or otherwise any of the voting shares of an insured institution not a subsidary, or of a savings and loan holding company not a subsidiary, or, in the case of a multiple savings and loan holding company, so acquire or retain more than 5 percent of the voting shares of any company that is not a subsidiary and that is engaged in any business activity other than those specified in paragraphs (b) of § 584.2 or § 584.2–1; or

(4) Acquire control of an uninsured institution or retain, for more than one year after the date any insured institution becomes uninsured, control of such institution.

* * * * *

(e) *Nonapplicability.* The provisions of this section and §§ 584.2(b), 584.2–1(b) and 584.6 shall not apply to any savings and loan holding company which acquires the control of an insured institution or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business, but no such company shall retain such control for more than one year from the date on which such control was acquired, except that the Corporation may upon application by such company extend such one-year period from year to year, for an additional period not exceeding three years, if the Corporation finds such extension is warranted and would not be detrimental to the public interest.

* * * * *

(g) *Approval by the Supervisory Agent.* (1) Any acquisition that may be approved under this section by the Corporation may be approved by a Supervisory Agent, provided that all of the following conditions are met:

(i) The company proposing to make the acquisition is solvent;

(ii) The company's debt-to-equity ratio compares favorably with the ratios of other companies in the same line of business;

(iii) The company will service its debt without receiving dividends from the acquired insured subsidiary in excess of 50 percent of the subsidiary's net income per year on a cumulative basis, and the company agrees in writing that it will not receive dividends from the acquired subsidiary in excess of that amount;

(iv) The company agrees in writing that it will ensure the subsidiary insured institution meets the minimum statutory

reserve and net worth requirements applicable to institutions insured for twenty years or more, as set out in § 563.13 of this chapter, and, where necessary, will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with the requirements;

(v) The Supervisory Agent determines that the financial and managerial resources and future prospects of both the company and the insured institution are such that the acquisition would not be detrimental to the insured institution and would not increase the Corporation's insurance risk;

(vi) No subsidiary institution of the acquiring company received on its most recent examination a rating less than satisfactory with regard to its compliance with the Community Reinvestment Act and regulations issued thereunder;

(vii) The acquisition is not substantially protested; and

(viii) The acquisition does not raise any significant issues of law or policy on which the Corporation has not taken a formal position.

(2) Where the acquisition comes within paragraphs (a)(1) or (a)(2) of this section or the acquisition would be of two or more insured institutions under paragraph (b) of this section, the following conditions must also be met:

(i) The Supervisory Agent determines that the acquisition will serve the convenience and needs of the insured institutions's local community;

(ii) The institution to be acquired has assets of less than $100,000,000, or all subsidiary institutions of the acquiring company, after the acquisition, would have total assets of less than $500,000,000;

(iii) All subsidiary institutions of the acquiring company, after the acquisition, would hold less than ten percent of the total savings accounts (including savings accounts under $100,000 held by commercial banks) held by all financial institutions in any county (or similar political subdivision) in which both the institution to be acquired and any other subsidiary insured institutions of the acquiring company have offices;

(iv) All subsidiary insured institutions of the acquiring company, after the acquisition, would hold less than twelve percent of the total savings accounts (including savings accounts of under $100,000 held by commerical banks) held by all financial institutions in each county (or similar political subdivision) in which the institution to be acquired has an office;

(v) All subsidiary insured institutions of the acquiring company would account for less than ten percent of the total residential mortgage loans made, based on mortgage recording data or such other evidence as is available, and in each county (or similar political subdivision) in which both the institution to be acquired and any other subsidiary insured institution of the acquiring company have offices;

(vi) All subsidiary insured institutions of the acquiring company, would account for less than twelve percent of the total residential mortgage loans made in each county (or similar political subdivision) in which any institution to be acquired has an office.

(3) The percentages set forth in paragraphs (g)(2)(iii), (iv), (v), and (vi) of this section shall be fifteen percent if the Supervisory Agent, prior to giving approval, obtains the concurrence of the Board's Office of General Counsel in the Agent's determination that the proposed acquisition(s) will not violate the antitrust laws.

(4) In approving an acquisition under paragraph (g) of this section, the Supervisory Agent is authorized to approve the issuance or assumption of any debt incurred as a result of the acquisition, subject to the standards set forth in § 584.6 for approval by the Corporation.

(5) Applications under this paragraph (g) shall be in the form prescribed by § 584.10 of this part and shall be filed with the Supervisory Agent of the district in which the insured institutions involved in the acquisition(s) have their home offices.

(h) *Procedure on applications.* * * *

4. Section 584.4–1 is amended by revising the third, fourth and fifth sentences to read as follows:

§ 584.4–1 Information filing required prior to excepted acquisition.

* * * One original and two copies of all filings under this section shall be submitted to the Supervisory Agent. The acquisition may be effected without the prior approval of the Corporation pursuant to such exception unless within 60 days after receipt of the initial filing the Supervisory Agent or the Board's Office of General Counsel issues a ruling that the company has not shown that the acquisition falls within said exception. The Supervisory Agent or the Office of General Counsel may request additional information from the company after receipt of the initial filing, but need not consider additional information received more than 45 days after the initial filing.

5. Section 584.9 is amended by adding a new paragraph (e), to read as follows:

§ 584.9 Prohibited acts.

* * * * *

(e) *Approval by the Supervisory Agent.* The Supervisory Agent may give prior written approval for any management interlock requiring the Corporation's approval under paragraph (b) of this section if (1) the interlock is not prohibited by Part 563f of this chapter and (2) the Supervisory Agent determines the interlock would not be likely to have an anti-competitive effect and would not be objectionable on supervisory grounds. Applications for the Supervisory Agent's approval shall be filed with the Supervisory Agent.

6. Section 584.10 is amended by revising paragraph (c)(1) to read as follows:

§ 584.10 Statements, applications, reports, and notices to be filed.

* * * * *

(c) *Applications under § 584.3(a).* (1) A letter application shall be used to describe and justify all applications filed under § 584.3(a)(4) by a subsidiary insured institution of a savings and loan holding company for the Corporation's approval of an extension of credit to a third party on the security of property acquired from a wholly-owned service corporation of such institution.

* * * * *

(Pub. L. 90–255 (12 U.S.C. 1730a et seq.); Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 81–33561 Filed 11–19–81; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

Correction and Address Change to Short Supply Controls and Monitoring

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule corrects the introductory paragraph of § 377.6(i) which concerns congressional review of petroleum and petroleum product exports, and also amends paragraph (d) of that same section which concerns the issuance of export liscenses by changing the mailing address of the Short Supply Program.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Robert F. Kan, Manager, Short Supply

Program, Resource Assessment Division, Office of Industrial Resource Administration, U.S. Department of Commerce, Room 3877, Washington, D.C. 20230 (Telephone: (202) 377-3984).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Department of Commerce has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. App. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose any new information collection burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

Accordingly, Part 377 of the Export Administration Regulations (15 CFR Parts 368-399) is amended in FR Doc. 81-29043 by revising paragraph (d) and correcting paragraph (i) of 377.6 to read as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) *Issuance of export licenses.* Petroleum Commodity Groups, as identified in the following paragraphs, are defined in Supplement No. 2 to Part 377. Submit each application for a validated license to export a commodity from one of these groups to: Export Administration, Short Supply Program, P.O. Box 273, Washington, D.C. 20044. Include with each license application the documentation required by § 377.6(e). Applications will be considered subject to the appropriate provisions of this section.

(1) * * *

* * * * *

(i) *Congressional Review.* An application to export more than 250,000 barrels of refined petroleum products to any destination in a single fiscal year will be subject to a 30-day processing delay. Applications *not* subject to this reporting requirement include:

* * * * *

(Secs. 7, 13, 15, Export Administration Act of 1979 (Pub. L. 96-72), 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*); E.O. 12214, (45 FR 29783, May 6, 1960); Department Organization Order 10-3, (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, Feburary 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: November 12, 1981.

Bo Denysyk,

Deputy Assistant Secretary for Export Administration, International Trade Administration.

[FR Doc. 81-33537 Filed 11-19-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Requirements as to the Provision of Meals

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is revising its regulation which requires employers to provide meals to covered United States and alien agricultural and logging workers, to clarify the requirements of that regulation. The revision continues to require employers to provide such workers with three meals a day, but would add an exception where, under prevailing practice or long-standing arrangements, the workers prepare the meals, employers need provide only free cooking and kitchen facilities.

EFFECTIVE DATE: December 21, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin. Telephone: 202-376-6295.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration's regulations at 20 CFR 655.202 (1980) require employers requesting temporary alien agricultural and logging labor certifications to include, as part of their application, a job offer containing specified minimum benefits, wages, and working conditions for the covered U.S. and alien workers. As one benefit, the regulation requires the employer to provide each such worker with three meals a day, for which the employer may charge no more than $4.00 per day without special permission. 20 CFR 655.202(b)(4) (1980); see also 20 CFR 655.211 (1980).

On August 22, 1980, 45 FR 56074, the Department of Labor proposed to revise 20 CFR 655.202(b)(4) to provide an exception where prevailing practice or long-standing arrangement at the establishment was for the employer to provide cooking and kitchen facilities in lieu of meals. In such instances, the employer needed to provide only free cooking and kitchen facilities and free transportation to purchase food. The proposed revision was designed to clarify the existing regulation, and to reflect the Department of Labor's continued acceptance of prevailing practice with respect to the provision of meals to agricultural and logging workers covered by the temporary alien labor certification program.

Comments on Proposed Rule

Comments were received from a number of various sources in the agricultural and logging industries, and are discussed below.

Twenty-eight loggers from the State of Maine urged that meals be provided to all covered U.S. and alien workers, rather than just cooking and kitchen facilities. They stated that the provision of facilities in lieu of meals would discourage youths from entering logging. This comment, however, neglects to note that the revision would apply only to those employers where prevailing practice or long-standing arrangements are that workers provide their own meals. As such, the regulation would be only a clarification and is expected to effect no substantial changes in employer or worker rights or responsibilities.

Another group of Maine loggers asked that the rule at 20 CFR 655.202(b)(4) (1980) be retained, or that an extensive set of requirements be imposed on employers providing facilities in lieu of meals: family housing, conveniently located cooking and kitchen facilities, and biweekly transportation to buy

food. [The issue of transportation was in the proposed rule, but has been omitted from the final rule, for reasons discussed below.] The commenters suggested also that facilities in lieu of meals be permitted only where the harvest season does not exceed 90 days in any 12-month period. The Employment and Training Administration is not persuaded by the above comments. The suggested restrictions on cooking and kitchen facilities, in general, would be unduly burdensome on covered employers, and ignores prevailing practice and long-standing arrangements which have been recognized at some employers' establishments for many years. [Although the requirement was not stated explicitly in the proposed rule, it was implicit that the cooking and kitchen facilities be situated in a location reasonably convenient to the workers. The final rule has been modified to clarify this.]

A group of Hood River, Oregon, agricultural employers asked that the comment period be extended, since they stated that the proposal was published during a harvest period in Oregon. Their request was denied, since a comment period during almost any period of the year would coincide with a harvest or some other crop activity in one or more areas of the United States.

A number of commenters stated that the proposed rule's requirement of free transportation to purchase food would create problems for some growers under the the Farm Labor Contractors Registration Act (FLCRA). The Employment Standards Administration has confirmed, in an opinion to the Employment and Training Administration, that this provision would place some employers in jeopardy under FLCRA. The Employment and Training Administration is persuaded, therefore, that the provision of transportation would be unduly burdensome, and has omitted the requirement from the final rule. Other commenters supported the adoption of the proposed rule.

For the above reasons, the Employment and Training Administration has determined to revise the regulation at 20 CFR 655.202(b)(4) as set forth below.

Development of Final Rule

The final rule was developed under the direction and control of Mr. David O. Williams, Administrator, United States Employment Service, Employment and Training Administration, United States Department of Labor, Washington, D.C.

Regulatory Impact

The regulation adopted by this document reflects existing practice by the Employment and Training Administration. It is not intended to change the practices of covered employers. As such, the regulatory and economic impact of the rule is minimal and, therefore, not so great as to require a regulatory impact analysis. The net benefits from the rule would outweigh the net costs, since the alternative would be to force the affected employers and workers to change their longstanding arrangements and existing operations. See E.O. 12291; 46 FR 13193 (February 17, 1981).

Since the Notice of Proposed Rulemaking for this rule was issued before January 1, 1981, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354; 94 Stat. 1164) do not apply to this rule. 5 U.S.C. 601 note; see 45 FR 56074 (August 22, 1980).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

Promulgation of Final Rule

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS OF THE UNITED STATES

Accordingly, § 655.202(b)(4) of Part 655 of Chapter V of Title 20, Code of Federal Regulations, is revised to read as follows:

§ 655.202 Contents of job offers.

* * * * *

(b) * * *

(4) The employer will provide the worker with three meals a day, except that where under prevailing practice or long-standing arrangement at the establishment workers prepare their meals, employers need furnish only: free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer shall state the cost to the worker for such meals. The cost shall not be more than $4.00 per day unless the RA has approved a higher cost pursuant to § 655.211 of this part.

* * * * *

(Sections 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c)); 8 CFR 214.2(h)(3)(i); (5 U.S.C. 301); Wagner-Peyser Act of 1933, as amended (29 U.S.C. 49 *et seq.*))

Signed at Washington, D.C. this 16th day of November, 1981.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 81-33568 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Certification of True Copies

Correction

In FR Doc. 81-32172, appearing at page 55090, in the issue for Friday, November 6, 1981, make the following change:

On page 55090, in the third column, change the section head to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

BILLING CODE 1505-01-M

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21 CFR Part 173

[Docket No. 80F-0365]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Epichlorohydrin-Ammonia Crosslinked Copolymer, Quaternized With Methyl Chloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of epichlorohydrin crosslinked with ammonia and then quaternized with methyl chloride to contain not more than 18 percent strong base capacity by weight of total exchange capacity [Chemical Abstracts Service (CAS name): oxirane (chloromethyl)-, polymer with ammonia, reaction product with chloromethane; CAS Reg. No. 68036-99-7] as an ion-exchange resin in the treatment of food, including potable water, as requested in a food additive petition filed by Dow Chemical Co.

DATES: Effective November 20, 1981; objections by December 21, 1981.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Neal D. Singletary, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1980 (45 FR 69042), FDA announced that a food additive petition (FAP 0A3519) had been filed by the Dow Chemical Co., 2040 Dow Center, Midland, MI 48640, proposing that § 173.25 (21 CFR 173.25) be amended to provide for the safe use of oxirane (chloromethyl)-, polymer with ammonia, reaction product with chloromethane as an ion-exchange resin in the treatment of food, including potable water.

FDA has evaluated data in the petition and order relevant material and finds that the proposed use is safe and that § 173.25 should be amended as set forth below to include the petitioned additive.

The agency previously considered the potential environmental effects of this rule as announced in the notice of filing published in the **Federal Register.** No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 173 is amended in § 173.25 by adding paragraph (a)(19) to read as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

§ 173.25 Ion-exchange resins.

* * * * *

(a) * * *

(19) Epichlorohydrin cross-linked with ammonia and then quaternized with methyl chloride to contain not more than 18 percent strong base capacity by weight of total exchange capacity [Chemical Abstracts Service name: Oxirane (chloromethyl)-, polymer with ammonia, reaction product with chloromethane; CAS Reg. No. 68036–99–7].

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1981 submit to the Dockets Management Branch, address above, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday and Friday.

Effective date. This regulation shall become effective November 19, 1981.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33154 Filed 11-19-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 177

[Docket No. 80F–0073]

Indirect Food Additives; Polymers Bis(Isocyanatomethyl) Benzene and Bis(Isocyanatomethyl) Cyclohexane

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(isocyanatomethyl) benzene and bis(isocyanatomethyl) cyclohexane in the production of polyurethane resins intended for use in contact with dry food. The agency is taking this action in response to a petition filed by Takeda Chemical Industries, Ltd.

DATES: Effective November 20, 1981; objections by December 21, 1981.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18480), FDA announced that a food additive petition (FAP 9B3473) had been filed by Takeda Chemical Industries, Ltd., Osaka, Japan, proposing that § 177.1680 *Polyurethane resins* (21 CFR 177.1680) be amended to provide for the safe use of bis(isocyanatomethyl) benzene and bis(isocyanatomethyl) cyclohexane in the production of polyurethane resins for dry food contact.

Having evaluated the data in the petition and other relevant material, FDA concludes that the proposed food additive use is safe and that § 177.1680 should be amended as set forth below.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore need not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch (HFA–305), address above, between 9 a.m. and 4 p.m., Monday through Friday.

PART 177—INDIRECT FOOD ADDITIVES: GENERAL

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 177 is amended in § 177.1680(a)(1) by alphabetically inserting two new items in the list of isocyanates to read as follows:

§ 177.1680 Polyurethane resins.

* * * * *

(a) * * *

(1) *Isocyanates:*

Bis(isocyanatomethyl) benzene (CAS Reg. No. 25854–16–4).

Bis(isocyanatomethyl) cyclohexane (CAS Reg. No. 38661–72–2).

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1981, submit to the Dockets Management Branch (HFA-305), address above, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 20, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 16, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33508 Filed 11-19-81; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0017]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester, which may contain triisopropanolamine, as an antioxidant and/or stabilizer for polypropylene in contact with food. This action is in response to a petition filed by Borg-Warner Chemicals.

DATES: Effective November 20, 1981; objections by December 21, 1981.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 13, 1981 (46 FR 12332), FDA announced that a petition (FAP 0B3478) had been filed by Borg-Warner Chemicals, Technical Centre, Washington, WV 26181, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester, which may contain triisopropanolamine, as an antioxidant and/or stabilizer for polypropylene in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulation should be amended as set forth below.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore need not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see FR 26052; May 11, 1981)), Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Phosphorous acid, cyclic neopentanetetrayl bis (2,4-di-*tert*-butylphenyl) ester (CAS Reg. No. 26741-53-7) which may contain not more than 1 percent by weight of triisopropanolamine (CAS Reg. No. 122-20-3).	For use only at levels not to exceed 0.10 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, and 1.3, under conditions of use B, C, D, E, F, G, and H described in Table 2 of § 176.170(c) of this chapter.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1981 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

EFFECTIVE DATE. This regulation shall become effective November 20, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33153 Filed 11-19-81; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5282/T82; PH-FRL-1989-3]

Tolerances for Pesticides in Food; 1-(4-Chlorophenoxy)-3,3-Dimethyl-1-(1H-1,2,4-Triazol-1 yl)-2-Butanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite in grape juice. This regulation to permit the marketing of grape juice, while further data are being collected on the fungicide, was requested by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on: November 20, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of October 19, 1981 (46 FR 51282) which announced that Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, submitted a food additive petition (FAP 1H5282) proposing that 21 CFR Part 193 be amended by the establishment of a regulation permitting the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3,-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-*H*-1,2,4-triazol-1-ethanol in the commodity grape juice at 2 parts per million (ppm) resulting from preharvest applications to grapes under an experimental use permit. The experimental use permit was issued on July 16, 1980 on a crop destruct basis under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. This regulation will allow the use of grape juice that results from treated grapes with this fungicide.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit that was issued under FIFRA. It has further been determined that since residues of the pesticide may result in grape juice from the agricultural use provided for in the experimental use permit, a food additive regulation should be established and should include a tolerance limitation.

The toxicological data considered in support of the proposed tolerance included a 2-year rat feeding study (oncogenicity) with a no-observable-effect level (NOEL) of 50 ppm, a 2-year dog feeding study with a NOEL of 100 ppm, a multigeneration rat reproduction study with a NOEL of 50 ppm, and a rat teratology with a NOEL of 50 mg/kg.

Based on the 2-year rat feeding study and using a safety factor of 100, the acceptable daily intake (ADI) for a 60-kg man is 1.5 mg/day. All the concurrently proposed temporary tolerances on human food items would theoretically represent 5.55 percent of the ADI. The metabolism of 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit. Accordingly, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register**, of May 4, 1981 (46 FR 24950).

Effective on: November 20, 1981.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: November 10, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 193 is amended by establishing a new § 193.83 to read as follows:

§ 193.83 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone.

(a) A tolerance is established for the combined residues of the fungicide 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4:triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-*H*-1,2,4,-triazol-1-ethanol in grape juice at 2.0 parts per million (ppm) resulting from the application of the fungicide in accordance with the provisions of an experimental use permit that expires December 31, 1982.

(b) Residues in grape juice not in excess of 2.0 ppm resulting from the use described in paragraph (a) of this section, remaining after expiration of the experimental use program, will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit.

(c) Mobay Chemical Corporation shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of distribution and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 81-33558 Filed 11-19-81 8:45 am]

BILLING CODE 6560-32-M

21 CFR Part 561

[FAP 1H5282/T81; PH-FRL-1989-4]

Tolerances for Pesticides in Animal Feeds; 1-(4-Chlorophenoxy)-3, 3-Dimethyl-1-(1H-1,2,4-Triazol-1-yl)-2-Butanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite in or on certain feed commodities. This regulation to permit the marketing of the commodities, while further data are being collected on the fungicide, was requested by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on: November 20, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of October 19, 1981 (46 FR 51282) which announced that Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, submitted a feed additive petition (FAP 1H5282) proposing that 21 CFR Part 561 be amended by the establishment of a regulation permitting the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-*H*-1,2,4-triazol-1-ethanol in or on the commodities apple pomace at 4 parts per million (ppm), grape pomace at 3 ppm, and raisin waste at 7 ppm resulting from preharvest applications to apples and grapes under two experimental use permits. These experimental use permits were issued on July 16, 1980 on a crop destruct basis under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This regulation will allow the use of apple pomace, grape pomace, and raisin waste, that results from treated apples and grapes with this fungicide.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permits that were issued under FIFRA. It has further been determined that since residues of the pesticide may result in apple pomace, grape pomace, and raisin waste from the agricultural use provided for in the experimental use permits, the feed additive regulation should be established and should include tolerance limitations.

The toxicological data considered in support of the proposed tolerances included a 2-year rat feeding study (oncogenicity) with a no-observable-effect level (NOEL) of 50 ppm, a 2-year dog feeding study with a NOEL of 100 ppm, a multigeneration rat reproduction study with a NOEL of 50 ppm, and a rat teratology study with a NOEL of 50 mg/kg.

Based on the 2-year rat feeding study and using a safety factor of 100, the acceptable daily intake (ADI) for a 60-kg man is 1.5 mg/day. All the concurrently proposed temporary tolerances on human food items would theoretically represent 5.55 percent of the ADI. The metabolism of 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes.

A temporary tolerance of 0.01 ppm for secondary residues of 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-*H*-1,2,4-triazol-1-ethanol in milk, eggs, meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep has been established.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permits. Accordingly, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before December 21, 1981, file written objections with the Hearing Clerk at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: November 20, 1981.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: November 10, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by establishing a new § 561.93 to read as follows:

§ 561.93 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone.

(a) Tolerances are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-H-1,2,4-triazol-1-ethanol in or on apple pomace at 4 parts per million (ppm), grape pomace at 3 ppm and raisin waste at 7 ppm resulting from the application of the fungicide in accordance with the provisions of experimental use permits that expire December 31, 1982.

(b) Residues in apple pomace not in excess of 4 ppm, in grape pomace not in excess of 3 ppm, and in raisin waste not in excess of 7 ppm resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use programs will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and feed additive tolerances.

(c) Mobay Chemical Corporation shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of distribution and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency of the Food and Drug Administration.

[FR Doc. 81-33557 Filed 11-19-81; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-81-948]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development, FHC.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I property improvement, mobile home loans, combination and mobile home lot loans, and historic preservation loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-755-6680).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on mobile home loans and property improvement loans have been lowered from 20.00 percent to 19.00 percent, and the finance charge on combination loans for the purchase of a mobile home and a developed or undeveloped lot has been lowered from 19.50 percent to 18.50 percent. The maximum charge on historic preservation loans has been lowered from 20.00 to 19.00 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart A—Eligibility Requirements—Property Improvement Loans

1. Section 201.4(a) is revised to read as follows:

§ 201.4 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge exclusive of fees and charges as provided by paragraph (b) of this section which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 19.00 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart B—Eligibility Requirements—Mobile Home Loans

2. Section 201.540(a) is revised to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 19.00 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

3. Section 201.1511, paragraph (a)(1) is revised to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.* * * *

(1) 18.50 percent per annum.

* * * * *

Subpart E—Eligibility Requirements—Historic Preservation Loans

4. Section 201.1625(a) is revised to read as follows:

§ 201.1625 Financing Charges.

(a) *Maximum financing charges.* The maximum permissible financing charge, exclusive of fees and charges as provided by paragraph (b) of this section, which may be directly or indirectly paid to, or collected by the insured in connection with the loan transaction, shall not exceed a 19.00 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

(Section 3(a), 82 Stat. 113; 12 USC 1709-1; Section 7 of the Department of Housing and Urban Development Act, 42 USC 3534(d))

Issued at Washington, D.C., November 13, 1981.

Philip D. Winn,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 81-33563 Filed 11-19-81; 8:45 am]
BILLING CODE 4210-01-M

24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

[Docket No. R-81-947]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development, FHC.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA interest rates on insured home, project, and Title X land development loans. This action by HUD is designed to bring the maximum interest rates into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: November 16, 1981.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202–426–4667).

SUPPLEMENTARY INFORMATION: The following amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA insured home mortgage insurance programs has been lowered from 16.50 percent to 15.50 percent for level payment (including operative builder) and graduated payment home loan programs (GPM). For insured multifamily project mortgage loan programs, the maximum interest rate has been lowered from 17.50 percent to 16.50 percent. The maximum interest rate for multifamily construction and Title X land development loans has been lowered from 21.00 percent to 19.00 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart A—Eligibility Requirements

1. Section 203.20 paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

2. Section 203.45 paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. Section 203.46 paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

Subpart A—Eligibility Requirements

4. Section 205.50 is revised to read as follows:

§ 203.50 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 19.00 percent per annum. Application for conditional or firm commitments received on or after November 16, 1981 will be processed at the 19.00 percent rate, with the exception of applications submitted pursuant to enexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

5. Section 207.7 paragraph (a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

6. Section 213.10 paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

7. Section 213.511 paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

8. Section 220.576 paragraph (a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

9. Section 221.518 paragraph (a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

10. Section 232.29 paragraph (a) is revised to read as follows:

§ 232.29 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Subpart C—Eligibility Requirement—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

11. Section 232.560 paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) On or after November 16, 1981, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 16.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed

upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

12. Section 234.29 paragraph (a) is revised to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

13. Section 234.75 paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

14. Section 234.76 paragraph (c) is amended to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgatges.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before November 16, 1981, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

15. Section 235.540(a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 16, 1981 the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 16.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

16. Section 236.15(a) is revised to read as follows:

§ 236.15 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

17. Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

18. Section 242.33(a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at

the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

19. Section 244.45(a) is revised to read as follows:

§ 244.45 Maximum interest rate.

(a) Effective on or after November 16, 1981, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 16.50 percent per annum with respect to permanent financing;

(2) 19.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after November 16, 1981 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., November 13, 1981.

Philip D. Winn,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-33559 Filed 11-19-81; 8:45 am]

BILLING CODE 4210-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Mobile Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed mobile home unit loans, lot loans, and combination mobile home unit and lot loans. In addition, the maximum interest rates applicable to home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420 (202–389–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for mobile home loans guaranteed by the VA as he finds the mobile home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional mobile home loans, and the decrease of other short-term and long-term interest rates—have shown that the mobile home capital markets have improved. It is now possible to decrease the interest rates on mobile home unit loans, lot loans, and combination mobile home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans and for loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

The Administrator's statutory authority to establish interest rates has been delegated by 38 CFR 2.6(b)(3) to the Chief Benefits Director, Deputy Chief Benefits Director, or person authorized to act for them.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in the Order. The existing process of informal consultation among representatives with the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

The official program numbers and titles of VA programs affected by this action as set forth in OMB Circular A–89, Catalog of Federal Domestic Assistance, are 64.113, Veterans Housing—Direct Loans and Advances, 64.114, Veterans Housing—Guaranteed

and Insured Loans, and 64.119, Veterans Housing—Mobile Home Loans.

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1), and 1819(f) and (g) of title 38, United States Code and delegated to the undersigned by 38 CFR 2.6(b)(3). The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These decreases are accomplished by amending §§ 36.4212(a)(1), (2), and (3), and 36.4311(a), (b), and 36.4503(a), title 38, Code of Federal Regulations.

Approved: November 13, 1981.

By direction of the Administrator.

Dorothy L. Starbuck,

Chief Benefits Director.

PART 36—LOAN GUARANTY

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective November 16, 1981, 18½ percent simple interest per annum for a loan which finances the purchase of a mobile home unit only.

(2) Effective November 16, 1981, 18 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 16, 1981, 18 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a mobile home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the mobile home.

* * * * *

2. In § 36.4311, paragraphs (a) and (b) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 15½ per centum per annum, effective November 16, 1981, the interest rate on any home or condominium loan guaranteed or insured wholly or in part on or after such date may not exceed 15½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Effective November 16, 1981, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs which is guaranteed or insured wholly or in part on or after such date may not exceed 17 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 15½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 17 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

(38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1819 (f) and (g))

[FR Doc. 81-33564 Filed 11-19-81; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Parts 6 and 8

United States Government Life Insurance and National Service Life Insurance; Interest Rates and Dividends

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is issuing new sections to allow higher interest rates to be paid to beneficiaries of USGLI (United States Government Life Insurance) and NSLI (National Service Life Insurance) where the proceeds are paid in equal monthly installments over a limited period of months. An amendment is also issued to authorize the payment of dividends for Veterans' Reopened Insurance prefixed by J, JR or JS, and for RS and W insurance. These regulation changes are necessary to make the regulations conform to legislation.

EFFECTIVE DATE: November 28, 1979 except that the amendment to 38 CFR 8.26(a)(3) concerning the payment of dividends on insurance issued under 38 U.S.C. 723(b) is effective May 24, 1974.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Carey, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101 (215-951-5360).

SUPPLEMENTARY INFORMATION: On pages 27361 and 27362 of the **Federal Register** of May 19, 1981 there was published a notice of proposed regulatory development to issue regulations concerning interest rates and dividends. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations.

No written objections have been received and the proposed regulations are hereby adopted with one change. Section 8.26(a)(3) is amended to read "Issued under sections 704(c) and 722(a) of title 38, United States Code; * * *." Section 723(b) is omitted since dividends are payable on RS and W insurance issued under this section as authorized by Pub. L. 93-289.

The agency has determined that these proposed regulations are nonmajor in accordance with the requirements of Executive Order 12291 because they will not have any significant effects on the economy nor will they cause an increase in costs or prices.

The Administrator hereby certifies that this final rule will not have a significiant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these rules, almost exclusively, affect only a small segment of the veteran population and insurance recipients. They will therefore have no significant direct impact on small entities.

The proposed regulations, as amended, are adopted and are set forth below.

Approved: October 30, 1981.

Robert P. Nimmo,

Administrator.

The Veterans Administration is amending 38 CFR Parts 6 and 8 as set forth below:

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

§ 6.58 [Amended]

1. Section 6.58 is amended by adding the words "or her" after the words "his" and "him" in the first sentence.

§ 6.60 [Amended]

2. Section 6.60 is amended by adding the words "or her" after the word "his" in the third sentence

§ 6.62 [Amended]

3. Section 6.62 is amended by removing the word "his" and adding the words "such person's" in the first sentence and adding the citation "(38 U.S.C. 718)" as the end of paragraph (a).

4. Section 6.69c is added as follows:

§ 6.69c Higher interest rates for amounts payable to beneficiaries.

Notwithstanding section 744, title 38, United States Code, where the beneficiary of an insurance policy issued in accordance with the provisions of subchapter II, chapter 19, title 38, United States Code receives the proceeds of such policy under a settlement option under which such proceeds are paid in equal monthly installments over a limited period of months, the interest that may be added to each such installment may be at a rate that is higher than the interest rate prescribed in section 744 and that is established by the Administrator as, from time to time, the Administrator determines to be administratively and actuarially sound for the program of insured concerned. Such higher rates will be paid on the unpaid balance of such monthly installments. (38 U.S.C. 761)

§ 6.70 [Amended]

5. Section 6.70 is amended by adding the words "or her" after the word "his".

PART 8—NATIONAL SERVICE LIFE INSURANCE

6. In Part 8, § 8.26(a)(3) is revised as follows:

§ 8.26 How paid.

(a) Except as hereinafter provided in this paragraph, a National Service Life Insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans Affairs. Dividends becoming payable after January 1, 1952, shall be payable on the date preceding the anniversary of the policy unless the Administrator shall declare them payable on some other date. Dividends are not payable on insurance:

* * * * *

(3) Issued under sections 704(c) and 722(a) of title 38, United States Code; (38 U.S.C. 723(b) and 725)

* * * * *

7. Section 8.82 is added as follows:

§ 8.82 Higher interest rates for amounts payable to beneficiaries.

Notwithstanding sections 702, 723 and 725 of title 38, United States Code, if the beneficiary of an insurance policy receives the proceeds of such policy under a settlement option under which such proceeds are paid in equal monthly installments over a limited period of months, the interest that may be added to each such installment may be at a rate that is higher than the interest rate prescribed in the appropriate section of subchapter I of chapter 19 of title 38, United States Code. The Administrator may from time to time establish a higher interest rate under the preceding sentence only in accordance with a determination that such higher rate is administratively and actuarially sound for the program of insurance concerned. Any such higher interest rate shall be paid on the unpaid balance of such monthly installments. (38 U.S.C. 726)

[FR Doc. 81-33565 Filed 11-19-81; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 1971-7]

Approval and Promulgation of Implementation Plans; Kentucky: Permit and Exemption Fees

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: As required by section 110(a)(2)(K) of the Clean Air Act, the Commonwealth of Kentucky has submitted for approval to EPA a State Implementation Plan (SIP) establishing Permit and Exemption Fees. EPA hereby approves this SIP. A copy of the SIP is available to the public as noted below.

DATES: This action will be effective January 19, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Library, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20005

Division of Air Pollution control, Kentucky Department for Natural Resources and Environmental Protection, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Mr. Drew Peake, Air Programs Branch, EPA, Region IV at the above address and telephone number 404/881-2864 or FTS 257-2864.

SUPPLEMENTAL INFORMATION: Under section 110(a)(2)(K) of the Clean Air Act (the Act), States must submit a State Implementation Plan which provides for permit and exemption fees to be levied against major stationary sources. Kentucky has adopted a regulation establishing such a plan which satisfies this requirement of the Act. The basic requirements for a SIP in general are outlined in section 100(a)(2) of the Clean Air Act and EPA regulations at 40 CFR 51, Subpart B. On June 10, 1981, the Kentucky Department for Natural Resources and Environmental Protection submitted the Permit and Exemption Fee SIP to EPA for approval. The Permit and Exemption Fees are required to cover the cost of processing the applications. The fees assessed under this plan are filing fees, construction permit fees, operating permit fees, duplicate permit fees, and exemption fees. For the purpose of assessing these fees, Kentucky defines three categories of sources. Category I includes all sources subject to the Prevention of Significant Deterioration (PSD) requirements. The highest fees are assessed to this group in order to recover the increased cost associated with the engineering determinations necessary for permits. Category II sources are not subject to PSD regulations but include all other major sources (potential to emit more than 100 tons/year). The fees assessed to Category II sources reflect the lower level of activity required for a non-PSD review. Category III sources include all other sources. The processing requirements are very limited for this group, and the fees assessed are minimal. EPA has reviewed the SIP and finds that it satisfies the guidelines.

Action: EPA today approves the Kentucky Permit and Exemption Fee SIP. This is being done without prior proposal because the SIP is noncontroversial, based on accepted procedures, has limited impact, and no comments are expected. The public should be advised that this action will be effective January 19, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this revision is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before January 19, 1982. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. section 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

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 merely ratifies State actions and imposes no new requirements on sources.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: November 12, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

In § 52.920, paragraph (c) is amended by adding subparagraph (24) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(24) Provision for permit and exemption fees, submitted on June 10, 1981, by the Kentucky Department for Natural Resources and Environmental Protection.

[FR Doc. 81-33529 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[Docket No. AH300FWV; A-3-FRL 1971-5]

Approval of Revision of the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 14, 1980 at 45 FR 54042, EPA approved, with certain conditions, West Virginia's revised State Implementation Plan (SIP) for the attainment of air quality standards. One of the conditions EPA established was that West Virginia submit a test method for Regulation XXIII to EPA as a SIP revision. Regulation XXIII limits volatile organic compound emissions from bulk gasoline terminals and a test method is needed to make it enforceable. EPA has received this test method from West Virginia and has determined that West Virginia has met the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51 for inclusion of it in the SIP. Therefore, EPA is approving this test method as a revision to the West Virginia SIP.

EFFECTIVE DATE: December 21, 1981.

ADDRESSES: Copies of West Virginia's test method for Regulation XXIII are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106; ATTN: Mr. Raymond Chalmers

West Virginia Air Pollution Control Board, 1558 Washington Street, East, Charleston, West Virginia 25311; ATTN: Mr. Carl Beard

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Raymond D. Chalmers (3AH13), U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, telephone number 215/597-8309.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA) Amendments of 1977 required States to submit revised State Implementation Plans (SIPs) for all areas where National Ambient Air Quality Standards (NAAQS) had not been attained. West Virginia submitted a SIP revision to EPA as required. EPA approved this SIP revision, with certain conditions, in a notice published at 45 FR 54042 (1980).

One of the concerns EPA had regarding West Virginia's SIP revision was that West Virginia had submitted one regulation, Regulation XXIII, entitled *To Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Bulk Gasoline Terminals*, without also submitting a test method needed to make it enforceable. Accordingly, EPA conditioned its approval of West Virginia's SIP revision on West Virginia submitting a test method for this regulation.

West Virginia submitted a test method for Regulation XXIII to EPA on November 6, 1980. This test method specifies procedures for quantifying emissions from bulk gasoline loading terminals. EPA proposed approval of this test procedure at 46 FR 33333 on June 29, 1981. EPA received no comments on the test procedure.

EPA has reviewed West Virginia's test procedure and has determined that it is acceptable. EPA has also determined that West Virginia has met the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51 for the inclusion of the test method in the West Virginia SIP. Therefore, EPA is approving this test method as a revision of the West Virginia SIP.

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 this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that the SIP approvals under Section 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7401–642)

Dated: November 10, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of West Virginia was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart XX—West Virginia

1. Section 52.2520, paragraph (c) is amended by adding paragraph (16) as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(16) Test Procedure for Quantifying Emissions From Bulk Gasoline Loading Terminals, submitted by the Governor of West Virginia on November 6, 1980.

[FR Doc. 81-33534 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-7-FRL 1973-7]

Attainment Status Designations—Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Final action is being taken in this notice to redesignate the Nebraska portion (Douglas and Sarpy Counties) of Air Quality Control Region 085 (AQCR 085) from nonattainment to unclassifiable for photochemical oxidants (ozone). Because there is insufficient valid monitoring or modeling data to determine whether the area is in compliance with the revised National Ambient Air Quality Standard (NAAQS) for ozone, data generated during the 1981 ozone season will be used to determine the attainment/nonattainment status of AQCR 085. The proposed rulemaking for this action appeared in the **Federal Register** on July 29, 1981 (46 FR 38733). No comments were received.

EFFECTIVE DATE: November 20, 1981.

ADDRESSES: Copies of the state submission and the EPA-prepared evaluation report are available at the following locations:

Public Information Reference Unit, Environmental Protection Agency, Room 2922, 401 M Street, SW., Washington, D.C. 20460.

Air, Noise and Radiation Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eloise Reed, Air Planning and Development Section, Air, Noise and Radiation Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816) 374–3791, FTS: 758–3791.

SUPPLEMENTARY INFORMATION: The NAAQS for ozone was revised on February 8, 1979 (44 FR 8202), and a new calibration method for ozone to be used by the states within 18 months was established. Nebraska switched to this revised calibration method in December 1980. Because two EPA ozone audits revealed ozone monitors in Omaha were not operating consistently prior to December 1980, Omaha ozone data prior to that date have been determined to be invalid, and data from the 1981 summer ozone season will be used to determine the attainment/nonattainment status for AQCR 085.

EPA proposed redesignation of the Nebraska portion of AQCR 085 (Douglas and Sarpy Counties) from nonattainment to unclassifiable on July 29, 1981 (46 FR 38733). No comments were received.

Because the Omaha monitors are also used for air quality monitoring for the Iowa portion of AQCR 085 (Pottawattamie County), appropriate redesignation actions will also be taken for Pottawattamie County after the attainment/nonattainment status is determined for Omaha. Pottawattamie County is presently designated as attainment. The inconsistencies of the attainment designation for Pottawattamie County and the unclassifiable designation for Douglas and Sarpy Counties will have little effect on new source review or requirements for existing sources in AQCR 085.

ACTION: EPA redesignates the Nebraska portion of AQCR 085 (Douglas and Sarpy Counties) as unclassifiable for ozone.

The requirements of Part D of the Clean Air Act, as amended, are no longer applicable, and a SIP revision is no longer required.

The Administrator finds good cause to make this redesignation effective immediately, as it eliminates the nonattainment status for Omaha, thereby, lifting the construction restrictions of Section 110(a)(2)(I) of the Clean Air Act Amendments of 1977 and enabling sources to proceed with certainty in conducting their affairs.

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not "major " because it only approves state actions and imposes no additional substantive requirements which are not currently applicable under State law. Hence it is unlikely to have an annual effect on the economy of $100 million or more, or to have other significant adverse impacts on the national economy.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this attainment status redesignation will not have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations.

Under Section 307(b)(1) of the Clean Air Act, as amended, judical review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged

later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice of final rulemaking is issued under the authority of Section 107(d) of the Clean Air Act Amendments of 1977.

Dated: November 10, 1981.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

Section 81.328 is amended by revising the table for ozone to read as follows:

§ 81.328 Nebraska

* * * * *

NEBRASKA

Designated area	Does not meet primary standards	Cannot be classified	Better than national standard
Douglas and Sarpy Counties		X	
Remainder of State			X

[FR Doc. 81-33536 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-4-FRL 1961-1]

Designation of Areas for Air Quality Planning Purposes; Alabama and Kentucky: Redesignation of Nonattainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rulemaking sets forth a revised ozone attainment status for Jackson and DeKalb Counties in Alabama and for Allen, Butler, Edmonson, Grayson, Hart, Logan, Simpson, and Warren Counties in Kentucky and a revised sulfur dioxide attainment status for Webster County, Kentucky. Data submitted by the Alabama Air Pollution Control Commission (AAPCC) for one ozone season showed no violations of the National Ambient Air Quality Standards (NAAQS) for ozone. The data submitted are representative of the area within 50 kilometers from the monitoring site in Murphy Hill, Alabama; this area is relatively homogeneous. The Kentucky Department for Natural Resources and Environmental Protection (KDNREP) submitted monitoring data for the 1980 ozone season showing no violations of the NAAQS. The two monitoring sites are located in Warren and Edmonson Counties, Kentucky. All of the counties included in this action lie within a 50 kilometer radius of one or both of the monitors and the areas within this radius are relatively homogeneous. The KDNREP also submitted twelve quarters of monitoring data (1978 through 1980) from Webster County, Kentucky showing no violations of the NAAQS for sulfur dioxide. All of these changes are based on measured air quality data meeting EPA's criteria for validity and representativeness.

DATES: These changes will be effective January 19, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: The materials submitted by the states in support of the redesignations may be examined during normal business hours at the following locations.

Public Information Reference Unit, EPA, 401 M Street, S.W., Washington, D.C. 20460

Air Programs Branch, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Notice of intent to make adverse comments should be directed to the EPA, Region IV, Air Programs Branch at the address given.

FOR FURTHER INFORMATION CONTACT: Archie Lee of the Region IV, Air Programs Branch at 404/881-3286 (FTS 257-3286).

SUPPLEMENTAL INFORMATION:

Ozone

On July 30, 1981, the Alabama Air Pollution Control Commission submitted one full ozone season of monitoring data collected at Murphy Hill, Alabama. EPA has determined that the data generated from May 6, 1980 through May 5, 1981, are acceptable for use in determining the attainment status of Jackson and DeKalb Counties. In Kentucky, an acceptable determination was made for data collected from July 1980 through October 1980, at the Bowling Green and Brownsville sites. EPA's guidelines for assessing compliance with the ozone standard, EPA 450/4-79-003, state that one oxidant season of ambient data, is sufficient to show attainment if no data have been arbitrarily excluded, and if the data are valid by having been subject to an acceptable quality assurance plan. The data meet these criteria and show no violation of the NAAQS for ozone. Jackson and DeKalb Counties in Alabama and Allen, Butler, Edmonson, Grayson, Hart, Logan, Simpson and Warren Counties in Kentucky were previously listed as unclassifiable because there was not sufficient data to make an attainment status determination. Based upon EPA's review of the material submitted, the Administrator hereby grants the redesignation requests made by Alabama and Kentucky. Since Section 107(d)(1) of the Clean Air Act does not provide for EPA to make a formal distinction between unclassifiable and attainment in the case of an area's attainment status for ozone; these counties will continue to be included in the "Rest of State" are shown in the ozone tables of 40 CFR 81.301 and 81.318 as unclassified or better than the NAAQS for ozone.

Sulfur Dioxide

On March 3, 1978, the Administrator designated Webster County, Kentucky nonattainment for sulfur dioxide.

On March 12, 1981, the Kentucky Department for Natural Resources and Environmental Protection (DNREP) submitted air quality data showing that the NAAQS for sulfur dioxide had not been violated from 1978 through 1980, demonstrated commensurate reductions in emissions (confirmed by compliance performance test), and requested that this area be redesignated to attainment. EPA is today changing the designation to attainment.

Action

Since EPA views as routine and noncontroversial any Section 107 redesignation made on the basis of measured air quality data, these redesignations are being made without prior proposal. The public should be advised that these actions will be effective January 19, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any of the actions taken today, that action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final

action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals of the appropriate circuit within 60 days of today.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations to attainment.

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 only approves state actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Sec. 107, Clean Air Act (42 U.S.C. 7407))

Dated: November 12, 1981.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.318 [Amended]

In § 81.318, the attainment status designation table titled "Kentucky—SO_2" is amended by removing the entry for Webster County.

[FR Doc. 81-33535 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PP 9F2201/R373; PH-FRL-1988-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Aldicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the nematocide aldicarb in or on the raw agricultural commodities grapefruits, lemons, and limes at 0.3 part per million (ppm). This regulation was requested by Union Carbide Corp., P.O. Box 12014, Research Triangle Park, NC 27709. This regulation establishes the maximum permissible level for the combined residues of aldicarb on the commodities.

EFFECTIVE DATE: Effective on November 20, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2787).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 7, 1979 (44 FR 32737) that Union Carbide Corp., had submitted a pesticide petition (PP 9F2201) to EPA. The petition proposed that 40 CFR 180.269 be amended by establishing tolerances for the combined residues of the nematocide aldicarb [2-methyl-2-(methylthio) propionaldehyde *O*-(methylcarbamoyl)oxime] and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl)oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl)oxime in or on the raw agricultural commodities grapefruits, lemons, and limes at 0.3 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included a two-year rat feeding/oncogenicity study with a no-observable-effect level (NOEL) (other than ChE) of 0.3 milligram (mg)/kilogram (kg) of body weight (bw) per day; a six-month rat feeding study using aldicarb sulfoxide (considered the more potent cholinesterase inhibitor) with a ChE NOEL of 0.125 mg/kg of bw/day; a two-year dog feeding study with a NOEL of 3.3 ppm; an 18-month mouse feeding/oncogenicity study with a NOEL of 0.7 mg/kg of bw/day; a three-generation reproduction study in rats with a 0.7 mg/kg of bw/day NOEL; a rat teratology study which was negative at 1.0 mg/kg/day; a hen neurotoxicity study which was negative up to 4.5 mg/kg/day; and a rat dominant lethal test which was negative at 0.7 mg/day. Based on the six-month rat aldicarb sulfoxide study with a NOEL of 0.125 mg/kg of bw/day, the acceptable daily intake (ADI) for humans is 0.003 mg/kg of bw/day. The implicit safety factor is about 40. This is considerably higher than the 10 margin of safety usually used for cholinesterase-inhibiting pesticides such as this and reflects a conservatism due to the high acute toxicity. The theoretical maximum residue contribution (TMRC) in the human diet from the previously established tolerances at levels ranging from 0.002 ppm to 1.0 ppm and the proposed tolerances do not exceed the ADI.

The metabolism of aldicarb is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. No actions are currently pending against continued registration of aldicarb, nor are there any other relevant considerations involved in establishing the proposed tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerance will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register** file written objections with the Hearing Clerk at the above address given. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations proposing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on November 20, 1981.

(Sec. 408(d)(2), 68 Stat. 512; (21 U.S.C. 346a(d)(2)))

Dated: November 5, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.269 is amended by alphabetically inserting the commodities as follows:

§ 180.269 Aldicarb; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Grapefruits	0.3
* * * * *	
Lemons	0.3
Limes	0.3
* * * * *	

[FR Doc. 81-33567 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6092

Alaska; Modification of Public Land Order Withdrawals; Classification and Opening of Lands for Selection by State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: The purpose of this public land order is to modify and amend a number of public land orders and to classify and open lands to selection by the State of Alaska under either the Alaska Statehood Act or Subsection 906(b) of the Alaska National Interest Lands Conservation Act, if such lands are otherwise available.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Beaumont C. McClure, Washington, D.C., (202) 343-6511, or Robert D. Arnold, Alaska State Office, (907) 271-5768

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Secretary by Subsection 204(a) of the Act of October 21, 1976, 43 U.S.C. 1714(a), and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. The following listed public land orders, as amended, modified, or corrected, which withdrew lands from State selection pursuant to the authority vested in the President and delegated to the Secretary in Executive Order No. 10355 of May 26, 1952, 17 FR 4831, are hereby modified and amended to the extent necessary to permit selection of the lands described therein by the State of Alaska under either the Alaska Statehood Act, 72 Stat. 339, or Subsection 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2437, if such lands are otherwise available and to the extent that such lands are (1) outside the boundaries of any conservation system unit, national recreation area, national conservation area, and new national forest and forest addition created under the Alaska National Interest Lands Conservation Act; and (2) outside the areas withdrawn by Public Land Order Nos. 5150, 5151, 5161, 5182, 5184, 5187, 5190, 5194, 5388, 5860, and 5951; and (3) outside lands described in Subsection 1431(j)(1) of the Alaska National Interest Lands Conservation Act; and (4) outside those portions of T. 30 N. Rs. 13 and 14 E.; T. 31 N., Rs. 12 through 14 E.; Secs. 33, 34, 35, and 36, T. 32 N., R. 12 E.; and Secs. 31 and 32, T. 32 N., R. 13 E., Kateel River Meridian, which are outside the Gates of the Arctic National Park and Preserve and outside the Noatak National Preserve.

a. The following public land orders which withdrew lands pursuant to Subsection 11(a)(3) of the Alaska Native Claims Settlement Act:

Public Land Order No. 5169, dated March 9, 1972, as amended by:
- Public Land Order No. 5191, dated March 17, 1972;
- Public Land Order No. 5256, dated September 12, 1972;
- Public Land Order No. 5396, dated September 14, 1973;
- Public Land Order No. 5428, dated July 25, 1974; and
- Public Land Order No. 5556, dated December 10, 1975,

except that Public Land Order No. 5169 is not modified or amended hereby as to the following described lands:

Umiat Meridian

T. 11 S., R. 10 W.
T. 10 S., Rs. 8 to 10 W., inclusive.
T. 10 S., R. 7 W.,
Secs. 19 to 36, inclusive.
T. 11 S., R. 7 W.,
Secs. 1 to 18, inclusive.
T. 11 S., R. 6 W.
T. 11 S., R. 5 W.,
Secs. 1 to 18, inclusive.
T. 10 S., R. 5 W.,
Secs. 19 to 36, inclusive.
T. 10 S., Rs. 1 to 4 W., inclusive.
T. 10 S., Rs. 1 to 10 E., inclusive.

Public Land Order No. 5170, dated March 9, 1972, as amended by:
- Public Land Order No. 5395, dated September 14, 1973;
- Public Land Order No. 5450, dated November 26, 1974; and
- Public Land Order No. 5557, dated December 10, 1975.

Public Land Order No. 5171, dated March 9, 1972, as amended by:
- Public Land Order No. 5253, dated September 12, 1972;
- Public Land Order No. 5389, dated September 14, 1973; and
- Public Land Order No. 5428, dated July 25, 1974.

Public Land Order No. 5172, dated March 9, 1972, as amended by:
- Public Land Order No. 5191, dated March 17, 1972;
- Public Land Order No. 5392, dated September 14, 1973;
- Public Land Order No. 5428, dated July 25, 1974; and
- Public Land Order No. 5442, dated November 4, 1974.

Public Land Order No. 5173, dated March 9, 1972, as amended by:
- Public Land Order No. 5191, dated March 17, 1972;
- Public Land Order No. 5213, dated May 30, 1972;
- Public Land Order No. 5321, dated December 7, 1972; and
- Public Land Order No. 5391, dated September 14, 1973.

Public Land Order No. 5174, dated March 9, 1972, as amended by:
- Public Land Order No. 5255, dated September 12, 1972;
- Public Land Order No. 5411, dated February 7, 1974; and
- Public Land Order No. 5501, dated June 5, 1975.

Public Land Order No. 5176, dated March 9, 1972, as amended by:
- Public Land Order No. 5191, dated March 17, 1972, and
- Public Land Order No. 5393, dated September 14, 1973.

Public Land Order No. 5178, dated March 9, 1972, as amended by:
- Public Land Order No. 5214, dated May 30, 1972, and
- Public Land Order No. 5257, dated September 17, 1972.

b. The following public land orders which withdrew lands pursuant to Subsections 11(a) or 11(b) of the Alaska Native Claims Settlement Act:

Public Land Order No. 5242, dated July 20, 1972, and
Public Land Order No. 5353, dated July 17, 1973.

c. The following public land order which withdrew lands pursuant to

Subsection 17(d)(2) of the Alaska Native Claims Settlement Act:

Public Land Order No. 5179, dated March 9, 1972, as amended by:
Public Land Order No. 5192, dated March 17, 1972;
Public Land Order Nos. 5250, 5251, 5253, 5256, dated September 12, 1972;
Public Land Order No. 5257, dated September 17, 1972;
Public Land Order No. 5321, dated December 7, 1972;
Public Land Order Nos. 5389, 5392, 5393, 5395, and 5396, dated September 14, 1973;
Public Land Order No. 5411, dated February 7, 1974; and
Public Land Order No. 5556, dated December 10, 1975,

except that Public Land Order No. 5179 is not amended or modified hereby as to the following described lands:

Umiat Meridian

T. 11 S., R. 10 W.
T. 10 S., Rs. 8 to 10 W., inclusive.
T. 10 S., R. 7 W.,
Secs. 19 to 36, inclusive.
T. 11 S., R. 7 W.,
Secs. 1 to 18, inclusive.
T. 11 S., R. 6 W.
T. 11 S., R. 5 W.,
Secs. 1 to 18, inclusive.
T. 10 S., R. 5 W.,
Secs. 19 to 36, inclusive.
T. 10 S., Rs. 1 to 4 W., inclusive.
T. 10 S., Rs. 1 to 10 E., inclusive.

Kateel River Meridian

Those portions of the following described lands lying outside the Gates of the Arctic National Park and Preserve and outside the Noatak National Preserve:
T. 30 N., Rs. 13 and 14 E.
T. 31 N., Rs. 12 to 14 E., inclusive.
T. 32 N., R. 12 E.,
Secs. 33 to 36, inclusive.
T. 32 N., R. 13 E.
Secs. 31 and 32.

d. The following public land order which withdrew lands pursuant to Subsection 17(d)(1) of the Alaska Native Claims Settlement Act:

Public Land Order No. 5180, dated March 9, 1972, as amended by:
Public Land Order No. 5193, dated March 17, 1972;
Public Land Order No. 5242, dated July 20, 1972;
Public Land Order Nos. 5250, 5251, and 5256, dated September 12, 1972;
Public Land Order No. 5257, dated September 17, 1972;
Public Land Order No. 5321, dated December 2, 1972;
Public Land Order Nos. 5391, 5392, 5393, 5395, and 5396, dated September 14, 1973;
Public Land Order No. 5411, dated February 7, 1974; and
Public Land Order No. 5418, dated March 25, 1974,

except that Public Land Order No. 5180 is not amended or modified hereby as to the following described lands:

Umiat Meridian

T. 11 S., R. 10 W.
T. 10 S., Rs. 8 to 10 W., inclusive.
T. 10 S., R. 7 W.,
Secs. 19 to 36, inclusive.
T. 11 S., R. 7 W.,
Secs. 1 to 18, inclusive.
T. 11 S., R. 6 W.
T. 11 S., R. 5 W.,
Secs. 1 to 18, inclusive.
T. 10 S., R. 5 W.,
Secs. 19 to 36, inclusive.
T. 10 S., Rs. 1 to 4 W., inclusive.
T. 10 S., Rs. 1 to 10 E., inclusive.

Kateel River Meridian

Those portions of the following described lands lying outside the Gates of the Arctic National Park and Preserve and outside the Noatak National Preserve:
T. 30 N., Rs. 13 and 14 E.
T. 31 N., Rs. 12 to 14 E., inclusive.
T. 32 N., R. 12 E.,
Secs. 33 to 36, inclusive.
T. 32 N., R. 13 E.,
Secs. 31 and 32.

2. Pursuant to the authority vested in the Secretary by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act, subject to valid existing rights and subject to the limitations set forth in paragraph 3 of this order, the lands withdrawn by the public land orders listed in paragraph 1 of this order which were withdrawn pursuant to the authority vested in the President and delegated to the Secretary in Executive Order No. 10355, and which are otherwise available, are hereby classified as suitable for selection by the State of Alaska and are hereby opened to such selection.

3. The purpose of this public land order is to make certain lands available for selection by the State of Alaska. No lands are opened to selection by the State of Alaska by this order which are (1) currently within the boundaries of any conservation system unit, national recreation area, national conservation area, or new national forest and forest addition created under the Alaska National Interest Lands Conservation Act; or (2) withdrawn by Public Land Order Nos. 5150, 5151, 5181, 5182, 5184, 5187, 5190, 5194, 5388, 5860, and 5951; or (3) described in Subsection 1431(j)(1) of the Alaska National Interest Lands Conservation Act; or (4) within those portions of T. 30 N., Rs. 13 and 14 E.; T. 31 N., Rs. 12 through 14 E.; Secs. 33, 34, 35, and 36, T. 32 N., R. 12 E; and Secs. 31 and 32, T. 32 N., R. 13 E., Kateel River Meridian, which are outside the Gates of the Arctic National Park and Preserve and outside the Noatak National Preserve.

4. As provided in Subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described herein until 10:00 a.m. Alaska Standard Time on February 19, 1982. After this time and date, the lands will be open to selection by the State and other forms of appropriation only to the extent specifically provided by statute, regulation, court decree, contract, or public land order.

Dated: November 16, 1981.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 81-33556 Filed 11-19-81; 6:45 am]
BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 81-519]

Amendment of the Commission's Rules To Reflect a Reorganization of the Office of Opinions and Review and the Office of General Counsel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's review process for policy and other decision items has been performed by various units within the Agency. To streamline the effort, for efficiency and speed, the Office of Opinions and Review is being subsumed into the Office of General Counsel. Renamed the Adjudication Division, the functions will be unchanged.

EFFECTIVE DATE: November 9, 1981.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Charles Marietta, Office of Managing Director (202) 632-7513.

Adopted: September 9, 1981.

Released: November 9, 1981.

By the Commission:

In the matter of an amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Office of Opinions and Review and the Office of General Counsel, Order.

1. The Commission has before it for consideration proposed changes in the organization of the Office of Opinions and Review and the Office of General Counsel. Implementation of the proposed changes would require amendments to §§ 0.41, 0.42 and 0.251 of the Commission's Rules and Regulations and deletion of §§ 0.171, 0.371, 0.377.

2. To promote operational efficiency, the Commission is hereby approving the transfer of the Office of Opinions and Review to the Office of General Counsel. The functions of the Office of Opinions and Review will be handled by a newly created Adjudication Division in the Office of General Counsel. These changes will reduce the processing time for adjudications heard by the Commission. Part 0 of the Rules and Regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, It is ordered, effective November 9, 1981 that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 0—COMMISSION ORGANIZATION

47 CFR Part 0 is amended as follows:

1. Section 0.41 is amended by adding a new paragraph (p):

§ 0.41 Functions of the Office.

* * * * *

(p) To assist and make recommendations to the Commission and to individual Commissioners designed to review initial decisions as to the disposition of cases of adjudication and such other cases as, by Commission policy, are handled in the same manner and which have been designated for hearing.

2. Section 0.42 is amended by adding a new paragraph (d):

§ 0.42 Units in the office.

* * * * *

(d) Adjudication Division

3. Section 0.251 is amended by adding a new paragraphs (f) and (g):

§ 0.251 Authority Delegated.

* * * * *

(f) The General Counsel is delegated authority to act upon the following matters in hearing proceedings which are pending before the Commission en banc:

(1) Motions or petitions for extension of time.

(2) Pleadings which are moot.

(3) To dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(4) To issue orders, in accordance with Commission instructions, specifying or changing the day or hour of oral argument and the time allowed a party for oral argument.

(5) Requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter. See §§ 1.48 and 1.204 of this chapter.

(6) Unopposed motion by any party for dismissal or withdrawal of his own pleading.

(7) Petitions for leave to amend applications where no objection is raised to the acceptance of the amendment.

(8) To issue orders, as appropriate, requesting the filing of further pleadings.

(9) Pleadings which may be dismissed due to procedural defect, subject to being refiled in proper form within five days.

(10) To dismiss, as repetitious, any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

(g) The official record of all actions taken by the General Counsel pursuant to § 0.251(f) is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

§§ 0.171, 0.371 and 0.377 [Removed]

4. Sections 0.171, 0.371 and 0.377 and their undesignated center headings are removed.

[FR Doc. 81-33566 Filed 11-19-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[FCC 81-497]

Amendment to § 73.1020 of the Commission's Rules: Station License Period

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Commission's rules to implement the new seven year and five year radio and television broadcast license term provisions of Pub. L. 97-35, the "Omnibus Budget Reconciliation Act."

DATES: Effective: October 30, 1981.

FOR FURTHER INFORMATION CONTACT: James J. Brown, Broadcast Bureau (202) 632-6993.

Adopted: October 30, 1981.

Released: November 2, 1981.

By the Commission: Commissioner Jones concurring in the result.

In the matter of an amendment to § 73.1020 of the Commission's Rules: Station license period, Order.

1. Section 73.1020 of the Commission's Rules provides that broadcast station licenses "will normally be renewed for 3 years." On August 13, 1981, the Omnibus Budget Reconciliation Act was enacted into law. Pub. L. 93-35, 95 Stat. 357. Although this legislation primarily dealt with the funding of various administrative agencies, including the Federal Communications Commission, it also amended section 307(d) of the Communications Act of 1934 so as to extend the maximum three year license term for radio and television broadcast stations. To alleviate costs both for the broadcasting industry and for the Commission, the license term for television stations was increased to five years, whereas the term for radio stations was extended to seven years. It was not the intent of the Congress to have broadcast station licenses presently in effect revised immediately in accord with the new maximum terms. Rather, the Congress intended to have the longer license terms applied in an orderly manner as radio and television stations became due for their regularly scheduled renewal periods following the legislation's enactment. See H.R. 3982, Report No. 97-208, p. 895. In accord with the intent of Congress, this order implements the longer license terms, commencing with the radio and television broadcast stations whose licenses were scheduled to expire on October 1, 1981.

2. Section 4 of the Administrative Procedures Act, 5 U.S.C. 553, requires that a general notice of proposed rule making be published in the **Federal Register**, and interested parties be given an opportunity to comment upon or participate in any rule making. However, these requirements do not apply when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Section 73.1020 of the Commission's Rules merely implements the intent of Congress in passing the subject legislation. Moreover, in that Congress determined that extended

license renewal terms are in the public interest, immediate implementation of revised § 73.1020 is appropriate. Thus, good cause is established for waiver of the 30 day effective period. 5 U.S.C. 553(d)(3).

3. Accordingly, It is ordered, That effective as of the adoption date of this Order, § 73.1020(a) of the Rules IS AMENDED in the manner set forth in the attached Appendix.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—RADIO BROADCAST SERVICES

Paragraph (a) of § 73.1020 is revised to read as follows:

§ 73.1020 Station license period.

(a) Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the state or territory in which the station is located. If issued after such date, it will run to the next renewal date determined in accordance with this section; and, commencing with the licenses scheduled to expire on October 1, 1981 and thereafter, it will normally be renewed for 7 years in the case of radio broadcast stations and for 5 years in the case of television broadcast stations. If the FCC finds that the public interest, convenience, and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of normally issued initial and renewal licenses will be 3 a.m., local time, on the following dates and thereafter at 7-year intervals for radio broadcast stations and at 5-year intervals for television broadcast stations located in:

(1) Maryland, District of Columbia, Virginia and West Virginia, October 1, 1981.

(2) North Carolina and South Carolina, December 1, 1981.

(3) Florida, Puerto Rico and Virgin Islands, February 1, 1982.

(4) Alabama and Georgia, April 1, 1982.

(5) Arkansas, Louisiana and Mississippi, June 1, 1982.

(6) Tennessee, Kentucky and Indiana, August 1, 1982.

(7) Ohio and Michigan, October 1, 1982.

(8) Illinois and Wisconsin, December 1, 1982.

(9) Iowa and Missouri, February 1, 1983.

(10) Minnesota, North Dakota, South Dakota, Montana and Colorado, April 1, 1983.

(11) Kansas, Oklahoma and Nebraska, June 1, 1983.

(12) Texas, August 1, 1983.

(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho, October 1, 1983.

(14) California, December 1, 1983.

(15) Alaska, American Samoa, Guam, Hawaii, Oregon and Washington, February 1, 1984.

(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, April 1, 1984.

(17) New Jersey and New York, June 1, 1984.

(18) Delaware and Pennsylvania, August 1, 1984.

* * * * *

[FR Doc. 81-33540 Filed 11-19-81; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1100

[Ex Parte No. 55 (Sub-No. 43c)]

Revision of Application Procedures—Substitution of Motor for Abandoned Rail Service

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is revising and clarifying its regulations dealing with applications of motor common carriers of property to provide service as a direct substitute for complete abandonment of all rail service in a community. This proceeding codifies the procedural and legal findings in two recent applications: *American Cent. Transp. Inc., Ext.—Sub. Rail Serv.*, 132 M.C.C. 664 (1981), and *Great Western Trucking Co., Inc. Extension*, 132 M.C.C. 672 (1981). The 120-day filing time provided by 49 U.S.C. 10922(b)(4)(B) in applications for motor-carrier authority as a direct substitute for rail service is interpreted as beginning to run either on the *effective* date of a certificate of abandonment issued by the Commission in a noncertificate case or on the date of another pronouncement by the Commission regarding the abandonment. New certification requirements are provided for applications filed before the actual abandonment takes place. In these situations, applicants must certify that after rail service ceases on the line to be abandoned, no rail service by any carrier will remain to the involved community.

EFFECTIVE DATE: December 21, 1981.

FOR FURTHER INFORMATION CONTACT: Van A. Bosco, Phone 202-275-7723 or Ellen D. Hanson, Phone 202-275-7245.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Act of 1980 (the Act) provides for relaxed evidentiary requirements for motor carriers proposing transportation service "which will be a direct substitute for abandoned rail service to a community if such abandonment results in such community not having any rail service and if such application is filed within 120 days after such an abandonment has been approved by the Commission", 49 U.S.C. 10922(b)(4)(B). The statutory 120-day filing deadline presents ambiguity, because approval of an abandonment by the Commission brings two dates into play—the date of issuance of a certificate of abandonment and the effective date of that certificate. Further problems arise with this section, because the Commission's approval of an abandonment is permissive only. Rail carriers have one year (plus possible extensions) to exercise abandonment authority, and all or part of that year may be used to accomplish the abandonment. Moreover, as explained below, in some instances, abandonment certificates are not exercised.

The Abandonment Process

Under 49 U.S.C. 10903 and 10904, a rail carrier providing transportation subject to the Commission's jurisdiction may abandon any part of its railroad lines or discontinue the operation of all rail transportation over any part of its lines if, pursuant to an appropriate application, the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. Our purposes here do not require a detailed discussion of the procedures and issues involved with the Commission's consideration of the abandonment application. We are concerned only with successful applications which trigger the operation of 49 U.S.C. 10922(b)(4)(B). In abandonment applications which ultimately are granted, the Commission issues a certificate of public convenience and necessity authorizing the abandonment. The certificate specifies a date on which the abandonment may take place—the effective date of the certificate. In rare instances, the effective date may be postponed to determine whether a viable offer of financial assistance has been made to the applicant by an

interested party pursuant to the requirements of 49 U.S.C. 10905(d).

At the present time, there are two other methods whereby a rail carrier may legally abandon one of its lines or completely discontinue service. First, if a railroad has filed for bankruptcy, it may request permission from the court having jurisdiction to abandon all or part of its lines. In this case, the bankruptcy court will request a recommendation from the Commission with regard to the abandonment request. If the Commission recommends that the abandonment be approved and the court agrees, the ultimate abandonment will take place without the Commission's issuance of a certificate of public convenience and necessity. Second, the Commission is empowered to issue decisions exempting from its regulations abandonments which meet the criteria of 49 U.S.C. 10505.

Interpretation of Statutory Filing Period

In Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Request for Operating Authority*, 45 FR 86798, 86805, December 31, 1980, *rev'd on other grounds, American Trucking Associations, Inc.* v. *ICC* (5th Cir., Oct., 1981), we had interpreted the statutory filing period to begin either when a certificate of abandonment is *issued* by the Commission or when another pronouncement states that an abandonment has occurred in circumstances where all rail service to the community would be eliminated. However, we later stated in *American Central Transport, Inc., Extension—Substituted Rail Service*, 132 M.C.C. 664 (1981), that the 120-day filing period should run from the effective date of the abandonment certificate, rather than the date of issuance. See also *Great Western Trucking Co., Inc. Extension—Substitution for Rail at Richmond, IL*, 132 M.C.C. 672 (1981). This changed policy was adopted in recognition of the fact that a carrier cannot act to abandon a line until the certificate becomes effective. Furthermore, there may be a delay between the date a certificate is issued and the date it becomes effective, often due to administrative and judicial appeals and stays. Since the statute requires a finding that all rail service has ceased, we do not wish to create an unnecessary burden by requiring applications to be filed before the rail carrier can exercise its abandonment authority. This does not affect our view stated in Ex Parte No. 55 (Sub-No. 43A) that, where no certificate of abandonment is issued, the Commission's recommendation or other pronouncement on the abandonment is the appropriate event to trigger the running of the 120-day time period. *American Central, supra*, footnote 4 at 668.

Clarification of Application Requirements

The threshold questions in these motor-for-rail substitution applications are first, whether the abandoning carrier has, or will shortly, terminate rail service at the communities which an applicant seeks to serve and second, whether the communities are then left without any rail service as a result. It is important to distinguish between a community's access to rail *service* and its access to rail *lines*. There may be unusual circumstances where no rail *service* is available to a community even though there are rail *lines* located in the community. Such circumstances could support an application.

As stated in *American Central, supra*, the applicant must (except where noted below) identify the points on a particular rail line at which all service has been abandoned and certify that each of these points no longer has any rail service available. The certification should be included within the applicant's verified statement which is submitted with the application. To facilitate the Commission's findings on these issues, applicants' description of the location of the points sought to be served should cross-reference each specific community to the pertinent abandonment proceeding.

We recognize that in some cases a rail carrier will not have ceased all service to a given community within 120 days after an abandonment certificate becomes effective (or a pronouncement has been made in a noncertificate abandonment). As stated above, our abandonment certificates are permissive only, and normally they may be exercised for one year after the effective date. Carriers may decide to defer abandonment until their customers' existing needs are met and other traffic commitments are satisfied. Thus, an applicant for motor carrier authority to replace this rail service may not be able to certify in its application that rail service is no longer available. Therefore, in future applications where abandonment has not taken place at the time of filing, we will require applicants to certify that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain at those communities. *American Central, supra* at 669. When this situation occurs, we will issue the motor carrier operating certificate with the condition that operations may begin only following certification by the applicant to the Commission that *all* rail service has actually terminated at the granted points. To accomplish this, the motor carrier will be required to submit an affidavit, entitled "Certification of Rail Service Termination", to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423. Thus, although the motor carrier certificate will have been issued, operations may not lawfully commence at any particular point until the statutory mandate of complete termination of rail service at such point has actually occurred and the carrier has so certified to the Commission.

Because the changes to the regulations are technical in nature and clarify application requirements which are already in effect, they will be adopted as final rules without public notice and opportunity for comment. The rules clarified here apply to the practice and procedure of the Commission and public notice and comment are not required. 5 U.S.C. 553(b)(A). No regulatory flexibility analysis is required in this proceeding because it falls within the above-cited exception to the notice requirements of the Administrative Procedure Act. 5 U.S.C. 603(a).

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

It is ordered:

Section 1100.251(h)(7) is revised as set forth in the appendix.

(49 U.S.C. 10321 and 5 U.S.C. 553.)

Decided: November 12, 1981.

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

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1100—GENERAL RULES OF PRACTICE

49 CFR 1100.251(h)(7) is revised to read as follows:

§ 1100.251 How to apply for operating authority.

(h) * * *

(7) *Application under §1100.251(b)(2):* Motor carrier applicants for transportation service as a direct substitute for complete abandonment of all rail service to a community shall file the following information:

(i) Docket number, approval date and effective date of the Commission's decision approving the abandonment; or, date of the Commission's

recommendation or pronouncement in a noncertificate abandonment.

(ii) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(iii) Certification that rail service was offered at the points for which authority is sought.

(iv) Certification that all rail service has been terminated (give date if known), or

(v) If rail service has not yet terminated, state that fact and submit certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(vi) When the certification in (h)(7)(v) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification by applicant that *all* rail service has ceased at the granted points.

(vii) *Filing Period:* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a non-certificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

(viii) *Verification:* Separate verification of any statement made under paragraph (h) of this section is not necessary. Applicant understands that the oath in the application form applies to these statements.

[FR Doc. 81-33555 Filed 11-19-81; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Parts 1132 and 1134

[Ex Parte No. MC 79 (Sub-No. 1) and Ex Parte No. MC-152]

Control of Duplicate Operating Rights; Policy Statement Regarding Duplicate Operating Rights

Decided: November 6, 1981.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule and policy statement.

SUMMARY: The Commission is amending its regulations at 49 CFR 1132.3(c) and 1134.51 to remove the prohibition against motor carriers of property holding duplicate operating rights under common control. Simultaneously, the Commission is issuing a final policy statement that it no longer will follow the past general practice of denying property motor carrier operating rights applications merely because they would result in commonly controlled carriers holding duplicating authority. The Commission will also permit individual carriers to hold duplicating authority and will no longer require carriers that are granted authority which duplicates one or more of their outstanding operating rights to submit for cancellation the outstanding duplicated rights as a precondition to the issuance of the new authority. The regulations and past policy will continue to apply to motor carriers of passengers. These changes also will not affect our current policies and regulations governing the sale and retention of duplicate rights, or our regulations respecting tariff filings.

EFFECTIVE DATE: The change in rules becomes effective December 21, 1981. The policy statement becomes effective November 20, 1981.

FOR FURTHER INFORMATION CONTACT:
Ellen D. Hanson (Finance), (202) 275-7245
or
J. Carol Brooks (Finance), (202) 275-7888
Thomas J. Barry (Operating Rights), (202) 275-7540
or
Edward E. Guthrie (Operating Rights) (202) 275-7691.

SUPPLEMENTARY INFORMATION: These proceedings were instituted to reexamine our longstanding policy concerning duplicating authority under common control in light of the regulatory changes brought about by the Motor Carrier Act of 1980. By notice of proposed rulemaking in Ex Parte No. MC-79 (Sub-No. 1), published in the **Federal Register** on May 15, 1981 (46 FR 26801), we proposed to amend the regulations at 49 CFR 1132.3(c) and 1134.51 to remove the prohibition against motor carriers of property holding duplicate operating rights under common control. In a simultaneously issued notice of proposed policy statement in Ex Parte No. MC-152 (46 FR 26799), we proposed to change our past general practice of denying property motor carrier operating rights applications merely because they would result in commonly controlled carriers holding duplicating authority. For the same reasons, we also proposed to allow individual carriers to hold duplicating operating authority. Since the Motor Carrier Act of 1980 does not appreciably apply to passenger carriers, and since passenger legislation is still in its formative stage, we limited our proposed action in both proceedings to property carriers.

We invited the public to comment on all aspects of our proposed actions. The Regular Common Carrier Conference, C&H Transportation Co., Inc., individually, and Crete Carrier Corporation, Shaffer Trucking, Inc., and Sunflower Carriers, Inc., Old Dominion Freight Line, Inc., and Deaton, Inc., Pepsico, Inc., North American Van Lines, Inc., and Lee Way Motor Freight, Inc., jointly, submitted comments supporting our proposed action in each proceeding. The law firm of Scopelitis and Garvin submitted comments in each proceeding and request clarification of the effect the proposed new rules and policy, if adopted, would have upon existing certificates and tariffs. Specifically, the firm asks whether or not when a carrier is granted new authority that duplicates authority previously granted, would the certificate previously granted and the tariff which effectuated it be null and void. Because of the similarity of the issues and of the comments received in each proceeding, we have decided to consolidate the two proceedings for final disposition.

Historically, the Commission has advanced four resons for prohibiting commonly controlled carriers from holding duplicating authority: (1) concern for promoting corporate simplification; (2) the possibility of unfair competition and unjust discrimination and preferences between shippers and consignees as to rates and practices; (3) the possible adverse effects on competition if commonly controlled carriers were able to sell one right while retaining another to perform identical operations; and (4) the concern that grants of "valuable" motor carrier operating rights could be used improperly for personal gain through their sale rather than for their true purpose of providing necessary services to the shipping public. All of the parties agree with our conclusion in the respective notices that the rationales supporting the past policy are no longer valid with respect to motor carriers of property in light of the recent changes in the regulation of the motor carrier industry.

Several parties believe that there no longer are any public benefits to be gained from pursuing the goal of corporate simplification. They argue that carriers should be permitted to structure their organizations in what management considers to be the most efficient and economical manner of conducting business. Although we still favor corporate simplification, this issue has ceased to be a serious concern and we

no longer, as a rule, require the merger of the separate entities or deny applications on that basis. As we pointed out in the respective notices, in today's motor carrier industry there are innumerable holding companies controlling one or more motor carriers, and we are not prepared to restructure the corporate organization of the motor carrier industry on an *ad hoc* basis.

The parties generally agree that the mere possibility of price discrimination is no longer a valid reason to prevent commonly controlled carriers from holding duplicate operating rights. The Motor Carrier Act of 1980 encourages carriers to offer a variety of price and service options to meet differing shipping needs. See 49 U.S.C. 10101(a)(7). As is pointed out in the comments, uniform pricing has all but vanished with carriers instituting various pricing programs on a daily basis. Also, as a result of section 10(b)(1) of the Motor Carrier Act of 1980, individual carriers are now permitted to offer different types of services and rates to the same shippers by the removal of the prohibition against dual operations. Under these circumstances, we see no continuing reason for preventing commonly controlled carriers from providing duplicative services merely because of the theoretical potential for discriminatory practices. If abuses in this area should develop in the future, they can be addressed with other regulatory tools. For example, our statutory powers under 49 U.S.C. 10741 enable us to protect the public and carriers from unreasonable price and service discrimination and other unfair or destructive competitive practices.

In our proposals we suggested that "trafficking" in operating rights and "potential adverse competitive effects" are also no longer valid impediments to the holding of duplicating authority. The comments we received are in general agreement with our suggestion. The relaxed entry standards of the Motor Carrier Act of 1980 have diminished the value of operating rights, and, thereby, reduced the incentive for carriers to reap large profits from the sale of duplicate rights. Furthermore, in granting the separate operating authorities, we have already found that a public need exists for the operations. The fact of common control between carriers does not necessarily mean there is no longer a public need for each separate operation. To the contrary, there may well be a need for continuation of the two services. Carriers under common control often operate completely independently of their affiliates, provide different types of services, and compete independently for business. We do not believe the public should be deprived of needed transportation services merely because the authority of one of the commonly controlled carriers would duplicate the authority of the other.

Moreover, any concern about the sale of duplicate rights arises when commonly controlled or individual carriers holding duplicate rights attempt to sell them and can be dealt with in that context. The elimination of the prohibition against the holding of duplicate rights does not alter our statutory authority to review the sale of rights. We will continue to review each proposed sale individually to determine whether it is consistent with the public interest.

Accordingly, the regulations at 49 CFR 1132.3(c) and 1134.51 are amended, as set forth in the appendix, to remove the prohibition against motor carriers of property holding duplicate operating rights under common control. Also, as a matter of policy, we will no longer follow the past general practice of denying applications for property motor carrier operating authority merely because they would result in commonly controlled carriers holding duplicating authority. In this same regard, we will also permit individual carriers to hold duplicating authority. Therefore, we will no longer require carriers that are granted authority which duplicates one or more of their outstanding authorities, to submit for cancellation the outstanding duplicated authorities as a precondition to the issuance of the new authority.

One final issue deserves attention. This decision does not require any change in our regulations regarding the filing of tariffs. If a certificate is granted which encompasses previously granted authority, the preexisting tariff will remain effective until or unless superseded by a new tariff. The publication of class or commodity rates which duplicate or conflict with the rates published in the same or any other tariff will continue to be prohibited. See 49 CFR 1310.7(j).

Regulatory Flexibility Analysis

Weighed in light of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, we concluded that this decision will have a modest, albeit beneficial economic impact upon an unascertainable number of small entities, but particularly small carriers, shippers, and the consuming public.

The burdensome, redundant practice of tracing duplicative operating authorities in the context of application proceedings often delayed or precluded issuance of new or expanded certificates. While new entrants into the for-hire motor carrier industry necessarily were unaffected by that practice, many smaller carriers were inconvenienced and obliged to incur added expense in prosecuting their applications. Those most adversely affected by uncertainties inherent in our prior practice were shippers and, ultimately, the consuming public. Under the instant decision, delays and uncertainties attributable to our prior practice are eliminated altogether at savings to carriers, shippers, the consuming public, and the Commission.

The decision in these two proceedings does not affect significantly either the quality of the human environment or conservation of energy resources.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 10922, 10923, 11343, and 11344, and 5 U.S.C. 553 and 559.

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

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1132—TRANSFER OF OPERATING RIGHTS

49 CFR 1132.3(c) is revised to read as follows:

§ 1132.3 Criteria for approval.

* * * * *

(c) The Commission will not approve a transfer or lease of operating rights authorizing the transportation of passengers to a person who controls, is controlled by, or is under common control with another person who is the record holder of operating rights which materially duplicate those to be transferred.

* * * * *

PART 1134—CONTROL OR CONSOLIDATION OF MOTOR CARRIERS OR THEIR PROPERTIES

Section 49 CFR 1134.51 is amended as follows:

(1) The heading of section 1134.51 is revised to read: "Control of duplicate operating rights authorizing the transportation of passengers."

(2) Paragraph (a) of section 1134.51 is revised to read as follows:

§ 1134.51 Control of duplicate operating rights authorizing the transportation of passengers.

(a) All applications under section 5 of the Interstate Commerce Act which would result in the control or

management in a common interest of two or more motor carriers of passengers must, as a condition precedent to approval, comply with one or more of the following conditions where unqualified approval would result in the holding of duplicate operating rights authorizing the transportation of passengers by any one or more of the carriers presently controlled and the carrier or carriers sought to be controlled, or by any two or more carriers sought to be controlled:

(1) One or more of the carriers holding duplicating authority shall request cancellation to the extent required to terminate all duplications, specifying the particular operating rights to be canceled, so that only one of them shall retain authority to operate over the same route or to render the same service between the same points;

(2) The applicant for control shall submit a plan and timetable to eliminate the duplications at the earliest practicable date so that only one of the carriers to be thereafter controlled will hold authority to operate over the same route or to render service between the same points;

(3) If cogent and acceptable reasons exist why duplicate operating rights under common control should be permitted to continue, then the certificates of the carriers holding duplicating authority shall be appropriately conditioned to provide that the operating rights, to the extent they duplicate, may not be thereafter severed from common ownership by sale or otherwise.

* * * * *

[FR Doc. 81-33519 Filed 11-19-81; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 224
Friday, November 20, 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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Processing of Cases; Proposed Revision of Rules

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed revision of rules and regulations.

SUMMARY: This proposed revision would provide that the timely filing of an exception to an arbitration award with the Authority will automatically serve to stay that award until the Authority resolves the exception. The proposed revision would more accurately reflect the provisions and intent of the Federal Service Labor-Management Relations Statute.

DATE: Written comments will be considered if received by December 21, 1981.

ADDRESS: Send written comments to James J. Shepard, Executive Director, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Paul E. Klein, Chief Counsel, (202) 382–0881.

SUPPLEMENTARY INFORMATION: Under § 2429.8 of the Authority's final rules and regulations, the Authority will entertain a request for a stay of an arbitration award only in conjunction with and as part of an exception to an arbitrator's award filed under part 2425 of the rules and regulations. The proposed revision would more accurately reflect the provisions and intent of section 7122(b) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7122(b)). That section provides that if an exception to an award is not filed with the Authority during the 30 day period beginning on the date of the award, then the award becomes final and binding and whatever action is required by the final award must be taken. Therefore, the Statute implicitly provides for a stay of the award when exceptions have been timely filed with the Authority and the proposed revision reflects that provision. Likewise, the change facilitates the administration of the Statute, since it would avoid questions concerning compliance with an award which may be subsequently set aside or modified as a result of the exceptions filed.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

It is proposed to amend 5 CFR Part 2429 by revising § 2429.8 to read as follows:

§ 2429.8 Stay of arbitration award.

The filing of an exception arbitrator's award under Part 2425 of this subchapter shall operate as a stay of the award. Such stay shall be deemed effective from the date of the award and shall remain in effect until the Authority resolves the exception.

(5 U.S.C. 7134)

Dated: November 13, 1981.
Federal Labor Relations Authority.
Ronald W. Haughton,
Chairman.
Henry B. Frazier III,
Member.
Leon B. Applewhaite,
Member.

[FR Doc. 81-33521 Filed 11-19-81; 8:45 am]
BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins PE-28, Specification for Figure 8 Multipair Distribution Wire and PE-27, Specification for One-Pair Distribution Wire

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A by withdrawing REA Bulletin 345–20, REA Specification for Figure 8 Multipair Distribution Wire, PE–28, and REA Bulletin 345–19, REA Specification for Figure 8 One-Pair Distribution Wire, PE–27. The products covered by these specifications are no longer used on the systems of REA borrowers, therefore, the specifications are no longer required.

DATE: Public comments must be received by REA no later than January 19, 1982.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3827. The draft Regulatory Impact analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A by withdrawing Bulletins 345–20 and 345–19. This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A–95 review is not applicable to this action.

The products covered by these specifications are no longer used on the systems of REA borrowers, therefore, the documents are being withdrawn. While it would have been possible to continue the documents in their present form, this would have been senseless, as it would have added to government paperwork and costs at no benefit to the borrowers, or their subscribers.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Dated: November 13, 1981.

Jack Van Mark,

Acting Administrator.

[FR Doc. 81-33522 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1701

Proposed Revision of REA Bulletin 105-5, "Financial Forecast—Electric Distribution Systems"

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins to provide for a revision of REA Bulletin 105-5, "Financial Forecast—Electric Distribution Systems." As proposed, this bulletin would formalize REA's acceptance of financial forecasts prepared using a standard computer program in lieu of manually prepared forecasts. The computer program design has been tested extensively and found acceptable by both REA and its borrowers. Use of the computerized forecast reduces the burden of work required both of applicants in preparing and revising their forcasts, and that of REA field staff members who assist the applicants, and those who review the completed forecasts as part of the loan making process.

The financial forecast, formally adopted by the applicant's board of directors, presents their financial plans, indicates their loan needs, and demonstrates loan feasibility. It also serves as a long-range planning tool in the management of these rural electric utilities.

DATE: Public comments must be received by REA no later than January 18, 1982.

ADDRESS: Persons interested in the proposed revision may submit written comments to Charles R. Weaver, Director, Electric Loans and Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Management Analysis Officer, Electric Loans and Management Division, Room 3853, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number (202) 382-1908. The Draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A by revising Bulletin 105-5, Financial Forecast—Electric Distribution Systems. Proposed revision of the bulletin will not result in increased costs or prices to consumers or industries nor will it have an annual effect of $100 million or more. Therefore in conformance with Executive Order 12291, Federal Regulation, this proposed action has been determined to be "not major." A Regulatory Flexibility Analysis is not required, and an OMB Circular A-95 review is not applicable to this action.

REA has a continuing need to assess borrower loan fund requirements and their financial feasibility. This formalized document submitted to REA in support of loans helps to assure REA that each borrower is committed to a reasonable, prudent plan that will allow it to achieve REA program objectives and repay its REA loan as agreed. While there are many factors influencing the quality of forecasting done by borrowers, the automated system contributes to the quality of forecasts by eliminating mathematical errors as well as by making it easier for managers to keep their forecasts current. These benefits should be permanent.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

The reporting and recordkeeping requirements contained in this proposed rule have been submitted for approval by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act of 1942. If OMB does not approve, without change, the reporting and recordkeeping requirements contained in the proposed rule, REA will revise it as necessary to comply with the decision of OMB. REA will publish a notice in a future issue of the **Federal Register** concerning OMB's decision on these requirements.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, at the above address. Copies of the proposed bulletin are available upon request from the addresses above.

Dated: November 13, 1981.

Jack Van Mark,

Acting Administrator.

[FR Doc. 81-33447 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-15-M

Agricultural Marketing Service[1]

Food Safety and Quality Service

7 CFR Part 2851

United States Standards for Grades of Kiwifruit[2]

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish voluntary U.S. Standards for Grades of Kiwifruit. This action is being taken at the request of the Kiwifruit Growers of California and the California Kiwifruit Commission. These proposed standards would provide industry with a uniform basis for trading which would promote orderly and efficient marketing.

DATE: Comments must be received on or before February 25, 1982.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Francis J. O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2188.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as a non-major rule.

Effect on Small Entities

William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by

[1] The Commodity Services Program of the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) was tranferred to the Agricultural 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.

[2] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

Background

The Kiwifruit Growers of California and the California Kiwifruit Commission have formally requested the Department to develop U.S. Standards for Grades of Kiwifruit. In response, staff members of the Fruit and Vegetable Division, Agricultural Marketing Service, met with the Standards Committee of the Kiwifruit Growers of California.

Kiwifruit production has begun to increase rapidly in the United States, particularly in California where approximately 600 acres are now in commercial production. Shipping volume has increased from 15,000 containers in 1978 to 250,000 during 1979 and approximately 800,000 in 1980. Additional plantings throughout California are nearing maturity and the crop is now marketed internationally. Kiwifruit grown in this country are marketed in mid-winter, whereas the larger New Zealand crop is marketed during the spring and summer. There is a definite industry need for U.S. standards which would provide a uniform basis for trading kiwifruit that are imported, exported, or marketed domestically.

The adoption of these proposed standards would provide the rapidly growing domestic kiwifruit industry with U.S. grade standards similar to those use extensively by the fresh produce industry to assist in the orderly marketing of other commodities.

The proposed grade standards are also drawn in accordance with the Agency's Uniform Grade Nomenclature Policy that become effective July 1, 1976. This policy requires that upon development of U.S. standards for fresh fruits and vegetables, the grade nomenclature shall be U.S. Fancy, U.S. No. 1, U.S. No. 2, or U.S. No. 3.

In November 1980 a "Market Survey to Consider Issuance of U.S. Standards for Grades of Kiwifruit" was distributed to interested persons. Reaction to the Survey was generally favorable.

Accordingly, it is proposed that U.S. Standards for Grades of Kiwifruit be established and codified as 7 CFR 2851.2335 through 2851.2340 to read as follows:

PART 2851—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)[1] [2]

Subpart—United States Standards for Grades of Kiwifruit

Sec.

2851.2335 Grades.
2851.2336 Tolerances.
2851.2337 Application of Tolerances.
2851.2338 Standard Pack.
2851.2339 Definitions.
2851.2340 Classification of defects.

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended, 7 U.S.C. 1622, 1624.

Subpart—United States Standards for Grades of Kiwifruit

§ 2851.2335 Grades.

(a) "U.S. Fancy" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Clean; and,
(v) Well formed.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Injury By:
(i) Bruises;
(ii) Leaf or limbrubs;
(iii) Discoloration;
(iv) Hail;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. § 2851.2336

(b) "U.S. No. 1" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Clean; and,
(v) Fairly well formed.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Damage By:
(i) Bruises;
(ii) Leaf or limbrubs;
(iii) Discoloration;
(iv) Hail injury;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat injury, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. § 2851.2336

(c) "U.S. No. 2" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Fairly clean; and,
(v) Not badly misshapen.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Serious Damage By:
(i) Bruises;
(ii) Leaf of limbrubs;
(iii) Discoloration;
(iv) Hail injury;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat injury, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. § 2851.2336

§ 2851.2336 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, shall be permitted in any lot:

(a) *U.S. Fancy and U.S. No. 1.*—(1) *For defects at shipping point.*[1] 8 percent for kiwifruit which fail to meet the requirements of this grade: *Provided,* That included in this amount not more than 4 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for kiwifruit affected by decay or internal breakdown.

(2) *For defects en route at destination.* 12 percent for kiwifruit which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 8 percent for permanent defects;

(ii) 6 percent for defects causing serious damage, including therein not more than 4 percent for serious damage by permanent defects and not more than

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

2 percent for kiwifruit affected by decay or internal breakdown.

(b) *U.S. No. 2.*—(1) *For defects at shipping point.*[1] 8 percent for kiwifruit which fail to meet the requirements of this grade: *Provided,* That included in this amount not more than 4 percent shall be allowed for serious damage by sunscale, internal breakdown, decay or insects including in this amount not more than 1 percent for kiwifruit affected by decay or internal breakdown.

(2) For defects en route or at destination. 12 percent for kiwifruit which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 8 percent for permanent defects including therein not more than 4 percent for sunscald, or serious damage by insects.

(ii) 2 percent for internal breakdown or decay.

§ 2851.2337 Application of tolerances.

The contents of individual containers in a lot, based on sample inspection, are subject to the following limitations:

(a) A container may contain not more than double any specified tolerance except that at least two defective specimens may be permitted in any container: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade.

§ 2851.2338 Standard pack.

(a) Kiwifruit shall be fairly uniform in size and color and shall be packed in boxes, flats, lugs, or cartons and arranged according to approved and recognized methods. All containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising resulting from overfilling or oversizing. The kiwifruit in the shown face shall be reasonably representative in size and quality of the contents of the entire container.

(b) When packed in closed containers the size shall be indicated by marking the container with the numerical count.

(c) Boxes, flats, lugs or cartons:

(1) Kiwifruit packed in containers equipped with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and the number of kiwifruit in the container shall correspond to the count marked on the containers.

(2) In order to allow for variations incident to proper packing when packed in other types of packs in lugs, cartons, or boxes, the number of kiwifruit in the container may vary not more than two from the number marked on the container.

(d) "Fairly uniform in size" means the diameter of kiwifruit in any container may not vary more than ¼ inch (6.4mm).

(e) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

(f) "Tolerances for standard pack." In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of containers in any lot may fail to meet the requirements for Standard Pack.

§ 2851.2339 Definitions.

"Similar varietal characteristics" means kiwifruit in any lot and container are similar in shape, color of skin and flesh.

"Mature" means the kiwifruit has reached the stage of maturity which will ensure the proper completion of the ripening process. The minimum average soluble solids of fruits tested shall be not less than 6.5 percent.

"Clean" means the kiwifruit is practically free from dirt, dust, or other foreign material.

"Fairly clean" means the kiwifruit is reasonably free from dirt, dust or other foreign material.

"Well formed" means the kiwifruit has the shape characteristic of the variety and slight bumps or other roughness are permitted providing they do not detract from appearance. Fan shaped or flattened fruit are not considered well formed.

"Fairly well formed" means the kiwifruit has the shape characteristic of the variety but slight bumps or other roughness are permitted providing they do not materially detract from appearance.

"Badly misshapen" means the kiwifruit is so decidedly deformed that its appearance is seriously affected.

"Carefully packed" means the kiwifruit shows no evidence of rough handling.

"Injury" means any specific defect described in § 2851.2340, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality of the kiwifruit.

"Damage" means any specific defect described in § 2851.2340, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the kiwifruit.

"Serious damage" means any specific defect described in § 2851.2340, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the kiwifruit.

"Permanent defects" means those defects which are not subject to change during shipment or storage; including, but not limited to shape, scars or growth cracks.

"Condition defects" means those defects which are subject to change during shipment or storage; including, but not limited to decay, soft, shriveling, discoloration, or bruises.

§ 2851.2340 Classification of defects.

TABLE I

Defects	Injury	Damage	Serious damage
Bruises	When any slight indentation of the kiwifruit or discoloration of the flesh extends deeper than 1/16 inch (1.6 mm).	When surface of the kiwifruit is indented and discoloration of the flesh extends deeper than ⅛ inch (3.2 mm) or any bruise causing slight discoloration exceeding an area of a circle ⅜ inch (9.5 mm) in diameter, or an aggregate area of ⅜ inch (9.5 mm) or lesser bruises which materially detract from the appearance, edible or shipping quality of the fruit.	When surface of the fruit is indented and discoloration of the flesh extends deeper than ¼ inch (6.4 mm), or any bruise causing discoloration exceeding an area ½ inch (12.7 mm), or lesser bruises which seriously detract from the appearance, edible or shipping quality of the fruit.
Leaf or limbrubs	When not smooth, or when not light colored, or when aggregating more than ⅜ inch (9.5 mm) in diameter.	When not smooth, or when not light colored, aggregating more than ½ inch (12.7 mm) in diameter.	When smooth and light colored and aggregrating more than 1⅛ inches (38.1 mm) in diameter, or dark or slightly rough and bark-like scars aggregating more than ¾ inch (19.1 mm) in diameter.
Discoloration	When color and pattern causes a distinct noticeable appearance affecting more than 5% of surface.	When color and pattern causes an unattractive appearance affecting more than 10% of surface.	When color and pattern causes a distinct unattractive appearance affecting more than 25% of surface.

TABLE I—Continued

Defects	Injury	Damage	Serious damage
Hail injury	Unhealed or deep, or when aggregating more than 5/16 inch (1.6 mm) in diameter.	Unhealed or deep, or when aggregating more than ¼ inch (6.4 mm) in diameter.	Unhealed or deep, or when aggregating more than ½ inch (12.7 mm) in diameter.
Growth cracks	When not healed, more than one in number, more than ⅛ inch (3.2 mm) in depth, or more than ¼ inch (3.2 mm) in length.	When not healed, more than one in number, more than ⅛ inch (3.2 mm) in depth, more than ⅜ inch (9.5 mm) in length if within the stem cavity, or more than ¼ inch (6.4 mm) in length if outside the stem cavity.	When not healed and more than ⅛ inch (3.2 mm) in length or depth, or healed and more than 3/16 inch (4.8 mm) in depth, or healed and aggregating more than ⅝ inch (15.9 mm) in length if within the stem cavity, or healed and aggregating more than ½ inch (12.7 mm) in length if outside the stem cavity.
Scab	When cracked, or when the aggregate area exceeds that of a circle ⅛ inch (3.2 mm) in diameter.	When cracked, or when the aggregate area exceeds that of a circle ¼ inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle ½ inch (12.7 mm) in diameter.
Scars	When not smooth, or when surface of the fruit is depressed more than 1/32 inch (.8 mm), or when not light in color, or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle ⅛ inch (3.2 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle ¼ inch (6.4 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle ½ inch (12.7 mm) in diameter.	When not smooth, or when surface of the fruit is depressed more than 5/16 inch (1.6 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle ¼ inch (6.4 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle ½ inch (12.7 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle ¾ inch (19.1 mm) in diameter.	When the surface of the fruit is depressed more than 3/16 inch (4.8 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle ¾ inch (19.1 mm) in diameter; (2) Not dark or rough when the area exceeds one-fourth of the fruit surface.
Heat injury or sprayburn or sunburn	When the normal color of the skin or flesh is more than slightly changed, or when any indentation is present.	When the skin is blistered, cracked or decidedly flattened, or the normal color of the skin or flesh has materially changed, or more than one indentation, or exceeds 3/16 inch (4.8 mm) in diameter.	When the skin is blistered, cracked or decidedly flattened, or causing any dark discoloration of the flesh, or when more than two indentations are present, or the aggregate area of indentations exceeds that of a circle ⅜ inch (9.5 mm) in diameter, or when causing a noticeable brownish or darker discoloration over more than one-fourth of the kiwifruit surface.
Scale or scale marks	When more than one scale or scale marks or when more than three scales or scale marks of any size are present.	When the aggregate area exceeds that of a circle ¼ inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle ⅜ inch (9.5 mm) in diameter.
Insects	When feeding injury is evident on fruit or any insect is present in fruit.	When feeding injury materially detracts from appearance or any insect is present in fruit.	When feeding injury seriously detracts from appearance or any insect is present in fruit.

Done at Washington, D.C. on November 16, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-33440 Filed 11-19-81 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Proposal of Supplement to California State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a Supplement to the California Occupational Safety and Health Plan submitted as a State initiated change under Subpart E of Part 1953 of this Chapter. The supplement, submitted October 9, 1981 concerns the State's adoption of an emergency temporary standard covering employee exposure to Ethylene Dibromide (EDB). Part 1953 of this Chapter prescribes procedures for the review of changes to State plans which have been approved under section 18(c) of the Occupational Safety Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act).

DATE: Comments and requests for a hearing should be submitted by December 21, 1981.

ADDRESSES: Written comments and requests for a hearing should be submitted to the Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3613, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Pat Horn, Project Officer, Office of State Programs, Occupational Safety and Health Administration, Room N3613, 200 Constitution Avenue NW., Washington, D.C. 20210.

A copy of the supplement, along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, Room N-3613, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 11349, 450 Golden Gate Avenue, San Francisco, California 94102; and the California Occupational Safety and Health Administration, Room 7232, 525 Golden Gate Avenue, San Francisco, California 94102.

SUPPLEMENTARY INFORMATION:

Background

The supplement, described below, concerns the State's emergency temporary standard covering employee exposure to EDB. The comparable Federal standard is found at 29 CFR 1910. 1000, Table Z-2. The Federal standard basically sets the allowable employee exposure limitation to EDB at 20 parts per million (ppm) for any 8-hour work shift of a 40 hour work week and at a ceiling of 30 parts per million (ppm) for any 15-minute period. The California standard sets limits for exposure to EDB at 130 parts per billion (ppb) as an 8-hour time-weighted average and at a ceiling of 130 parts per billion (ppb) for any 15-minute period. Additionally, the California standard contains specific requirements with respect to: reporting of use and emergencies; exposure monitoring; methods of compliance; protective clothing and equipment; training; posting and notification of shipments; recordkeeping; and medical

surveillance. It appears that the California standard is at least as effective as the comparable Federal standard and in many respects, more stringent. Under the Act and pertinent regulations, States are permitted to adopt standards which are more stringent than comparable Federal standards. However, section 18(c)(2) of the Act and 29 CFR 1902.3(c)(2) provide that State standards which are different from Federal standards and applicable to products which are distributed or used in interstate commerce, must be required by compelling local conditions and not unduly burden interstate commerce. Because concerns have been raised that this product standard limitation may be applicable to the California EDB standard, OSHA is seeking through this notice, public comment as to whether the California standard is applicable to products which are distributed or used in interstate commerce and, if so, whether it is required by compelling local conditions and does not unduly burden interstate commerce.

A synopsis of the salient provisions of the California standard follows:

(a) The requirements for control of employee exposure to EDB apply to the manufacture, reaction, packaging, repackaging, storage, transportation, distribution, sale, handling and use of EDB. Additionally the provisions apply to exposure to EDB diffusing out of any packaging material of fruit or vegetable previously impregnated with EDB.

(b) Permissible limit for employee exposure to EDB is 130 ppb as an 8-hour time-weighted average.

(c) Information regarding employee exposure to EDB shall be reported to the State agency within 24 hours following the introduction of EDB into the workplace. Additionally, emergencies resulting in sudden exposure to EDB in excess of permissible limits shall be reported to the State agency within 24 hours of the occurrence. Such report must also be posted in the workplace.

(d) Each employer who has a place of employment in which EDB is present shall monitor to accurately determine exposure levels. Monitoring shall be done at least quarterly and may be required more frequently under certain circumstances. Employees shall be notified of the results of the monitoring.

(e) Exposure to EDB shall be controlled by feasible engineering and work practice controls. Where such controls are not feasible, exposure shall be controlled by necessary personal protective controls.

(f) Where there is a possibility of eye or skin contact with EDB, protective clothing and equipment shall be provided and required.

(g) Each employee engaged in EDB operations involving exposure to EDB shall be provided a training and education program relating to the hazards of EDB and precautions for its safe use.

(h) The employer shall post a precautionary sign wherever containers of EDB are present in the workplace such that exposure may occur as a result of work operations, except that no posting is required in areas where produce is sold at retail. Precautionary signs must bear the following legend:

DANGER

ETHYLENE DIBROMIDE

CANCER HAZARD

MAY CAUSE STERILITY

Additionally, all employers shipping or handling produce fumigated with EDB shall provide the recipient of the produce with a written notice of such fumigation prior to any handling of the fumigated produce by the recipient.

(i) The employer shall maintain an accurate record of all monitoring and medical surveillance required by this section.

(j) A medical surveillance program may be required.

Public Participation

Any interested person may request an informal hearing concerning the proposed supplement by filing particularized written objections with respect thereto within the time allowed for with the Director of the Office of Federal Compliance and State Programs at the above address. If in the opinion of the Assistant Secretary of Labor for Occupational Safety and Health, substantial objections are filed which warrant public discussion, an informal hearing on the subject and issues involved may be held.

Decision

The Assistant Secretary will consider all relevant comments, arguments and requests submitted concerning the supplement and will thereafter issue a decision approving or disapproving it. The Assistant Secretary's decision will be published in the **Federal Register** and appropriate section of Subpart K of 29 CFR Part 1952 will be amended.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 16th day of November 1981.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 81-33562 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1965-6]

Minnesota; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rulemaking on a revision to the Minnesota State Implementation Plan (SIP) pursuant to Part D of the Clean Air Act (Act) as amended in 1977. The revision pertains to a portion of the Part D SIP for total suspended particulates (TSP) in Minnesota. The purpose of this notice is to discuss EPA's evaluation of the revision and to solicit public comments on the revision and on EPA's proposed action.

DATE: Comments on this revision and on the proposed EPA action must be received by December 21, 1981.

ADDRESSES: Copies of the SIP revision are available at the following addresses. (It is recommended that you telephone the contact person listed below before visiting the Region V Office of EPA).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, Washington, D.C. 20480

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (the Act), EPA designated certain areas in each state as

nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3), and nitrogen dioxide (NO_2).

Part D of the Act requires State Implementation Plans (SIP) to include strategies and regulations adequate to insure attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982, and in the interim, to provide reasonable further progress toward attainment through the application of reasonably available control technology (RACT). Where attainment cannot be demonstrated despite the application of RACT to traditional sources of particulate matter, EPA will accept as a basis for approval a commitment by the State (1) to conduct additional studies on the causes for particulate nonattainment, including the degree to which nontraditional area sources of particulate matter such as dust from construction or resuspended road dust affect air quality, and (2) to develop and to submit to EPA additional strategies and enforceable regulations adequate to demonstrate attainment of the primary standards by the statutory attainment date. The criteria for an approvable SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally-approved SIP are different from the regulations currently being enforced by the State. If these situations, the present federally-approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulations. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemption granted will be reviewed and acted on by EPA.

In Minnesota, Air Quality Control Region 131 (the Twin Cities Seven County Metropolitan Area) and the Cities of Duluth and International Falls are designated nonattainment for the primary TSP NAAQS. The Cities of Red Wing, East Grand Forks, Cloquet and Silver Bay and portions of the Mesabi Iron Range are designated nonattainment for the Secondary TSP NAAQS. These areas are listed in the October 5, 1978 **Federal Register** (43 FR 46010).

In a May 13, 1981 action (46 FR 26504) EPA proposed (1) to redesignate the City of International Falls from nonattainment of the primary TSP standard to nonattainment of the secondard TSP standard, and (2) to reduce the size of the primary nonattainment area within the City of Duluth and for those areas not within the primary nonattainment area to redesignate as either secondary nonattainment or attaiment. EPA's final action on this rulemaking will be published shortly.

The TSP control plan which is the subject of today's proposed rulemaking is designed to control total suspended particulates in the primary and secondary nonattainment areas within the Twin Cities Seven County Metropolitan Area and the City of Duluth. The control plan for the remaining secondary nonattainment area has not yet been submitted by the State.

The TSP control strategy for the Twin Cities Metropolitan Area and the City of Duluth consists of RACT on traditional (point and fugitive emission) sources and a commitment to study nontraditional (fugitive dust) sources. In developing this strategy, the State analyzed the sources contributing to the nonattainment problem in these areas.

A microscopic study of filters collected in 1977 was conducted to determine the causes of TSP nonattainment. In the Twin Cities area the following sources, in descending order, were found to be the main contributors to nonattainment: (1) Traffic reentrainment, (2) windblown soil (3) combustion from point sources, (4) fugitive emissions from industrial processes, and (5) emission from miscellaneous point and fugitive emission sources. In the City of Duluth the following sources, also in descending order, were found to be the main contributors of non-attainment: (1) traffic reentrainment, (2) materials handling (iron ore, coal, etc.), (3) combustion from point sources, and (4) airborne soil.

On August 4, 1980 and October 17, 1980, the State submitted TSP control plans for the Twin Cities Seven County Metropolitan Area and the City of Duluth. (The Twin Cities Seven County Metropolitan Area includes Hennepin, Ramsey, Scott, Carver, Washington, Dakota, and Anoka Counties, as well as the major cities of Minneapolis and St. Paul.) As part of the control strategies, the State on January 5, 1981 submitted Rule APC–33, standards of performance for coal handling facilities, and on January 23, 1981 submitted amendments to their existing APC rules and added certain new regulations. The control plan developed by the State of Minnesota is intended to ensure attainment of the primary TSP NAAQS by December 31, 1982 and the secondary TSP NAAQS by December 31, 1985.

EPA's review of the TSP plan is segmented into traditional and nontraditional source controls.

I. Traditional Control

A. *Point Sources.* The strategy for controlling point sources is based upon new and existing rules limiting particulate emissions through the application of RACT. All State rules that are utilized in the control of point source emissions must be approved by EPA as SIP revisions. EPA approved State rules APC–1 through APC–16 on May 31, 1972 (37 FR 10874) as revisions to the Minnesota SIP. Since that time the State has adopted amendments to some of these rules and has adopted new rules. Therefore, on January 23, 1981, the State submitted amendments to the previously approved rules and new rules. A number of the amended and new rules submitted to EPA on January 23, 1981 do not apply to the particulate strategy and will be discussed in a future **Federal Register** notice. Following is EPA's review of the amended and new rules that are applicable to the control of particulate point sources.

Amended Rules

APC–2: Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability

This rule contains definitions and abbreviations that are used in air pollution control regulations. It describes the types of facilities affected by standards of performance and for these facilities the rule provides for access to premises, variance procedures and other general requirements.

This rule was amended by adding more definitions, adding an additional section on abbreviations and applicability of standards of performance, and deleting a section allowing recreational fires.

EPA has reviewed this amended rule and is proposing to approve it as a revision to the Minnesota SIP.

APC–4: Standards of Performance for Fossil Fuel-Burning Indirect Heating Equipment

This rule provides particulate, sulfur dioxide and nitrogen dioxide standards for indirect heating equipment where there is no standard in another regulation. It was amended by adding provisions on test methods and procedures, opacity and correction factors for calculation of emissions from various types of fuels. At this time, EPA will only review this rule for particulates.

The particulate standards for indirect heating equipment are based on mass and opacity limits. For indirect heating equipment installed prior to August 17, 1971, the mass limit varies according to the geographical location of the facility; the opacity limit does not vary. For indirect heating equipment installed after August 17, 1971, the mass limit varies according to the geographical location of the facility; the opacity limit varies according to the equipment size. The mass and opacity limits are described in the submittal.

EPA has reviewed this rule and determined that the particulate standard for indirect heating equipment represent RACT. Therefore, EPA is proposing to approve this rule a revision to the Minnesota SIP.

APC–5: Standards of Performance for Industrial Process Equipment

This rule provides particulate emission standards for industrial process equipment where there is no standard contained in another regulation. It was amended by adding more definitions, more stringent limitations, and requirements for appropriate test methods and procedures.

The particulate standards for industrial process equipment are based on mass and opacity limits and in certain instances, an equipment substitution. The mass limit varies according to the process weight rate; the opacity limit varies according to the installation date of the equipment. The mass limit may be substituted by control equipment having specific collection efficiencies. The mass, opacity, and control equipment limits are described in the submittal.

EPA has reviewed this amended rule and determined that the particulate standards for industrial process equipment represent RACT. Therefore, EPA is proposing to approve this amended rule as a revision to the Minnesota SIP.

APC–7: Standards of Performance for Incinerators

This rule provides particulate standards for incinerators installed before or after August 17, 1971. The amendments to this rule include more definitions, recordkeeping, and performance test methods and procedures.

The particulate standards for incinerators are based on mass and opacity limitations and, in certain instances, requires auxiliary fuel burners. The mass limit varies according to the burning capacity of the incinerator and the installation date of the equipment; the opacity limit varies according to the installation date of the equipment; and auxiliary fuel burners, with certain operating standards, are also required when incinerators burn type 2, 3, 4, 5 or 6 waste. All these limits are described in the submittal.

EPA has reviewed this amended rule and determined that the particulate standards for incinerators represent RACT. Therefore, EPA is proposing to approve this amended rule as a revision to the Minnesota SIP.

APC–11: Restriction of Emission of Varible Air Contaminants

This rule provides an opacity limit for emission facilities built before or after January 24, 1977 where there is no limit contained in another regulation. The principal amendment is the deletion of a paragraph containing exceptions.

The amended regulation provides that emission facilities built before January 24, 1977, opacity is limited to no greater than 20% except that a maximum of 40% opacity shall be permissible for 4 minutes in any 60 minute period. For emission facilities built after January 24, 1977 opacity is limited to no greater than 20%. This rule requires that emission facilities use Method 9, found in Appendix A, 40 CFR Part 60, and, when applicable, Method 9 as amended in APC–21, when doing performance tests for opacity.

EPA has reviewed this amended rule and determined that the opacity limits represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

New Rules

APC–18: Emmission Standards for Inorganic Fibrous Materials

This rule contains definitions and provides equipment and maintenance procedures for sources spraying inorganic fibrous materials.

The expected impact of this rule is a reduction of emissions, especially fugitive emissions, into the atmosphere.

EPA has reviewed this rule and proposes to approve it as a revision to the Minnesota SIP.

APC–21: Emmission Source Monitoring, Performance Tests, Reports, Shutdowns and Breakdowns

This rule provides requirements for emission monitoring, reference methods for various performance tests, inventory reporting, excessive emissions reporting, and procedures during periods of shutdowns or breakdowns.

EPA has reviewed this rule and finds it consistent with the requirements of the Act and therefore proposes to approve it as a revision to the Minnesota SIP.

APC–22: Standards of Performance for Portland Cement Plants

This rule contains monitoring of operation requirements and performance test methods and procedures. It provides particulate standards for portland cement plants built before or after August 17, 1971.

The particulate standards for portland cement plants are based on mass and opacity limitations. For plants built before August 17, 1971 the mass limit is governed by APC–5 (process weight rule for industrial equipment). The opacity limit is 20%, except that a maximum of 40% shall be permissible for not more than 4 minutes in any 30 minute period and a maximum of 60% opacity shall be permissible for not more than 4 minutes in any 60 minute period. For plants built after August 17, 1971 the mass and opacity limits are the same as the New Source Performance Standards (NSPS) contained in Subpart F, 40 CFR Part 60.

EPA has reviewed this rule and determined that the particulate standards for portland cement plants

represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–23: Standards of Performance for Asphalt Concrete Plants

This rule contains performance test methods and procedures. It provides particulate standards for asphalt concrete plants built before or after June 11, 1973.

The particulate standard for asphalt concrete plants is based on mass and opacity limitations. For plants built before June 11, 1973 the mass limit is governed by APC–5 (process weight rule for industrial equipment). The opacity limit is 20%, except that a maximum of 40% opacity shall be permissible for not more than 4 minutes in any 30 minute period and a maximum of 60% opacity shall be permissible for not more than 4 minutes in any 60 minute period. For plants built after June 11, 1973 the mass and opacity limits are the same as the NSPS contained in Subpart I, 40 CFR Part 60.

EPA has reviewed this rule and determined that the particulate standards for asphalt concrete plants represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–24: Standards of Performance for Petroleum Refineries

This rule contains definitions, exemptions, emission monitoring and performance test methods and procedures. It provides particulate, sulfur dioxide, carbon monoxide, and hydrogen sulfide standards for affected facilities at petroleum refineries. At this time EPA will only review this rule as it applies to particulates.

The particulate standards for affected facilities at petroleum refineries built before or after June 11, 1973 are based on (1) mass or opacity, or (2) mass and opacity limitations. These limits vary according to the type of process equipment and when the equipment is installed and are described in the submittal.

EPA has reviewed this rule and determined that the particulate standards for affected facilities at petroleum refineries represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC 25: Standards of Performance for Secondary Lead Smelters

This rule contains definitions and performance tests methods and procedures. It provides a particulate standard for secondary lead smelters.

The particulate standard for secondary lead smelters is based on (1) mass and opacity, or (2) opacity limitations, depending on the type of process equipment. There are three types of process equipment for secondary lead smelters: cupola, reverberatory and pot furnaces. The mass limit for cupolas and reverberatory furnaces are 0.022 grains per dry standard cubic foot and the opacity limit is 20%. The only standard for pot furnaces is a 10% opacity limit for furnaces greater than 550 pounds.

EPA has reviewed this rule and determined that the particulate standard for secondary lead smelters represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–26: Standards of Performance for Secondary Brass and Bronze Ingot Production Plants

This rule contains definitions, performance test methods and procedures. It provides a particulate standard for secondary brass and bronze ingot production plants.

The particulate standard for secondary brass and bronze ingot production plants is based on mass and opacity limitations. Secondary brass or bronze ingot production plants generally contain reverberatory, electric or blast furnaces. These furnaces vary in production capacity and thus the mass and opacity limits are different. These limits are contained in the submittal.

EPA has reviewed this rule and determined that the particulate standard for secondary brass and bronze ingot production plants represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–28: Standards of Performance for Sewage Sludge Incinerators

This rule contains definitions, procedures for monitoring, performance test methods and procedures, and emission limits for sewage sludge incinerators.

The particulate standards for incinerators are based on mass and opacity limits and an auxiliary fuel burning requirement. The mass limit varies according to the burning capacity of the incinerator and the installation date of the equipment, and the opacity limit varies according to the installation date of the equipment. All these limits are described in the submittal.

EPA has reviewed this rule and determined that the particulate standards for sewage sludge incinerators represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–32: Standards of Performance for Fossil Fuel-Burning Direct Heating Equipment

This rule contains definitions, determination of applicable standards of performance, and performance test method and procedures. It provides particulate and sulfur dioxide standards for fossil fuel burning direct heating equipment. At this time, EPA's review will be limited to particulate regulation.

The particulate standard for any fossil fuel-burning direct heating equipment is based on mass and opacity limits. The mass limit is governed by APC–5 (process weight rule for industrial equipment). The opacity limit is 20%, except that a maximum of 60% opacity shall be permissible for 4 minutes in any 60 minute period and that a maximum of 40% opacity shall be permissible for 4 additional minutes in any 60 minute period. The only exception to these limits is an existing gray iron cupola with a melting capacity of less than one and one-half tons per hour. These limits are described in the submittal.

EPA has reviewed this rule and determined that the particulate standard for fossil fuel-burning direct heating equipment represents RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

B. *Fugitive Emission Sources.* The strategy for controlling fugitive emission sources is (1) to enforce an existing rule limiting emissions from grain handling facilities (APC–29); (2) to enforce a newly developed rule limiting emissions from coal handling facilities (APC–33); and (3) to enforce a permit procedure requiring the application of RACT measures for sources emitting controlled particulate emissions over 25 tons per year. Following is a discussion of the rules and the permit procedure.

APC–29: Standards of Performance for Grain Handling Facilities

This rule contains definitions, a requirement that all grain handling facilities maintain good operating and housekeeping practices at all times, equivalent peformance standards as specified in APC–5, exceptions for grain dryers, and nuisance provisions. It provides specific particulate standards for grain handling facilities built before or after August 3, 1978.

The particulate standard for grain handling facilities is based on a control equipment standard combined with good housekeeping practices. The equipment standard varies according to:

(1) The geographical location; (2) the grain throughput of the facility; and (3) the construction date of the facility. These limits are described in the submittal.

EPA has reviewed this rule and dertermined that the particulate standards for grain handling facilities represent RACT. The opacity limits contained in APC–11 will be utilized in this rule. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

APC–33: Standards of Performance for Coal Handling Facilities Within Designated Areas

This rule contains standards of performance for coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region (AQCR) or the City of Duluth and requires these facilities to perform certain abatement measures. These measures include the pavement of surfaces, installation of mechanical air pollution control equipment, and the application of chemical suppressants or agents.

Coal handling facilities located outside the Minneapolis-St. Paul AQCR and the City of Duluth are required to comply with the provisions of APC–6 for the control of fugitive particulate emissions. Pneumatic coal-cleaning equipment and thermal dryers at any coal handling facility are required to conform to specific mass and opacity limits. These limits are contained in the submittal. Performance tests will be carried out in accordance with approvable procedures and methods.

This rule also contains definitions, monitoring requirements, exemptions, cessation of operation requirements and performance test methods.

EPA has reviewed this rule and determined that the standards of performance for (1) coal handling facilities, and (2) pneumatic coal-cleaning equipment and thermal dryers at any coal handling facility represent RACT. Therefore, EPA is proposing to approve this rule as a revision to the Minnesota SIP.

Section G of this rule provides the Director of the Minnesota Pollution Control Agency (MPCA) with the authority to approve other performance test methods from those specified in this section. The Director's approval of alternative test methods constitutes a revision to the SIP and must be submitted to EPA. Alternative test methods approved by the Director cannot become effective until reviewed and approved by EPA. For this reason EPA takes no action on the alternative test method provision of section G.

Permit Procedure

APC–6 was approved as a revision to the Minnesota SIP on May 31, 1972 (37 FR 10874). It is a general rule which prevents particulate matter from becoming airborne. This rule provides the Director of the MPCA the authority to require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne. As part of the strategy to control fugitive emission sources within the State, the Director has specifically required RACT measures in Agency permits.

EPA is proposing to approve Minnesota's control strategy for fugitive emissions with the understanding that these permits be submitted to EPA as SIP revisions.

II. Nontraditional Control

Control strategies that are based on RACT for traditional sources must also contain a commitment by the State to conduct additional studies on the control of nontraditional sources. The State submitted schedules for the Twin Cities Metropolitan Area and the City of Duluth which presents a means for assessing nontraditional source control measures, formulating appropriate control strategies and implementing legally enforceable provisions to deal with the source. The schedules developed by the State for these areas are intended to ensure attainment of the primary TSP NAAQS by December 31, 1982, and the secondary TSP NAAQS by December 31, 1985.

Summary

The State of Minnesota has demonstrated that for the nonattainment areas within the Twin Cities Metropolitan Area and the City of Duluth RACT measures will be implemented on traditional sources and has committed to study, adopt and implement nontraditional source regulations. Therefore, EPA is proposing to approve this portion of the Minnesota TSP plan as meeting the requirements of Part D of the Clean Air Act.

A 30-day public comment period is being provided on this notice of proposed rulemaking. Public comment received on or before (30 days from the date of publication) will be considered in EPA's final rulemaking. Please send three copies of comments, if possible.

A 30-day comment period is being provided to enable publication of final action on this submission as expeditiously as possible. Final action approving this revision would satisfy one of the requirements of a Part D SIP. Until the State has an approved Part D SIP, it is subject to the new source growth prohibitions of section 110(a)(2)(I) of the Clean Air Act. EPA believes that the thirty days will provide the public with ample time to review and comment on today's proposed rulemaking. All comments received will be available for inspection during normal business hours at the Region V office listed at the front of this notice. Please call the contact person listed at the beginning of this notice before visiting the Region V office.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified on January 27, 1981, (46 FR 8709) that approvals of SIPs under sections 110 and 172 of the Act would not have a significant economic impact on a substantial number of small entities. Today's action proposes to approve a State action under section 110 and 172 of the Act. It imposes no new requirements beyond those which the State has already imposed.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a regulatory impact analysis. Today's action does not constitute a major regulation since it proposes to approve provisions which the State adopted and submitted to EPA. Thus no additional requirements will be imposed on these sources. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Dated: September 21, 1981.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 81–33077 Filed 11–19–81; 8:45 am]

BILLING CODE 6560–38–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 233

Proration of Shelter, Utilities, and Similar Need Items for AFDC Children Living With Ineligible Relatives

Correction

In FR Doc. 81–31597, appearing at page 53720, in the issue of Friday, October 30, 1981, make the following changes:

1. On page 53723, in the first column, paragraph "1." of Appendix A, change the line now reading "Proratable portion of the need standard (shelter only), $200 × 3 = $60" to read "Proratable portion of the need Standard (shelter only), $200 × .3 = $60".

2. On page 53723, in the second column, in paragraph "3." the subparagraph beginning "Present shelter allowance * * *" should be removed and the following inserted in its place:

Computed present shelter allowance for 2 AFDC children $119.25 × .30 = $35.80

3. On page 53723, in the second column, in paragraph "3." change the first line of the subparagraph beginning "Substitution * * *" to read "Substitution of prorated shelter allowance for computed"

4. On page 53724, in the first column, in § 233.20(a)(3)) the seventh line should read "§ 233.90(v)(1)(v) than to a child or"

5. On page 53724, in the second column, in § 233.20, (a)(3)(vi)(*2*) in line two, "100 percent" should read "100 percent."

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Regulatory Flexibility Agenda

AGENCY: Federal Maritime Commission.

ACTION: Regulatory flexibility agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Commission anticipates having under consideration during the period from November 1, 1981 to March 31, 1982 actions in the areas listed below which are likely to have a significant economic impact on a substantial number of small entities.

DATES: None.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking procedures or the status of any matter listed below, contact Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which the agency may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. The agenda does not necessarily include petitions for rulemakings which are under staff review.

In addition, the Commission is publishing a compilation of the status of pending rulemaking decisions and a listing of rules that have become final since the publication of the most recent regulatory agenda (April 1981). Pursuant to section 602(d) of the Regulatory Flexibility Act, this list will be made available to the press and interested groups.

I. Unpublished rules

(1) Equal Access to Justice

Subject of the Rule: This prospective rule will implement the Commission's responsibilities under the Equal Access to Justice Act (Pub. L. 96-481, 5 U.S.C. 504 *et seq.*)

Summary and Objective of the Rule: The Equal Access to Justice Act provides for reimbursement to persons who have been subjected to investigatory processes of government agencies and the person investigated subsequently prevailed on the merits. The proposed rule will prescribe procedures for proper implementation of this Act

Legal Basis for the Rule: Equal Access to Justice Act (Pub. L. 96-481, 5 U.S.C. 504 *et seq.*; Section 43, Shipping Act, 1916, 46 U.S.C. 841a).

Impact on Small Entities: Unknown.

Staff Contact: Francis C. Hurney, Secretary, (202) 523-5725.

(2) Levels of Military Rates (General Order 29, 46 CFR Part 494)

Subject of the Rule: the Commission's regulations governing the level of military rates were suspended for the period October 1, 1980 through September 30, 1982.

Summary and Objective of the Rule: This rule was originally published to determine compensatoriness of military rates to avoid discrimination against commercial cargoes. The Commission will reevaluate need and effectiveness of this rule.

Legal Basis for the Rule: Sections 18b(5) and 43, Shipping Act, 1916 (46 U.S.C. 817, 841a).

Impact on Small Entities: Probably none.

Staff Contact: Newton J. Frank, Chief, Office of Financial Analysis, Bureau of Tariffs, (202) 523-5873.

(3) Exemption of Vessel Charters from Section 15

Subject of the Rule: Section 15 requirements for vessel charters. This rule would exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, vessel charter arrangements between competitors which are entered into for a short term or for a small portion of the fleets of two or more parties and vessel charter arrangements between noncompetitors for use in noncompetitive trades.

Summary and Objective: To clarify the subjectivity of these arrangements to the requirements of section 15 and to provide relief from these requirements where appropriate.

Legal Basis for the Rule: Section 35, Shipping Act, 1916 (46 U.S.C. 833a).

Impact on Small Entities: None.

Staff Contact: Robert G. Drew, Director, Bureau of Agreements, (202) 523-5787.

(4) Exemption of Terminal Agreements

Subject of the Rule: This rule would exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, (a) certain agreements relating to the lease, license, assignment or other similar use of marine terminal real property; (b) agreements relating solely to the performance of traditional stevedoring services; (c) certain marine terminal agreements relating to the use of dock, berth, apron, or pier space; (d) other terminal facilities at other than tariff rates; and (e) marine terminal services at other than tariff rates.

Summary and Objective: To exempt routine port and terminal agreements from the requirements of section 15.

Legal Basis: Section 35, Shipping Act, 1916 (46 U.S.C. 833a).

Impact on Small Entities: Unknown.

Staff Contact: Robert G. Drew, Director, Bureau of Agreements, (202) 523-5787.

(5) Non-Exclusive Transshipment Agreements

Subject of the Rule: The scope of the present exemption of transshipment agreements under 46 CFR Part 524.

Summary and Objective: A revision would provide clarification and specification of the rule and administration of non-exclusive transshipment agreements.

This proposal may also involve a modification of the foreign and domestic tariff filing requirements of 46 CFR Parts 531 and 536 related to non-exclusive transshipment agreements.

Legal Basis for the Rule: Section 35, Shipping Act, 1916 (46 U.S.C. 833a).

Impact on Small Entities: Probably none.

Staff Contract: Robert G. Drew, Director, Bureau of Agreements, (202) 523-5787.

(6) Subjectivity of Parties to Terminal Agreements to the Shipping Act, 1916

Subject of the Rule: Termination of "Not Subject" procedures for terminal agreements under 46 CFR 530.5a.

Summary and Objective: To eliminate an expensive and time consuming process for advisory opinions of the

amenability of terminal agreements to the requirements of section 15 and to place this responsibility on parties to the agreements. This will probably involve a proposal to delete the last sentence of the guidelines set forth in 46 CFR 530.5(a). A rulemaking on this matter will most likely be forthcoming after a final rule for No. 4 above is adopted.

Legal Basis for the Rule: Sections 1 and 15, Shipping Act, 1916 (46 U.S.C. 801, 814).

Impact on Small Entities: Unknown.

Staff Contact: Robert G. Drew, Director, Bureau of Agreements, (202) 523-5787.

(7) Definition of Independent Ocean Freight Forwarder

Subject of the Rule: The implementation of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) which amended sections 1 and 44 of the Shipping Act, 1916 (46 U.S.C. 801, 841b).

Summary and Objective: These amendments have removed the prohibition against affiliations between independent ocean freight forwarders and persons with a beneficial interest in oceanborne exports and specified forwarder compensation where a beneficial interest exists. This rule will amend General Order 4 (46 CFR Part 510) to incorporate these statutory changes.

Legal Basis for the Rule: Sections 43, 44, Shipping Act, 1916 (46 U.S.C. 841a, 841b); Omnibus Budget Reconciliation Act (Pub. L. 97-35).

Impact on Small Entities: No apparent impact.

Staff Contact: Jeremiah D. Hospital, Chief, Office of Freight Forwarders, Bureau of Certification and Licensing, (202) 523-5843.

II. Published Proposed Rules

Docket No.	Subject	Status	Target date
78-63	Filing of agreements by common carriers by water	Pending decision	April 1, 1982.
80-54	Time/volume rates	Pending further comments	June 1, 1982.
80-70	Status of bulk commodities	Pending decision	Mar. 1, 1982.
81-18	Exemption of credit agreements	Pending decision	Jan. 1, 1982.
81-36	Procedures for environmental policy analysis	Pending decision	Mar. 1, 1982.
81-40	Exemption of exclusive equipment interchange agreements	Pending decision	Feb. 1, 1982.
81-50	Tariff requirements for per-container rates	Pending further comments	July 1, 1982.
81-51	Time limits on filing over-charge claims	Pending review of comments	Do.
81-54	Dual rate contracts—Rebuttable presumption	Pending review of comments	Apr. 1, 1982.

III. Final Rules

Docket No.	Subject	Status	Citation
80-13	Licensing of independent ocean freight forwarders	Rule effective in part, Oct. 1, 1981	46 FR 24565.
80-56	Temporary tariff filing regulations	Rule stayed pending reconsideration	N.A.
81-4	Exclusion of routine rate actions from reporting requirements	Final rule served, Sept. 11, 1981	46 FR 46136-38.
81-8	Exemption of housekeeping agreements	Final rule served, Sept. 23, 1981	46 FR 48199-200.
81-16	Exemption of certain agency agreements	Issued decision	46 FR 51246-48.
81-22	Interest in reparation proceedings	Final rule served, Sept. 3, 1981	46 FR 45138-40.
81-46	Financial reports of common carriers by water in domestic offshore trades	Final rule effective, Oct. 28, 1981	46 FR 53171.

Francis C. Hurney,

Secretary.

[FR Doc. 81-33838 Filed 11-19-81; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704; FCC 81-466]

Licensing Space Stations in the Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and proposed rulemaking.

SUMMARY: The Commission is proposing to reduce the separations between domestic communications satellites in orbit down to 2° of longitude where feasible. This proposed action is intended to allow more satellites to be operated in certain GHz bands. If this objective can be successfully achieved, the Commission intends to continue its present multiple entry policies and license additional satellites both to existing operators to satisfy traffic growth requirements and to new entrants into the domestic satellite market. If it proves infeasible to reduce orbital spacings below 3° in certain GHz bands, the Commission proposes to license only those additional satellites to existing operators which are already pending, and to reserve the few unassigned orbital locations at a certain GHz frequency for new entrants. The Commission is also proposing more stringent earth station antenna performance standards to reduce interference between satellites placed closer together in orbit.

DATES: Comments must be filed on or before January 25, 1982 and reply comments must be filed on or before March 1, 1982.

ADDRESS: Comments and reply comments may be mailed to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ronald J. Lepkowski, Pamla J. Wisne, Joseph F. Harcarufka, Common Carrier Bureau, (202)-632-5930.

SUPPLEMENTARY INFORMATION:

Adopted: October 1, 1981.

Released: November 18, 1981.

In the matter of licensing of space stations in the Domestic Fixed-Satellite Service and related revisions of Part 25 of the rules and regulations; CC Docket No. 81-704.

1. In the eight years since domestic satellite communications services were initiated, demand for these voice, data and video services has grown steadily.

We expect demand will continue to grow for the next several decades. This growth will be stimulated, in part, by new and innovative equipment and services offered by an increasing number of entrepreneurs in the telecommunications, programming and information marketplace. We therefore want to insure that our regulatory policies provide for the timely availability of sufficient in-orbit satellite capacity to satisfy this demand. We also want to be able to accommodate new entrants into this increasingly competitive market.

2. Eight of the nine operational domestic satellites were built under authorizations issued by the Commission in 1973. Over half of these first generation domestic satellites were launched between 1974 and 1976 with estimated operating lifetimes of seven years. In December 1980, we authorized construction and launch of the replacements for these satellites. At the same time, we authorized the construction and launch of additional satellites by existing and new licensees. We also adopted a set of tentative orbital location assignments for these satellites, and outlined the further proceeding we are formally initiating here to accommodate more satellites in orbit.[1]

3. In our December actions, we acknowledged that additional steps must be taken if we are to continue to meet the demand for satellite capacity and provide for new entry, particularly at 4/6 GHz. Under present 4° spacing between our domestic satellites at 4/6 GHz, nearly all available orbital locations have been assigned. A reduction to 2° spacing between satellites in these bands would nearly double the number of satellites that can be accommodated. We therefore propose to reduce orbital spacing to 2° in these bands. In addition, we propose a reduction in orbital spacing in the 12/14 GHz bands from the present 3° to 2°; a 3 dB improvement in earth station antenna sidelobe gain standards and a 10 dB cross-polarization isolation standard in Section 25.209 of the Rules, 47 CFR 25.209, for small off-axis angels; policies and procedures to govern the disposition of pending and future requests for additional orbital locations in the 4/6 GHz bands; and other related revisions and additions to Part 25 of the Rules. As a result of this proceeding, we expect to adopt a revised orbital deployment plan. This plan will govern the new domestic satellites presently scheduled for launch through about the middle of this decade.

4. We also have to consider long range policies needed to assure users that their demands can be satisfied well into the 1990's. Investment decisions for the next generation of domestic satellites will be made during the mid-to-late 1980's. This is because of the long lead times associated with satellite design, construction and launch. We therefore are beginning an inquiry now to identify the technical and regulatory issues that may be raised by this third generation of domestic satellites. Provisions must be made to ensure that new technologies can be introduced into the market in a timely and orderly fashion by both existing domestic satellite operators and new entrants.

Introduction

5. The Commission's statutory mandate is to "regulat[e] interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. 151. With respect to radio stations, the purpose of this legislative scheme is "to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." 47 U.S.C. 301.

6. Domestic satellites are radio stations in space which relay communications between fixed points on the earth's surface, or from one point to many specified points of reception. It takes two to three years to construct a satellite and launch it into orbit. A domestic satellite system has normally consisted of at least two in-orbit satellites and an on-the-ground-spare satellite to protect against a launch failure. An investment of at least $200 million is required for such a system. Once in orbit, a satellite cannot be repaired or refurbished. Moreover, its performance capabilities begin to degrade immediately. After a period of seven to ten years in orbit, the spacecraft is no longer usable for commercial communications services.

7. The geostationary orbit in which domestic satellites are operated is critical to this industry. In this unique orbit, the satellite revolves once about the earth during the same 24 hours that the earth spins about its own axis. The geostationary satellite therefore appears to be stationary when viewed from a point on the earth's surface. The location of the satellite is nominally defined by the longitude (° West) of the point on the earth's equator over which the geostationary satellite appears to be positioned. Only a portion of the geostationary orbit is visible from points within the United States, and hence usable to provide domestic satellite service.[2]

8. This geostationary satellite orbital arc and associated frequency spectrum from which domestic satellites can serve consumers is universally recognized as a limited natural resource:

> However, it is most important to realize that it is not a material resource nor is it even a finite resource in the same way as are deposits of fossil fuels. Instead, and like the radio frequency spectrum, it is a resource which can be increased in value by wise use of technical means. For example, one orbit position could support two entirely different transmissions on the same frequency by each using an opposite polarization. This is one way of obtaining frequency and orbit re-use and it has the effect of increasing the capacity of the orbit.[3]

Another way of increasing orbital utilization is to reduce the spacing between satellites so that more of them can be placed into the limited arc usable to serve the United States. The minimum required spacing between satellites is determined by the levels of interference that are accepted. It is not governed by physical considerations of actual collision between satellites since a degree of orbital arc amounts to a distance of about 450 miles. Reduction of satellite spacings to the smallest practical values will tend to provide the greatest amount of in-orbit capacity with present satellite designs. In addition to increasing the level of orbit-spectrum utilization, reduced orbital spacings will allow a greater number of independently competing domestic satellite systems to be accommodated.

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[1] *Orbit Deployment Plan*, 84 FCC 2d 584 (1981). Specific satellite facilities were authorized in *Hughes Communications, Inc.*, 84 FCC 2d 578 (1981); Southern Pacific Communications Company, 84 FCC 2d 650 (1981); *COMSAT General Corporation*, 84 FCC 2d 547 (1981); *RCA American Communications, Inc.*, 84 FCC 2d 633 (1981); *Western Union Telegraph Company*, 86 FCC 2d 196 (1981); *Satellite Business Systems*, 86 FCC 2d 180 (1981); and *GTE Satellite Corporation, 84 FCC 2d 562 (1981)*.

[2] *See Orbit Deployment Plan, supra* note 1, at 597-600, for a more detailed discussion of the geostationary orbital arc usable to serve the United States.

[3] Report to the Special Preparatory Meeting and to Study Group IV by CCIR Interim Working Party 4/1 on its Eighth Meeting, Tokyo, Japan, 29 May to 5 June 1978, p. 3. *See also*, Interim Working Party 4/1, Provisional Technical Report for WARC-84, Geneva, May 1981, Doc. 4/286.

A variety of additional approaches to providing more in-orbit capacity are discussed in paragraphs 34–41, *infra*. However, because all of the presently available orbital locations at 4/6 GHz under 4° spacing have been assigned, we will focus in this Notice on reduced orbital separations as a matter of urgency. A prompt decision is needed on the smallest practical orbital separations so that a deployment plan can be adopted before a significant number of new satellites are launched. A timely decision will also minimize any potential operational dislocations.

9. Authorizations to construct and operate the initial series of domestic satellites in the geostationary orbit were issued under the regulatory policies adopted experimentally in Docket No. 16495.[4] We perceived flexible policies and procedures to be necessary because the technology was relatively unknown and untested in the domestic telecommunications market.[5] Without the benefit of operational experience or rigid empirical indicia of domestic consumer demand, we were hesitant to adopt firm regulatory guidelines. Instead, we chose to rely to a large extent on marketplace forces to evidence the merits of the technology as a communications medium, and the nature and quantity of services which would be demanded by consumers. Regulatory barriers to entry were minimized in light of what appeared to be formidable market risks. Under these policies, new applicants generally have been required only to demonstrate their legal, technical and financial qualifications to construct and implement their initial two in-orbit satellite system promptly.

10. Consistent with this policy of flexibility, we have been reluctant to impose technical standards beyond those required by the international Radio Regulations or those required to maintain reasonably small orbital spacings between satellites. We have sought to impose only the minimal regulations needed to insure that all proposed satellites can be accommodated in orbit to satisfy demand and permit new entry. As long as all can be accommodated, there is no reason to burden this industry with the regulatory costs of traditional administrative proceedings that have been applied in other areas where spectrum is in short supply. The most common of these proceedings are formal comparative hearings, designed to select among competing entities.

11. As we now review the efficacy of these policies, we believe our flexible, multiple entry approach has proven to be a reliable tool for achieving full and efficient use of the geostationary statellite orbit and the frequencies associated with it. Consistent with this belief, it appears essential to maintain opportunities for new entry in each pair of frequency bands for as long as practical. Such entry opportunities seem to provide the strongest assurances for continued innovation and improved efficiences in the use of every portion of the orbit-spectrum resource. It has to date permitted the introduction of four separate domestic satellite systems.[6] Another four systems will be launched by 1986.[7] Each of these systems has been authorized without the need for lengthy hearings or administrative selections between competing applicants. We perceive that our ability to respond quickly and affirmatively to new system proposals has been, and will continue to be, integral to the growth of this market:

> In this dynamic and technologically innovative industry, a proposed venture may become obsolete in just a few years. Even without regulatory delay, a satellite firm is faced with the daunting prospect of time-consuming research and construction which entail advance planning and risky lead time—and which may lead to naught. To delay a proposed project six months will increase capital cost and diminish technological advantage. To delay it a year or more may destroy its attractiveness as an investment * * *. We recognize that the need for expedition will not justify an agency's failure to carry out its statutory responsibilities, but the relative urgency of a decision is a thoroughly appropriate factor for an agency to consider when crafting its procedures.[8]

12. Thus, it appears that the initial and experimental phase of our domestic satellite regulatory program can be brought to a successful conclusion. Our experience over the last eight years leads us to reaffirm the continued validity of our domestic satellite policies as essential to the continued development of this industry and the attainment of our statutory mandate. The public interest, convenience, and necessity has been and continues to be well served by the competitive supply of diverse and innovative domestic satellite service. It is now time to turn to the difficult but necessary task of ensuring that continued new entry and growth of existing systems needed to maintain the success of this market will not be hampered by an insufficient supply of orbital locations. Consistent with this objective, we also wish to preserve technical flexibility to introduce new and innovative services.

Proposed Orbital Spacings

13. In *Orbit Deployment Plan*, 84 FCC 2d at 597–600, we discussed the limited nature of the orbital arc usable to serve the United States. More satellites can be operated in this arc, however, if they are placed closer together in orbit. The orbital locations tentatively assigned in *Orbit Deployment Plan* are based on 4° orbital separations at 4/6 GHz and 3° separations at 12/14 GHz. *Id.* at 613–17. Although we recognized the likely feasibility of reduced orbital spacings in that decision, we deferred any final decision until additional technical studies could be performed and a more complete record could be compiled. *Id.* at 601.[9] This is one of the objectives of this rulemaking proceeding. We also wish to resolve the question of orbital spacing at an early date, and before most of the new or replacement satellites are launched. This will allow us to implement a revised deployment plan based on reduced orbital separations with minimal disruption to the services provided to existing users.[10] Since our primary objective is to continue to accommodate as many satellites as are economically feasible in each band to meet the needs of new

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[4] *Domestic Communications Satellite Facilities*, 22 FCC 2d 86 (1970); 35 FCC 2d 844 (1972), *recon. in part*, 38 FCC 2d 665 (1972) (hereinafter referred to respectively as *Domsat I, II* and *III*).

[5] The first commercial communications satellite, "Early Bird" or INTELSAT I, was lauched only five years prior to our decision to accept domestic satellite applications in *Domsat I. See Communications Satellite Corporation*, 38 FCC 1298 (1965).

[6] These systems are operated by the Western Union Telegraph Company (WESTAR), RCA American Communications Company, Inc. (SATCOM), COMSAT General Corporation (COMSTAR—leased by AT&T and GTE Satellite Corporation), and Satellite Business Systems.

[7] Hughes Communications, Inc., Southern Pacific Communications Company and GTE Satellite Corporation will place their initial two in-orbit domestic satellite systems into service during the 1983–1986 time frame. Space Communications Company, 50% owned by the Western Union Telegraph Company and 25% each by Fairchild Space Communications, Inc. and ConTel Space Corporation, will lauch the Advanced WESTAR system in the 1983–1984 time frame.

[8] *U.S. v. FCC*, 652 F.2d 72, 95–96 (D.C. Cir. 1980) (footnotes omitted).

[9] A 3° spacing in the 4/6 GHz bands was considered to be feasible under certain conditions as early as 1972. *See Domestic Communications Satellite Facilities*, 34 FCC 2d 9, 72–73 (1972) and *Domsat II, supra* note 4, at 659.

[10] Existing users might encounter outages measured in days or weeks if a revised deployment plan required the moving of an in-orbit satellite from one location to another. This is because the satellite would have to be turned off as it drifted past other in-orbit satellites to avoid interference. With sufficient advance planning, the length of such outages could be reduced to the minutes or hours needed to repoint earth station antennas from the old in-service satellite to the replacement satellite at a different orbital location.

entrants and existing operators, we wish to select the smallest practical orbital spacings in all frequency bands to conserve orbital arc for such requirements.

14. There are, of course, potential economic and technical costs associated with small orbital spacings which increase as the spacings are made smaller. These costs may include: higher interference levels adversely affecting service quality or system capacity, more expensive equipment needed to reduce interference levels to acceptable values, and loss of operational flexibility as adjacent satellite systems are engineered under tighter constraints to solve interference problems. The 4/6 GHz bands are of special concern. If demand grows for 4/6 GHz satellites beyond those being built today—which we think likely—then continued open entry requires that orbital spacings in the 4/6 GHz bands may have to be set at values somewhat smaller than what existing operators might prefer. It is not sufficient simply to accommodate in orbit the satellites presently under construction. Orbital spacings based on assumptions and analyses that are too conservative could prematurely impose artificial limits on the growth of the domestic satellite industry. More particularly, unnecessarily large orbital spacings in a band would frustrate new entry in that band. We believe that new entry is integrally related to the achievement of the policies and goals of the Communications Act as they relate to the domestic Fixed-Satellite Service and efficient and innovative use of the geostationary satellite orbit and spectrum. Since the costs of using engineering solutions that increase the supply of domestic satellite services appear reasonable, we therefore prefer such approaches over administrative or random selections between competing applicants for a constant number of orbital locations.

15. Several broad, generic technical approaches are available to achieve a desired reduction in orbital spacings. These include: improved earth station antenna sidelobe discrimination and cross-polarization isolation,[11] increased interference allowances,[12] coordination and adjustment of transmission and modulation parameters,[13] and less conservative computational assumptions and techniques.[14] Past orbital spacing decisions have been based on achieving acceptable levels of interference between typical or baseline domestic satellite system facilities on a co-channel basis. This approach eliminates the need for coordination of actual frequency usage between adjacent satellites for most of the common or baseline services, while still allowing new, smaller antenna services to be considered on a case-by-case basis.[15]

16. Appendices A and B present analyses of the feasibility of orbital spacings as small as 2° in the 4/6 GHz and 12/14 GHz bands, respectively. A 3 dB reduction in earth station antenna sidelobe gain standard of § 25.209 of our rules at small off-axis angles appears sufficient to achieve a reduction in orbital spacings from 4° to 3° at 4/6 and from 3° to 2° at 12/14 GHz for baseline system facilities.[16] By careful coordination of frequency and polarization plans between adjacent satellites and a 4 to 6 dB improvement in the assumed off-axis cross-polarization isolation of earth station antennas, a 2° spacing at 4/6 GHz appears to be achievable if some of the other techniques mentioned in paragraph 15 above are also employed.[17]

17. Thus, with proper engineering techniques, a 2° spacing criteria may be feasible both at 4/6 GHz and at 12/14 GHz.[18] We therefore propose to adopt such a 2° spacing criteria because of the significant number of additional satellites that can be accommodated in orbit with such small spacings. However, we also expect that the difficulties that will have to be overcome to achieve operations at such small orbital separations will have significant costs associated with them. Thus, we seek documented information on such costs, including those of a technical or operational nature, against which to balance the growth and competitive opportunities afforded to the industry and the public from the orbital spacings we are proposing to adopt.

18. Parties are therefore requested to comment on the scope and adequacy of the technical assumptions and methodology, as well as the selection of baseline facilities, used in the technical analyses in Appendices A and B. Supplementary analyses should be provided for any types of transmissions or facilities which parties believe would constitute a significant enough proportion of the market to warrant inclusion as baseline services for the purposes of analyzing the feasibility of reduced satellite spacings. Calculations of interference between particular combinations of r.f. carriers may result in estimated interference levels higher than that initially desired. Consideration

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[11] See Appendix A for a discussion of these factors.

[12] It may be practical to increase the single entry and/or aggregate interference criteria as improved linearity decreases internal intermodulation noise, thermal noise margins are decreased through higher power transmitters or lower noise receivers, further measurements are made of the subjective impact of interference on certain types of signals, or market conditions indicate that a lower quality of service is acceptable to consumers at lower prices. The difference between aggregate and single entry interference values can also be reduced by assuming statistically independent frequency plans on neighboring satellites rather than an array of homogeneously configured satellites.

[13] This may include the use of frequency offsets, use of less interfering transmission techniques (e.g. use of line-rate rather than frame-rate dispersal waveforms to reduce interference from FM-television signals into SCPC transmissions), and use of more interference resistant signals by proper adjustment of modulation parameters or coding algorithms. Increasing power on all satellites simultaneously would allow a greater proportion of the noise budgets of all satellite systems to be allocated to interference rather than to thermal or internal noise, thus permitting satellite spacings to be reduced.

[14] Such techniques include use of topocentric rather than geocentric angles in calculations, actual antenna patterns when they are better than reference patterns, cross-polarization values that have been measured rather than conservatively assumed, convolutional techniques to evaluate interference reduction factors (or receiver transfer characteristics), and receiver-filter characteristics.

[15] *See generally, American Broadcasting Companies*, 62 FCC 2d 901 (1976); *Western Union Telegraph Company*, 47 FCC 2d 274 (1974); *Domestic Communications Satellite Facilities, supra* note 11; and *Domsat II, supra* note 4.

[16] As discussed in Appendices A and B, it appears that baseline facilities generally can operate satisfactorily at reduced spacings. By baseline facilities, we mean a representative set of facilities and transmission parameters for each system used in the interference analyses of reduced satellite spacings. Because of the large variety of transmissions carried over most domestic satellite systems, it is not practical to include every r.f. carrier variation in these spacing studies. For the baseline facilities considered in the appendices, no severely adverse impact appear to be caused to them by these reductions in satellite spacings under the assumed conditions. While smaller antennas at 4/6 GHz may not conform to this new sidelobe standard, the calculated increased interference levels nevertheless appear to be acceptable.

[17] The different bandwidths of transponders in the authorized 12/14 GHz satellite systems have been optimized for different initial service requirements. It therefore appears premature to require standard frequency and polarization plans at this time in the 12/14 GHz bands. Moreover, the digital transmissions presently characteristic of planned 12/14 GHz systems tend to have flat power spectral distributions. This factor eliminates for 12/14 GHz satellites most of the advantages of such frequency plans for the FM-FDM and FM-TV transmissions common at 4/6 GHz. We are concerned, however, about the possibility that requiring standard frequency and polarization plans in the 4/6 GHz bands could impose costs on possible future uses of this bandwidth. Therefore, we would like comments on costs of such standards.

[18] A common spacing criteria for the 4/6 and the 12/14 GHz bands would also eliminate many of the problems raised by hybrid satellites. *See Orbit Deployment Plan, supra* note 1, at 606–608. Comments and proposals are requested on the need and desirability of explicit policies governing the operation and assignment of orbital locations to additional hybrid satellites beyond those addressed in *Southern Pacific Communications Company* and *Western Union Telegraph Company, supra* note 1.

should be given in these instances to the various techniques available to reduce interference levels to acceptable values or to the possible acceptability of interference levels higher than those initially desired in order to implement the proposed orbital spacings.

19. As discussed in Appendix A, it appears that reduced orbital spacings are generally feasible with existing facilities, and that the difficulties will be reduced in the future as improved earth stations are constructed and placed into operation with the additional domestic satellites to be launched in the coming years. Antennas larger than 6 meters in diameter that are now in operation seem to actually perform better than the current rule standard, thus mitigating in practice the impact of reduced spacing. Smaller antennas now in service may not meet the proposed new standards, but the types of services provided over these facilities appear to be compatible with reduced spacings. The industry studies cited in Appendix A indicate that television receive-only earth stations can tolerate somewhat higher interference levels than that produced under current satellite spacings while still providing acceptable overall signal quality to the end viewer. For narrowband two-way services provided over other small antennas, careful selection of frequency plans and slight adjustment to individual r.f. carrier frequencies appear to be sufficient to make these operations compatible with reduced orbital separations. However, the preliminary analyses presented in Appendices A and B are also based on a limited amount of measured antenna performance. Parties, particularly antenna manufacturers, are encouraged to provide measured data on the sidelobe and cross-polarization performance of their existing and planned products. Such information would be desirable to obtain a better picture of what the impact of reduced spacing would be on existing users.

20. To date, we have provided great flexibility in the design and operation of satellite and earth station facilities within broad limits to achieve reasonable orbital separations. As discussed above and in the appendices, some degree of this flexibility might have to be exchanged for the additional in-orbit capacity that will be made available to the market by reduced satellite spacings. We therefore request parties to review their existing operations with a view towards finding ways of achieving the proposed 2° orbital separations in both the 4/6 and 12/14 GHz bands. We also request parties to propose whatever minimum standards they believe are necessary to assure reasonable performance at small satellite separations. In particular, we request comment on the need for any frequency coordination requirements or changes to our small antenna authorization program that parties believe necessary. If parties believe that the costs of achieving a 2° spacing outweigh the increase in potential in-orbit capacity, they are requested to submit detailed analyses and supporting documentation for such beliefs as well as their proposals for minimum feasible spacings. However, it is our initial belief that these costs are sufficiently low to make our proposed 2° orbital spacings at 4/6 and 12/14 GHz desirable in view of the benefits to be derived from continued entry and growth of the domestic satellite industry.

21. In reducing spacing between United States domestic satellites, we recognize the concern that such reductions could have an impact on the ability of other countries in the Western Hemisphere to accommodate their satellite requirements. We believe that our proposed reductions will not prevent other Region 2 countries from interleaving, or even colocating, their satellites with those of the United States. Interleaving can be accomplished where the adjacent satellites have antenna coverage areas that do not overlap. In this case, the discrimination of the spacecraft antennas provides isolation between the satellite networks. If the geographical separation between the coverage areas is sufficiently large and the satellite antenna gain patterns have sufficiently fast roll-off characteristics, the satellites can be colocated at the same nominal orbital location without mutual interference. Even where colocation is not possible, satellites serving nonoverlapping coverage areas can be placed closer together in orbit than those with the same or overlapping coverage. Reduction in satellite spacing does not negate these possibilities.

22. The possibility of aggregating satellites into a more compact enironment does cause other concerns, however. If co-coverage satellites are spaced just far enough apart to satisfy an aggregate interference requirement, insufficient margin, if any, to accommodate additional interference from nonoverlapping coverage satellites, colocated or interleaved, may result. While our primary concern in this proceeding is the impact of this situation on U.S. domestic satellites, we are also concerned about the potential increase in aggregate interference from U.S. domestic satellites to other Region 2 satellite systems. Comment is therefore requested on the magnitude of the interference allowance that should be allocated for domestic and other Region 2 satellite systems to intersystem interference.

Regulatory Proposals

23. In the decade past, our competitive domestic satellite policies have been workable because of our ability to accommodate both new entry and expansion by existing systems where it has been sought. The confluence of new entry, success of satellite operations in the market and the limited nature of the orbital arc, however, has made it increasingly difficult to accommodate applicants exactly as they propose. We presaged this situation in our *Satellite Processing Order* adopted last year.[19] In that decision, we determined that all applications filed on or before May 1, 1980 would be considered as a finite group of proposals.[20] We indicated that subsequently filed applications generally would be deferred until we had an opportunity to reexamine our policies in a more comprehensive proceeding which we undertake here. We adopted this bifurcated approach to ensure that critically needed satellite facilities were authorized in an expeditious manner.[21]

24. In December 1980, we considered those applications which had been filed by the prescribed date.[22] It became apparent that, even with our interim procedure, not all timely filed requests for orbital location assignments could be accommodated precisely as proposed. Recognizing that service requirements were rapidly exceeding capacity, we undertook a judicious application of our preexisting policies to resolve the controversies generated by the applicants' requests. Orbital locations were assigned on the basis of operational needs, firm service

[19] *Domestic Fixed-Satellite Service*, 77 FCC 2d 956 (1980).

[20] *Id.* at 958–59. This procedure was analogous to that employed for our consideration of the initial domestic satellite applications. *Domsat I, supra* note 4, at 98.

[21] The shortage of satellite capacity which existed at that time is well documented in various Commission proceedings. *See e.g. Competitive Carrier Rulemaking*, 85 FCC 2d 1 (1980) (Domestic satellite carriers dominent because demand for transponder capacity exceeds supply); *Spanish International Network, Inc.*, 78 FCC 2d 1451 (1980) (Complaints concerning carrier assignment of scarce transponders among customers); *RCA American Communicotions, Inc.*, 79 FCC 2d 331 (1980) (Use of lottery approved as impartial means of allocating transponders in face of serious capacity shortfall). Our proposals here for reduced orbital spacings are intended, in part, to remedy or avoid such situations in the future.

[22] *Supra* note 1.

requirements, and competitive considerations supporting new entry. In many instances, specific location requests were denied although alternative orbital locations were assigned.[23]

25. In assigning orbital locations to domestic satellites, we also consider the needs of other countries in this hemisphere. The portion of the orbital arc between about 55° and 143° West Longitude is generally capable of serving the 48 contiguous states. We have recognized, however, that "the easternmost portion of this arc is particularly useful in accommodating those requirements of other countries in this hemisphere which can not be satisfied by interleaving their satellites between U.S. satellites."[24] Our general intention is to utilize positions in the easternmost arc segment between about 70° and 55° West Longitude only when westerly positions are no longer available, using technological advances, to satisfy our domestic satellite requirements. Furthermore, we previously have stated our commitment to the accommodation of the orbital requirements of other countries through the international frequency coordination process. Both the Department of State and the National Telecommunications and Information Administration have urged us to emphasize the use of orbit conservation techniques in actual practice to demonstrate our belief that the requirements of all countries can be met through the judicious application of technological advances.[25] We believe that the techniques to be used to reduce orbital spacings between U.S. domestic satellites are responsive to the objective of orbit-spectrum conservation.

26. In the December Orders, twenty satellites were authorized for launch and assigned tentative orbital locations. Fifteen of those assignments were for locations in the 4/6 GHz bands in the arc between 70° and 143° West Longitude based on 4° spacing intervals. Four additional launch requests for satellites now under construction were deferred.[26] The assignment of orbital locations to these satellites presently under construction and scheduled for launch is, we think, a matter of great urgency. Financial commitments and operational resources have been dedicated by those entities who obligated themselves prior to the May 1, 1980 deadline. Thus, we construe our *Satellite Processing Order* to require action on these deferred requests before any subsequently filed application, which would prejudice the rights of these parties, can be considered.[27]

27. Given these constraints, it is evident that reductions in orbital spacings are needed if new entry and expansion are to be supported. In the past, we have been able to accommodate all reasonable requests for orbital locations by both new entrants and existing operators within the context of the application processing cycle. We have not resorted to the more traditional administrative procedures that have been used for assigning scarce spectrum in other services that we regulate. This approach was adopted to minimize delay because of the characteristics unique to the satellite industry. It is essential, we think, to retain this ability to accommodate new satellite proposals without extended administrative delays. Fluid entry policies, which minimize administrative processing delays, will continue to provide the public with benefits associated with competitive supply of satellite services by multiple entities:

> The principle advantages to be gained from competition in this heavily regulated industry are two. First, the presence of a large number of competitors and a large capacity may prevent supracompetitive price pressures that the Commission might not be able to perceive or control. Second, the increased competition may spur firms in the industry to greater technological advances and more efficient operations.[28]

28. The opportunity for meaningful entry lies at the very foundation of our domestic satellite policies. A meaningful opportunity must encompass not only the initial entry decision, but also a reasonable opportunity to expand as success in the market place grows. We wish to nurture such opportunities through our orbital assignment policies and procedures. To attain this objective, our policies cannot flow from conditions of orbital scarcity. Rather, we think it essential to retain our ability to accomodate new satellite proposals without extended administrative delays to the extent that this goal is compatible with efficient use of the orbit space resource.

29. Thus, we propose to continue to apply our present assignment policies and procedures so long as the number of available locations exceeds the number requested. Under our proposed 2° orbital spacing criteria, we expect to continue to accommodate all reasonable requests for orbital locations by both new entrants and existing operators within the context of the application processing cycle. Orbital locations potentially can be assigned during the foreseeable future to any entity who can "demonstrate with specificity the applicant's legal, technical and financial qualifications and its ability to immediately proceed with the construction and operation of the proposed domestic satellite system." *Satellite Processing Order*, 77 FCC 2d at 960.

30. Our present orbit assignment policies are summarized in *Orbit Deployment Plan*. Domestic satellite application and authorization procedures are described in *Domsat I*, *Satellite Processing Order*, and *Orbit Deployment Plan*. We propose to retain these flexible policies and procedures if our small orbital spacing proposals are adopted. Nevertheless, parties may wish to comment on the efficacy of these procedures and propose refinements or improvements to them in their initial comments in this proceeding. For example, in *Western Union Telegraph Company* (FCC 72-686) released July 26, 1972, we ruled that Section 319 of the Act applied to the procurement of satellites, as well as their actual construction. It appears to be necessary to continue to review technical designs of satellites to avoid interference and achieve efficient orbit and spectrum use before substantial investments are committed prior to construction and launch. Other procurement activities, such as the procurement of launch services from NASA, may be of a more fungible nature at this time. We

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[23] *See e.g., Satellite Business Systems, supra* note 1. Because of the comparable nature of locations within the same segment of the orbital arc, we have long held that competing requests for the same location do not give rise to comparative hearing rights. See *Western Union Telegraph Company*, 47 FCC 2d 274 (1974).

[24] *Orbital Deployment Plan, supra* note 1, at 599. It may be particularly difficult to coordinate a U.S. domestic satellite at the easternmost limit of this arc because of a planned INTELSAT satellite at 53° West Longitude to serve Mexican domestic communications needs.

[25] *See e.g.*, Statement of U.S. Delegation, Summary Report of Part Two of the Tenth Meeting of Committee 6 (Regulatory Procedures), WARC-79, Doc. No. 846 (29 Nov. 1979) at Annex 1, pp. 6-7; *Notice of Inquiry Relating to the Preparations for the 1985 Space WARC*, FCC 80-697, released December 16, 1980.

[26] These include requests for a fifth location by RCA Americom and Western Union, two of the initial entrants, and for a third location by Hughes and Southern Pacific, the most recent entrants at 4/6 GHz. Southern Pacific has not verified its intent to a construct fourth satellite. *See Southern Pacific Communications Company, supra* note 1, at 658, n.32.

[27] *Kessler v. FCC*, 326 F.2d 673, 686 (D.C. Cir. 1963). A somewhat anomolous situation exists with respect to Western Union since we authroized launch of all its requested satellites but did not assign the number of locations requested by the applicant. Thus, in Application File No. 732-DSS-P/LA-81, we have granted Western Union authority to proceed with construction of WESTAR VI. Action on the launch request and assignment of a fifth location was deferred pending completion of this proceeding. See *Western Union Telegraph Company*, FCC 81-465, adopted today.

[28] *U.S. v. FCC, supra* note 8, at 104.

therefore propose to eliminate this requirement for prior Commission approval for such launch service expenditures.[29]

31. At 3° spacing in the 4/6 GHz bands, only about 3 or 4 orbital locations would be unassigned after the remaining requests filed before May 1, 1980 are honored. This number of orbital locations would appear to be just sufficient to accommodate one new system in orbit. Alternatively, these few orbital locations could be reserved for some incremental expansion of existing systems until a new generation of high capacity satellites could be made available towards the end of the decade. Thus, adoption of a 3° orbital spacing guideline may require an administrative selection between accommodating one new entrant or providing limited growth capabilities to existing operators in the 4/6 GHz bands. We propose to make such a selection if we do not adopt the smaller orbital spacings we are proposing in this rulemaking proceeding.

32. If such a choice becomes necessary, we believe the public interest would be better served by assigning the remaining orbital locations at 3° spacing at 4/6 GHz to a new entrant.[30] With equivalent, state-of-the-art space station design technologies, we believe the new entrant without an established traffic base will have greater incentives than an established operator at 4/6 GHz to keep prices low and to offer services that are more specially tailored to customer requirements. A new entrant developing a system in the 4.6 GHz bands may also have a somewhat greater incentive to tailor his or her service offerings to those customers who would make optimal use of these bands. Established systems operators, with large amounts of capacity to market at 4/6 GHz, 12/14 GHz or both, may not have as great an incentive to make small, specialized offerings. Finally, assigning these orbital locations to a new entrant would tend to avoid greater concentration of control by an entity of the orbital location in any given frequency band.[31]

33. We would, of course, prefer not having to make such a choice; and we need not as long as orbital spacings in each pair of bands are small enough to accommodate requirements.[32] These proposals, or possibly other regulatory alternatives, should therefore be weighed and advanced by parties commenting on the feasibility and/or difficulties of achieving 2° orbital separations at 4/6 and 12/14 GHz. In particular, as long as an increasing number of satellites and new entrants can be accommodated in orbit, parties finding particular hardships in operating with 2° spacing may wish to comment on the practicality of a time phased orbital spacing criteria in those cases where 2° spacing is not possible at the present. Under such a scenario, all future satellite and earth stations would have to be designed for a 2° spacing criteria at 4/6 and 12/14 GHz. However, a limited number of existing facilities could be operated in the interim at spacings between 2° and 3° until uniform closer spacings became necessary to accommodate a new satellite, or the existing facilities were replaced with a follow-on satellite. Another approach could be to permit slightly larger spacings between a few domestic satellites on a more permanent basis, perhaps indefinitely. Any such instances would be strictly limited to those necessary to satisfy special or unique requirements where the costs of achieving smaller spacings would cause extraordinary hardships to the public. The problem we foresee with either of these approaches, however, is defining concrete, unambiguous criteria under which certain satellites would be excepted from the spacing criteria that would apply uniformly to all of the other satellites in this increasingly competitive industry. Advocates of non-uniform orbital spacing should therefore focus their comments on solutions to this serious regulatory problem, as well as on the particular hardships they would face under our orbital spacing proposals.

Future Technological Alternatives

34. In addition to our obital spacing and regulatory proposals, we are also beginning an inquiry here into additional technological approaches that may further increase the amount of domestic satellite capacity available in the future. These include: (a) use of higher frequency bands, (b) higher capacity satellite designs, and (c) more spectrum efficient transmission techniques. We wish to explore each of these approaches, as well as the tradeoffs among them. Consideration is needed of the applicability of these technologies to the design and operation of the third generation of domestic satellites which will be launched towards the end of this decade. Their applicability to the transition from the satellites presently in operation or under construction also must be examined. We also wish to examine any impact of our proposals to reduce orbital spacings on the feasibility of implementing these technological advances. We therefore request comments and the results of any studies performed by interested parties on which of these approaches, or which combinations, offer economically efficient means of providing capacity increases needed to satisfy long-term demand.

35. In particular, we wish to identify any potential conflicts and tradeoffs between these various approaches and orbital spacing reductions, or between the underlying technical or operational decisions that would have to be made to pursue one or more of these approaches. For example, a greater proportion of the system noise budget [33] can be allocated by the system designer to interference rather than to thermal noise. This increase in acceptable interference levels can be used to reduce orbital separations, or to achieve a greater number of frequency re-uses on the same satellite, or some combination of the two results. It is not completely clear, however, which approach would result in the largest net increase in in-orbit capacity over the long run. Other factors also enter into such an evaluation. For instance, additional capacity can be provided by re-using the frequency spectrum through narrow spot

[29] *See e.g., UA—Columbia Cablevision*, 55 FCC 2d 660 (1975), where we eliminated our previous pre-grant procurement restrictions regarding earth station facilities.

[30] If it became necessary to choose between two or more competing new entrants who were qualified to proceed expeditiously with a newly proposed systems, less burdensome and faster administrative selection mechanisms than full, evidentiary comparative hearings may be available to assign the unoccupied orbital locations at 4/6 GHz. *See e.g., Use of Alternative Procedures in Choosing Applicants for Radio Authorizations in the Multipoint Distribution Service*, CC Docket No. 80-116, 45 Fed. Reg. 29335 (May 2, 1980); *Cellular Communications Systems*, 86 FCC 2d 469 (1981); *Omnibus Budget Reconciliation Act of 1981*, Public Law 97-35.

[31] A corollary would be to limit the number of orbital locations into which an existing 4/6 GHz satellite system operator could launch replacement satellites below the number presently assigned, so that additional new entrants could be accommodated in the next generation of domestic satellites.

[32] Our legal authority to make such selections in a rulemaking rather than adjudicatory proceeding is analyzed in *Domestic Satellite Earth Stations—Alaska Bush*, 81 FCC 2d 304, 314-318 (1980).

[33] The overall quality of a communications channel can be technically defined by the total amount of noise in the channel. This noise is usually caused by a number of independent sources. Some of this noise is generated internally within the system, such as thermal noise produced by the electronic components of the receiver. Other noise is caused by external sources, such as interference from other radio systems operating on the same frequency. A numerical value can be assigned to the degrading effect of each noise source on overall channel performance. The system noise budget is the numerical schedule showing how the system designer intends to limit the amount of noise contributed by each source to achieve the overall total noise objective for the channel.

beams and complex switching arrangements on board the satellite to interconnect the various beams. This may be an acceptable and economically attractive approach to providing point-to-point types of voice and data services. However, such a design approach may not be cost or operationally efficient for nationwide distribution of audio and video programming material. For present satellite designs providing nationwide coverage on each transponder, reducing orbital spacings to get more satellites in orbit appears to be preferable and is the course of action presently proposed. However, this conclusion may be different for a new generation of satellites designed to better match a more developed and stable traffic base. The results of any such tradeoff studies surrounding a particular design choice in the future would therefore not only depend on purely technical matters and considerations, but also on operational and market conditions.

36. It is these types of trade-offs among technical, cost and operational considerations, together with the best estimates of market conditions and demand in the future, which we wish to explore in this inquiry. It would, of course, be desirable to maintain the flexibility to choose any individual approach or combination of these approaches for as long as possible into the future. Thus, we request comment on the anticipated types and volumes of services that domestic satellites can or will be expected to provide into the next decade, the technological alternatives that may be available to accommodate these satellites in orbit in order to satisfy demand into the 1990's, and any changes to our regulatory policies, technical criteria or procedures that may be necessary or desirable to insure the orderly and timely availability of these facilities. However, we believe that certain decisions on which approaches are to be taken, or are to be preferred, may have to be made in the near term so that planning of the next generation of domestic satellites can proceed in an orderly fashion and subsequent dislocations minimized or avoided.

37. *Higher Frequency Bands.*[34] Domestic satellite communications presently occur in both the 4/6 GHz and the 12/14 GHz bands. The 4/6 GHz bands are used intensively at the present time. Although a number of orbital locations are presently unassigned in the 12/14 GHz bands, it is likely that most of the available locations in the 12/14 GHz bands will be applied for and assigned to satisfy mid-term growth requirements over the next decade. As demands on these bands increase, more stringent orbit conservation techniques will have to be applied in these two pairs of bands. The next available pair of frequency bands available for domestic satellite services are at 18 and 30 GHz. Although propagation difficulties at these frequencies are more significant than in the presently used bands lower in the spectrum, these higher frequencies should be commercially usable by the early 1990's. Work has been sponsored by the National Aeronautics and Space Administration to develop critical technologies needed to utilize these bands commercially. A very large amount of additional domestic satellite capacity can be provided in these bands because they are five times as wide as either of the 4/6 or 12/14 GHz bands. Moreover, it appears that satellites can be placed closer together without excessive costs because antenna directivities increase with increasing frequency.

38. We request comment on the extent to which future growth in domestic satellite services can or should be accomplished at these higher frequencies. To the extent that the 18/30 GHz bands, rather than the present 4/6 and 12/14 GHz bands, can be relied on to meet long-term growth requirements, it should be possible to avoid at least some of the more stringent and costly measures that would be required if all of these growth requirements were to be satisfied in the lower bands. Parties may therefore wish to focus on these considerations in formulating their comments and plans for using the higher frequency bands for future domestic satellite communication services.

39. *Higher Capacity Satellite Designs.* One measure of the inherent capacity of a satellite design is the number of times that the allocated frequency band can be independently used on board the spacecraft to establish channels of communication. Increasing the number of times that a single frequency band is used at an orbit location technically results in a more efficient use of the spectrum. For example, current 24 transponder satellites in the 4/6 GHz bands like COMSTAR and SATCOM achieve a 2-fold frequency use. That is, within the satellite antenna beam covering the entire continential United Sates, the 4/6 GHz band is used once with one sense of polarization (e.g., horizontal) and a second time with the opposite sense of polarization (e.g., vertical). About 1000 MHz, or two times the 500 MHz allocated bandwidth, is available for communications in this design. A different satellite design could be used in the future to achieve a greater number of frequency uses. For example, if one sense of polarization is used in two independent spot beams, and the opposite sense of polarization is used in a wider antenna beam covering the entire continental United States, a total of 1500 MHz, or three times the 500 MHz allocated bandwidth, could be made available for service on the same spacecraft. Such high capacity satellite designs would, however, require complex switching arrangements on board the spacecraft to interconnect earth stations located in different spot beams. Alternatively, complex antenna arrays may be used to electronically scan the beams across the service area. Exceptionally high capacity satellites are also being studied under the "space platform" concept for future applications.

40. We therefore request parties to comment on the feasibility and desirability of introducing such higher capacity satellite designs into service in each of the various frequency bands. We also seek comment on the relative advantages and disadvantages of achieving increased in-orbit capacity through this design technique compared to reduced orbital spacings, use of higher frequencies and/or the more efficient transmission techniques discussed below.

41. *Efficient Transmission Techniques.* We also request comment on the technical, operational and economic feasibility of using the various techniques that are or will become available to increase the amount of capacity that can be derived from a satellite transponder. For example, we are aware that one carrier can expand the number of one way voice channels derived in a transponder from 972 to 2892 on a high density route. Various digital processing and time division multiple access techniques may also provide greater transponder capacity. The increased linearity of solid state final amplifiers and better filters in satellites now under construciton are expected to further increase capacity. These techniques may also be capable

[34] In the text of this notice, the following abbreviations are used for the specific frequency bands allocated for domestic satellite communications:

4 GHz : 3700–4200 MHz (down link)
6 GHz : 5925–6425 MHz (up link)
12 GHz : 11.7–12.2 GHz (down link)
14 GHz : 14.0–14.5 GHz (up link)
18 GHz : 17.7–21.2 GHz (down link)
30 GHz : 27.5–30.0 GHz (up link)

The common pairings of downlink/uplink bands for a complete satellite link are: 4/6 GHz, 12/14 GHz and 18/30 GHz.

of supporting more spectrally efficient modulation techniques, such as compandored single sideband transmissions or sophisticated digital or hybrid modulation schemes. Finally, it may be possible to routinely transmit two or more television signals through a transponder. We therefore request comments and information on how and to what extent such techniques are or will be commercially available, and how they can be used effectively to increase transponder capacity. In evaluating the feasibility of each of these techniques, we also request parties to comment in particular on the interference causing potential and the susceptibility to interference of each of these techniques, and the resulting impact on satellite spacing and/or capacity.

Proposed Rule Revisions

42. The Commission believes that more efficient utilization of the orbit and spectrum available in the Domestic Fixed-Satellite Service will be achieved by reducing satellite separations from 4° to 2° in the 4/6 GHz bands and from 3° to 2° in the 12/14 GHz bands. As a first step to achieve these goals, we propose to modify the antenna performance standard of Section 25.209 of the Rules and Regulations as specified in Appendix C.

43. The present antenna performance standard was adopted in 1973 when the Commission revised those portions of the rules dealing with the coordination of earth stations and terrestrial stations operating in shared frequency bands. *See Earth and Terrestrial Stations*, 40 FCC 2d 395 (1973).[35] Since we are concerned here with the effects of antenna performance on interference levels between adjacent satellites close together in orbit, we propose that a 3 dB improvement only be required at small off-axis angles. We therefore propose a plateau between the old and improved patterns at the 8 dBi gain level at angles between 7° and 9.2° off-axis. We also propose to incorporate a cross-polarization isolation standard of 10 dB into this section of the rules.

44. Existing technologies are available for effectively controlling side lobe performance. These techniques include the following:

(a) Reduction of antenna illumination which lowers the main beam gain slightly but reduces the side lobes considerably. The effectiveness of this technique is related to antenna size and the effectiveness increases with the size of the antenna;

(b) Corrugated antenna feeds;

(c) Design practices that reduce and minimize reradiation from secondary reflector supports and antenna edges;

(d) Off-set feed antenna designs that reduce the effects caused by sub-reflectors and supports;

(e) Horn antenna designs in lieu of a parabolic dish; and

(f) Improved manufacturing tolerances which reduce sidelobe levels resulting from the effects of antenna reflector surface errors.

Application of these technologies have varying degrees of effectiveness in reducing side lobe levels as well as associated penalties, both in main beam gain and in increased antenna costs. Some of these techniques are more appropriate for antennas that are 6 meters or less in diameter. Other approaches are more effective when applied to large diameter antennas. However, a number of options appear to be available to the antenna manufacturer in any case to satisfy the proposed new antenna performance standard in a cost effective manner.

45. We are also making other changes in the specification of how compliance with this new performance standard is to be defined. We welcome specific proposals for further improvements to the proposed standard, particularly to avoid unnecessary costs in the implementation of this standard while still achieving small orbital spacings.

46. We are also proposing other revisions and additions to Part 25 of the Rules and Regulations in Sections 25.201 through 25.208 as set forth in Appendix C. These revisions and additions are intended to update definitions, available frequency bands and other technical standards to conform them to the current National Table of Frequency Allocations and International Radio Regulations. We recognize that some of these proposed rules will require further revision in the course of implementing the Final Acts of the 1979 World Administrative Radio Conference. *See Third Notice of Inquiry* adopted July 16, 1981 in General Docket No. 80-739. However, it appears premature to further address those matters at this time prior to ratification of the Final Acts by the Senate. Finally, we are proposing to clarify the need for applicants and licensees to provide us with the information we require to discharge our international frequency coordination obligations. This clarification is provided in the proposed § 25.202(c). Parties may also propose in their initial comments additional rules or standards to govern the design and/or operation of domestic satellite space stations for consideration in this rulemaking proceeding. However, such proposals must identify with specificity the problem to be solved and demonstrate that the proposed rule or standard is necessary to effectively correct the problem.

Conclusion

47. We have encouraged multiple entry into the domestic satellite market as a means by which to realize the fullest and most efficient use of the geostationary orbital arc and the radio frequencies associated with it. Satellite operations are characterized by large expenses and long planning and construction lead times. Therefore, we have followed a policy of minimal regulatory intrusion so that service providers might have flexibility to experiment with different approaches in delivering domestic satellite services. This policy has been possible because of our ability to assign orbital locations requested both by new entrants and by existing operators. We believe it important to continue to accommodate both new entry and growth at both 4/6 GHz and 12/14 GHz.

48. Because the present supply of orbital locations at 4/6 GHz is virtually depleted, we are proposing to shorten the spacing between satellites operating in those bands from 4° to 2°. Although this action will require more sophisticated interference analyses, other engineering improvements and possibly significant additional costs, our initial studies indicate this objective appears desirable and within reach. We have discussed a number of additional means available to achieve shorter spacing at 4/6 GHz, and are proposing specific rule revisions in Appendix C.

49. Two-degree spacing at 12/14 GHz appears to be more easily achieved. The proposed 3 dB improvement in our earth station antenna performance standard appears sufficient to permit this proposed spacing.

50. We believe shorter spacing is necessary to achieve our proposal to continue our multiple entry policy for domestic satellites, and to ensure that the orbit spectrum resources are used efficiently. In making our proposals for reduced orbital spacings, we intend to fulfill our international commitments to consider the space communication requirements of other countries in our

[35] The power flux density limits in § 25.208 of the rules, with the proposed revisions, should be sufficient to protect terrestrial stations from in-orbit space station transmissions, even with a reduction in satellite spacing to 3°. *See*, P. E. Butzien, "Radio System Interference from Geostationary Satellites" (IEEE Transactions on Communications, January 1981). Parties who believe that further reductions in satellite spacings would have a severely adverse impact on their terrestrial systems should provide detailed technical analyses to document such harmful effects of our proposed actions.

domestic satellites activities. Without shorter spacing, our policy proposals are driven by shortage, and require that we take actions that restrict growth if new entry is to be preserved. For example, it may be necessary to limit the number of locations each system may have at 4/6 GHz, and direct growth beyond a limited number of satellites to higher bands. We believe the better course is to continue to permit both growth and new entry in all bands, according as much flexibility as possible to system operators in matters of system design and operation.

51. We seek comment on the analyses, observations and proposals made herein. We invite specific, focused comments, studies and analyses performed by parties. We are particularly interested in studies that evaluate cost/benefit tradeoffs of the various approaches and techniques we have discussed, or alternative ways of achieving our objectives. We remain committed to accommodating both new entry and growth by existing systems, while maintaining flexibility to introduce new and innovative services; we seek to adopt the least burdensome regulatory policies and rules which will facilitate both.

Procedural Matters

52. This Notice of Inquiry and Proposed Rulemaking is issued pursuant to authority contained in sections 4(i), 4(j), 303 and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303 and 403.

53. Our initial analysis pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, is attached as Appendix D. We do not believe that the actions proposed in this proceeding will have a significant economic impact on a substantial number of small businesses if ultimately adopted. However, because the impact may vary depending on the orbital spacing ultimately adopted, interested parties may wish to comment on this matter.

54. Interested parties may file comments on or before January 25, 1982 and reply comments on or before March 1, 1982. In accordance with § 1.1419 of the Commission's rules and regulations, 47 CFR 1.1419, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding should be furnished to the Commission. Copies of all filings will be available for public inspection during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that 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.

55. For the purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking 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, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or 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 Secretary of the Commission for inclusion into the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments in 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 into 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*, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Due to the effort to minimize publishing costs, Appendix A, *Analysis of Reduced Orbital Spacing in the 4/6 GHz Bands*, and Appendix B, *Analysis of 2 Spacing in the 12/14 GHz Bands*, are not printed herein. However, they may be inspected on file in the Dockets Branch, Room 239, 1919 M St. NW., Washington, D.C. and are filed with the original.

Appendix C

PART 25—SATELLITE COMMUNICATIONS

It is proposed that Part 25 of Chapter I of Title 47 of the Code of Federal Regulations be amended as follows:

§ 25.201 [Amended]

1. In § 25.201, the following definitions be removed:

Communication-satellite earth station
Communication-satellite service
Communication-satellite space station
Space service
Stationary satellite
Terrestrial service

2. In § 25.201, the following definitions be revised to read as follows:

Earth station. A station located either on the earth's surface or within the major portion of the earth's atmosphere intended for communication:

(a) With one or more space stations; or

(b) With one or more stations of the same kind by means of one or more passive satellites or other objects in space. .

Space station. A station located on an object which is beyond, or has been beyond, the major portion of the earth's atmosphere.

Terrestrial station. A station effecting terrestrial radiocommunication.

3. In § 25.201, new definitions be added in alphabetical order as follows:

Fixed-satellite service. A radiocommunications service:

(a) Between earth stations at specified fixed points when one or more satellites are used; in some cases this service includes satellite to satellite links, which may also be effected in the inter-satellite service;

(b) For connection between one or more earth stations at specified fixed points and satellites used for a service other than the fixed-satellite (for example, the mobile-satellite service, broadcasting-satellite service, etc.).

Geostationary satellite. A satellite, the circular orbit of which lies in the plane of the earth's equator and which turns about the polar axis of the earth in the same direction and with the same period as those of the earth's rotation. The orbit on which a satellite should be placed to be a geostationary satellite is called the "geostationary satellite orbit".

Inter-satellite service. A radiocommunication service providing links between artificial earth satellites.

Satellite system. A space system using one or more artificial earth satellites.

Spacecraft. A manmade vehicle which is intended to go beyond the major portion of the earth's atmosphere.

Space operation service. A radiocommunication service concerned exclusively with the operation of spacecraft, in particular tracking, telemetry and telecommand. These functions will normally be provided within the service in which the space station is operating.

Space radiocommunication. Any radiocommunication involving the use of one or more space stations or the use of one or more passive satellites or other objects in space.

Space system. Any group of cooperating earth and/or space stations employing space radiocommunication for specific purposes.

Terrestrial radiocommunication. Any radiocommunication other than space radiocommunication or radio astronomy.

4. In § 25.202, paragraphs (a) through (c) be revised and (d) is removed and reserved as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) *Frequency bands.* The following frequencies are available for use by the fixed-satellite service. Precise frequencies and bandwidths of emission will be assigned on a case-by-case basis.

Space-to-earth	Earth-to-space
3700–4200 MHz [1]	[1] 5925–6425 MHz
10.95–11.2 GHz [2]	[2] 14.0–14.5 GHz.
11.45–11.7 GHz [2]	[1] 27.5–29.5 GHz.
11.7–12.2 GHz	29.5–30.0 GHz.
17.7–19.7 GHz [1]	
19.7–20.2 GHz	

[1] This band is shared coequally with terrestrial radiocommunication services.
[2] Use of this band by the fixed-satellite service is limited to international systems, i.e. other than domestic systems.
[3] The band 14.0–14.3 GHz is shared coequally with the radionavigation service, and the band 14.4–14.5 GHz is shared with Government terrestrial radiocommunication services.

(b) Other frequencies and associated bandwidths of emission may be assigned on a case-by-case basis to space systems under this part in conformance with §2.106 of this chapter and the Commission's rules and policies.

(c) Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, coordination and notification of frequency assignments pursuant to the International Radio Regulations and Article XIV of the INTELSAT Agreement. This information includes, but is not limited to, that specified in Appendices 1A and 1B of the Radio Regulations. Until coordination procedures are completed, no protection from interference caused by radio stations authorized by other Administrations is guaranteed. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.

(d) [Reserved]

5. In § 25.204, paragraphs (a) through (c) be revised to read as follows:

§ 25.204 Power limits.

(a) In bands shared coequally with terrestrial radiocommunication services, the equivalent isotropically radiated power transmitted in any direction towards the horizon by an earth station operating in frequency bands between 1 and 15 GHz, shall not exceed the following limits except as provided for in paragraph (c) of this section:

$+40$ dBW in any 4 kHz band for $\theta < 0°$
$+40 + 3\theta$ dBW in any 4 kHz band for $0° < \theta < 5°$

Where θ is the angle of elevation of the horizon viewed from the center of radiation of the antenna of the earth station and measured in degrees as positive above the horizontal plane and negative below it.

(b) In bands shared coequally with terrestrial radio-communication services, the equivalent isotropically radiated power transmitted in any direction towards the horizon by an earth station operating in frequency bands above 15 GHz shall not exceed the following limits except as provided for in paragraph (c) of this section:

$+64$ dBW in any 1 MHz band for $\theta < 0°$
$+64 + 3\theta$ dBW in any 1 MHz band for $0° < \theta < 5°$

Where θ is as defined in paragraph (a) of this section.

(c) For angles of elevation of the horizon greater than 5° there shall be no restriction as to the equivalent isotropically radiated power transmitted by an earth station towards the horizon.

6. §§ 25.205 through 25.206 be revised to read as follows:

§ 25.205 Minimum angle of antenna elevation.

Earth station antennas shall not normally be authorized for transmission at angles less then 5° measured from the horizontal plane to the direction of maximum radiation. However, upon a showing that the transmission path will be seaward and away from land masses or upon special showing of need for lower angles by the applicant, the Commission will consider authorizing transmission at angles between 3° and 5° in the pertinent directions. In certain instances, it may be necessary to specify minimum angles greater than 5° because of interference considerations.

§ 25.206 Station identification.

The requirement for transmission of station identification is waived for all radio stations licensed under this part.

7. §§ 25.208 and 25.209 be revised to read as follows:

§ 25.208 Power flux density limits.

(a) In the band 3700–4200 MHz, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

- -152 dBW/m² in any 4 kHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;
- $-152+(\delta-5)/2$ dBW/m² in any 4 kHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and
- -142 dBW/m² in any 4 kHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux density which would be obtained under assumed free-space propagation conditions.

(b) In the bands 10.95–11.2 and 11.45–11.7 GHz, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

- -150 dBW/m² in any 4 kHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;
- $-150+(\delta-5)/2$ dBW/m² in any 4 kHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and
- -140 dBW/m² in any 4 kHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux density which would be obtained under assumed free-space propagation conditions.

(c) In the band 17.7–19.7 GHz, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

- -115 dBW/m² in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;
- $-115+(\delta-5)/2$ dBW/m² in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and
- -105 dBW/m² in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux density which would be obtained under

assumed free-space propagation conditions.

§ 25.209 Antenna performance standards.

(a) The gain of any antenna to be employed in transmission from an earth station in the fixed-satellite service shall lie below the envelope defined by:

$29 - 25 \log_{10} \theta$ dBi $\quad 1° < \theta < 7°$

$+8$ dBi $\quad 7° < \theta < 9.2°$

$32 - 25 \log_{10} \theta$ dBi $\quad 9.2° < \theta < 48°$

-10 dBi $\quad 48° < \theta < 180°$

where θ is the angle in degrees from the axis of the main lobe, and dBi refers to dB relative to an isotropic radiator. For the purposes of this section, the peak gain of an individual sidelobe may not exceed the envelope defined above by more than 3 dB for θ between 1° and 7°. For θ greater than 7°, the envelope may be exceeded by 10% of the sidelobe peaks.

(b) The off-axis cross-polarization isolation of any antenna to be employed in transmission from an earth station in the fixed satellite service shall be greater than or equal to 10 dB for off-axis angles between 1° and 10°; and

(c) Any antenna licensed for reception at an earth station in the fixed-satellite service shall be protected from interference only to the degree to which harmful interference would not be expected to be caused to an earth station employing an antenna conforming to the standards specified in paragraphs (a) and (b) of this section.

(d) The standards specified in paragraphs (a) and (b) of this section shall apply to all new antennas installed after January 1, 1983 and to all antennas after January 1, 1985.

(e) the operations of any earth station with antenna not conforming to the standards of paragraphs (a) and (b) of this section shall impose no limitation upon the operation, location, or design of any terrestrial station, any other earth station, or any space station.

Appendix D

Initial Regulatory Flexibility Analysis

Why Action is Contemplated

We are recommending reduced orbital spacing in order to provide the additional orbital locations needed to accommodate the expansion of existing systems and the entry of new systems into the domestic satellite communications market. This action should provide the American public with a more competitive domestic satellite communications industry and innovative new communication services. The Commission in this *Notice* has, therefore, made a preliminary determination that additional domestic satellites are in the public interest and that the results of this proposal should benefit domestic communication users into the next decade.

Under present 4° orbital spacing at 4/6 GHz, nearly all available orbital locations have been assigned to domestic satellite operators. A reduction to 2° spacing between satellites in these frequency bands would nearly double the number of satellites which can be accommodated in the geostationary orbit. Reduction of orbital spacings appears to be the only practicable method of satisfying the potential demand for satellite communication services while also continuing the Commission's policy of "open entry" in this area.

Objectives and Legal Basis for Proposed Rule

Our objective in proposing these policies and Rules is to provide for the full and most efficient use by domestic satellites of the geostationary satellite arc and the frequencies associated with it by maintaining the potential for new and multiple entry into that industry.

Our legal basis for this action can be found in sections 1, 4(i), 4(j), 303(f), 303(g), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(f), 303(g), 303(r), and 403.

Small Entities Affected by the Rule

This action will have a primary effect on domestic satellite operators who might have to modify their facilities and operations in order to comply with these new rules and orbital spacing criteria. However, since a minimum investment of at least $200 million is required to launch a typical satellite system, these operators can hardly be classified as small business. There are, however, "earth-based" entities which will also be affected by this action. Although it is impossible to determine the number and types of existing and potential "earth-based" entities which might be affected, we can speculate that the group might include small antenna manufacturers, certain cable television companies, potential low power TV operators and other small companies who are potential users of satellite communications. A 2° orbital spacing may require some entities to improve their existing facilities in order to counteract any increased adjacent satellite interference. However, the overall increased satellite capacity afforded by this action should provide opportunities for both large and small companies to enter the market, expand their existing business, and obtain new or additional services—opportunities that would not have existed but for our proposed action here in this *Notice*. It is very likely that any costs associated with the improvement of existing facilities will be more than offset by the increased business opportunities and a more competitive industry.

Reporting, Record-Keeping and Compliance Requirements

This action will not create any new reporting or recordkeeping requirements for existing or potential satellite users.

Relevant Federal Rules Which Overlap, Duplicate or Conflict With This Action

There are no other Federal rules that overlap, duplicate or conflict with this action to our knowledge.

Specific Alternatives That Could Accomplish the Same Objectives

Since its inception in 1973, the demand for domestic communications satellite services has grown steadily. It appears that this demand will continue to grow for the foreseeable future. In order to insure that this demand is satisfied, the Commission has taken the only practical course of action open to it; namely, reducing satellite spacing in the 4/6 GHz and 12/14 GHz frequency bands in order to accommodate more satellites in geostationary orbit. The alternatives to increase available satellite capacity in orbit which are mentioned in the *Notice* (e.g., higher frequency bands, higher capacity satellite designs, and more efficient transmission techniques) would apparently be more costly and less desirable than reducing spacing in the near-term. The alternative of not increasing the amount of satellites that could be accommodated in orbit would stifle the growth of a vibrant and increasingly competitive industry.

[FR Doc. 81-33530 Filed 11-19-81; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 21502; RM-2737; FCC 81-449]

Amendment of the Commission's Rules in Regard to a Specific Section and Other Aspects of the Subscription Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to change the requirements for operation of a subscription television ("STV") station. The intended effect of the proposed rule changes is to eliminate various constraints on the development of STV, thereby increasing program choices presently available to the public. By this action, initiated by the Commission itself, not only could STV bring new programming to television viewers different from current network and independent station fare, but highly specialized programming as well.

DATES: Comments must be received on or before December 21, 1981, and reply comments on or before January 5, 1982.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792; Scott Roberts, Broadcast Bureau, (202) 632-6302; Teri

Freundlich, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: September 30, 1981.

Released: November 13, 1981.

By the Commission: Chairman Fowler issuing a separate statement.

In the matter of amendment of Part 73 of the Commission's rules and regulations in regard to § 73.642(a)(3) and other aspects of the subscription television service. Docket No. 21502, RM-2737.

1. This *Notice* commences another phase of the proceeding evaluating the rules governing the subscription television ("STV") service.[1] It will deal with a number of issues, including:

(1) Whether the rule restricting STV operation to communities within the Grade A contour of at least five commerical television stations, including that of the STV operator, should be modified or deleted;

(2) Whether the requirement that an STV station broadcast at least 28 hours of conventional programming per week should be modified or deleted;

(3) Whether the Commission should allow the purchase of decoders by subscribers or should retain the present system of permitting only the leasing of such equipment;

(4) Whether the requirement that an applicant for STV authorization ascertain the needs and interests of the community specifically with regard to subscription programming, should be deleted; and

(5) Whether STV stations should be made to comply with present television technical standards which they currently do not meet.

Historical Development of STV Regulation

The First STV Commission Proceeding—Docket No. 11279

2. In order to place the issues outlined above in perspective, we are first providing a brief history of subscription television regulation and a discussion of the STV marketplace of today. After more than a decade of rule making proceedings in Docket No. 11279, the Commission in 1968, in a *Fourth Report and Order ("Fourth Report")*, 15 F.C.C. 2d 466 (1968), established the basis for nationwide over-the-air STV service. It was concluded, in part based on experience garnered from trail pay television operations,[2] that STV could provide a beneficial supplement to conventional television programming and that, as an alternative medium, it might well provide a wholesome stimulus to conventional television which coud lead to an improvement in overall programming available to the public. Until more was known about how STV would devleop on a nationwide scale, however, the Commission felt it best to proceed with caution. Consequently, in the *Fourth Report*, the Commission adopted regulations designed to strike a reasonable balance between conventional and pay television.

3. Thus, the regulations initially governing the subscription television service were imposed in the belief that they were necessary to maintain the availability of conventional programming. These consisted of restricting STV operation to communities within the Grade A contour of at least five commercial television stations including that of the STV operator (the "complement of four" rule). In these communities, only one station was permitted to engage in STV operations (the "one-to-a-community" rule). Also, STV stations were required to broadcast at least 28 hours of conventional programming per week and operated under a variety of program restrictions.

4. Rules governing STV equipment and system performance capability were adopted by the Commission in a *Fifth Report and Order ("Fifth Report")*, 19 F.C.C. 2d 559 (1969). The manner in which applications for STV authorization should be filed and their content and form were also set out in this document. There is no STV application form as such. Rather, applicants furnish a detailed description of the STV operation, as well as financial and programming information. Included in the latter category is a requirement that applicants survey their community with specific regard to STV programming and relate how the proposed STV programming will fulfill needs and interests thus ascertained.

5. The action of the Commission in establishing STV service was challenged in *National Association of Theatre Owners* v. *F.C.C. ("NATO")*, 420 F. 2d 194 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 922 (1970). The Court of Appeals, however, affirmed the Commission's power to authorize nationwide STV on a permanent basis. The Court found that the Communications Act did not preclude the Commission from approving a system of direct charges to the public as a means of financing broadcasting service. Rather, the Court stated that the Act seems designed to foster diversity in the financial organization and *modus operandi* of broadcasting stations as well as in the content of programs. It further found the establishment of a subscription television service consistent with these goals. Also addressed in the *NATO* case was the question of whether Commission authorization of nationwide STV operations would result in unconstitutional discrimination against people in low income groups who cannot afford to subscribe. The Court rejected the assertion of discrimination and concluded that there was nothing distinguishing broadcasting from other regulated industries that would justify imposing on it alone a requirement that any service be made available to all citizens regardless of their ability to pay.

6. Eight years after the *NATO* decision, the Court of Appeals in *Home Box Office* v. *F.C.C. ("HBO")*, 567 F. 2d 9 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 829 (1977), reviewed those Commission regulations limiting the program fare that cable television systems and STV stations might offer to the public for a fee set on a per-program or per-channel basis. These rules, which were originally developed for STV in 1968 and then later applied to pay cable: (1) restricted the presentation of certain feature movies on pay cable and STV; (2) restricted those sports events which might be offered on pay cable and STV; (3) prohibited commerical advertising on pay cable and STV; and (4) limited the combined amount of sports and movies to 90% of a pay cable or STV station's programming.[3]

7. After concluding that the Commission had exceeded its authority over cable television in promulgating the pay cable rules and that there was no evidence to support the need for regulation of pay cable, the Court in *HBO* vacated the rules. It found that the Commission had failed to state clearly the harm which its regulations sought to

[1] Briefly described, subscription television broadcasting involves the broadcasting of a scrambled television signal which, on payment of a fee, subscribers are authorized to unscramble through use of a decoder. See *In the Matter of Subscription Television Program Rules*, 52 F.C.C. 2d 1, at 2 (1974).

[2] Data concerning pay television were developed from the 6½ year trial STV operation of UHF Station WHCT, Hartford, Connecticut, and the 5 year experimental cable operation at Etobicoke, Canada.

[3] The rules, as they related to feature films and sports, were amended soon after their adoption. The general effect of the amendment was a relaxation of the requirements. A rule prohibiting subscription exhibition of series programming, originally one of the program restrictions, was deleted in its entirety by amendment.

remedy and its reasons for supposing that this harm existed.

8. The *HBO* Court noted that rules substantially similiar to the STV program restrictions under review had been affirmed in the *NATO* decision. The Court stated that at that time the Commission acted on an elaborate rule making record, including the Hartford STV experience. Since it appeared that few, if any, STV stations had begun operation in the interim decade,[4] the Court believed the best information available with respect to STV was that reviewed in *NATO*. Further, the Court noted that the data presented in *NATO* had not been called into question in the *HBO* case. For this reason, the Court of Appeals concluded that *NATO* required affirmation of the promulgation of the STV program restrictions under review in *HBO*.[5] However, the Court noted that petitioners' charge that these restrictions had the effect of killing the STV medium in its infancy, by denying it access to necessary programming, seemed to be supported by the absence at that time of viable commercial applications for STV.

9. Even though the *HBO* court did not vacate the STV program limitations, they were deleted by the Commission in November 1977,[6] and April 1978,[7] because of the Court's pay cable decision. The Commission reasoned that STV and pay cable are two communications activities in direct competition and, as a result, should be given equal treatment insofar as program availability is concerned. *The Second STV Commission Proceeding—Docket No. 21502*

10. Soon after the *HBO* decision, the Commission decided to commence a re-evaluation of its rules restricting STV service. By *Memorandum Opinion and Order and Notice of Inquiry and Notice of Proposed Rule Making* (the "*Notice*"), 67 F.C.C. 2d 202 (1977), we initiated the current proceeding in Docket No. 21502. Six issues were raised in the first *Notice:* (1) whether the Commission should permit more than one television station in a given community to provide an STV service; (2) whether the Commission should require compatibility of STV systems; (3) whether the Commission should adopt a cut-off procedure for STV applications; (4) whether the Commission should allow the purchase of decoders by subscribers or continue the present system of permitting only the leasing of such equipment;[8] (5) whether the Commission should consolidate proceedings where an applicant is involved in two mutually exclusive hearings, one for a construction permit for a new television station and the other for STV authorization;[9] and (6) whether the Commission should establish criteria for comparing two competing STV applications, as well as for comparing two competing applications for a new television station when one is for conventional use and the other contemplates STV operation.[10]

11. Of the issues raised by the *Notice*, three were resolved in the *First Report and Order* ("*First Report*"), FCC 79-535, 44 FR 60091 (published October 18, 1979). First, the Commission decided to eliminate the rule providing that only one station in a community may engage in STV operations. Rather than precluding additional conventional programming, the Commission found it likely that the growth of STV could both stimulate the use of UHF channels not currently utilized and provide a sound economic underpinning for existing UHF facilities. Further, a station's ability to spread its fixed cost of operation across pay and conventional programming would provide additional conventional programming and improve the welfare of both subscribers and non-subscribers. The Commission also stated that since STV can obtain subscribers by responding to intense demands of a small viewing group, this communications service could make cultural, minority-oriented, or quality children's programming financially viable. Eliminating the "one-to-a-community" rule, it was concluded, would not endanger the continued availability of a substantial amount of free television, but rather it could hold the promise of more diversity in the mode and substance of television fare.

12. We also found that STV technology was still in its beginning stages and any decision as to which system would be the approved one would be premature. The Commission therefore refused to require compatibility in STV systems. We further decided that a cut-off procedure for applications for STV authorization was neither necessary nor beneficial in view of the elimination of the "one-to-a-community" rule and the resulting small number of situations involving mutually exclusive STV applications.

13. In the *Second Report and Order* ("*Second Report*"), FCC 81-13, 46 FR 19937 (published April 2, 1981), the Commission considered whether criteria should be established for comparing STV proposals with each other or conventional applications. We established the policy that mutally exclusive applications for a new broadcast television station, where one or more contemplate a subscription television broadcast operation, be compared by traditional comparative criteria.[11] Comparing one STV proposal with another would provide little meaningful information as to which would better serve the public. Comparing subscription television and conventional television proposals was also held inadvisable in that the public would refuse to subscribe to STV if pay programming were not desired. This is especially so because of the substantial conventional service currently available. We found that it is likely that the marketplace will more efficiently serve the public interest in the programming sphere than will regulation. Thus, it was decided that program proposals are not to be a basis for comparison of these applications.

14. The *Second Report* also decided that the comparative criteria issue in regard to mutually exclusive applications for STV authorization of those already licensed as commercial television stations, or holding construction permits, or seeking construction permits for non-exclusive channels should not be resolved until a decision was reached on whether to delete the "complement of four" rule. If the rule were deleted, the above situations would not arise, thus obviating the need for comparative criteria. Even if the rule were only relaxed, there would not only be substantially fewer cases involving mutually exclusive applications, but the significance of a number of factors would likely be limited by the

[4] The *HBO* case was decided on March 25, 1977, at which time only one STV station was in operation, that being Station WWHT (formerly WBTV and WTVG), Newark, New Jersey, which commenced operation on March 1, 1977. The second STV facility, Station KBSC, Corona, California, began service on April 1, 1977.

[5] The affirmance of these rules was subject, however, to further review upon completion of additional hearings regarding *ex parte* contacts.

[6] See the *Report and Order* in Docket 21311, 42 FR 62372 (published December 12, 1977), for deletion of the feature film restriction.

[7] See the *Report and Order* in Docket 21489, 43 FR 15322 (published April 12, 1978), for deletion of the remainder of the program restrictions.

[8] This issue, which is being raised in the instant *Notice* for rule making purposes, was raised as a matter of inquiry in the first *Notice*.

[9] STV authorization may be issued only to an entity that already is either the licensee of a commercial television broadcast station or the holder of a construction permit for a new commercial television broadcast station. See § 73.642(a) (1), (2) and (3) of the Commission's rules.

[10] A list of the parties filing formal comments and/or reply comments to the first *Notice* is contained in Appendix B.

[11] Traditional comparative criteria include, but are not limited to, diversification of mass media, integration of ownership and management and efficient use of spectrum.

opportunity for the establishment of numerous and varied STV facilities.

15. Our consideration of the "complement of four" rule was also found to be an important factor in determining whether the Commission should consolidate proceedings where an applicant is involved in two mutually exclusive hearings, one in which it seeks a construction permit for a new television station and the other in which it seeks STV authorization (the fifth issue in the *Notice*). Consolidated hearings would only be necessary where the number of STV stations in a market are limited by the "complement of four."

The STV Industry of Today

Present and Proposed STV Operations

16. Today's STV marketplace reveals continued interest in the service with a reasonable growth in the number of outlets. As of April 1, 1981, nineteen STV stations were on the air.[12] Those stations operate in television markets with over 25 million television households,[13] and they enjoy a total of about 864 thousand subscribers. The most successful station, from the point of view of subscriber count, is KBSC, Corona, California, in the Los Angeles market, with 350,000 subscribers.[14] The next highest subscriber count is 94,000 attributed to WWHT, Newark, New Jersey. The other STV station in the Los Angeles market, KWHY, Los Angeles, California, is at 72,000 subscribers followed by WXON, Detroit, Michigan, at 56,000 and WQTV, Boston, Massachusetts, with 51,000. At 25,000 subscribers or less are Stations WKID, Ft. Lauderdale, Florida; WBTI, Cincinnati, Ohio; KNXV, Phoenix, Arizona; WSNS, Chicago, Illinois; WCGV, Milwaukee, Wisconsin; WSMW, Worcester, Massachusetts; KTSF, San Francisco, California; KAUT, Oklahoma City, Oklahoma; WIHT, Ann Arbor, Michigan; WCLQ, Cleveland, Ohio; KGCT, Tulsa, Oklahoma; and three stations in the Dallas/Ft. Worth, Texas, market—KTWS, KNBN and KTXA.[15] Of the nineteen STV stations on the air as of April 1981, about half were operating as conventional independent stations for many years prior to switching to a pay mode for a portion of their broadcast day.

17. There are another sixteen applications for STV operation that have been granted. However, the stations are not as yet on the air. Those applications include markets with a total of over 22 million television households. Moreover, about 60 STV applications are currently pending before the Commission.

18. All STV stations provide both conventional and pay programming. In the pay mode, the signal is scrambled so that only subscribers supplied with a decoder can receive the programming. Generally, from sign-on to about 7 or 8 pm, the stations operate as conventional non-network affiliated stations, presenting syndicated movies, sitcoms, children's and variety shows. There is also some news and public affairs programmming as well as sports, ethnic and religious programming. One station, WKID, Ft. Lauderdale, Florida, offers financial programming from 9:30 am to 4 pm that features periodical news inserts and a New York Stock Exchange scroll. Several other stations feature two hours of scrambled programming during the late morning or in the afternoon after which they return to conventional programming until pay operation once again commences in the evening. The scrambled programming generally begins earlier on weekends, sometimes as early as 1 pm and, as with Monday thru Friday, it concludes when the station signs off about 1 or 2 am.

19. Pay programming consists of unedited movies, sports and specials. Specials include Las Vegas type shows and cultural affairs such as ballet, opera, symphonies and plays. Sometimes educational children's programs are also included in the earlier hours of pay programming. Movies, however, make up the bulk of the pay schedule and during any given month, as many as twelve to twenty new titles are rotated with older movies on different days and times for maximum time diversity for the viewer. A few stations offer, for an additional fee, movies considered "adult" fare late at night, usually after midnight. The fee charged for this type of "adult" fare is over and above the regular monthly fee and is known as "tiering." There is also an occasional charge for a special telecast on some STV stations such as the Roberto Duran-Sugar Ray Leonard fight.

20. The costs to the STV subscriber are broken into three categories: deposit, installation and monthly fee. Not all stations require a deposit, but, of those that do, the range is from $25 to $50 and it is refundable. Installation fees vary from $30 to $100 with the most common charge being around $50. Monthly charges have a small range of $17 to $22.95 and average $19.95. Of those stations that use "tiering" (additional scrambled programming), the second level or "tier" costs an additional $5 per month.

21. Financial analysts, industry consultants, STV operators and equipment manufacturers have projected a 10 percent penetration rate, *i.e.*, 10 percent of the households which could receive the signal are expected eventually to subcribe to the service.[16] However, as indicated in paragraph 16, only 864,000 have subscribed yielding a penetration level of about 4.0 percent of those who could subscribe.[17] Obviously, the projected 10 percent penetration level has not yet been achieved for STV. Additionally, STV is lagging behind cable TV [18] and multipoint distribution services ("MDS").[19] Cable's pay service attracts 44.9 percent of all those who subscribe to the basic cable service.[20] MDS has a penetration level of 4.4 percent.[21] Thus, it is difficult to estimate the degree of penetration STV may yet

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[12] All data on current STV operations are as of April 1, 1981.

[13] Markets refer to Area of Dominant Influence TV markets rather than the community to which an STV station is licensed. The ADI market, delineated by Arbitron Company, provides a working definition for purposes of this study.

[14] Subscriber information is from *Pay TV Newsletter*, Paul Kagan, November 28, 1980.

[15] Stations KTWS and KNBN are assigned to Dallas, while Station KTXA is assigned to Fort Worth.

[16] See Paul Kagan, *Pay TV Newsletter*, February 6, 1979. Stanford Research Institute, *Analysis of Consumer Demand for Pay Television Prepared for the Office of Telecommunications Policy*, May, 1975. Blyth Eastman Dillon, *Report on Oak Industries* (prepared by Raymond F. Jansen) undated-circa 1979.

[17] *Subscription Television Association News*, Vol. 1, Number 2, April, 1981.

[18] Cable television, also known as community antenna television ("CATV"), consists of facilities which receive and amplify the signals broadcast by one or more television stations and redistribute such signals by wire or cable to the homes of subscribing members of the public for a fee. *In the Matter of Rules re Microwave-Served CATV*, 38 F.C.C. 683, 684 (1965). Cable service also provides original programs of a local public service nature and entertainment type.

[19] An MDS system may be described basically as a fixed station transmitting more or less omnidirectionally to numerous fixed receivers with directive antennas. The intelligence which is transmitted is supplied by the subscriber and may consist of private television, high speed computer data, facsimile, control information, or other communications capable of radio transmission. The transmission is one-way in that the audience cannot use the system to respond to the communication, although return voice communications may be obtained by simultaneous use of telephone lines. *Amendment of Commission Rules to Provide for Licensing and Regulation of Common Carrier Radio Stations in the Multipoint Distribution Service*, 45 F.C.C. 2d 616, 617 (1974). See the *Notice* in Gen. Docket No. 80-112, FCC 80-136, 45 FR 29323, published May 2, 1980, proposing, among other things, additional channels for use in the multipoint distribution service.

[20] Pay cable refers to cable telecasting of programs for which the cable television subscriber is charged an additional fee, or an additional channel fee beyond the regular monthly cable subscription fee. See *Home Box Office* v. *FCC*, 567 F. 2d 9 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 829 (1977).

[21] *Arbitron Television Census*, Fall 1980.

have in any of these markets because of the limited experience with the service to date and the fact that only a few studies have been done which examine the prospects for STV.

Regulatory Limits on STV

22. The "complement of four" rule establishes a regulatory limit on STV activity by defining those TV markets in which an entrepreneur can consider an STV operation. Those markets have at least five commercial TV allocations and at least four commercial TV stations on the air.[22] At present, there are 74 markets which meet the requirements of the "complement of four," *i.e.*, markets that have at least four operating conventional commercial television stations and a total of at least five allocations. These markets include over 70% (53.7 million) of the total television households in the U.S.[23] As of April 1981, 19 STV stations were on the air in 14 of those eligible markets, serving over 864 thousand television households. Those 14 markets where STV stations actually exist comprise 32.6% of total television households in the U.S.[24] There are 222 vacant UHF allocations and 36 vacant VHF allocations in the markets currently eligible for STV.[25] In addition to the currently operating STV stations, there are now 16 STV applications approved for eligible markets, but not yet on the air. Commencement of their operation will bring STV into a total of 25 markets with 35 stations serving a potential audience of over 33.2 million television households.[26] As of April 1981, there were also 57 STV applications pending for 32 communities. If granted, they would increase the number of STV operations to 67 stations serving a potential of almost 44.8 million television households, over half of all television households.[27]

23. Given present levels of TV channel utilization, the rule denies STV access to 139 (65%) of all television markets.[28] This comprises 28% of all television households in the U.S.[29] A number of markets do not currently meet the "complement of four" requirement because vacant allocations exist in those markets. Currently, 722 of the 1247 commercial television channels allocated by the Commission are occupied by operating stations. A large number, 520, remain vacant.[30] Under current rules, even if all existing allocations were occupied by operating stations STV still could not exist in 96 (43.5%) TV markets, [31] with about 13.6% of all television households.[32] Thus the "complement of four" rule, in conjunction with the number of TV channels allocated and/or in use, substantially restricts STV access to television markets.

24. STV interest in markets closed to it by the "complement of four" restriction is evident from waiver requests pending before the Commission. For example, an applicant for a VHF channel in Pembina, North Dakota, requested and recently received a waiver to provide that community's first TV service by STV.[33] In another situation, Baltimore, Maryland, is served by three VHF network affiliated stations and a UHF independent station, WBFF, operating on Channel 45. An STV application for Channel 54 assigned to Baltimore has been approved, but WBFF is also seeking STV authority. The conversion of WBFF would leave Baltimore without four conventional Grade A signals, and a waiver has therefore been requested.

25. An additional restriction on presently operating STV stations is the "twenty-eight hour" rule [34] which requires STV stations to provide at least 28 hours per week of conventional programming. Thus a licensee is not entirely free to determine which type of programming or mode of operation would best suit its own market at all times of the day.

26. Existing STV operations are also limited by the requirement that decoders be leased rather than sold. The restriction was imposed in the early days of STV operation when technology was in a state of flux. However, the inability to sell decoders could artificially restrict an entrepreneur's ability to finance the construction of a station let alone cost subscribers more money. Similarly, the requirement that a special ascertainment of STV needs be conducted imposes a regulatory burden on STV operators which may be neither necessary nor desirable.

Benefits of STV Operation

27. The pay TV mode of operation provides opportunities for the public to more fully enjoy the medium of television. It can accelerate the utilization of unused channels, provide viable financial support for specialized programming and small market stations, and directly respond to the interests of its audience.

28. As previously indicated, almost all of the stations operating or awaiting authorization are on UHF channels. In terms of conventional television, UHF frequencies are generally regarded as less desirable than VHF for a variety of reasons.[35] Currently, a relatively large number of UHF allocations (439) are vacant.[36] Of the UHF stations in operation, over one-third report negative net incomes and over one-fourth report negative cash flows. Reports from VHF stations show a considerably better financial picture with less than 10% reporting negative net incomes and only about 5% reporting negative cash

[22] Section 73.642(a)(3) of the Commission's rules.

[23] *1980–1981 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1981.

[24] *1980–1981 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1981.

[25] *Television Channel Utilization Report*, F.C.C. March 1981. For purposes of this analysis, vacant allocations include those channels which are not operational; *i.e.*, those channels for which construction permits have been granted, applications have been made or unapplied for vacancies exist.

[26] *1980–1981 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1981.

[27] *Id.*

[28] *Television Channel Utilization Report*, F.C.C., March 1981.

[29] *1980–1981 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1981.

[30] *Television Channel Utilization Report*, F.C.C. March 1981. Applications have been made for 138 of those channels and construction permits have been granted for 96 more.

[31] *Id.*

[32] *1980–1981 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1981.

[33] The Commission granted the applicant, Satellite Television Service, Inc., a waiver of the "complement of four" rule because such waiver would initiate programming by reactivating a VHF channel idle since 1975 for which no one else had applied, and would provide the only local television service to Pembina. The Commission noted that STV, with its ability to generate revenues, will provide the greatest inducement for a broadcaster to enter the small rural community of Pembina where operation of a conventional television station might not be economically viable. FCC 81–363, released August 13, 1981.

[34] Section 73.643(a) of the Commission's rules provides: "Any television broadcast station licensee or permittee authorized to broadcast subscription programs shall broadcast in addition to its subscription broadcasts, at least the minimum hours of nonsubscription programming required by § 73.1740." Section 73.1740(a)(2)(ii) states that all commercial television stations are required to operate not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week once they have been in operation 36 months. Before that time, television licensees or permittees are required by § 73.1740(a)(2)(i) to meet less strenuous standards, those being ". . . not less than 2 hours daily in any 5 broadcast days per calendar week and not less than a total of:

(A) 12 hours per week during the first 18 months.

(B) 16 hours per week during the 19th through 24th month.

(C) 20 hours per week during the 25th through 30th month.

(D) 24 hours per week during the 31st through 36th month."

[35] Compared to VHF, UHF broadcasting has transmission disparities, tuning differences, disparities in signal quality and higher noise figures. For further discussion see, *Staff Report on Comparability of UHF Television: A Preliminary Analysis*, F.C.C., 1979.

[36] *Television Channel Utilization Report*, F.C.C., March 1981.

flows.[37] Thus, while UHF profitability has improved, UHF stations on the whole are still less profitable than VHF stations resulting in many vacant UHF allocations. With the large number of UHF vacancies and the marginal financial history of many operational UHF stations, STV operation may be viewed as a viable alternative to operating in the red or ceasing operation altogether. In other words, STV may be the only way to bring some UHF allocations on the air and for others it may be the only feasible method for continuing operation.

29. In addition to providing a financial base for otherwise unused channels, STV holds out the potential for new types and sources of programming. Rather than being forced to rely on mass appeal programming to generate audiences sufficient to attract advertisers, an STV operator can respond to the intense demand of a "few" viewers willing to pay for the service. Thus, some STV stations could engage in "narrowcasting" (specialized programming to the select audiences willing to pay for it), a service less frequently provided by the advertiser supported system which does not respond to the intensity of that demand.

30. Finally, on a purely theoretical economic basis, this system of direct payment for desired services is more efficient than the indirect system of advertiser supported broadcasting. In the former situation, the supplier and consumer have a clear notion of both the price and the programming being purchased, while in the latter case price is obscured and the choice of programming is indirect.

31. In sum, the STV mode of operation promises substantial benefits to the public. It can provide an economic base for the commencement of service in markets which have not otherwise attracted applications for available channels. STV therefore provides a means to more efficiently utilize television spectrum and provide additional program choices to the public. It can also provide a medium for specialized programming by tapping the intensity of viewer demand for particular entertainment fare, and it provides a direct pay-as-you-go system of providing home video entertainment services without the hidden costs and market anomalies inherent in the conventional, indirect, financial structure of advertiser supported television. However, these potential benefits are withheld from numerous television viewers by the "complement of four" rule. Further even in markets where STV can exist, other regulatory restrictions can operate to prevent its optimum utilizaiton.

[37] *TV Broadcast Financial Data—1979*, F.C.C., November 1980.

Issues for Comment

32. We believe the time is ripe to re-evaluate one of the basic premises of STV regulation, the status of the medium as a supplement to conventional television, restrained by rules and policies designed to prevent the service from supplanting advertiser supported television. Since STV serves the intense demands of consumers, by definition it would appear to be in the public interest. If it is determined that, as a matter of public policy, STV is a medium whose service to the public is on an equal footing with conventional television, regulations which limit its access to markets or limit its mode of operation in favor of conventional television must fall.

33. If, on the other hand, it is determined that the public interest continues to demand rules designed to preserve conventional broadcasting, we must determine whether STV presents a significant threat to the continued availability of that advertiser supported medium. If it appears that some protective restrictions are necessary to preserve any conventional operation, we must determine whether existing regulations like the "complement of four" and the "twenty-eight hour" rules are appropriate limitations, whether those rules should be modified in some way, or whether some other form of regulation would perform the same function with less intrusion into the STV marketplace. Finally, we must determine the continued efficacy of such STV operational requirements as the rules allowing only the leasing of decoders and the special ascertainment obligation, neither of which depend on the relationship between STV and conventional television.

STV's Regulatory Status

34. As recounted in the historical discussion at paragraphs 2.15, *supra*, the *Fourth Report* in Docket 11279 authorized a nationwide STV system with certain restrictions imposed to ensure the continued availability of conventional programming. Some of those restrictions, specifically program limitations and the "one-to-a-community" rule, have been eliminated in previous Commission decisions, and today we institute an inquiry into the remaining ones, the "complement of four" and the "twenty-eight hour" rules. In this context, we believe it is appropriate to consider the underlying premise of such rules, which is that the public interest requires rules protecting conventional advertiser supported television. However, it appears that events may well have overtaken this concept, and a reevaluation of it is in order.

35. Approximately 26 percent of the television homes in the United States receive their video service via cable television in return for a monthly fee. Some of the services thus provided are supported by advertising, but others require additional payments. Similarly, STV and other direct pay-for-programming services have made substantial inroads in some markets, and the inauguration of direct broadcast satellite service on a pay basis may also be in the offing in the not too distant future. It therefore appears that the pay mode of operation has achieved substantial acceptance in the marketplace by both suppliers and consumers. It further appears that STV offers substantial public interest benefits of its own. It can provide a means to effectuate new television service on unused channels, thereby more efficiently utilizing the spectrum reserved for television and providing new or first service to significant audiences. Finally, the direct pay system provides a vehicle for more responsive programming by directly reacting to audience demands for both mass appeal and more narrowly targeted programming.

36. The benefits to be gained by STV operation serve the public interest, and we believe it is appropriate to consider the adoption of a more neutral approach to the regulation of STV vis-a-vis conventional broadcasting. Accordingly, commenters are invited to address themselves to the question of whether the Commission should consider STV as a co-equal partner with conventional broadcasting in terms of service in the public interest. Commenters are particularly invited to address any statutory provisions which might affect the degree to which the Commission could modify the rules designed to preserve the conventional mode of television operation.

Market Limitations on STV

37. Assuming for the purposes of further discussion that it is determined that the public interest requires rules for the preservation of conventional, advertiser supported television, we must determine what, if any, restrictions on STV operations would be appropriate to achieve that end. To determine the parameters of permitting the television marketplace to reach its own equilibrium between conventional and

pay services, the staff of the Commission's Broadcast Bureau undertook an economic analysis to determine the likely result of eliminating the "complement of four" restriction on the mix of television services in markets thereby made available to STV.

38. To predict the likely decisions of entrepreneurs looking at markets opened up to STV by a change in the "complement of four" rule, the staff undertook to compare the advantages and disadvantages of each pay television delivery system, as well as the capital and operating costs of each system. The staff found that on a per channel basis, cable appears to be the least expensive delivery system. This conclusion was also born out by a comparison of industry wide subscriber costs which indicate that the total monthly fees for cable, including a pay cable channel, are generally less than monthly fees for a single STV channel. On the basis of this information, the study concludes that cable has a significant advantage in head-to-head competition with STV. To apply this conclusion to an entrepreneur's decisional process, the staff also determined the relative value of a single television household to both an STV station and a conventional station. When that value is considered, along with the number of alternative pay and conventional program sources and the market's cable penetration, the staff's analysis provides a reasonable prediction of the decision an entrepreneur is likely to make when considering whether to provide STV or conventional service. The study, attached hereto as Appendix A, undertakes to determine the factors that would be considered by an entrepreneur in deciding which of the available pay program services, STV, MDS or cable, to offer to a particular market and then analyzed the extent to which conventional service might be lost as a result of eliminating the "complement of four" restriction.

39. Upon application of the model to all actual television markets, the staff concluded that in both one and two station markets, the stations will remain conventional. As to markets with three or more operating stations, there could be some loss of conventional service. However, this would depend on the level of cable penetration. To determine the likelihood of a shift to STV service in those markets where conventional service could be affected, they were individually studied by the staff. It found that in nine markets, there is a *possibility* though not probability of loss of conventional service. Four of these markets have four allocations and four operating stations and five have three allocations with three stations on the air. Of these markets, however, there are really only *four* where the conditions suggest a loss of conventional service if the "complement of four" rule is eliminated. These markets are Rochester, New York; Chattanooga, Tennessee; South Bend, Indiana; and Fort Wayne, Indiana. There are a number of reasons why only four markets realistically may lose some conventional service. In some markets, cable penetration is sufficiently great to make STV entry unlikely. In other markets, where some initial switching of operation might occur, the activation of a new station with network affiliation would probably occur with minimal time lag. For all specifics of the study, the attached Appendix should be consulted.

40. Although the predictions of the study are based upon assumptions which appear to exaggerate the profitability of STV as compared to conventional broadcasting, they remain generalized predictions, subject to the vagaries of individual markets.[38] We therefore invite public comment on the study, its method, the general validity of its predictions and individual market characteristics which might alter its results. We also invite comments on industry developments which might affect the underpinnings of the study. For example, changes in the copyright laws might affect the average cost of a cable channel by increasing the system's cost for carriage of conventional signals. Similary, the availability of new STV decoder technology, including multichannel decoders, might decrease the cost of supplying the STV service.

Alternative to Market Limitations

41. Again, assuming that the continued availability of conventional television should be protected, and further assuming that market forces should not be relied upon to provide such protection, we must consider what limitations would be appropriate to accomplish the Commission's objective. To the extent that it has prevented stations from switching from a conventional to a pay mode of operation, the "complement of four" rule has provided one form of protection, ensuring at least four conventional signals in a market before STV could be authorized. The "twenty-eight hour" rule is designed to provide another type of protection, not of conventional stations but the availability of conventional programming on STV stations, even in markets with four operating conventional stations. Comments are invited on these methods of protection, as well as combinations thereof or other restrictions that would assure preservation of conventional program service with as little regulatory intrusion as possible in STV operations if the Commission determined such restrictions to be desirable.

42. Whether STV is considered of equal importance to conventional broadcasting or it is thought that rules are necessary to preserve conventional programming, we believe that the "complement of four" rule should be deleted. In the first case, such a restriction would be unnecessary; and in the second case, it appears that adequate conventional programming is assured without any threshold requirement at all. Although we are proposing the total elimination of the "complement of four" rule, we note that significant additional STV activity could be encouraged by a reduction of the current limitation to three, two or even one conventional station. The "complement of four" restriction denies STV access to 139 television markets with 28 percent of the television households in the United States. A complement of three would make STV available in 53 of those markets with 14.3 million TV households or 18.6 percent of the United States total. If the threshold were dropped still further to two conventional stations and at least three allocations, 47 more markets would be added comprising an additional 6.2 million television households, 8 percent of the U.S. total.[39] An incremental drop of the threshold to one conventional station and at least two allocations would add still 29 more markets with over 1.5 million television households.[40] But a "complement of one" would still leave 10 markets, in which there is only one conventional station and no additional allocations, ineligible for STV service.[41] Thus, the number of TV households gained for potential STV service is increased with each incremental reduction in the threshold requirement. An intermediate threshold, between the existing

[38] Indeed, the previously mentioned STV applicant in Pembina, North Dakota, selected STV as the mode of operation for that market's first station.

[39] *1980-1981 Television Markets and Rankings Guide*, Abritron Company, Chicago, Illinois, 1981.

[40] *Id.*

[41] These markets are Jonesboro, Arkansas; Presque Isle, Maine; Twin Falls, Idaho; Ottumwa, Iowa; Farmington, New Mexico; Bend, Oregon; Harrisonburg, Virginia; Zanesville, Ohio; North Platte, Nebraska and Alpena, Michigan. There are a combined total of 266,500 television households in these markets.

"complement of four" and no restriction, may therefore be an appropriate limitation on STV access to television markets. Of course, any such threshold would be subject to waiver requests, particularly where it appeared that STV operation provides the only viable means of effectuating service to an area.[42]

43. Like the "complement of four," the "twenty-eight hour" rule restricts STV, but it is directed at programming mix rather than market eligibility. We believe that the mix of conventional and pay programming is better determined by the judgment of the individual entrepreneur and the demands of the marketplace. We are therefore proposing to eliminate the rule. In fact, STV stations are far exceeding the minimum of 28 hours required of them. In the alternative, we believe it appropriate to consider the interrelationship between a threshold requirement like the "complement of four" and an operating prohibition like the "twenty-eight hour" rule. In a market with four or more conventional television services, our policy preferences for conventional service might not require any non-scrambled programming from the STV licensee. On the other hand, a market with no conventional service might provide strong public policy support for a requirement that some amount of conventional service be provided. Therefore, as an alternative to the elimination of the "twenty-eight hour" rule, the Commission is considering the modification of that rule to require conventional programming on a sliding scale according to the number of conventional stations in a market. For example, where the only station in a market was STV, it might be required to present 28 hours of non-scrambled programming per week; if there were one conventional station in a market, the STV station would present at least 14 hours of non-scrambled programming; if two conventional stations were in operation, only 7 hours of such programming would be required by an STV operator; and if three or more conventional stations were in operation, an STV licensee would have no conventional programming requirement.

44. The proposed elimination or modification of the "twenty-eight hour" rule could permit STV stations to forego all nonscrambled programming. Each television licensee presently has the obligation to provide program responses to the problems, needs and interests of its community. Should licensees of subscription stations, however, continue to bear this programming obligation? If so, should we permit STV stations to fulfill their public service programming obligations through offerings presented on a subscription basis and thus be entirely free to determine the mix of conventional and scrambled programming?

Additional Regulatory Requirements

45. Section 73.642(f)(3) requires that STV equipment be leased and not sold to subscribers. Although in 1968 the Commission concluded that the best way to protect the public against the obsolescence of equipment or cessation of service at that early stage of STV development was to adopt the "lease" rule, it was noted that at some later stage the public interest might better be served by permitting both sale and lease. Should STV flourish and become a regular part of the television scene, the Commission stated, a continued leasing requirement could mean that subscribers would pay in continued rental fees more than it would cost to buy the decoding equipment.[43] Thus, the public interest might demand a rule change.

46. In view of the likelihood of STV succeeding coupled with the Commission's initial statement more than a decade ago in regard to revisiting the lease question, we raised as a matter for inquiry in the first *Notice* the issue of whether the Commission should allow some type of decoder purchase option. Half of the comments addressing the question opposed a purchase provision while half were in favor of a rule allowing subscribers to lease or purchase decoders at their option. Proponents assert that the sale of decoders could result in lower overall costs for STV services and thereby assist in making this relatively new service viable. Further, if there is any risk, commenters submit, the risk would be a voluntary one in that the option of purchase would belong to the subscriber. Noting that the decoder is part receiver, part billing mechanism and part security device, however, opponents contend that allowing its purchase could result in the mechanism being tampered with to circumvent billing and otherwise affect the working of the system. Therefore, these parties recommend that an STV company be given the continued right to remove the decoder from the subscriber's home if he/she is no longer willing to pay for the programs.

47. Recent developments in the STV sphere specifically and subscription services generally, as well as responses to the inquiry, indicate that the rule allowing only leasing of STV decoder equipment should be relaxed. Since other pay technologies, such as cable are offered on a lease or purchase basis (the option belonging to the system's owner), why not STV? STV's significant growth should obviate any concern regarding the immediate demise of this service. Moreover, the subscriber is adversely affected if the accumulated rental fees exceed the initial purchase price, which is usually the case. Also, the sale of decoder equipment, by providing working capital early in an operation's existence, will assist licensees in commencing and securely establishing their subscription operations. For these reasons, we are proposing to allow the purchase or lease of decoders. Although some commenting parties suggested a subscriber rather than licensee option in this regard, we believe the latter is preferable. In order to explore this subject further, we invite commenters to address the following questions. Is there any reason why the STV operator should not have the option of deciding whether it is in the station's best interest to sell and/or lease decoders? Could the Commission allow the STV operator this flexibility without adversely affecting the public interest? What benefit, if any, could result from the subscriber having the option?

48. Another matter to be addressed in the context of our discussion on subscriber purchase of decoder equipment is whether the Commission should concern itself with the alleged equipment security problem. Is this not a business matter more properly the concern of the STV operator? Furthermore, is equipment security a significant impediment to allowing the purchase of decoders? If so, would not a licensee option rather than subscriber option to lease or purchase solve the difficulty? Finally, what can or should STV operators or the Commission do to alleviate any difficulty that may arise about the security of equipment when the STV service arrangement no longer exists? By submitting their views on these questions as well as offering any other pertinent comments, such as those on the state of the art, the parties will assist the Commission in making its final determination whether to allow subscriber purchase and/or lease of STV decoders and whether any rule is necessary to effectuate any changes adopted in this regard.

49. Applicants for STV authority are also obliged to state the methods used to

[42] See for example the Pembina application, mentioned at paragraph 24, *supra*.

[43] See *Fourth Report and Order*, 15 F.C.C. 2d 466, 552 (1968).

ascertain the needs and interests of the community with regard specifically to their STV programming. Applicants are also required to indicate how the proposed STV programming will fulfill those needs and interests.[44] When establishing the basis for nationwide STV service, the Commission indicated that a substantial amount of STV programming well might consist of feature films and sports with lesser amounts of STV programming offering opera, ballet or theater presentations. Therefore, ascertainment of the community's needs and interests regarding STV programming is a search principally directed at the sports and entertainment needs of a community.

50. Now that we have had the opportunity to observe a number of STV services in operation, we believe that ascertaining the community's STV interest can be more than adequately accomplished by the operation of the marketplace. It seems evident that consumers subscribe only to those pay television systems offering programs meeting their STV interests. It is clearly in the operator's best interest to fashion station offerings to meet those needs. These are preliminary views to which we invite comments. Further, it should be noted that STV subscribers not only can directly express a program preference but also can indicate the intensity of that program preference by the amount and method of payment. Since a formalized Commission requirement appears unnecessary, we propose to eliminate the STV ascertainment study.[45]

51. A number of other application requirements are imposed on applicants for STV authorization.[46] These comprise the submission of information detailing minutely the method of STV operation, the programming offered, the financial structure of both the applicant and the franchise holder and the type of technical equipment to be used. Depending on the resolution of various issues raised in this *Notice*, many informational requests presently made of STV applicants may no longer be necessary. If particular data prove to serve no purpose, applicants will not be required to provide it and so will be informed.

STV Technical Standards

52. Before concluding this *Notice*, there is an additional point to be raised for consideration, the failure of Commission "approved" STV technical systems to comply with present television technical standards. The numerous technical standards for television may be divided for discussion into two related categories. The first set of standards reflects the degree to which stations may interfere with each other. The second set of standards reflects the desirability for receivers to extract a minimum consistent quality level of visual and aural program from any particular station with a minimum of adjustment. Commission advance approval for STV technical systems has heretofore examined compliance only with the first set of standards. At the time an STV authorization is granted, compliance with the second set of standards is examined. It has been found that the present operating STV systems do not comply with some standards to varying degrees. The specific areas of noncompliance are largely in the audio performance area while the system is operating in a scrambled mode.[47] STV signals exhibit either more noise than conventional signals or reduced frequency response or have both of these difficulties.[48]

53. Because of the failure of STV technical systems to comply with present television technical standards, no STV station has been issued an authorization. Instead, STV operations initially were conducted pursuant to special temporary authorizations ("STA's"),[49] which had to be renewed every 90 days, and presently are conducted under program test authority ("PTA's").[50] Since these procedures are neither administratively efficient nor certain, we are proposing alternative solutions. A number of options are available and we invite discussion of all of them as presented in the following paragraphs. Additionally, we invite any other relevant suggestions commenters may wish to make.

54. The first option we propose is to allow all STV stations to be at variance with the second set of standards; that is, waiving compliance with those standards which require receivers to provide a consistent quality level of visual and aural program with a minimum of adjustment. Also to be considered is whether waiver should be for an indefinite or definite period of time. A key question we wish to raise in regard to this option is whether the marketplace will best govern the standards issue. What are the incentives for system development if we allow waiver of present technical requirements? Will consumer demand assure sufficient development? If high technical quality is essential to STV becoming a permanent offering to the public and is economically efficient, it would seem that such quality would result without government regulation. However, comments are sought on this opinion.

55. Another point to be considered is whether some STV subscribers are more interested in lower monthly costs than signals of optimum technical quality if such a trade-off exists. Again, it would appear that consumers acting through the marketplace could best determine to what degree such a trade-off should occur. We also invite discussion by commenters on efforts presently being made by STV entrepreneurs to comply with the Commission's technical requirements. Is it likely that STV systems can comply with these standards in the near future? If so, when and at what cost? Further, commenting parties should address the question of whether government intervention in this area would serve the public interest and, if so, how?

56. The second option in remedying the current procedural impasse is to establish goals and timetables for compliance with all technical standards. Is such a proposal possible and would it fairly treat new entrants to the STV sphere? Also, we ask whether strict compliance is possible for all STV systems in the same time frame.

57. The third option relating to technical standards is to require all STV operations to meet the present technical standards in each new market that is entered. This proposal once again raises the question of fair treatment to new STV operators since existing operations would be "grandfathered." Further, would this not have a chilling effect on the continued development of STV as

[44] *Fifth Report and Order*, 19 F.C.C. 2d 559, 566 (1969).

[45] STV applicants when originally applying for their television licenses, or the renewal of them, are obligated to ascertain the community's needs, problems and interests and program in a non-entertainment fashion to meet those problems. Nothing in the instant proposal would affect this basic ascertainment requirement.

[46] The manner in which applications for STV authorization should be filed and their content and form were prescribed by the Commission more than a decade ago in the *Fifth Report and Order*, 19 F.C.C. 2d 559, 564–70 (1969). There is no STV application form as such. Rather, STV applicants ascertain the appropriate ingredients which comprise an application from a number of paragraphs in the *Fifth Report*.

[47] The visual performance of some systems, however, is deficient in the horizontal blanking width. It appears that 3.5 microseconds of additional blanking is probably the largest deviation.

[48] Because of the measurement techniques used, it is not possible to precisely quantify the discrepancies. However, noise of 10 dB greater than the rules allow and a reduction of two octaves in frequency response seem to be the largest deviations.

[49] For the STA provision, see Section 309(f) of the Communications Act of 1934, as amended.

[50] For the PTA rule, see § 73.1620 of the Commission's rules.

well as upsetting the competitive balance that now exists?

Petition for Consolidation

58. One matter which can be resolved at this point in the proceeding is a petition filed on March 2, 1981, by the Subscription Television Association, to consolidate issues in Docket No. 21502, BC Docket No. 78–253 and Gen. Docket No. 80–603 which involve or relate to STV service. These proceedings concern amending various rules governing the STV service, proposing rules to establish a new low power television service and an inquiry into developing policy for direct broadcast satellites, respectively. In view of our belief that the questions regarding subscription functions of low power facilities and direct broadcast satellite services are best studied in the context of those particular proceedings, we are denying the petition to consolidate issues. We also note that there is thorough inter-office as well as inter-disciplinary discussion whether the pay services involved are categorized as broadcasting, or for that matter, as common carrier, cable or private radio.[51] There is also coordination with all interested agency personnel in evaluating the impact and consistency of the action to be taken.

59. Regulatory Flexibility Act—Initial Analysis

I. Reason for Action:

The historical development of STV has reached a point at which it is reasonable to examine the basic tenants of the Commission's regulations of the service. That examination will consider the continued need for rules which appear to have restricted STV service. The rule changes proposed herein seek to place STV in its proper role in the overall communications system with the minimum of federal government intervention.

II. The Objective:

The proposed rules will reduce the degree of government restrictions on STV service, thereby permitting the natural expansion of the industry to the benefit of the public. They would permit additional STV authorizations in additional television markets with reduced administrative and operating restrictions.

[51] A matter of concern to the Commission is STV's distinct disadvantage with MDS and cable from a regulatory perspective. A question to be considered is whether removal or restrictions will allow STV to reach some degree of parity with these other two pay services.

III. Legal Basis:

Authority to consider the proposed rules is contained in sections 4(i), 301, 303 and 308 of the Communications Act of 1934, as amended.

IV. Description of Potential Impact and Number of Small Entities Affected:

By opening up STV service in markets with less than four operating television stations the proposed rules would permit such operations in smaller markets. The number of STV operations would also increase, and the proposal would eliminate many regulatory limitations on such operators. In general, the impact of the proposed rules would open up opportunities for small entities and reduce burdens imposed upon them. The number of small entities affected could be substantial.

V. Record Keeping and Other Compliance Requirements:

The proposal would impose no new record keeping burdens, and would generally reduce the need for records and other compliance requirements.

VI. Federal Rules Which Overlap, Duplicate or Conflict with these Rules:

None.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives:

The *Further Notice of Proposed Rule Making* considers various alternatives which would be consistent with the stated objectives and indicates the Commission's desire to adopt the least burdensome course.

VIII. Conclusion:

The rule changes proposed herein would have a positive impact on entities, large and small, by eliminating unnecessary restrictions on the operation of STV stations and increasing the opportunities for STV stations, thereby increasing the program choices available to the public.

Filing Responses to This Notice

60. 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, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person ourside the Commission and a Commissioner or 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 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.

61. This *Further Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Interested parties may file comments on or before December 21, 1981, and reply comments on or before January 5, 1982. All relevant and timely comments filed in response to this *Notice* will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the hearing. 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.

62. As to the request to consolidate issues filed on March 2, 1981, on behalf of the Subscription Television Association, it is ordered, That that petition is denied.

63. 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. 20554.

64. For further information concerning this proceeding, contact Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792, Scott W. Roberts, Broadcast Bureau, (202) 632-6302, and Teri Freundlich, Broadcast Bureau, (202) 632-6302.

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

Federal Communications Commission.

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Secretary.

Appendix A

Staff Study of the Effect on Conventional Television of Relaxing the "Complement of Four" Rule

1. While eliminating the "complement of four" threshold would open additional markets to STV operation, it does not necessarily follow that STV would actually become operational in all of those markets. In order to study the likelihood of STV becoming operational in additional markets if the threshold of four were reduced or eliminated, it is necessary to briefly discuss the decision process of a pay television operator. Because pay television in all its forms is a highly complex technology composed of many parts, there are numerous factors to consider in deciding whether and how to operate a pay television system. As discussed in the *Further Notice*, STV is only one means of delivery; in most markets cable and MDS can also be considered as options. Each pay television delivery system has unique advantages and disadvantages and a comparison of these factors should be made in determining which system would be the best choice for delivering what is essentially identical pay programming.[1] Of equal significance (on an economic basis), pay television may not be preferred to conventional broadcasting.

Comparing Alternative Pay Systems

Investment Costs

2. While the most appropriate comparative analysis of all three services, STV, MDS and cable, considers the additional cost of adding one more channel to a market under each delivery system, it is difficult to segment the costs in that manner since a cable television system offers multi-channel capacity, one or more of which may be a pay service. However, a pro-rated figure of the cost of cable for one channel can be compared to the cost of one channel on STV or MDS.

3. The investment involved in building and operating a cable system has many parts. Construction costs vary depending upon such factors as the array of services provided, the number of miles of cable to be laid, whether the system must be constructed underground and the cost of drop-lines and subscriber terminals. Operating costs for a cable system depend on the size of the plant and the array of services offered. Additionally, the costs involved in obtaining a franchise must be included.

4. STV start-up expenses can be viewed from two perspectives, the capital expenditures in operating a pay facility where a new station is involved and operating on an existing station. If there is an existing station, the operator can ignore the initial fixed investment aspect and simply choose how and whether to operate. The cost of a new full-service television station equipped for STV activities is generally around $2,866,000 ($1,666,000 for facilities and $1,200,000 for STV-related costs).[2] Therefore, the cost of adding a pay service to an existing operation is about $1.2 million.[3]

5. MDS apparently has the lowest initial capital investment with a station costing about $500,000.[4] One large difference betwen STV and MDS operation is the cost of leasing time. MDS costs $27 per hour compared with $400 per hour on an STV station.[5]

6. STV generally takes about 18 to 20 months to show positive profits in most markets.[6] These figures compare with a breakeven point of about 25 months for MDS and 43 months for cable.[7] The fact that an MDS signal reaches a smaller market accounts for a longer period of time for MDS to achieve the breakeven point. Cable requires a higher capital investment than does either STV or MDS, therefore 43 months are needed for a cable system to break even. A cash flow breakeven point for MDS has been estimated to be between 4000 and 8000 subscribers as compared to between 25,000 and 40,000 for STV.[8] Penetration levels would generally be lower for STV and MDS in markets with significant cable penetration. For example, if cable had penetrated 80% of a market, STV would have to sell 25% of the remaining 20% of a cabled market to obtain even a 5% penetration level.[9]

Subscriber fees and service

7. Subscriber fees and services also can be compared for pay operations. While MDS and STV offer only one channel each, cable usually offers clearer reception of several fringe over-the-air channels, a number of imported distant over-the-air channels, one or more pay channels, and, in some cases, non-entertainment services such as home security, consumer information services and data transfer services. Cable offers this package of services at a lower price than the cost of one STV channel and only at a slightly higher price than MDS. Basic cable subscribers pay an average of $7.37 for numerous channels [10] and an additional $8.75 for one-channel pay service. [11] This $16.12 compares with an average of $13.99 for one-channel MDS pay service and an average of $19.95 for one-channel STV pay service. [12]

8. As a result of its lower cost of providing a channel, it appears that in head to head competition cable is likely to prevail over alternative pay systems.[13] STV's greatest competitive advantage over cable is the speed with which it can enter and penetrate a market. However, it has only single channel capacity and suffers some transmission problems. MDS has the most limited signal range and the greatest reception problems because it depends on line-of-sight transmission.

[1] As discussed in the *Further Notice*, pay programming includes such services as unedited movies, sports and specials.

[2] Paul Kagan Associates, *Pay TV Newsletter*, April 4, 1979; June 16, 1978; February 7, 1980. This figure is the average of data submitted for station costs in 7 applications for STV authorization and the average of STV cost estimates filed in 12 applications for STV authorization.

[3] *Id.* Actually, the range of costs for STV operation exclusive of facilities was reported to be between $128,000 and $2.9 million.

[4] Kristen Glen, *Report on Multipoint Distribution Service*, prepared for the Network Inquiry Special Staff, F.C.C., November, 1979, p. 105.

[5] *Id.* Of course, the coverage of these two types of stations is quite different since MDS is a much lower power operation on a higher frequency. This difference, among others, explains why these numbers are so divergent.

[6] *Television Radio Age*, January 12, 1981, p. 113. Paul Kagan Associates, *Multicast*, May 30, 1979, p. 1.

[7] Paul Kagan Associates, *Multicast*, May 30, 1979, p. 1.

[8] Remarks of Arthur Lipper, Chairman of Microband, *Multicast*, May 30, 1979, p. 1. *Pay TV Newsletter*, April 19, 1979, p. 1. Remarks of Mark Foster, President of Microband, *Multichannel News*, April 27, 1981, p. 12.

[9] Kristen Glen, *Report on Subscription Television*, prepared for the Network Inquiry Special Staff, F.C.C., October, 1979, p. 101.

[10] *Cable TV Financial Report*, F.C.C., December 29, 1980.

[11] *MDS Databook*, June 30, 1980, p. 60.

[12] *Id.*

[13] Kristen Glen, *Report on Subscription Televison*, prepared for the Network Inquiry Special Staff, F.C.C., October, 1979, p. 8. See also, *Subscription Television: History, Current Status, and Economic Projections*, prepared for the National Association of Broadcasters by Communications Research Center, April, 1980, p. 145. "Because of [the] advantages of cable, all major STV interests . . . are leery of entering markets where the cable penetration is high."

Thus, it would take several MDS systems with simultaneous transmission to attain the same coverage as cable or STV. Therefore, unless they can find some means of overcoming their competitive disadvantages both MDS and STV would apparently lose out to cable in the long run since they offer only one channel at a price that generally exceeds the price of cable's myriad of services which include a pay channel.

Comparing STV with Conventional Operation

9. Having already set forth the disadvantage under which STV operates in head-to-head competition with cable, we now attempt to analyze the extent to which conventional service might be lost as a result of eliminating or relaxing the "complement of four" rule. The approach used in our analysis is based on a comparison of how much a household is worth to operators of conventional stations versus the value of a household to STV operators. Presumably where one mode of operation is more profitable than the other, the operator of a station would choose to operate in that mode. [14] In our analysis, loss of conventional service would be expected to occur where a conventional station operator thought that STV operation would be the more profitable mode of operation. The value of a household to a *conventional* operator is determined by dividing the total national television advertising expenditures for 1978, $8,058.5 million, [15] by the total number of television households, 73,901,000, [16] to arrive at an average expenditure by advertisers of $109.04 per television household. Our analysis considers this national average as the value of a household in any given market to a conventional broadcaster. Athough the additional revenue or profit for each station would be preferable to this average figure, we still think that the use of an average would not substantially affect the results of the study.

10. On the other hand, the value of a household to an STV operator is determined by using a different approach. Since sufficient information about demand for STV is lacking, we use demand for pay cable services as a proxy. We feel that by using demand for pay cable services, we will reach the outer limits of STV demand and, in fact, probably overstate STV demand. [17]

11. The value of a household to cable (as a proxy for STV) is derived from a census of the industry as of December 31, 1978. [18] The systems surveyed by this census include only those systems with pay cable and, therefore, do not cover the entire industry, but rather a very significant sub-sample. The summary figures show aggregate annual cable revenues of $1,138,308,000 ($68,238,445 per month) for the basic cable charge and $26,620,555 per month for pay cable) and 18,338,312 homes *passed* by these systems. Thus, the annual average revenue per household passed for both basic and pay cable services is $62.07. [19] The homes passed measure is used since it comprises the maximum potential market that can be exploited by an existing cable system.

12. At this point, the basic presumption comes into play that, in head-to-head competition between a pay cable channel and an STV hook-up, the pay cable operator can underprice the STV operator as a result of his cost advantages. Thus, even if a household is only passed by cable rather than actually hooked-up), it cannot be lured to STV due to STV's relatively higher price. In light of the above numbers, then, the STV demand for television time will not exceed $62.07 multipled by the ratio of homes *not* passed by cable to the total television households in a market.

13. For example, if there were no cable in a given market, an STV operator could expect to receive approximately the entire $62.07 per household. However, if 10% of the market were passed by cable, only 90% of this amount or $55.86 per household would accrue to the STV operator.

14. Having established the relative values of the two alternatives for a broadcaster ($109.04 per household for conventional operation, and $62.07 for STV operation) [20], we are now able to estimate for markets of varying degrees of cable penetration and television allocation characteristics how many, if any current conventional television allocations would be likely to convert to subscription television operations if the complement of four rule were relaxed.

15. One further explanation is necessary for the completion of the analysis. Clearly, from the comparative figures for conventional versus STV operation ($109.04 versus $62.07, respectively), the first station in a market would elect conventional operation. However, if a second station's entering the market would split the conventional revenues in half for each station (0.5 of $109.04=$54.52), the second station would appear at first glance to prefer STV operation instead. However, as discussed above, the degree of cable penetration directly bears on this decision. By a rather straightforward calculation, one can determine what cable penetration level is necessary to cause a station to be indifferent between going STV or becoming a conventional outlet. If that cable penetration level is exceeded, the second station will elect conventional operation rather than STV and *vice versa*.

16. The financial relationship needed for deciding whether to operate in a conventional or in an STV mode is established in the following manner. That relationship combines the degree of cable penetration and the number of stations in a given market to arrive at a decision rule for choosing between the two modes.

Let X equal percentage of homes *not* passed by cable. Then we can set up the equation:

[14] Implicit in this analysis is the assumption that the costs faced by conventional TV and STV operators are essentially equal. Consequently, comparing revenues of the two alternatives correlates with a direct profitability comparison. This would seem to be a conservative assumption since there are transaction costs associated with STV operation not associated with conventional operation and thus STV profitability is probably overestimated.

[15] *TV Broadcast Financial Data*—1978, F.C.C., July 30, 1979.

[16] *1979–1980 Television Markets and Rankings Guide*, Arbitron Company, Chicago, Illinois, 1980.

[17] We believe this overstates STV demand because consumers will generally choose cable's myriad of services at lower cost versus one service from STV (where pay cable and STV compete). Therefore STV's potential market is limited to those households that are not passed by cable, a number that is rapidly shrinking.

[18] Paul Kagan Associates, Pay TV Census, December 31, 1978.

[19] The simple division of total revenues by the number of households passed yields this result or $1,138,308,000÷18,338,312=$62.07. See Attachment 1 for comment on how the cable proxy used in the analysis for STV is a very conservative figure.

[20] The individual conventional broadcaster does not receive the $109 per household directly. The costs of services provided by the networks and advertising agencies are removed before reaching the broadcaster level. Similar services are provided to STV operators that are borne directly by the STV broadcaster and similarly reduce the $62 per household used in the analysis. Absent these services, both the conventional broadcaster and the STV operator must have these services performed regardless of whether they are paid for directly or indirectly. Any dissimilarities in the proportions of the dollar figures used for conventional and STV broadcasting that payment for these services (networking and advertising) represent to each mode of operation are compensated for by using gross dollar figures for comparing one service with the other. In fact they are probably over compensated for as the discussion in attachment 1 indicates.

(1) $\frac{\$109.04}{\text{number of conventional stations}} = \frac{\$62.07}{\text{number of STV stations}} (X)$

or $X = \frac{\$109.04}{\text{number of conventional stations}} \div \frac{\$62.07}{\text{number of STV stations}}$

When X takes on a value so that the right and left-hand sides of equation (1) are balanced, a potential station operator would be indifferent between STV and conventional operation.[21]

17. The left hand side of the first equation is the estimated per household revenue of a conventional station. The right hand side is the per household proxy for STV revenue per station times the percentage of homes *not* passed by cable (the universe of potential STV subscribers). In a one-station market, X would have to be greater than 100% to balance the equation.[22] Therefore, in one-station markets, the station will always operate in a conventional mode.[23]

18. In two-station markets, the $109.04 figure is divided by two.[24] In a market with two stations then, a second station can be one of two conventional stations (each getting $54.52) or can be the only STV operation receiving $62.07 in the absence of any cable. We would expect the second station to elect STV operation at zero cable penetration since that type of operation would appear to be more profitable. However, according to the formula presented, the second station will choose conventional operation instead if the percentage of homes *not* passed by cable is less than 87.8% (or greater than 12.2% of homes passed).[25]

19. Figure I demonstrates in graphic form the number of allocations that we expect would operate conventionally in the different types of markets. It also shows the percentage of households passed and not passed by cable that would be required for conventional operation to be preferred over STV operation.

20. The vertical axis on the chart indicates dollars per household per year. The horizontal axis indicates the percentages of homes passed and of homes not passed by cable. Certain benchmark figures are shown indicating the percentages of homes passed (and not passed) by cable that are required to preserve conventional service in a market.

21. The horizontal lines on the graph indicate a constant revenue per household per conventional station regardless of the degree of cable penetration for markets with one, two, three, four and five conventional stations. It can be noted that, in markets of two stations for example, the revenue per household per station is $54.52 (half that of a one conventional station market).

22. The lines sloping downward to the right indicate the revenue per household for an STV station which declines as the degree of cable penetration increases. The intersections of these diagonal lines and the horizontal lines indicate the cable penetation levels where station operators would be indifferent between operating in a conventional or STV mode. For example, at 41.4% homes passed by cable and three stations in a market, the operator of a third station could operate in either mode and expect to receive $36.34 per household. As the percentage of homes passed by cable continues to increase, the average value of a household to an STV operator decreases whereas the conventional operator is unaffected by the level of cable penetration and continues to receive the same amount—in this case $36.34. Therefore, the third station would operate as a conventional station when cable penetration (homes passed) exceeds 41.4%. A fourth station would opt for conventional operation when the level of homes passed by cable exceeds 56.1%. Likewise, a fifth station would choose conventional operation at 64.9% cable penetration (homes passed).

$$X = \frac{\$109.04}{2} + \frac{\$62.07}{1}$$

Or $X = 87.8\%$.

23. In four-or-five station markets where there already is an STV station operating, the percentage of homes passed by cable need only reach 12.2% to discourage a second STV operation. This is because a second STV station divides the $62.07 in half ($31.03) and with more than 12.2% of the homes passed by cable, the STV stations receive less than the $27.26 that each of four conventional stations would receive. The 12.2% number can be identified by the intersection of the second diagonal line (2 STV stations) and the fourth horizontal line from the top which indicates four conventional stations at $27.26. Moving to the right of this intersection (increasing cable penetration) makes conventional operation more attractive than STV operations for a station contemplating becoming the second STV outlet in a four or five station market. Our analysis predicts that six or more outlets in a market will yield four conventional outlets even at zero cable penetration.

24. By comparing the percentages of homes passed (and not passed) by cable in every television market to the benchmark cable penetration figures on Figure I, we can identify those markets where there is a potential for a switch from conventional to subscription operation.[26] As stated earlier our analysis indicates that one-station markets would operate conventionally even at zero cable penetration. A list of those markets appears in Table 1. Two-station markets, listed in Table 2, all have sufficient cable penetration to discourage STV interest according to the analysis. Only 12.2% of the homes in a market need be passed by cable to yield conventional service on both stations. All two-station markets exceed this figure by a wide margin. However, in markets with three or more operating stations, some switching from conventional to STV operation could occur if the complement of four were eliminated.

25. Three-station markets are vulnerable to a possible loss of some conventional service where the percent of homes passed by cable is less than 41.4% of the market. If the percent of homes passed by cable exceeds 41.4%, conventional operation will generate more revenue than operating in a pay mode as indicated on Figure 1. Table 3 lists 14 markets that have three

[21] X = % of homes *not* passed by cable: 1 minus x = % of homes passed by cable (cable penetration).

[22] The number of homes passed by cable would have to be less than zero. This is obviously not possible.

[23] A list of one-station markets appears in Table 1. All tables appear at the end of this Appendix.

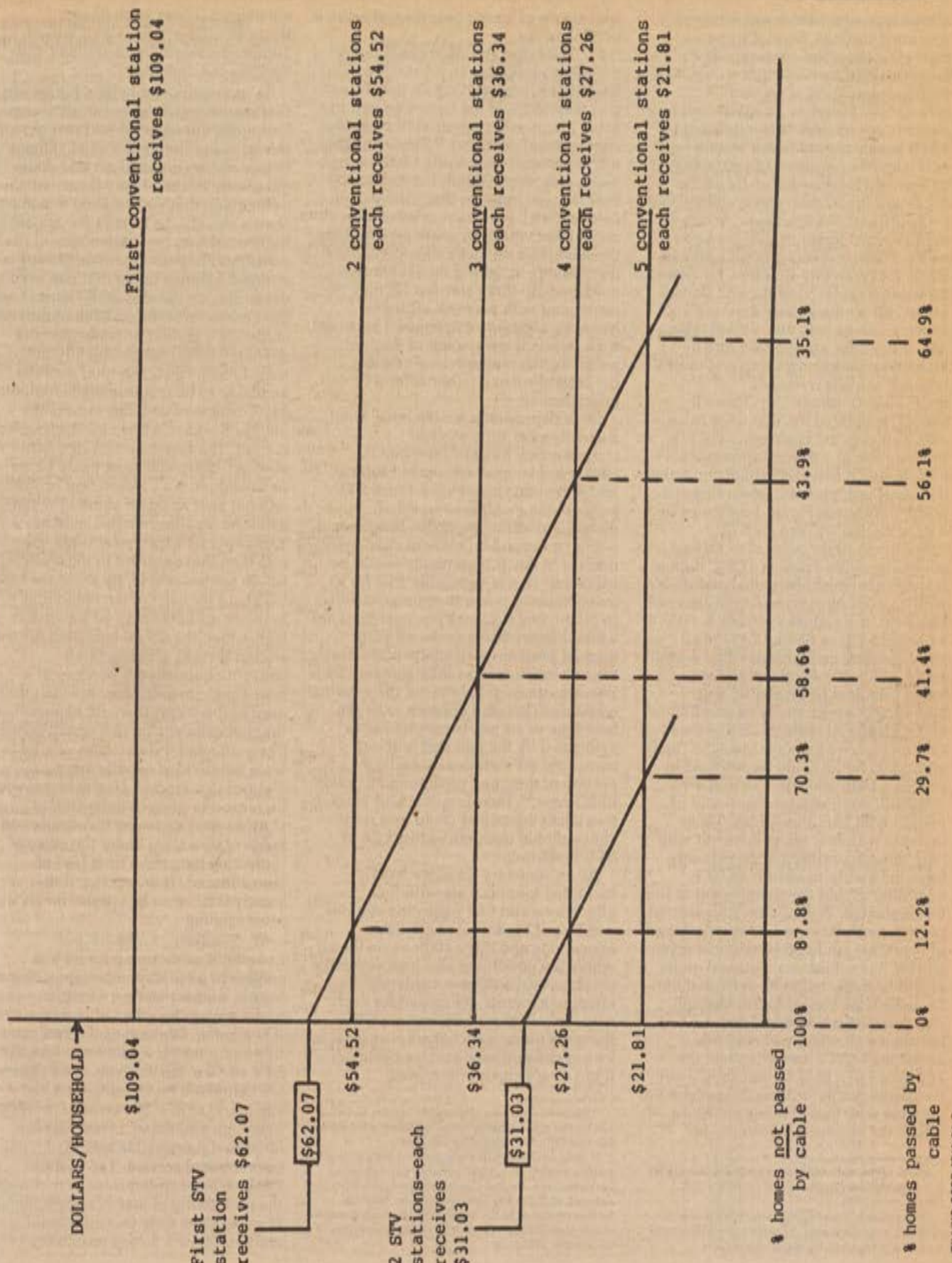
[24] It is assumed that conventional stations share equally in conventional revenue. STV stations share equally in STV revenue and that revenues for each mode of operation are generated independently, *i.e.*, entry of an STV station will not affect the revenues being earned by conventional stations already in the market. See also *The Determinants of Television Station Profitability*, prepared for the Network Inquiry Special Staff, F.C.C., June 1980, p. 13–38 for evaluation of other studies that use alternative assumptions in examining what happens when additional stations are added to a market.

[25] Arithmetically:

[26] A list of all television markets with cable penetration figures appears as Table 5.

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FIGURE 1



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allocations all of which are occupied by operating stations. Nine of these markets exceed the necessary 41.4% homes passed by cable that would lead to the continuation of present conventional service. An additional four markets are so close to the threshold of 41.4% homes passed that a station assessing the prospects of converting to STV would be reluctant to make the necessary investment since cable would probably pass the additional homes by the time conversion to STV could be made. Those markets are Youngstown, Ohio; Traverse City-Cadillac, Michigan; Charleston, West Virginia; and Bangor, Maine. Eliminating these markets from concern leaves only one market where one of the three stations in a three-allocation market might convert to STV because cable is relatively undeveloped—Sioux City, Iowa. It should be pointed out that prior to an elimination of the complement of four, a third station in a three-station market is presumably a network affiliate and, the data suggests, probably operating at a profit.[27] Although Figure 1 indicates that a third station will opt for STV operation until the percent of homes passed by cable exceeds 41.4%, station management might be quite comfortable with its existing revenue/profit figures.[28] However, if a station switches to STV in a market such as Sioux City, Iowa, enterpreneurs may presume that a profit could still be made by activating a vacant channel (if available) and operating conventionally as an affiliate of the displaced network. In the Sioux City market, for instance, demand for an additional outlet could be satisfied by adding a UHF allocation to that area.

26. Still another situation is that of market with four allocations. Those markets with four allocations but with only three operating stations already have the ability to absorb an STV operation should the complement of four be eliminated. Without the complement of four in effect, some initial switching of operation could occur within a given market but a third conventional outlet would be expected to be activated on the otherwise vacant fourth channel. Any time lag which might occur between a conventional station's switching to STV operation and the activation of a new station should not be exessive. It is in those four-allocation markets with four stations on the air where the strongest possibility for conversion of some conventional service to STV exists.

27. The latter situation exists in the following markets which have four allocations, four stations on the air and less than 56.1% of the homes passed by cable (the number required to yield four conventional services).[29] Those markets are: Rochester, New York; Chattanooga, Tennessee; South Bend, Indiana and Fort Wayne, Indiana. Since three conventional outlets are predicted to result even with zero cable penetration, three network services should be forthcoming in light of the fact that markets with three stations fill that contingent with network affiliates. Network service is emphasized because each does a large amount of original programming and provides unique national news and public affairs programming.

28. Independents, on the other hand, currently offer little original programming. Most of their fare is largely made up of syndicated reruns and older movie packages. Since STV programming includes enough first run material to attract paying subscribers, it is from independent stations that greater interest in pay programming would be expected. This is especially true for an independent's prime time programming. In prime time (*i.e.* 8–11 pm. eastern time) when independents are faced with original programming competition from the networks, they usually generate their lowest ratings and shares of the viewing audience. This also appears to be the best time to air pay programming as evidenced by the fact that without exception, STV stations do a large portion of their pay programming in this time frame.[30] Therefore, the four markets previously identified could lose some conventional independent service to STV operation.

29. In summary then, we have identified four markets with four allocations and four operating stations, and five of 14 markets with three allocations and three stations on the air where the possibility of a loss of service is conceivable. After considering the mitigating factors delineated for each case, only four markets remain where the conditions in each market suggest a loss of conventional service could occur if the complement of four was eliminated. These markets are: Rochester, New York; Chattanooga, Tennessee; South Bend, Indiana and Fort Wayne, Indiana.

30. As mentioned before, it appears that markets with four allocations and four conventional stations presently on the air are probably the most vulnerable to loss of conventional service. This possibility is more likely if our assumption that each station in a market shares equally the $109.04 per household for conventional operation is substantially imprecise. The $109.04 is a national average figure that can vary depending on the size of the market and the number of stations. Each additional station in a market not only may not share the total revenue equally but also may, in fact, cause the total revenue available to be increased (see footnote 24). To some extent, this is virtually always the case when new firms enter a market. The fourth station in a four-station market will most likely be an independent. An independent probably will not gain an equal share of revenue available in a four-station market. Therefore, its expected revenue may be less than that assumed in the analysis of $27.26 per household. By the same token, the share for each of the remaining network affiliates may be somewhat higher than the $27.26 indicated for each station thereby yielding three conventional network services at a lower cable penetration rate than that used in the study. It would appear then that independent service would be more likely affected if the monies available were not divided equally among all stations in a market. However, we see no reason to prevent independent stations from choosing their preferred mode of operation under the guise of protecting the public from loss of conventional "free" service if that very same public reveals a desire for STV programming.

31. Similarly, our $62.07 per household cable proxy for STV is subject to a band of uncertainty. For this reason we have done a sensitivity study to determine the effect of variance in this number. We assumed a 25% error in this figure which would have favored STV service. An analysis of its effects are contained in Attachment 2. In summary, with a 25% error in the STV figure, an additional 12 markets are identified for possible loss of conventional service. Ten of those markets have circumstances that reduce the probability of loss of conventional service. Thus, only two additional markets show a strong possibility of

[27] 87% of network affiliates report profits—Table 9, *TV Broadcast Financial Data—1979*, F.C.C. December 9, 1980.

[28] It is possible that being faced with losing an affiliate, a network may increase compensation to its affiliate to retain its outlet in a market.

[29] Markets with four allocations appear in Table 4. This list also includes those with four allocations but less than four operating stations.

[30] Also, in those markets where existing stations could switch from conventional to pay operation because there are five Grade A signals available, no network affiliate has elected to do so, lending further credence to the vulnerability of independent stations switching to pay programming as opposed to network affiliates.

conventional service loss. All of these markets are identified in Attachment 2.[31]

[31] Data used for this study was the most recent complete data when this study was initiated. Checking portions of this study with 1980 data reveals that dollar per household for conventional broadcasting went from the 1978 figure of $109 to $133 in 1980. Likewise our cable proxy figure increased from $62 to $81 per household passed. Plugging the newer figures into our formula (para 16) reveals that the cable penetration benchmark figures (Figure 1) that indicate where conventional service is assured over STV service in different types of markets increase only slightly. Since we know cable penetration (homes passed) is a number that continues to grow, it is highly likely that cable penetration in all markets has increased sufficiently to offset the minor increases in the benchmark penetration figures. Thus no markets other than those previously identified in this analysis would be predicted to lose conventional service.

TABLE 1

Market rank	Markets with one channel allocated and on the air	Homes not passed by cable	Percent not passed	Percent passed by cable
152	Alexandria, MN	68,665	68.5	31.5
172	Jonesboro, AR	36,544	57.6	42.4
195	Twin Falls, ID	11,870	34.2	65.8
199	Harrisonburg, VA	19,758	62.1	37.9
201	Presque Isle, Me	3,717	47.8	52.2
203	Zanesville, OH	5,658	20.4	79.6
205	Farmington, NM	8,782	41.8	58.2
209	North Platte, NB	6,324	43.9	56.1
211	Alpena, MI	5,657	41.3	58.7

TABLE 2

Market rank	Markets with two allocations both on the air	Homes not passed by cable	Percent not passed	Percent passed by cable
86	Springfield-Holyoke, MA	119,608	54.5	45.5
111	Wheeling-Steubenville, OH	47,673	30.4	69.6
160	Elmira, NY	17,423	21.4	78.6
174	Ardmore-Ada, OK	33,418	53.4	46.6
185	Eureka, CA	8,837	18.2	81.8
187	Palm Springs, CA	6,390	15.0	85.0

TABLE 3

[Markets with three allocations—all occupied]

Market rank	Market	Homes not passed	Percent not passed	Percent passed by cable
80	Youngstown, OH	150,750	60.1	40.0
84	Johnson City-Kingsport-Bristol, TN	119,845	50.1	49.9
90	Burlington-Plattsburgh, NY	104,478	50.2	49.8
95	Baton Rouge, LA	9,614	4.9	95.1
109	Terre Haute, IN	89,587	55.9	44.1
113	Joplin-Pittsburg, MO-KS	77,525	50.5	49.5
118	Traverse City-Cadillac, MI	89,974	60.3	39.7
122	Binghamton, NY	45,620	31.6	68.4
123	Sioux City, IA	124,528	85.9	14.1
124	Charleston, SC	89,587	62.1	37.9
127	Yakima, WA	56,472	40.2	59.8
142	Ft. Myers-Naples, FL	0	0.0	100.0
146	Bangor, ME	73,777	65.4	34.6
154	Bakersfield, CA	0	0.0	100.0

TABLE 4

[Markets with four allocations]

Market rank	Market	Homes not passed	Percent not passed	Percent passed
46	Dayton, OH	227,532	52.6	47.4
58	Little Rock, AR	274,478	72.5	27.5
65	Rochester, NY	258,453	80.0	20.0
73	Chattanooga, TN	190,669	67.2	32.8
78	Southbend, IN	148,855	55.2	44.8
83	Jackson, MS	112,480	47.0	53.0
85	Springfield, MO	206,108	88.0	12.0
89	Lexington, KY	150,186	71.2	28.8
98	Ft. Wayne, IN	142,673	75.4	24.6
99	Columbia, SC	120,661	63.9	36.1
108	Augusta, GA	87,118	54.3	45.7
114	Savannah, GA	74,680	49.1	50.9
115	Lafayette, LA	89,805	59.3	40.7

TABLE 4—Continued

[Markets with four allocations]

Market rank	Market	Homes not passed	Percent not passed	Percent passed
119	Montgomery, AL	75,063	50.8	49.2
120	Beaumont-Pt. Arthur, TX	66,056	45.0	55.0
121	Columbus, GA	93,486	63.9	36.1
130	Wausau & Rhinelander, WI	91,520	69.2	31.8
131	Topeka, KS	63,706	47.5	52.5
134	Rochester-Austin, Mason City, IA	88,844	66.9	33.1
135	Erie, PA	75,309	56.8	43.2
136	Coplumbus-Tupelo, MS	78,738	60.1	39.9
139	Columbia-Jefferson City, MO	64,839	51.7	48.3
170	Anchorage, AK	64,000	100.0	0.0

TABLE 5.—TELEVISION MARKETS

Market rank		(1) TV HH	(2) HH passed	Percent passed (2÷1)	HH not passed (1–2)
55	Abilene-Sweetwater	97,100	74,109	76.3	22,991
150	Albany, GA	106,100	57,792	54.5	48,308
45	Albany-Schnectady-Troy	437,200	276,318	63.2	160,882
77	Albuquerque	277,800	86,569	31.2	191,231
171	Alexandria, LA	64,400	608,857	94.5	35,430
211	Alpena	13,700	8,043	58.7	5,657
117	Amarillo (Clovis)	150,100	120,316	80.2	29,784
170	Anchorage	64,600	0	0	64,600
191	Anniston	37,800	28,557	75.5	9,243
174	Ardmore-Ada	62,600	29,182	46.6	33,416
16	Atlanta	902,500	254,454	28.2	648,046
108	Augusta	160,500	73,382	45.7	87,118
97	Austin, TX	190,700	116,514	61.1	74,186
154	Bakersfield	117,200	117,200	100.0	0
19	Baltimore	797,500	44,610	5.6	752,890
146	Bangor	112,800	39,023	34.6	73,777
95	Baston Rouge	194,300	184,686	95.1	9,614
120	Beaumont-Port Arthur	146,900	80,844	55.0	66,056
197	Bellingham	32,300	28,048	86.8	4,252
161	Billings	79,600	44,004	55.3	35,596
183	Biloxi-Gulfport-Pascagoula	49,000	39,266	80.1	9,734
122	Binghamton	145,000	99,180	68.4	45,820
50	Birmingham	421,500	171,907	40.8	249,593
132	Bluefield-Beckley-Oak Hill	133,500	83,127	62.3	50,373
141	Boise	122,800	15,855	12.9	106,945
6	Boston (Manchstr, Worchstr)	1,788,300	493,259	27.6	1,295,041
198	Bowling Green	31,900	3,170	9.9	28,730
84	Briston-Kingsport-J City	239,100	119,255	49.9	119,845
29	Buffalo	624,200	353,383	56.6	270,817
90	Burlington-Plattsburgh	208,000	103,522	49.8	104,478
178	Casper-Riverton	51,200	44,542	87.0	6,658
70	Cedar Rapids-Waterloo (Dbq)	296,000	59,634	20.1	236,366
124	Charleston, SC	144,200	54,613	37.9	89,587
44	Charleston-Huntington	443,400	274,990	62.0	168,410
34	Charlotte (Hickory)	530,900	118,906	22.4	411,994
73	Chattanooga	283,600	92,931	32.8	190,669
176	Cheyenne	55,000	52,167	94.8	2,833
3	Chicago	2,806,660	149,557	5.3	2,657,043
145	Chico-Redding	114,500	80,559	70.4	33,941
26	Cincinnati	635,300	84,480	13.3	550,820
165	Clarksburg-Weston	74,900	49,500	66.1	25,400
9	Cleveland (Akron, Canton)	1,304,200	406,871	31.2	897,329
103	Colorado Springs-Pueblo	179,600	117,825	65.6	61,775
99	Columbia, SC	188,800	68,139	36.1	120,661
139	Columbia-Jefferson City	125,300	60,461	48.3	64,839
121	Columbus, GA	146,300	90,970	62.2	55,330
32	Columbus, OH	546,200	377,249	69.1	168,951
136	Columbus-Tupelo	131,100	52,362	39.9	78,738
133	Corpus Christi	133,000	76,204	57.3	56,796
10	Dallas-Fort Worth	1,115,300	112,516	10.1	1,002,784
74	Davenport-Rock I-Moline	282,800	139,223	49.2	143,577
46	Dayton	432,300	204,768	47.4	227,532
21	Denver	694,000	72,691	10.5	621,309
63	Des Moines	337,100	128,810	38.2	208,290
7	Detroit	1,590,700	59,217	3.7	1,531,483
157	Dothan	90,900	34,480	37.9	56,420
107	Duluth-Superior	165,400	72,236	43.7	93,164
184	El Centro-Yuma	48,800	48,800	100.0	0
160	Elmira	81,300	63,877	78.6	17,423
105	El Paso	172,500	140,552	81.5	31,948
135	Erie	132,600	57,231	43.2	75,369
126	Eugene	136,200	111,942	82.2	24,258
185	Eureka	48,500	39,663	81.8	8,837
87	Evansville	214,000	64,331	30.1	149,669
101	Fargo	180,600	67,245	37.2	113,355
205	Farmington	21,000	12,218	58.2	8,782

TABLE 5.—TELEVISION MARKETS—Continued

Market rank		(1) TV HH	(2) HH passed	Percent passed (2÷1)	HH not passed (1-2)
207	Flagstaff	18,500	13,886	75.1	4,614
55	Flint-Saginaw-Bay City	385,500	211,206	54.8	174,294
159	Florence, SC	83,900	50,496	60.2	33,404
142	Fort Myers	120,800	120,800	100.0	0
162	Fort Smith	79,400	44,776	56.4	34,624
98	Fort Wayne	189,200	46,527	24.6	142,673
69	Fresno (Hanford, Tulare)	304,100	76,195	25.1	227,905
177	Gainesville	53,300	48,154	90.3	5,146
188	Grand Junction	42,700	29,099	68.1	13,601
39	Grand Rapids-Klmz-Btl Cr	472,900	254,089	53.7	218,811
175	Great Falls	59,600	30,536	51.2	29,064
66	Green Bay	320,000	76,921	24.0	243,079
53	Greensboro-WS-High Point	397,600	126,314	31.8	271,286
94	Greenville-New Bern-Wash	196,000	45,099	23.0	150,901
37	Grnvl-Sptbg-Ashvl (Andsn)	504,800	171,790	34.0	333,010
192	Greenwood-Greenville	36,000	19,209	53.4	16,791
47	Harrisburg-York-Lanc-Leb	430,800	282,324	65.5	148,476
199	Harrisonburg	31,800	12,042	37.9	19,758
13	Hartford-New Haven	670,400	331,188	49.4	339,212
210	Helena	14,000	12,442	88.9	1,588
12	Houston	1,009,500	148,428	14.7	861,072
96	Huntsville-Decatur-Florence	191,000	115,320	60.4	75,680
163	Idaho Falls-Pocatello	78,200	41,903	53.6	36,297
20	Indianapolis	762,800	223,033	29.2	539,767
83	Jackson, MS	239,400	126,920	53.0	112,480
190	Jackson, TN	38,600	26,293	68.1	12,307
64	Jacksonville	324,700	43,572	13.4	281,128
72	Johnstown-Altoona	287,500	203,868	70.9	83,632
172	Jonesboro	63,400	26,856	42.4	36,544
113	Joplin-Pittsburg	153,400	75,875	49.5	77,525
27	Kansas City	629,300	206,395	32.8	422,905
60	Knoxville	349,200	136,737	39.2	212,463
126	La Crosse-Eau Claire	140,000	77,368	55.3	62,632
193	Lafayette, IN	35,600	23,100	64.9	12,500
115	Lafayette, LA	151,500	61,695	40.7	89,805
173	Lake Charles	62,700	38,400	61.2	24,300
93	Lansing	196,900	115,970	58.9	80,930
204	Laredo	25,400	25,164	99.1	236
137	Las Vegas	129,900	668	0.5	129,232
167	Laurel-Hattiesburg	73,000	25,655	35.1	47,345
89	Lexington (Hazard)	211,000	60,814	28.8	150,186
194	Lima	35,100	31,237	89.0	3,863
82	Lincoln-Hasting-Kearney	240,600	127,471	53.0	113,129
58	Little Rock	378,800	104,322	27.5	274,478
2	Los Angeles	3,918,200	1,037,679	26.5	2,880,521
43	Louisville	449,200	64,796	14.4	384,404
125	Lubbock	143,000	84,605	59.2	58,395
147	Macon	112,000	76,519	68.3	35,481
104	Madison	175,200	94,090	53.7	81,110
186	Mankato	45,900	21,633	47.1	24,267
179	Marquette	51,200	35,592	69.5	15,608
138	McAllen-Brownsville	126,500	81,894	64.7	44,606
156	Medford	96,900	63,873	65.9	33,027
35	Memphis	524,000	105,515	20.1	418,485
169	Meridan	68,100	25,708	37.8	42,392
15	Miami (Fort Lauderdale)	946,900	230,066	24.3	716,834
212	Miles City-Glendive	8,600	6,340	73.7	2,260
25	Milwaukee	638,700	45,107	7.1	593,593
14	Minneapolis-St. Paul	962,800	111,644	11.6	851,156
143	Minot-Bismarck-Dickinson	118,900	52,742	44.4	66,158
153	Missoula-Butte	99,600	65,332	65.6	34,268
62	Mobile-Pensacola	337,700	145,840	43.2	191,860
106	Monroe-El Dorado	170,900	69,152	40.5	101,748
119	Montgomery	147,700	72,637	49.2	75,063
30	Nashville	575,200	108,080	18.8	467,120
36	New Orleans	511,400	71,241	13.9	440,159
1	New York	6,375,500	2,078,685	32.6	4,296,815
48	Norkfolk-Portsmouth-NN-H	429,000	135,198	31.5	293,802
209	North Platte	14,400	8,076	56.1	6,324
149	Odessa-Midland	107,800	86,744	80.5	21,056
38	Oklahoma City	475,300	127,826	26.9	347,474
68	Omaha	314,700	23,663	7.5	291,037
40	Orlando-Daytona Beach	468,100	289,335	61.8	178,765
202	Ottumwa-Kirksville	27,800	11,277	40.6	16,523
76	Paducah-Cape G-Harrisburg	278,000	126,071	45.3	151,929
	Palm Springs (L.A.)				
180	Panama City	51,200	32,192	62.9	19,008
200	Parkersburg	30,100	29,194	97.0	906
88	Peoria	211,600	1,21,607	57.4	90,193
4	Philadelphia (Alntn, Wldwd)	2,364,000	871,369	36.9	1,492,631
33	Phoenix	531,900	51,301	9.6	480,599
11	Pittsburgh	1,096,900	868,993	79.2	228,907
22	Portland, Or (Bend)	672,500	169,321	25.2	503,179
79	Portland-Poland Spring	267,300	148,193	55.4	119,107
201	Presque Isle	28,700	14,983	52.2	13,717
31	Providence	559,700	84,732	15.1	474,968
144	Quincy-Hannibal	117,900	48,822	41.4	69,078
42	Raleigh-Durham	451,800	163,687	36.3	287,913
166	Rapid City	74,700	40,706	54.5	33,994
148	Reno	99,900	80,070	80.2	19,830

TABLE 5.—TELEVISION MARKETS—Continued

Market rank		(1) TV HH	(2) HH passed	Percent passed (2÷1)	HH not passed (1-2)
56	Richmond (Charlottesville)	381,600	71,346	18.7	310,254
67	Roanoke-Lynchburg	319,300	154,532	48.4	164,768
65	Rochester, NY	323,200	64,747	20.0	258,453
134	Rochester-Mason C. Austin	132,800	43,956	33.1	88,844
100	Rockford	180,900	144,290	79.8	36,610
162	Roswell	52,500	41,688	79.4	10,812
24	Sacramento-Stockton (Mdsto)	619,800	22,950	36.0	396,850
181	St Joseph	50,100	29,987	59.9	20,113
13	St Louis	971,900	70,678	7.2	901,222
112	Salinas-Monterey	154,100	132,436	85.9	21,664
168	Salisbury	69,900	69,900	100.0	0
49	Salt Lake City	423,900	78,415	18.5	345,485
196	San Angelo	32,600	25,257	77.5	7,343
51	San Antonio	406,700	51,152	12.6	355,548
28	San Diego	624,500	481,073	77.0	143,427
5	San Francisco	1,871,000	1,309,154	70.0	561,846
116	Santa Barbara-S.M.-S.L.O	150,900	150,900	100.0	0
114	Savannah	152,200	77,520	50.9	74,680
18	Seattle-Tacoma	852,500	496,760	58.3	355,740
208	Selma	17,300	10,161	58.7	7,139
59	Shreveport-Texarkana	360,900	158,090	43.8	202,810
123	Sioux City	144,900	20,372	13.1	124,528
92	Sioux Falls-Mitchell	201,000	72,669	36.2	128,331
78	South Bend-Elkhard	269,800	120,945	44.8	148,855
75	Spokane	282,300	159,539	56.5	122,761
86	Springfield, MA	219,400	99,792	45.5	119,608
85	Springfield, MO	234,200	28,092	12.0	206,108
71	Springfield-Decatur-Chmpgn	288,800	150,078	52.0	138,722
61	Syracuse	311,900	160,553	51.5	151,347
140	Tallahassee	124,200	69,658	56.1	54,542
17	Tampa-St. Pete. (Sarasota)	875,900	364,538	41.6	511,362
109	Terre Haute	160,200	70,339	43.9	89,861
57	Toledo	381,400	219,168	57.5	162,232
131	Topeka	134,000	70,294	52.5	63,706
118	Traverse City-Cadillac	149,300	59,326	39.7	89,974
91	Tucson	202,100	39,635	19.6	162,465
52	Tulsa	397,800	179,738	45.2	218,062
169	Tuscaloosa	39,500	32,278	81.7	7,222
195	Twin Falls	34,700	22,830	65.8	11,870
158	Tyler	89,400	59,685	66.8	29,715
151	Utica	131,300	92,278	70.3	39,022
206	Victoria	19,100	19,100	100.0	0
102	Waco-Temple	179,700	158,879	88.4	20,821
8	Washington, DC (Hagerstown)	1,363,900	213,081	15.6	1,150,819
164	Watertown-Carthage	76,700	40,480	52.8	36,220
130	Wausau-Rhinelander	134,100	42,580	31.8	91,520
81	West Palm beach (Ft P,V B)	244,300	194,756	79.7	49,544
111	Wheeling-Steubenville	156,800	109,127	69.6	47,673
54	Wichita-Hutchinson	393,300	141,913	36.2	251,387
110	Wichita Falls-Lawton	160,000	77,095	48.2	82,905
41	Wilkes Barre-Scranton	456,100	386,436	84.7	69,664
129	Wilmington	135,300	135,300	100.0	0
127	Yakima	140,500	84,028	59.8	56,472
80	Youngstown	251,100	100,350	40.0	150,750
203	Zanesville	27,700	22,042	79.6	5,658

1. Arbitron Estimates as of 1/1/79.
2. FCC Cable Bureau 1978 data.

Attachment 1.—Use of Cable Proxy

1. An examination of the cable figure of $62.07, which was used as a proxy for STV, suggests that we probably overestimate by a considerable margin what the STV station can actually expect to earn per household passed. The results of this close scrutiny shed further doubt on the projections of actual conventional service loss to STV in various markets.

2. As of December 31, 1978, there were 9,396,842 cable subscribers among 18,338,312 households that were passed by cable systems with pay channel(s).[1] Therefore 51.2% of the households passed are subscribers.[2] In a hypothetical market of 250,000 TV households, all passed by cable, we would expect 128,000 households to be cable subscribers (250,000 × 51.2%).

3. Total cable revenues generated per month by systems with pay serivce equals ($68,238,445 for basic cable *plus* $26,620,555 for additional pay cable services) $94,859,000.[3] Dividing this figures by: 9,396,842 cable subscribers reveals an average of $10.09 per month per subscriber. In the hypothetical market described earlier, 128,000 cable subscribers would pay an average of $10.09 per month totaling $1,291,520 per month. Dividing this latter figure by 250,000 homes passed (the maximum extent of the market) results in $5.17 in revenue for each household passed.[4]

4. In that same market of 250,000 television households and *zero* cable penetration, an STV station can expect to have a 10% penetration rate [5] or about 25,000 subscribers—the breakeven point for STV.[6] Since the average charge to an STV subscriber is about $20 per month, this particular market will generate about $500,000 per month in STV revenues (25,000 subscribers times $20). Dividing this $500,000 in the STV revenue by the 250,000 television households (total homes passed) [7] reveals that only two dollars accrues to STV for each household passed as opposed to the $5.17 assumed for cable in the analysis. Therefore, the cable figure used in our study (Appendix A) probably overstates the actual revenue that an STV operator can expect from a household passed by about 150%.

Attachment 2.—Sensitivity Study

1. In order to determine how sensitive our conclusions were to the estimate of STV revenues per station, we considered the unlikely possibility that there was a 25% error in our cable proxy for STV revenue. The $62.07 was increased by 25% to $77.59 which would make STV operation much more attractive when compared to the $109.04 which could be earned from conventional operation. Figure II shows the shift of the STV lines and the indicated cable penetration benchmarks that denote where one mode of operation is more attractive than another. With the assumption of greater STV revenue potential, one-station markets will still operate conventionally even at zero cable penetration (100% homes not passed). Two-station markets will also have conventional operation on both stations once 29.7% of the homes in the market are passed by cable (70.3% not passed). As can be seen in Table 2, all two-station markets exceed this cable penetration figure. Four-allocation markets would now need 64.9% homes passed to yield conventional service (up from 56%). Those markets that might be affected and thus come under closer scrutiny are Peoria, Illinois; Huntsville-Decatur, Alabama; Austin, Texas; Lubbock, Texas and Fort Smith, Arkansas. All of these markets have three of their four allocations on the air. Should the fourth be activated as a result of STV operation, there would be a net gain of service and no loss would occur. The three stations on the air in each market would be expected to stay in a conventional mode because all of these markets exceed the 53.2% homes passed by cable, the level needed to assure conventional service.

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[1] Paul Kagan Associates, *Pay TV Census*, December 31, 1978.

[2] 9,396,842 ÷ 18,338,312 = .512.

[3] Paul Kagan Associates, *Pay TV Census*, December 31, 1978.

[4] Dividing our proxy of $62.07 by 12 months also results in $5.17 per household *passed* per month.

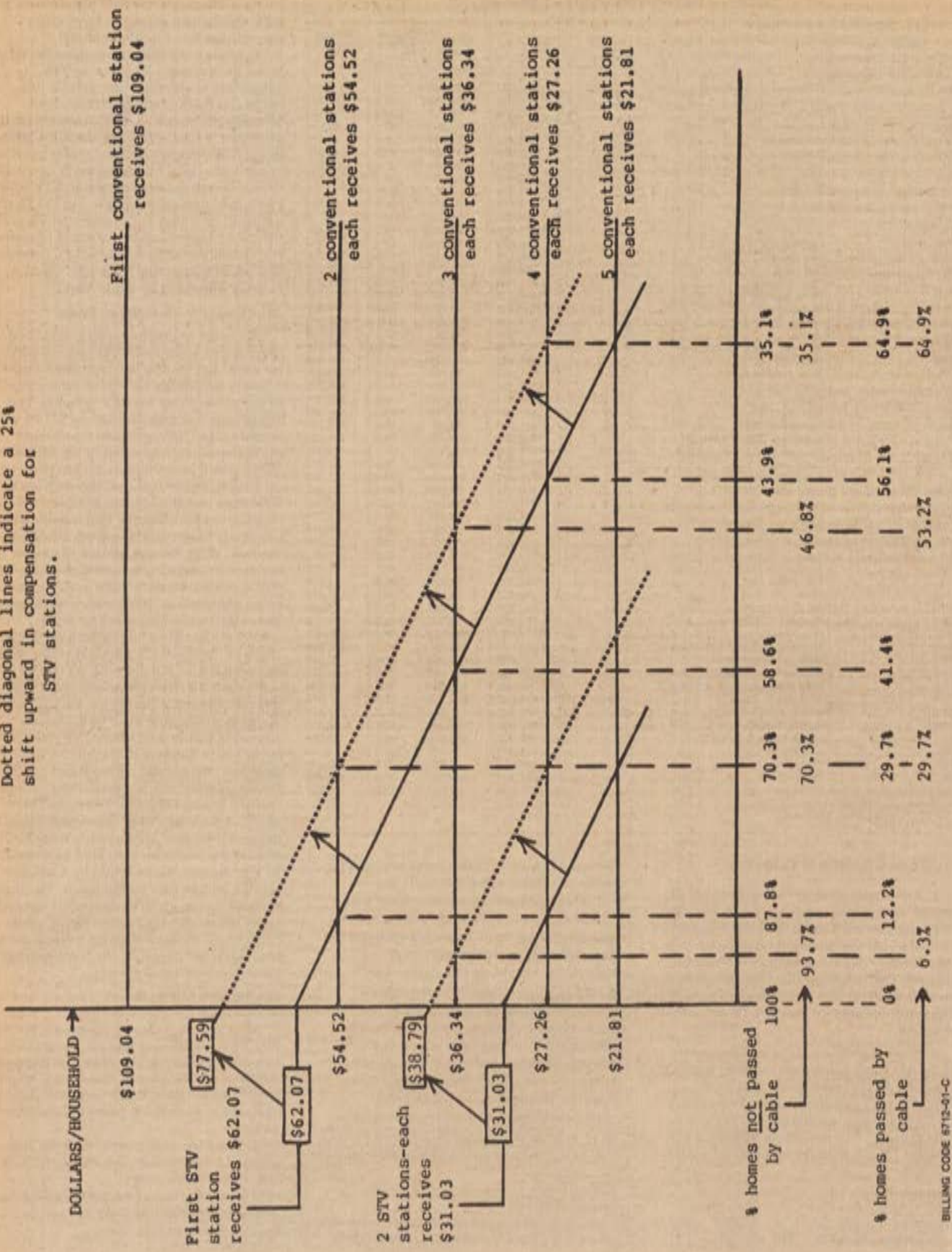
[5] See, Paul Kagan, *Pay TV Newsletter*, February 6, 1979. Stanford Research Institute, *Analysis of Consumer Demand for Pay Television Prepared for the Office of Telecommunication Policy*, May 1975. Blyth Eastman Dillon, *Report on Oak Industries* (Prepared by Raymond F. Jansen), undated circa 1979.

[6] Kristen Glen, *Report on Subscription Television*, prepared for the Network Inquiry Special Staff, FCC, October 1979, p. 100.

[7] It is assumed that all 250,000 households are within the signal pattern of the STV station and are therefore homes passed.

FIGURE II

Dotted diagonal lines indicate a 25% shift upward in compensation for STV stations.



2. The minimum cable penetration (homes passed) to maintain conventional service for three-station markets would shift from 41.4%. Five markets consequently require closer examination: Youngstown, Ohio; Johnson City-Bristol-Kingsport, Tennessee; Burlington-Plattsburgh, New York; Terre Haute, Indiana and Joplin-Pittsburg, Kansas. Three of these five markets—Johnson City-Bristol-Kingsport, Tennessee; Burlington-Plattsburgh, New York; and Joplin-Pittsburg, Kansas, have 49% of households passed by cable. This figure is very close to the 53% households passed by cable needed to discourage STV development. This fact and the likelihood of future cable growth may be sufficient to inhibit existing conventional station operators from switching to STV operation.

3. Terre Haute, Indiana, has only 43.9% of homes passed. This leaves only 89,861 homes not passed by cable which provide the potential to generate a subscriber level sufficient to make STV a viable operation. Several industry analysts suggest minimum subscriber levels for a breakeven point.[1] The lowest of these is 25,000 subscribers. For STV to survive in Terre Haute, an STV subscriber level of 27.8% of homes not passed by cable would have to be achieved. The percent of homes that are not passed by cable is a number that continues to contract in the face of universal cable expansion. Therefore, even with the 25% error factor, it would appear that conventional service will be maintained in Terre Haute.

4. Under the assumption of a 25% error in the STV revenue figure, Youngstown, Ohio, would appear to be a market with a good possibility of losing one conventional operation to STV. At 40% of households passed by cable in Youngstown, another 33,000 households would have to be passed to retain conventional service under this sensitivity study. Youngstown now has 150,000 homes not passed by cable so that for STV to be viable at 25,000 subscribers, only 17% of homes not passed by cable are needed to achieve that figure.

5. Under our sensitivity analysis assumptions, four-allocation markets are predicted to have two conventional stations and two STV stations when cable penetration is less than 6.3% homes passed. When the percent of homes passed exceeds 6.3%, three conventional services are expected. Only one market has less than 6.3% cable penetration—Anchorage, Alaska. With three stations operating, one vacant allocation and zero cable penetration, it would be expected that one conventional outlet would switch to STV. Even if the vacant allocation were to be activiated as an STV station, one of the three conventional stations would switch to STV because there is no cable competition. Therefore, according to Figure II, Anchorage would be expected to have two conventional stations, each receiving $36.34 per household and two STV stations each receiving $38.79 per household.

6. This sensitivity study has identified an additional 12 markets that would become candidate for possible loss of existing conventional service to STV if our STV revenue estimate was 25% too small. However, after taking the mitigating factors as described into account, only two additional markets appear to be true candidates for possible loss of service with the 25% error. They are Youngstown, Ohio, and Anchorage, Alaska.

[1] Kristen Glen, *Report on Subscription Television*, prepared for the Network Inquiry Special Staff, FCC, October 1979, p. 100.

Appendix B

Parties Filing Comments

American Broadcasting Companies, Inc.
American Civil Liberties Union
American Television and Communication Corp.
Blonder-Tongue Laboratories, Inc.
Buford Television, Inc.
Cleveland Associates Co.
Jesus Lives, Inc.
KCAU-TV et al.
Ledbetter, Theodore S., Jr.
Motion Picture Association of America, Inc.
National Association of Broadcasters
National Business Network, Inc.
National Subscription Network, Inc.
New Life Evangelistic Center, Inc.
Oak Broadcasting System, Inc.
Pay TV Corporation
Peter and John Radio Fellowship, Inc.
Radio Broadcasting Company
Subscription Television of America
Tarshis, Mark, B.
Teleglobe Pay-TV System, Inc.
The American Subscription Television Companies, Inc.
The National Cable Television Association, Inc.
Universal Subscription Television, Inc.
Video 44
Wometco Blonder-Tongue Broadcasting Corporation
Wometco Enterprises, Inc.
Wometco Home Theatre, Inc.

Parties Filing Reply Comments

American Subscription Television Companies, Inc.
Blonder-Tongue Laboratories, Inc.
National Business Network, Inc.
Pay [1] TV Corp.
Radio Broadcasting Company
Subscription [1] Television of America, Inc.
Wometco Blonder-Tongue Broadcasting Corp.
Wometco Enterprises, Inc.
Wometco Home Theatre, Inc.

Separate Statement of Chairman, Mark S. Fowler re: Further Notice of Proposed Rulemaking in STV

By its vote today the Commission has begun what I hope will be the final disassembly of one of the great regulatory tinker toys of the last decade—the subscription television rules.

It was necessary for the Commission to wrestle with a myriad of interrelated factual and philosophical questions on the nature of broadcast television service to have developed the current STV rules. Although the "complement of four" rule, the "twenty-eight hour" rule, and the STV ascertainment rules have slightly different underpinnings, they do share the common premise that somehow the public interest demands that STV stations should provide a substantial amount of conventional, ascertainment-based programming and should be allowed to preempt only a federally-determined number of channels that otherwise could be used for conventional television service.

And so here sits the Commission, deciding once again, in effect, that non-subscription, ascertainment-based programming is *good* for you—so good, in fact, that other types of programming ought not to replace it. And that's the concept I simply cannot accept.

It is axiomatic that the highest valued use of any resource is its most efficient use. Marketplace forces, rather than extrinsic regulation, should control broadcasters' decisions as to whether to use a given station to provide STV or conventional service. In saying this I do not mean that I endorse the idea that all conventional television should become pay television. I do not, nor do I believe there is even the remotest chance that this would occur. Whatever our fears in 1968, in the intervening years the broadcast industry has matured and stabilized. There is a far greater general market for conventional television than for STV and I doubt that even the largest urban areas could support a number of STV stations. It does not seem realistic to assume that conventional stations will be gobbled up by STV entrepreneurs in such quantities that this Commission should fret over the possibility.

This is not to say that in some situations a return to marketplace forces might not result in an increase in premium program service and a concomitant loss of conventional, ascertainment-based programming. However, my judgment at this time is that maintaining a stated amount of conventional service—whether by the "complement of four" rule or the "twenty-eight hour" rule of both—cannot be justified by an automatic assumption that premium or non-ascertainment based programming is somehow lower in a public interest pecking order.

In most if not all cases, STV serves the public interest *by definition* insofar as it provides programming in response to the directly-expressed needs and interests of those consumers who support it. To the extent STV successfully meets those needs and interests by its programming—whatever that programming is—it will prosper, and the Commission need not interfere. To the extent STV fails to present programming that reflects consumer needs and interests, it will fail, and no Commission interference ought to prevent that failure.

The course of this rulemaking will require us to reevaluate some fundamental suppositions that attach to our concept of how broadcast services generally serve the public interest. The reevaluation is long overdue, whatever its implications in this proceeding and beyond.

[1] The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party and their lateness did not exceed a few days, we shall consider them in this proceeding.

[FR Doc. 81-33418 Filed 11-19-81; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Small Numbers of Non-Depleted Marine Mammals

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for information and advance notice of proposed rulemaking.

SUMMARY: Advance notice is hereby given that the National Marine Fisheries Service (NMFS) intends to promulgate regulations under section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)) to authorize the incidental, but not the intentional, taking of small numbers non-depleted marine mammals requested by U.S. citizens who engage in a specified activity within a specified geographical region. Section 101(a)(5) directs the Secretary (Commerce or Interior) to allow such incidental taking, upon request, if the Secretary makes certain findings and prescribes certain regulations relating to permissible methods of taking, and the monitoring and reporting of such taking. The NMFS invites interested persons to submit information and suggestions on the specific types of activities and specific geographical regions for which authorization may be requested, as well as on the structure and content of the regulations NMFS is required to develop. The NMFS will consider this information in developing proposed regulations to implement section 101(a)(5).

DATES: Information should be submitted on or before December 21, 1981.

ADDRESS: All information should be submitted to: Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: R. B. Brumsted, Chief, Permits and Documentation Division, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7529.

SUPPLEMENTARY INFORMATION: Pub. L. No. 97–58 (approved October 9, 1981) amended the Marine Mammal Protection Act of 1972 by adding, among other things, a new section 101(a)(5) (16 U.S.C. 1371(a)(5)) which directs the Secretary to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, the incidental, but not the intentional, taking of small numbers of marine mammals. This permission may be granted for a period of five years or less. Such taking may be allowed only if the species involved is not depleted and if the Secretary, after notice and opportunity for public comment: (a) Finds that the total taking will have a negligible impact on the species and its habitat, and on the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. As used in this section, "negligible impact" means an impact which can be disregarded, and "incidental, but not the intentional, taking" means accidental taking, which includes harassing, capturing, or killing.

The NMFS is responsible for implementing this new section with respect to all cetaceans and all pinnipeds except walrus. In order to develop the proposed regulations required by the new section, NMFS invites information on the following:

(1) A description of specific activities other than commercial fishing that can be expected to result in incidental taking of marine mammals;

(2) The dates and duration of such activities and the specific geographical region where they are likely to occur;

(3) The species and numbers of marine mammals likely to be taken by age, sex, and reproductive condition, and the type of taking (e.g. disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

(4) A description of the status and distribution of the affected species or stocks likely to be affected by such activities;

(5) The anticipated impact of the activities upon the species or stock, and on the availability for taking for subsistence uses;

(6) The anticipated impact of the activities upon the habitat of any marine mammal populations, and the likelihood of restoration of the affected habitat;

(7) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(8) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activities or other means of effecting the least practicable adverse impact upon the affected species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(9) Suggested specification of classes of activities (e.g. marine geophysical activities such as seismic surveys, core drilling, vessel transport, hydrofoil operations, etc.) and geographical regions in which such activities might be authorized;

(10) Suggested means of accomplishing the necessary monitoring and reporting and of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activities;

(11) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

The NMFS solicits information and suggestions from interested persons in order to assist it in: (a) Identifying potential activities that may be authorized under Section 101(a)(5); (b) developing regulations relating to permissible methods of taking, monitoring and reporting; and (c) developing a system of processing individual requests for such permission to take. In particular, NMFS is aware that persons who engage in seismic activities that may affect marine mammals may be interested in authorization under section 101(a)(5). The NMFS specifically invites representatives of this industry as well as other concerned parties to submit relevant information so that appropriate implementing regulations can be developed.

After sufficient information has been received to develop necessary regulations, NFMS will consider individual requests to conduct specific activities in specific geographical areas. At that time, NMFS will invite information, suggestions and comments, through notice in the **Federal Register**, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activities.

After a finding a negligible impact and the promulgation of regulations relating to taking, monitoring, and reporting, NMFS likely will issue letters of authorization for persons to conduct the specific activities subject to the regulations. To insure that the purposes of section 101(a)(5) are satisfied, the letters of authorization may specify any terms and conditions that are

appropriate. Letters of authorization may be suspended if NMFS determines that the regulations prescribed are not being substantially complied with, or the allowed taking is having, or may have, more than a negligible impact on the species or stock concerned, its habitat or on the availability for subsistence uses.

(Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407))

Dated: November 12, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals & Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-33576 Filed 11-19-81; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 46, No. 224
Friday, November 20, 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

Soil Conservation Service

Grand Forks County Rural Flood Prevention R.C. & D. Measure, North Dakota

AGENCY: Soil Conservation Service, USA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. J. Michael Nethery, State Conservationist, Soil Conservation Service, P.O. Box 1458, Bismark, North Dakota 58502, telephone (701) 255–4011, Extension 421.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grand Forks County Rural Flood Prevention R.C. & D. Measure, Grand Forks County, North Dakota.

The environmental evaluation of this Federal action indicates that the project will not cause significant adverse local, regional or national impacts on the environment. As a result of these findings, Mr. J. Michael Nethery, State Conservationist, has determined that the preparation and review of any environmental impact statements are not needed for this project.

This measure plan will be the installation of protective works including moving or raising structures, flood proofing structures, diking and/or floodwall systems, or a combination of alternatives to provide the required flood protection for individual farmstead structures or rural dwellers.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting J. Michael Nethery, State Conservationist, Soil Conservation Service, Federal Building, Rooser Avenue and Third Street, P.O. Box 1458, Bismarck, North Dakota 58502. A combined environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the Finding of No Significant Impact are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until December 21, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 5, 1981.

J. Michael Nethery,

State Conservationist

[FR Doc. 81-33239 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-16-M

Northeast Calhoun Watershed, South Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: George E. Huey, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, telephone (803–765–5681).

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Northeast Calhoun Watershed, Calhoun County, South Carolina.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George E. Huey, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for erosion control on cropland and watershed protection. The planned works of improvement include the establishment of waterways, diversions, stripcropping, conservation tillage, field borders, cropland protective cover, sediment basins and related land treatment practices for watershed protection.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state and local agencies and interested parties. A limited number of copies of the Finding of No Singificant Impact are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting George E. Huey.

No administrative action on implementation of the proposal will be taken until December 21, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

George E. Huey,

State Conservationist.

November 9, 1981.

[FR Doc. 81-33237 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-16-M

Upper and Lower McKee Creek Watersheds (North Fork), Ill.; Intent To Deauthorize Federal Funding

Pursuant to Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of intent to deauthorize federal funding for the Upper and Lower McKee Creek Watersheds (North Fork), Adams, Brown, and Pike Counties, Illinois.

The environmental assessment consistent with Soil Conservation Service Guidelines (7 CFR Part 650), indicates that the federal action of

deauthorization of federal funding will not cause significant local, regional, or national impacts on the environment. Therefore an environmental impact statement will not be prepared.

Environmental assessment data may be reviewed by interested parties at the Soil Conservation Service, 301 North Randolph Street, Champaign, Illinois 61820.

No administrative action will be taken on this proposal until January 19, 1982.

Dated: November 12, 1981.

Warren J. Fitzgerald,

State Conservationist, USDA, Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 81-33376 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-16-M

Upper Tradewater River Watershed, Kentucky; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Eddie L. Wood, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504, telephone 606-23-2749.

Notice: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Tradewater River Watershed, Christian and Hopkins Counties, Kentucky.

The environmental assessment of this federally assisted action indicates that the project will not cause significiant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eddie L. Wood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The original work plan called for eight (8) floodwater retarding structures and approximately fourteen (14) miles of channel improvement. Six (6) floodwater retarding structures have been completed. Fourteen (14) miles of channel improvement has been deleted from the work plan. The planned action is to continue the ongoing land treatment programs and construct two (2) remaining floodwater retarding structures.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency, Office of Environmental Review. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Eddie L. Wood, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504. A Finding of No Significant Impact has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the Finding of No Significant Impact (FONSI) and/or Environmental Assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until December 21, 1981.

Dated: November 12, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Eddie L. Wood,

State Conservationist.

[FR Doc. 81-33378 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-16-M

Rural Electrification Administration

Arkansas Electric Cooperative Corp., Little Rock, Arkansas; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65), and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $40,000,000 to Arkansas Electric Cooperative Corporation (AECC) of Little Rock, Arkansas. This loan guarantee will be used to provide supplemental funds necessary to complete the financing of AECC's 35 percent undivided ownership interest in the White Bluff Steam Electric Station which consists of two 700 MW coal-fired generating units.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Carl S. Whillock, Manager, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219.

In order to be considered, proposals must be submitted on or before December 21, 1981 to Mr. Whillock. The right is reserved to given such consideration and to make such evaluation or other disposition of all proposals received as AECC and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 10th day of November 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-33433 Filed 11-19-81; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Commuter Fitness Determination

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
81-11-62	Air Kentucky Air Lines, Inc., d.b.a. Allegheny Commuter.	Dec. 3, 1981
81-11-63	Air Link Corporation	Do.
81-11-64	American Inter-Island, Inc	Do.
81-11-65	Wings West Airlines, Inc	Do.
81-11-66	Nova Flito Airways, Inc	Do.
81-11-67	Air East of Delaware, Inc	Do.
81-11-68	Liberty Airlines, Inc	Do.
81-11-69	Royale Airlines, Inc	Do.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their

responses on all persons listed in Attachment A of the respective orders and file response or additional data with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428; except for responses to Orders 81–11–62 and 69 which should be filed with the Essential Air Services Division, Room 921, Civil Aeronautics Board, Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

For further information contact: Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428 for Order 81–11–62: Ms. Corinne Grant, (202) 673–5102; for Orders 81–11–63 and 64: Ms. Patti Szrom, (202) 673–5088; for Order 81–11–65: Mr. Raymond Nadonley, (202) 673–5920; for Order 81–11–66: Mr. J. Kevin Kennedy, (202) 673–5918; for Order 81–1167: Mr. John McCamant, (202) 673–5082; for Order 81–11–68: Ms. Joyce Snovitch, (202) 673–5074; and for Order 81–11–69: Mr. John L. Quay.

By the Civil Aeronautics Board: November 12, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-33544 Filed 11-19-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 39595]

Japan Air Lines Co., Ltd., Against Northwest Airlines, Inc., "Export Inland Contract" Rates; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter, originally scheduled for November 16, 1981 (46 FR 55129) will now be held on November 20, 1981 at 10:00 a.m. (local time) in Room "B", Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., November 16, 1981.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 81-33542 Filed 11-19-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-11-66]

Fitness Determination of Nova Flite Airways, Inc.; Order To Show Cause

Section 419(c)(2) of the Federal Aviation Act directs us to determine whether commuter carriers providing service to an eligible point are "fit, willing, and able to perform such service," and that all aircraft used in this service conform to the safety standards established by the Federal Aviation Administration.[1] In making our fitness findings, we review data which demonstrate a carrier's managerial capabilities, financial posture, and compliance disposition. For carriers providing essential air service, we also examine data which reflect a carrier's ability to operate its service reliably.[2]

We have received the necessary information from Nova Flite Airways, Inc. (Nova)[3] and, upon review of this information and the safety and compliance information on the carrier received from the Federal Aviation Administration (FAA), the National Transportation Safety Board (NTSB), and our Bureau of Compliance and Consumer Protection (BCCP), we tentatively conclude that Nova is qualified to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that Nova is fit, willing, and able to provide commuter service.

The Carrier

Nova is a newly formed corporation.[4] It recently initiated on-demand air taxi operations between various Florida points and Freeport, Bahamas. Upon being authorized and found fit to offer passenger commuter service, it intends to inaugurate service between Daytona Beach and Miami, Florida.[5] Once established in that market, Nova plans to extend its commuter service to other cities in Florida.[6] The carrier's fleet currently consists of one seven-passenger Piper Navajo Chieftain aircraft.[7] Nova is properly registered with us and maintains insurance coverage as required by Part 298 of our Regulations. It is an applicant for certification by the FAA to conduct commuter operations and under Part 135 of the Federal Aviation Regulations. In addition, Nova has applied for an operating authorization from the Bahamian government.

Managerial Capabilities

Mr. Peter P. Vazquez is the carrier's president. A recent graduate of Embry-Riddle Aeronautical University with a baccalaureate degree in aeronautical science and aviation management, Mr. Vazquez has overall responsibility for the carrier's operations. A licensed commercial pilot, he brings to bear on his responsibilities five years of practical experience in various aspects of the airline business. Before organizing Nova, Mr. Vazquez had been a travel agent, a passenger service agent for a major foreign airline, a flight instructor, and a charter service pilot. Mr. Donald K. Gallion, Jr., Nova's vice president, was a classmate of Mr. Vazquez's at Embry-Riddle, graduating with honors in aeronautical science. While he is a licensed commercial pilot, his aviation background is primarily academic in nature. Nonetheless, he will be able to draw on five years of non-aviation marketing experience in directing Nova's marketing efforts. Nova's director of operations and chief pilot is Mr. Bernd Steinmetz. He has 16 years aviation experience, including service as chief pilot for other air taxi operators. Mr. Paul D. King, the director of maintenance, has held various supervisory aircraft maintenance positions during his 21 year career. Taking into consideration the experience of Nova's management personnel, we tentatively conclude that the carrier has the management and technical capability to satisfy this criterion of our fitness test.[8]

Financial Posture

Similarly, we tentatively conclude that Nova will be financially capable of

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[1] Part 204 of our rules sets forth the evidence we need to make fitness findings (ER–1180, 45 FR 42593, June 25, 1980). In adopting that rule, we concluded that the Act requires us to make fitness determinations for all commuters providing scheduled passenger service.

[2] For a more complete discussion of the requirements of section 419(c)(2) and the Board's fitness program, see Order 81–3–10, March 2, 1981.

[3] Nova filed the fitness data pertaining to carriers not currently providing essential air service. See § 204.7 of the Economic Regulations.

[4] The carrier was incorporated under the laws of the State of Florida on April 23, 1981. It is co-owned in five equal shares by Messrs. Peter Yazquez, Bernd Steinmetz, John Harrell Carmichael, and Drs. Agustin and Marina R. Vazquez. Each of the carrier's principals is a U.S. citizen.

[5] The carrier plans initially to offer three round trips daily between the points.

[6] Nova plans ultimately to provide commuter service to Tampa, Tallahassee, Orlando, Gainesville, and Jacksonville.

[7] Nova owns this aircraft. It intends to lease an additional, similar aircraft to supplement its commuter fleet, as necessary.

[8] Before authorizing a carrier to conduct commuter operations, the FAA evaluates the carrier's operations and maintenance directors, as well as its chief pilot, with respect to the minimum qualifications for these positions prescribed in 14 CFR 135 of the Federal Aviation Regulations.

providing scheduled service without undue risk to its passengers or their funds. Since being authorized to commence on-demand service, Nova has operated at a loss, a not uncommon situation for a fledging carrier.[9] Nonetheless, its principals have honored their commitment to support the carrier's operations with the funds necessary to continue service. Nova anticipates that the funds for initiating commuter operations will come from the sale of common stock to a limited number of investors, providing a substantial increase in the carrier's capital resources. The funds necessary for maintaining the proposed commuter service are expected to be generated by those operations.[10]

Compliance Disposition

We also tentatively conclude that Nova has the proper regard for the laws, rules, and regulations governing its operations to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed. The FAA informs us that Nova is currently operating on-demand service in accordance with Part 135 of the Federal Aviation Regulations; that it has applied for certification as a commuter carrier; that its application is currently under active consideration; and that final FAA action on the application is expected in the near future. The carrier has recently commenced operations and the NTSB report reflects no incidents or accidents. Similarly, our BCCP records reveal no complaints or enforcement actions against the carrier, nor any against its key personnel.

In view of the foregoing, we tentatively conclude that Nova is fit, willing, and able to provide scheduled passenger service, and that the aircraft used in this service conform to applicable safety standards.

We will give interested persons 15 days following the service date of this order to show cause why the tentative findings and conclusions made here should not be made final; replies will be due within 10 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order finding that Nova Flite Airways, Inc. is fit, willing, and able under section 419(c)(2) of the Federal Aviation Act to provide service as a commuter air carrier, and that its aircraft comply with applicable safety standards;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed fitness findings set out here to file such objections with Mr. Curtis B. Maloy, Chief, Special Authorities Division, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, and serve them on all persons listed in Attachment A no later than December 1, 1981; replies to objections will be due on December 11, 1981;

3. We will accord full consideration to the matters and issues raised in any timely and properly filed objections before we take further action; [11]

4. In the event no one files objections, we will deem all further procedural steps waived, and the Secretary will enter an order making final the tentative findings and conclusions set out here;

5. We will serve a copy of this order on the persons listed in Attachment A; [12] and

6. We will publish a notice of this order in the **Federal Register**.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-33543 Filed 11-19-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 39674]

United Air Lines, Inc., Compliance With Part 252, Enforcement Proceeding; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington D.C., November 17, 1981.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 81-33546 Filed 11-19-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 39464]

United Air Lines, Inc., Compliance With Part 252, Enforcement Proceeding; Reassignment of Proceeding

This proceeding is reassigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington D.C., November 17, 1981.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 81-33545 Filed 11-19-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Pig Iron From East Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On September 18, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pig iron from East Germany. The review covered the only known exporter of this merchandise to the United States, Deutsche Stahl-Metall, and the period October 3, 1978 through September 30, 1980. Interested parties were given an opportunity to submit oral or written comments on these preliminary results. The Department received no comments.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4793/5289).

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1968, a dumping finding with respect to pig iron from East Germany was published in the **Federal Register** as Treasury Decision 68-262 (33 FR 15904).

As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department of Commerce ("the Department") conducted an administrative review of the antidumping finding on this merchandise and published in the **Federal Register** on September 18, 1981 a notice of the preliminary results of the review (46 FR

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[9] Nova submitted unaudited financial statements covering its organization period and the three months since commencing on-demand operations in April 1981.

[10] Moreover, Nova's current principals have stated their willingness to continue using their personal assets to support the carrier. Mr. John Harrell Carmichael and the Drs. Vazquez have furnished personal financial information demonstrating their ability to satisfy this commitment.

[11] Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

[12] Attachment A filed as a part of the original document.

40910). The Department has now completed that administrative review.

Scope of the Review

Imports covered by this review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machinery parts. Pig iron is currently classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of only one exporter of pig iron from East Germany to the United States, Deutsche Stahl-Metall. The review covers the period October 3, 1978 through September 30, 1980. The Treasury Department reviewed all prior periods.

Final Results of the Review

There is no evidence of any importations of this merchandise during the period of review and there are no known unliquidated entries.

The Department received no comments on the preliminary results of its administrative review. Therefore, the final results are the same as the preliminary results.

Since the exporter has neither requested revocation nor provided the written agreement required by section 353.54(e) of the Commerce Regulations, we will not consider further the tentative revocation of this finding proposed by the Treasury Department.

As provided for in section 353.48(b) of the Commerce Regulations, a cash deposit of 70 percent, based on the margin calculated during the original fair value investigation, shall be required on all shipments of pig iron from East Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of October 1982.

This administrative review and notice are in accordance with section 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).

November 13, 1981.

Melinda L. Carmen,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-33527 Filed 11-19-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Jennifer Buchwald, et al.; Receipt of Application for Marine Mammal Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name: Drs. Jennifer Buckwald, Carl Shipley, & Robin Fisher (P204C), b. Address: Department of Physiology; Psychology, and Brain Research Institute; University of California, Los Angeles, California 90024.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Northern elephant seals (*Mirounga angustirostris) 4.*

4. Type of Take: To sacrifice two male and two female animals in order to complement vocal behavior studies by examining the anatomy of sound production and perception. Stomach samples will also be taken for food studies.

5. Location of Activity: San Nicolas Island, California.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before December 23, 1981. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 17, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-33575 Filed 11-19-81; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council's Administrative Subcommittee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Caribbean Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established an Administrative Subcommittee to assist the Council in carrying out its responsibilities. The Council's Administrative Subcommittee will meet to consider matters related to the Council's administrative operations including the status of fishery management plan development.

DATES: The public meeting will convene on Wednesday, December 16, 1981, at approximately 1:30 p.m., and adjourn at approximately 5 p.m.; reconvene on Thursday, December 17, 1981, at approximately 9 a.m., adjourn at approximately noon.

ADDRESS: The public meetings will take place at the Council's Headquarters, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108—Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753–4926.

Dated: November 17, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81-33572 Filed 11-19-81; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to discuss the summer flounder fishery management plan (FMP); status of other FMP's; the outer continental shelf lease sale #76;

advisory panel membership; foreign fishing applications, as well as other fishery management and administrative matters.

DATES: The public meetings will convene on Wednesday, December 9, 1981, at approximately noon and will adjourn on Thursday, December 10, 1981, at approximately 3 p.m. The meetings may be lengthened or shortened depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mid-Atlantic Fishery Management Council, Federal Building—Room 2115, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: November 17, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81–33573 Filed 11–19–81; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to give guidance to the Salmon Plan Development Team on issues to be addressed in the 1982 Salmon Plan amendment; a status report on Pacific Ocean perch; conduct a public comment period beginning at 2 p.m., as well as discuss other matters that may come before the Council by December 10, 1981.

DATES: The public meeting will convene on Thursday, December 10, 1981, in the King's Room of the Imperial Hotel, 400 S.W. Broadway, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Pacific Fishery Management Council, 526 S.W. Mill Street—Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: November 18, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81–33574 Filed 11–19–81; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Export Visa Requirement for Cotton, Wool, and Manmade Fiber Textile and Apparel Products from Macau

November 17, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Pursuant to the terms of the bilateral textile agreement, a new export visa requirement has been established for cotton, wool, and man-made fiber textiles and apparel exported from Macau which provides for the stamping of the export visa on the front side of the invoice (Special Customs Invoice form 5515, successor document, or commercial invoice when such form is used).

The Government of Macau has notified the United States that certain export visas issued between October 15, 1981 through October 27, 1981 have been stamped on the reverse side of the invoice (Special Customs Invoice form 5515, successor documents, or commercial invoice when that form is used) and has requested an automatic waiver for these shipments.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements which directs the Commissioner of Customs to permit entry of shipments of cotton, wool, and man-made fiber textile products, produced or manufactured in Macau and exported on and after October 15, 1981 and extending through October 27, 1981, which have visas stamped on the reverse side of the invoice (Special Customs Invoice for 5515, successor document, or commercial invoice when such form is used).

Effective date: November 18, 1981.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 17, 1981.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 11, 1981, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements which established a new export visa requirement for cotton, wool and man-made fiber textiles and apparel products from Macau.

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 November 29 and December 18, 1979, as amended, between the Governments of the United States and Macau; 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, effective on November 18, 1981, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile and apparel products in Categories 300–369, 400–469, and 600–669, produced or manufactured in Macau and exported on and after October 15, 1981 and extending through October 27, 1981 for which the Government of Macau has stamped visas on the reverse side of the invoice (Special Customs Invoice form 5515, successor document or commercial invoice when that form is used).

The actions taken with respect to the Government of Macau and with respect to imports of cotton, wool, and man-made fiber textile products from Macau 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.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81–33541 Filed 11–19–81; 8:45 am]

BILLING CODE 3510–25–M

Import Controls on Certain Cotton and Wool Apparel Products From Sri Lanka

November 18, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import controls on cotton trousers in Category 347 and on wool sweaters in Category 445/446, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on November 23, 1981 and extending through November 22, 1982, at respective levels of 306,979 dozen and 63,281 dozen.

(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) and October 27, 1981 (46 FR 52409)).

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 7, 1980, as amended, between the Governments of the United States and Sri Lanka, consultations were requested by the

United States on August 25, 1981, concerning imports into the United States, of cotton and wool textile products in Categories 347 and 445/446 from Sri Lanka. Notice of the intention to hold these consultations was published in the **Federal Register** on September 15, 1981 (46 FR 45792). Under the terms of the bilateral agreement, the Government of Sri Lanka is obligated to limit its exports to the United States of these products during the ninety-day consultation period which began on August 25, 1981 and extends through November 22, 1981 to respective levels of 74,663 dozen and 11,237 dozen in the event that no mutually satisfactory solution is reached during consultations. These ninety-day levels are currently being controlled by the U.S. Government (See 45 FR 50092).

The bilateral agreement, as amended, also specifies that Sri Landa is obligated to limit its exports to the United States of cotton trousers and wool sweaters in Categories 347 and 445/446, during the twelve-month period beginning on November 23, 1981 and extending through November 22, 1982.

Inasmuch as consultations with the Government of Sri Lanka have not yet reached a mutually satisfactory solution, the United States Government has decided, in carrying out its responsibilities in implementing the aforementioned provisions of the bilateral agreement, to prohibit entry of imports of cotton and wool textile products in Categories 347 and 445/446 in excess of 306,979 dozen and 63,281 dozen, respectively, during the twelve-month period beginning on November 23, 1981 and extending through November 22, 1982. Should a mutually satisfactory solution be reached in consultations with the Government of Sri Lanka, notice will be published in the **Federal Register.**

EFFECTIVE DATE: November 23, 1981.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On May 1, 1981, there was published in the **Federal Register** (46 FR 24618) a letter dated April 27, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain categories of cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on May 1, 1981. The notice document which preceded this letter described the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 347 and 445/446, which are not subject to specific ceilings and for which levels may be established during the year. A further letter to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements, published on October 9, 1981 (46 FR 50092), established levels of restraint of 74,663 dozen for Category 347 and 11,237 dozen for Category 445/446 during the ninety-day period which began on August 25, 1981 and extends through November 22, 1981.

In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry in the United States for consumption, or withdrawal from warehouse for consumption, of cotton and wool textile products in Categories 347 and 445/446, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on November 23, 1981 and extending through November 22, 1982, in excess of the designated levels of restraint.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: 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 July 7, 1980, as amended, between the Governments of the United States and Sri Lanka, 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 November 22, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 347 and 445/446, produced or manufactured in Sri Lanka and exported on and after November 23, 1981, in excess of the following levels of restraint:

Category	12-month level of restraint (dozen)
347	306,979
445/446	63,281

In carrying out this directive, entries of cotton and wool textile products in Categories 347 and 445/446 which have been exported to the United States on and after August 25, 1981 and extending through November 22, 1981 shall, to the extent of any unfilled balance be charged against the levels of restraint established for such goods during that period. In the event that the levels of restraint established for the period which began on August 25, 1981 and extended through November 22, 1981 have been exhausted by previous entries, such goods shall be subject to the levels established herein for the twelve-month period beginning on November 23, 1981. Also to be charged to the twelve-month level of restraint established for Category 445/446 are 2,833 dozen representing September 1981 imports, exported during the ninety-day consultation period which began on August 25, 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 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 F.R. 85142), May 5, 1981 (46 F.R. 25121), October 5, 1981 (46 F.R. 48963) and October 27, 1981 (46 F.R. 52409).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Sri Lanka and with respect to imports of cotton and wool textile products from Sri Lanka 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,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81–33793 Filed 11–19–81; 9:08 am]

BILLING CODE 3510–25–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1982 commodities to be produced by and services to be provided by workshops

for the blind and other severely handicapped.

EFFECTIVE DATE: November 20, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 24, 1981, September 4, 1981, and September 18, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (46 FR 38119, 46 FR 44494, and 46 FR 46375) of proposed additions to and deletions from Procurement List 1982, November 12, 1981 (46 FR 55740).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity and service are hereby added to Procurement List 1982:

Class 7510

Eraser, Mechanical Pencil
7510–00–307–7885

SIC 7349

Janitorial/Custodial
Ellsworth Air Force Base, South Dakota

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity and service are hereby deleted from Procurement List 1982:

Class 6230

Flashlight
6230–00–643–3486

SIC 5812

Catered Noon Meals
Armed Forces Examining and Entrance Station, Seattle, Washington

C. W. Fletcher,

Executive Director.

[FR Doc. 81–33552 Filed 11–19–81; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1982; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1982 commodities to be produced by workshops for the blind and other severely handicapped.

Comments must be received on or before: December 3, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1982, November 12, 1981 (46 FR 55740):

Class 3990

Pallet, Warehouse (40" x 48")
(Requirements for Army and Air Force Exchange Service, Oakland Army Base, California only)

Class 7510

Pencil, Fine-Line, Writing
7510–00–286–5755
7510–00–286–5750
7510–00–286–5751

C. W. Fletcher,

Executive Director.

[FR Doc. 81–33551 Filed 11–19–81; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1982; Establishment

Correction

In FR Doc. 81–32581, appearing on page 55740, in the issue of Thursday, November 12, 1981, make the following corrections.

1. On page 55740, second column, under **"CLASS 1005"**, the entry under "Sling, Adjustable, Small Arms (IB)" should read "1005–00–*167*–4336".

2. On page 55741, first column, eighth line, the material reading "(48x40x26')" should read "(48x40x36')".

3. In the same column, under **"CLASS 4910"**, "Creeper, Mechanic's (SH)", the first entry should read "4910–00–*251*–6981".

4. On page 55741, second column, under **"CLASS 5440"**, "Stepladder (IB)", the first entry should read "5440–00–*514*–4483".

5. On page 55741, third column, the eighth line from the bottom of the page "6530–00–299–9603" should be deleted.

6. On page 55742, first column, under **"CLASS 6532"**, the entries under "Gown, Hospital, Personnel (SH)" should have read:

6532–*01*–045–5380
6532–*01*–045–5381

7. On page 55743, third column, the fourteenth line from the bottom of the page, under "Envelope, Crystal Clear Vinyl (IB)", should read "7510–00–N*/B*–0003".

8. On page 55745, first column, the first eleven entries under "Paper, Looseleaf, Ruled (IB)", should read:

7530–*00*–286–6366
7530–*00*–286–4332
7530–*00*–286–4331
7530–*00*–286–4333
7530–*00*–286–4334
7530–*00*–286–4335
7530–*00*–198–6265
7530–*00*–286–4336
7530–*00*–286–4337
7530–*00*–286–4338
7530–*00*–286–4339

9. In the same column, under **"CLASS 7690"**, the seventeenth line reading "–Code 607 USPSW" should read "*7690*–Code 607 USPSW".

10. On page 55745, third column, thirty fourth line reading "7920–00–246–.930" should read "7920–00–246–*0*930".

11. On page 55747, third column, the ninth line under **"CLASS 8465"** reading "Bag, Soiled Clothes (SH) (IB)" should read "Bag, Soiled Clothes (SH)".

12. In the same column, the sixth line from the bottom of the page should read "8465–00–781–9564".

13. On page 55748, first column, the third line under **"CLASS 8520"**, "Soap, Toilet (IB)" reading "8520–01–141–2519" should read "8520–00–141–2519".

14. On page 55748, second column, third line under **"CLASS 9920"** was omitted. Above "Divider, Separation (SH)" add "U.S. Postal Items".

15. In the same column, the eighth line from the bottom of the page reading "P.S. Item #0816–A" should read "P.S. Item #0816–*B*".

BILLING CODE 1505–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Foreign Technology Division Advisory

Group, Air Force Systems Command, will hold meetings on December 17, 1981, from 8:00 am to 5:00 pm, and December 18, 1981, from 8:00 am to 1:00 pm, at Wright-Patterson Air Force Base, Ohio, Building 856, Room E202.

The Division Advisory Group will receive classified briefings and participate in review and discussions related to Foreign Technology Division assessment of foreign particle beam research and development. Review emphasis will be placed upon foreign capability to develop weapons quality beams.

The meetings concern matters listed in Section 552b(c), Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings are closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 81-33532 Filed 11-19-81; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 81-31-NG]

Natural Gas Imports From Canada; Northwest Pipeline Corp.; Application for Authorization To Extend Period and Increase Volumes

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 28, 1981 of an application from Northwest Pipeline Corporation (Northwest) to amend its authorization to import certain volumes of natural gas purchased from Westcoast Transmission Company (Westcoast) by extending the term of that authorization from December 31, 1981 through October 31, 1987, and by increasing the total volume of gas available for import.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m., December 7, 1981.

FOR FURTHER INFORMATION CONTACT:

Stanley Vass, Division of Natural Gas, Economic Regulatory Administration, 2000 M Street, N.W., Room 6304, RG-13, Washington, D.C. 20461, (202) 653-3623

Sue D. Sheridan (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue, S.W., Forrestal Building, Room 6E-042, Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: Pursuant to a contract dated September 23, 1960, the El Paso Natural Gas Company (El Paso) agreed to purchase certain volumes of natural gas from Westcoast to be imported at the Kingsgate, British Columbia import point. By an order issued August 5, 1960 in Docket No. G-18033 (24 FPC 134), the Federal Power Commission (the Commission) authorized El Paso to purchase from Westcoast and import up to 151,731 Mcf of natural gas per day through December 31, 1981, not to exceed a total of 1.02 Tcf over the term of the authorization. The Commission on September 21, 1973 issued orders in Docket Nos. CP73-331 and CP73-332 (50 FPC 825) authorizing Northwest to acquire and operate the facilities of El Paso's Northwest System Division, and to continue the importation of gas purchased from Westcoast as El Paso' successor in interest under the terms of the Commission's prior order in Docket No. G-18033.

By an agreement dated July 6, 1979, Northwest and Westcoast amended the September 23, 1960 contract to extend its term from December 31, 1981 through October 31, 1989. On April 30, 1979, Westcoast requested the National Energy Board of Canada (NEB) to amend Export License GL-4 to extend its term and to increase the volume available for export by 201 Bcf, thereby increasing from 1.02 Tcf to 1.221 Tcf the total volume available for export to Northwest. As recommended by the NEB, the Canadian Governor-in-Council on December 10, 1979, amended Export License GL-4 to permit Westcoast to continue exporting gas to Northwest through October 31, 1987, with a phased-in reduction of authorized volumes as follows:

December 10, 1981 through October 31, 1982—151,731 Mcf per day and 46 Bcf annually; November 1, 1982 through October 31, 1984—151,731 Mcf per day and 51 Bcf annually (no change from previously authorized daily and annual volumes);

November 1, 1984 through October 31, 1985—116,000 Mcf per day and 38 Bcf annually;

November 1, 1985 through October 31, 1986—76,000 Mcf per day and 26 Bcf annually;

November 1, 1986 through October 31, 1987—38,000 Mcf per day and 13 Bcf annually.

The export license as amended authorizes Westcoast to export a total of 1.245 Tcf of natural gas during the period covered by the license (1961-1987), of which 225 Bcf is authorized for export during the extended term of the license running from December 10, 1981 to October 31, 1987.

On August 28, 1981, Northwest filed an application requesting ERA to extend through October 31, 1987 its authorization to import gas from Westcoast at the Kingsgate import point and to increase the total volumes available for import by 201 Bcf for a total volume of 1.221 Tcf over the entire term of the authorization (1961 through 1987). On October 29, 1981, Northwest's supplemented its application to increase the volume requested for import to request 225 Bcf for a total volume of 1.245 Tcf over the entire term of the authorization.

Under its contract with Westcoast, Northwest is required to purchase and receive delivery of the lesser of (a) a minimum average daily volume of natural gas equal to ninety (90) percent of the maximum daily volume authorized or (b) the volumes of gas Westcoast is obligated to purchase under a specified list of gas purchase agreements. The contract provides that the price of the gas to be imported will be the international border price, currently $4.94 per MMBtu. Northwest states that if its application is approved, it will continue to sell the major portion of the gas to municipalities, distribution companies and pipeline companies in Idaho, Washington, Oregon, Colorado, Wyoming and Utah.

In support of its application, Northwest states that the proposed additional import will not be inconsistent with the public interest because it will provide up to 225 Bcf of natural gas to Northwest and its customers over the extended term of the import license. Northwest states that approval of its application will permit it to continue to meet customer requirements in northestern Washington and the panhandle of Idaho with existing facilities. Without the additional imports, Northwest states that it would have to make substantial modifications on the northern portion of its transmission system to assure adequate natural gas service to those areas. Northwest further states that extension of its import authorization is the most economical means of serving the market areas historically served through the Kingsgate import point.

Other Information

Any person wishing to become a party to the proceeding or to participate as a party in any conference or hearing which might be convened must file a petition to intervene. Any person may file a protest with respect to this application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements specified in 18 CFR 1.8 and 1.10. They should be filed with the Division of Natural Gas, Economic Regulatory Administration, Room 6304, RG–13, 2000 M Street, N.W., Washington, D.C. 20461. Because the applicant has requested that a decision be issued before December 31, 1981, all protests and petitions to intervene must be filed no later than 4:30 p.m., December 7, 1981. An official service list will not be available until after this intervention period is closed.

A hearing will not be held unless a motion for a hearing is made by a party or person seeking intervention and granted by ERA, or if ERA on its own motion believes that a hearing is necessary or required. A person filing a motion for hearing should demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of the application noticed herein is available for public inspection and copying in the Division of Natural Gas Docket Room, Room 6304, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on November 13, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-33548 Filed 11-19-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–FC–81–009; OFC Case No. 55027–3095–01,02,03–12]

Powerplant and Industrial Fuel Use; ARCO Petroleum Products Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemptions from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On March 18, 1981, ARCO Petroleum Products Company (ARCO) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking permanent exemptions for three new major fuel burning installations (MFBI's) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 et seq., (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. The procedure for petitioning and the criteria for an exemption from the prohibitions of FUA are contained in 10 CFR Parts 500, 501 and 503 published on June 6, 1980, at 45 FR 38276 and 38302.

ARCO initially requested a permanent exemption under 10 CFR § 503.32 based upon a lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum as a primary energy source for each of three new field-erected boilers (identified as Boiler House Units Nos. 1, 2 and 3), to be installed at ARCO's Phjiladelphia Refinery, Philadelphia, Pennsylvania. As explained in the SUPPLEMENTARY INFORMATION section below, ERA, with ARCO's concurrence, subsequently redesignated ARCO's petition as a petition for a permanent fuels mixture exemption for each of the three MFBI's under the provisions of 10 CFR 503.38.

Pursuant to section 212(d) of the Act, and 10 CFR § 503.38, and subject to specified terms and conditions stated herein, ERA hereby issues this order granting permanent fuels mixture exemptions to ARCO to permit the use of petroleum and/or natural gas in a mixture with refinery waste gas in Boiler House Units Nos. 1, 2 and 3. As specified in the terms and conditions, the amount of petroleum and/or natual gas used in each exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in each MFBI.

In accordance with section 702(a) of FUA, this order shall take effect on January 19, 1982.

FOR FURTHER INFORMATION CONTACT:

Richard A. Ransom, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653–3341

Robert Goodie, Case Manager, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653–3400

Douglas Mitchell, Office of General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–2967

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at Room 7120, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., Monday–Friday, 8:00 a.m.–4:30 p.m.

SUPPLEMENTARY INFORMATION: ERA published notice of its acceptance of ARCO's petition for cost exemptions under 10 CFR 503.32 in the **Federal Register** on May 15, 1981, at 46 FR 26810. As stated in that notice, ARCO, on March 20, 1981, filed a request with ERA for a determination that the refinery waste gas proposed to be used in the three MFBI's in a mixture with refinery fuel oil is an alternate fuel under the criteria contained at 10 CFR 500.2 (Definitions of "alternate fuel" and "petroleum"). As furthr noted by ERA in that notice, if the refinery waste gas were found to be an alternate fuel, then it would appear that ARCO's stated intention to limit the amount of refinery fuel oil to be burned in a mixture with the refinery waste gas in the three MFBI's to not more than 25 percent of each unit's total annual Btu heat input would qualify the three MFBI's for the permanent fuels mixture exemption by certification available under 10 CFR 503.38(d).

In a letter dated June 11, 1981, ERA advised ARCO that the gaseous waste by-product planned to be used as a fuel in the new units at the Philadelphia Refinery was determined to be an alternate fuel. ERA also stated in that letter that subject to ARCO's approval it will redesignate ARCO's petition, in accordance with 10 CFR 501.67, as a petition for a permanent fuels mixture exemtion for each boiler, and publish notice of redesignation of the petition in the **Federal Register.** ARCO, by letter dated July 15, 1981, approved the redesignation of its petition and submitted the certifications and environmental checklist required for a permanent fuels mixtures exemption under 10 CFR 503.38(d).

On September 1, 1981, ERA published in the **Federal Register** at 46 FR 43867, notice of redesignation of ARCO's petition as a petition for permanent fuels mixture exemptions and, pursuant to 10 CFR 501.3(d), noticed that with the submission of the certifications required under 10 CFR 503.38(d), ARCO's redesignated petition for permanent fuels mixture exemptions was complete and accepted. Simultaneously with the

notice of redesignation and acceptance, and after the ERA staff had reviewed and analyzed the information submitted by ARCO under the provisions of 10 CFR 503.38(d), ERA, pursuant to 10 CFR 501.64, published notice of the availability of the Tentative Staff Analysis prepared by the ERA staff. The analysis recommended that ERA issue an order which would grant ARCO permanent fuels mixture exemptions for Boiler House Units 1, 2 and 3 with the proviso that the amount of petroleum and/or natural gas used in each of the three MFBI's not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in each MFBI.

The combined notice provided a 45-day comment period during which interested persons could submit written comments on the redesignation of ARCO's petition, ERA's acceptance of the redesignated petition and the Tentative Staff Analysis and could request that a public hearing be convened. The period expired on October 16, 1981. No comments were received nor was a public hearing requested.

Decision and Order

Based upon review of the entire record of this proceeding, ERA has determined that ARCO has satisfied the certification requirements of 10 CFR 503.38(d). Therefore, pursuant to section 212(d) of the Act, and subject to the terms and conditions stated below, ERA hereby grants ARCO permanent fuels mixture exemptions to permit the use of petroleum and/or natural gas in a mixture with the refinery waste gas produced at the Philadelphia Refinery in the new Boiler House Units Nos. 1, 2 and 3. The total amount of petroleum and/or natural gas used in each exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in each MFBI.

Terms and Conditions: Section 214(a) of FUA and 10 CFR 503.38(e) provide ERA the authority to attach terms and conditions to any order granting an exemption. Accordingly, this order is granted subject to the following terms and conditions:

(1) The amount of petroleum and/or natural gas to be used in a mixture with an alternate fuel in each of Boiler House Units Nos. 1, 2 and 3, will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of each unit;

(2) The quality of any petroleum to be burned in each of the exempted units will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements; and

(3) Prior to operating Boiler House Units Nos. 1, 2 and 3, ARCO will secure all applicable environmental permits and approvals pursuant, but not limited, to the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act and the Resource Conservation and Recovery Act.

Reporting Requirements

In addition to the above standard terms and conditions, ARCO will, pursuant to 10 CFR 503.38(g), submit to ERA the following: (a) A certified statement indicating the date (or dates) Boiler House Units Nos. 1, 2 and 3 are first operated under the provisions of this order, and (b) Within 30 days of each anniversary date (or dates) of commencement of operation of Boiler House Units Nos. 1, 2, and 3, a certified statement of the percentage of petroleum and/or natural gas to total fuel consumed in each exempted MFBI during the preceding year. Such certifications shall be executed by a duly authorized representative of ARCO. Cite OFC Case Number 55027-3095-01, 02, 03-12 on each certification and send to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Attn: OFC Case No. 55027-3095-01, 02, 03-12, Box 4629, Room 6114, 2000 M Street, NW., Washington, D.C. 20461.

NEPA Categorical Exclusion Guidelines

On August 11, 1980, DOE published in the **Federal Register** (45 FR 53199) a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent fuels mixture exemption by certification, was identified as an action which normally does not require the preparation of an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. ARCO has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new MFBI's under exemption. The Environmental Checklist completed and certified to by ARCO pursuant to 10 CFR 503.15(b) has been reviewed by DOE's Office of Environmental Protection, Safety, and Emergency Preparedness in consultation with the Office of the General Counsel. ARCO's responses to the questions contained therein indicated that the operation of the new Boiler House Units Nos. 1, 2, and 3 will have no significant impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirm the applicability of the categorical exclusion to this FUA action. ERA has not received any public comments during this proceeding which raised questions regarding the application of the categorical exclusion in this instance. Therefore, no additional environmental review is deemed to be required.

Effectiveness of Order

This order shall take effect on January 19, 1982.

Judicial Review

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review in the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, at any time before January 19, 1982.

Issued in Washington, D.C. on November 13, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-33550 Filed 11-19-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-018; OFC Case No. 55368-3194-01-12]

Powerplant and Industrial Fuel Use; Jones & Laughlin Steel Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting an exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On July 14, 1981, Jones & Laughlin Steel Corporation (J&L) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent exemption for a major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*, (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. The procedure for petitioning and criteria for an exemption from the prohibitions of FUA are contained in 10 CFR Parts 500, 501 and 503 published on June 6, 1980, at 45 FR 38276 and 38302.

J&L requested a permanent fuels mixture exemption in order to burn petroleum and natural gas in a mixture with industrial and commercial waste oils and blast furnace gas in a new field-erected boiler (designated as #61 Boiler by J&L) at its Aliquippa Works located at Aliquippa, Pennsylvania. The industrial and commercial waste oils proposed to be used in the mixture consist of spent lubricants and crankcase sludge collected from gasoline service stations.

Pursuant to section 212(d) of the Act, and 10 CFR 503.38, and subject to specified terms and conditions stated herein, ERA hereby issues this order granting a permanent fuels mixture exemption to J&L to permit the use of petroleum and natural gas in a mixture with industrial and commercial waste oils and blast furnace gas in the #61 Boiler. As specified in the terms and conditions, the amount of petroleum and natural gas used in the exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the unit.

In accordance with section 702(a) of FUA, this order shall take effect on January 19, 1982.

FOR FURTHER INFORMATION CONTACT:

Richard A. Ransom, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653-3341

Robert Goodie, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 6114, Washington, D.C. 20461, Phone (202) 653-3400

Douglas F. Mitchell, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at Room 7120, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., Monday-Friday, 8:00 a.m.-4:30 p.m.

SUPPLEMENTARY INFORMATION: Under the authority of section 212(d) of the Act, 10 CFR 503.38 sets forth eligibility criteria and evidentiary requirements governing a permanent exemption for the use of petroleum or natural gas in a mixture with alternate fuels. Under 10 CFR 503.38(d), a certification alternative is available for MFBI's which will not burn more than 25 percent petroleum or natural gas in a mixture with an alternate fuel. J&L utilized the certification alternative in its permanent fuels mixture exemption petition.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published notice of its acceptance of J&L's petition in the **Federal Register** on September 1, 1981, at 46 FR 43870. The notice of acceptance provided a 45-day comment period during which interested persons could submit written comments on the petition for exemption or could request that a public hearing be convened. The period expired on October 16, 1981.

The ERA staff reviewed and analyzed the information contained in the record of the proceeding to that date and prepared a tentative staff analysis. The analysis recommended that ERA issue an order granting J&L a permanent fuels mixture exemption for its #61 Boiler, permitting the use of petroleum and natural gas in a mixture with industrial and commercial waste oils and blast furnace gas, with the proviso that the amount of petroleum and natural gas used in the MFBI not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the unit. Pursuant to 10 CFR 501.164, ERA published notice of the availability of the Tentative Staff Analysis in the **Federal Register** on October 1, 1981, at 46 FR 48286. The 14-day comment period prescribed in 10 CFR 501.164 for interested persons to submit written comments or request a public hearing on the Tentative Staff Analysis was incorporated into the remaining 16-days of the 45-day comment period provided in the notice of acceptance. The combined periods expired on October 16, 1981. No comments were received on ERA's acceptance of J&L's petition or on the Tenative Staff Analysis nor was a public hearing requested.

As required by section 701(f) and (g) of the Act, ERA provided copies of J&L's petition to the Environmental Protection Agency and the Federal Trade Commission for their comments. No comments were received from those agencies.

Decision and Order

Based upon review of the entire record of this proceeding, ERA has determined that J&L has satisfied the certification requirements of 10 CFR 503.38(d). Therefore, pursuant to section 212(d) of the Act, and subject to the terms and conditions stated below, ERA hereby grants J&L a permanent fuels mixture exemption to permit the use of petroleum and natural gas in a mixture with industrial and commercial waste oils and blast furnace gas in the new #61 Boiler. The total amount of petroleum and natural gas used in the exempted unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

Terms and Conditions

Section 214(a) of FUA and 10 CFR 503.38(e) provide ERA the authority to attach terms and conditions to any order granting an exemption. Accordingly, this order is granted subject to the following terms and conditions.

(1) The amount of petroluem and/or natural gas to be used in a mixture with an alternate fuel in the #61 Boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit.

(2) The quality of any petroleum to be burned in the #61 Boiler will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

(3) Prior to operating #61 Boiler under this exemption, J&L will secure applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act and the Resource Conservation and Recovery Act.

Reporting Requirements

In addition to the above standard terms and conditions, J&L will, pursuant to 10 CFR 503.38(g), submit to ERA the following: (a) A certified statement indicating the date #61 Boiler is first operated under the provisions of this order, and (b) Within 30 days of each anniversary date of commencement of operation of the #61 Boiler, a certified statement of the percentage of petroleum and natural gas to total fuel consumed in the #61 Boiler during the preceding year. Such certifications shall be executed by a duly authorized representative of J&L. Cite OFC Case Number 55368-3194-01-12 on each certification and send to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Attn: OFC Case No. 55368-3194-01-12, Box 4629, Room 6114, 2000 M Street, NW., Washington, D.C. 20461.

NEPA Categorical Exclusion Guidelines

On August 11, 1980, DOE published in the **Federal Register** (45 FR 53199) a notice of proposed amendments to guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the guidelines, the grant or denial of certain FUA permanent exemptions, including the

permanent fuels mixture exemption by certification, was identified as an action which normally would not require the preparation of an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion). This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. J&L has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new MFBI under exemption. The Environmental Checklist completed and certified to by J&L pursuant to 10 CFR 503.15(b) has been reviewed by DOE's Office of Environmental Protection, Safety, and Emergency Preparedness in consultation with the Office of the General Counsel. J&L's responses to the questions contained therein indicate that the operation of the new #61 Boiler will have no significant impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirm the applicability of the categorical exclusion to this FUA action. ERA has not received any public comments during this proceeding which raised questions regarding the application of the categorical exclusion in this instance. Therefore, no additional environmental review is deemed to be required.

Effectiveness of Order

This order shall take effect on January 19, 1982.

Judicial Review

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review in the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, at any time before January 19, 1982.

Issued in Washington, D.C. on November 13, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-33549 Filed 11-19-81; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Sauvage Gas Co.; Amended Proposed Remedial Order

Pursuant to 10 CFR 205.192, paragraphs (c) and (e), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of an Amended Proposed Remedial Order which was issued to Sauvage Gas Company of Oberlin, Kansas on the 4th day of November, 1981.

This Amended Proposed Remedial Order supersedes the Proposed Remedial Order which was issued to Sauvage Gas Company in Kansas City, Missouri on the 2nd day of October, 1981 (46 FR 51429, October 20, 1981).

This Amended Proposed Remedial Order charged Sauvage Gas Company with pricing violations in the amount of $24.9 million in sales of propane, butane, natural gasoline, and natural gas liquids during the time period September 1, 1973 through July 31, 1977.

A copy of the Amended Proposed Remedial Order, with confidential information deleted, may be obtained from Thomas A. Elliot, Acting District manager of Enforcement, 324 East 11th Street, Kansas City, Missouri 64106–2466. On or before December 21, 1981, file a Notice of Objection with the Office of Hearings and Appeals 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 12th day of November, 1981.

Robert Gerring,

Director, Enforcement, Program Operations Division, Economic Regulatory Administration.

Concurrence:

Robert G. Heiss,

Assistant General Counsel for Enforcement.

[FR Doc. 81-33459 Filed 11-19-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP82-27-000]

Cities Service Gas Co.; Notice of Application

November 16, 1981.

Take notice that on October 16, 1981, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–27–000 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 a pipeline tap, measuring, regulating and appurtenant facilities and the sale of natural gas to the Rural Water, Sewer, Gas and Solid Waste Management District No. 1 (Water District), Grady County, Oklahoma, for resale in and about the town of Pocasset, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to tap its East Niles 12-inch pipeline in Grady County, Oklahoma, and to construct measuring, regulating appurtenant facilities for delivery of natural gas to Water District for resale to its consumers in and around the community of Pocasset, Oklahoma.

Applicant estimates that the annual volumes required for the first three years of operation are 15,000 Mcf, 17,000 Mcf and 17,500 Mcf, respectively. Applicant estimates that the total cost of the facilities is approximately $17,680 which would be financed from funds on hand.

Applicant further states that the sale would not adversely affect any of its existing customers. It is explained that the instant proposal would make it possible for the resdents of the community to secure natural gas for heating somewhat less expensively than other current fuel costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. 81-33594 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-114-001]

Columbia Gas Transmission Corp.; Petition To Amend

November 16, 1981.

Take notice that on October 13, 1981, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP80-114-001 a petition to amend the order issued February 19, 1980, in the instant docket pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the commission's Regulations (18 CFR 157.7(b)) so as to authorize a waiver of the annual cost limitation for the construction of gas supply facilities prescribed by § 157.7(b)(1)(i) of the regulations for the calendar year 1981, all as more fully set forth in the petition to amend which is on file with the commission and open to public inspection.

It is stated that by order issued February 19, 1980, in the instant docket, Petitioner was authorized to construct and operate facilities to enable it to take into its certificated main pipeline system natural gas supplies during an indefinite period commencing March 1, 1980. Petitioner states that the total cost of the proposed facilities during any calendar year would not exceed $20,000,000 pursuant to § 157.7(b) of the Commission's Regulations. Petitioner requests waiver of the total cost limitation of $20,000,000. It proposes to increase the total project limitaton for calendar year 1981 to $26,000,000. Petitioner contends that the construction and operation of additional gas supply facilities is necessary in order to make new gas supplies available to its system supply. It is stated that the proposed increase is commensurate with the proposed construction taking into account the increases in the cost of equipment and expenses incident to the proposed facilities due to inflation. It is further stated that no single project to be constructed hereunder would exceed the single project cost limitation of $2,500,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 10, 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. 81-33595 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-32-000]

Comanche Natural Gas Co., Inc. (Applicant) and Lone Star Gas Co., a Division of Enserch Corporation (Respondent); Notice of Application

November 16, 1981.

Take notice that on October 21, 1981, Comanche Natural Gas Company, Inc. (Applicant), P.O. Box 145, Lawton, Oklahoma 73502, filed in Docket No. CP82-32-000 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Lone Star Gas Company, a Division of Enserch Corporation (Respondent), to establish a connection with Applicant's facilities and to sell natural gas to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests a connection to Respondent's line at a point approximately two miles south of Anyder, Oklahoma, for the purpose of distributing gas to the town of Indiahoma and approximately one hundered and twenty Comanche Indian housing units. Applicant explains that the volumes required is 300 Mcf per day or 65,000 Mcf per year for each of the first three years.

Applicant plans to install a 3-inch plastic pipeline from Respondent's line near Snyder, Oklahoma, through the center of the service area to a point on the west side of Cache, Oklahoma. Applicant asserts that it would install 1-inch and 2-inch lines around and into the adjoining service area. Applicant estimates the cost of construction to be $614,000 which would be financed from loans and grants obtained from the Comanche Indian Tribe. Applicant avers that after a period of three and one-half years the Comanche Indian Tribe would be owners of the entire system.

Applicant submits that except for the tap and meter installation no construction requirements by Respondent are known to be necessary.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10 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 156.9). 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. 81-33596 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 176-005]

Escondido Mutual Water Co.; Application for Amendment of License

November 16, 1981.

Take notice that Escondido Mutual Water Company (Applicant) filed on July 7, 1981, an application for amendment of its license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the Escondido Project No. 176. The project is located on Escondido Creek in San Diego County, California. Correspondence with the Applicant should be directed to: Mr. Richard S. Harper, Secretary, Escondido Mutual Water Company, 620 North Ash Street, Escondido, California 92027.

Project Description—Applicant proposes to construct: (1) a 700-foot long, 30-inch diameter buried steel penstock connecting to the existing Escondido Canal outlet structure; (2) a powerhouse, located on Bear Valley Creek, containing two generating units with a total rated capacity of 620 kW; and (3) associated electrical and transmission equipment. Applicant estimates that the average annual energy output of the proposed powerhouse would be 2,100 MWh. Project energy would be sold and distributed to consumers in the San Diego area.

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 Decembr 28, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "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. 81-33597 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-21-000]

Great Lakes Gas Transmission Co.; Notice of Application

November 16, 1981.

Take notice that on October 14, 1981, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP82-21-00 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 a 7,500 horsepower reciprocating compressor unit at its existing compressor Station No. 1 near St. Vincent, Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate a new 7,500 horsepower reciprocating compressor at its existing compressor Station No. 1 which location is the first point on Applicant's system at which gas received from TransCanada PipeLines Limited (TransCanada) at the U.S.-Canadian Boundary is compressed.

Applicant states that the proposed unit would be in addition to the three 5,500 horsepower rated units which Applicant currently owns and operates at this station. It is further stated that the proposed unit would provide spare capability which could be utilized in the event of a shutdown of an existing unit at Station No. 1. Applicant submits that it would also provide the capability to compress gas to a pressure of 750 psig on an emergency basis in the event of an interruption in contractual compression service by TransCanada.

Applicant states that the total cost of the compressor unit is estimated at $9,446,400 which cost would be financed from internally generated funds together with borrowing from banks under short-term lines of credit if required.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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 necessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33598 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4585-000]

Greenfields Irrigation District and Sun River Electric Cooperative, Inc.; Application for Preliminary Permit

November 16, 1981.

Take notice that Greenfields Irrigation District and Sun River Electric Cooperative, Inc. (Applicant) filed on April 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4585 to be known as the Gibson Dam Power Project located on the North Fork Sun River in Teton and Lewis and Clark Counties, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert M. Fagerberg, Manager, Greenfield Irrigation District, P.O. Box 157, Fairfield, Montana 59436.

Project Description—The proposed Project No. 4585 would consist of: (1) the existing U.S. Bureau of Reclamation concrete arch Gibson Dam; (2) a proposed 70-foot long penstock; (3) a proposed power plant with an installed capacity of about 12,200 kW; (4) a proposed 20-mile long 69-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output of the project is 37,000,000 kWh. It is anticipated that energy produced will be used by the Applicant to meet local summer pump irrigation energy demands. Any excess energy would be sold to Central Montana Electric Generation and Transmission Cooperative, Inc., of which Applicant is a member, or to the Montana Power Company.

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 engineering, environmental, and economic feasibility of the project, and to carry out consultation with Federal, State and local agencies. The Applicant

estimates the cost of studies to be $100,000.

Competing Applications—This application was filed as a competing application to the Gibson Dam Hydro Project No. 3693 filed on November 7, 1981, by Mitchell Energy Co., Inc. 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 Interven.—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 18, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENT," "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, 825 North Capitol Street, NE., 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. 81-33599 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4584-000]

Greenfields Irrigation District and Sun River Electric Cooperative, Inc.; Application for Preliminary Permit

November 16, 1981.

Take notice that Greenfields Irrigation District and Sum River Electric Cooperative, Inc. (Applicant) filed on April 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 4584 to be known as the Sun River Diversion Dam Power Project located on the North Fork Sun River in Teton and Lewis and Clark Counties, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert M. Fagerberg, Manager, Greenfield Irrigation District, P.O. Box 157, Fairfield, Montana 59436.

Project Description—The proposed Project No. 4584 would consist of: (1) the existing U.S. Bureau of Reclamation Concrete gravity-arch Sun River Diversion Dam; (2) a proposed 500-foot long penstock; (3) a proposed power plant with an installed capacity of about 2,300 kW; (4) a proposed 17-mile long 69-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output of the project is 10,500,000 kWh. It is anticipated that an energy produced will be used by the Applicant to meet local summer pump irrigation energy demands. Any excess energy would be sold to Central Montana Electric Generation and Transmission Cooperative, Inc., of which Applicant is a member, or to the Montana Power Company.

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 engineering environmental, and economic feasibility of the project, and to carry out consultation with Federal, State and local agencies. The Applicant estimates the cost of studies to be $100,000.

Competing Applications—This application was filed as a competing application to the Sun River Diversion Dam Project No. 3775 filed on November 21, 1981, by Cook Electric Co. 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 December 18, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTESTS," 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, 825 North Capitol Street, NE., 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. 81-33600 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-41-000]

Mississippi Valley Gas Co.; Notice of Application

November 16, 1981.

Take notice that on October 23, 1981, Mississippi Valley Gas Company (Applicant), P.O. Box 3348, Jackson, Mississippi 39207, filed in Docket No. CP82-41-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222(e) of the Commission's

Regulations for a certificate of public convenience and necessity granting blanket authorization to transport, sell and/or assign natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's regulations as well as § 284.203 thereof, 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 was declared exempt from the Natural Gas Act and the Commission's Regulations thereunder pursuant to section 1(c) of the Natural Gas Act by order issued July 25, 1956, in Docket No. G–10552 and is regulated by the Mississippi Public Service Commission.

Applicant states that a total of 58,665,499 Mcf of natural gas was received by Applicant in Mississippi from all sources during the most recent 12-month period ending August 31, 1981.

Applicant states that its proposed rates and charges for any transportation hereunder would be computed by using the portion of its weighted average annual unit revenue (per million Btu) generated by existing rates which is attributable to the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service). Applicant further states that its rate methodology would be based on its total company operating revenues ($132,059,191.64) for the twelve-month period ending September 30, 1979 (first twelve-month period following final state approval of last approved rate case), less purchased gas costs ($107,061,082.97) and direct and allocated distribution costs ($6,441,087.00) divided by system throughput (56,574,514 million Btu). Such derivation, it is submitted, would yield a current rate of 32.8 cents per million Btu.

Applicant asserts that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Further, Applicant requests that the Commission declare that the requested blanket certificate authorizes Applicant to assign, without compensation, all or any portion of its contractual right to receive surplus natural gas at any first sale without prior approval of the Commission, under the conditions and as provided for intrastate pipelines in § 284.163 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. 81-33801 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-26-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Notice of Application

November 16, 1981.

Take notice that on October 16, 1981, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82–26–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas for Iowa Electric Light and Power Company (Iowa Electric), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently authorized to transport up to 2,000 Mcf of summer maximum daily volume during the summer season to Iowa Power and Light Company (Iowa Power) for the account of Iowa Electric which volumes Iowa Power liquefied and stored for Iowa Electric. It is indicated that such deliveries were made to Iowa Power's Des Moines, Iowa, Town Border Station No. 1 located in Polk County, Iowa. Applicant states that during the winter season it delivered by displacement to the billing groups designated by Iowa Electric volumes of vaporized LNG at a rate of up to 9,000 Mcf of winter maximum daily volume. Total daily volumes designated for transportation by Iowa Electric were made available by Applicant's concurrent reduction of authorized deliveries to Iowa Power at Des Moines, Iowa, under Applicant's Rate Schedule CD–1.

It is asserted that Applicant was authorized to increase its peak day obligation by 257,000 Mcf per day of which an additional 15,000 Mcf per day of seasonal service is made available to Iowa Electric. Applicant asserts that with this increased seasonal service availability, Iowa Electric would no longer need the LNG it was providing to its customers.

Therefore, Applicant seeks to abandon its transportation agreement with Iowa Electric identified in the FERC Gas Tariff, Original Volume No. 2, as Rate Schedule T–16.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and

approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33602 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-581-001]

Pataya Storage Co.; Amendment to Application

November 16, 1981.

Take notice that on October 16, 1981, Pataya Storage Company (Pataya), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP80-581-001 pursuant to section 7(c) of the Natural Gas Act an amendment to its application filed September 30, 1980, in the instant docket so as to revise the proposed project to bring it into conformity with the comments and suggestions of the Commission's staff, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Pataya states that in the application filed on September 30, 1980, it requested authorization to construct and operate an underground gas storage facility in Mohave County, Arizona.

It is stated that by letter dated August 25, 1981, the Commission issued the Draft Environmental Impact Statement (DEIS) relating to Pataya's proposed project. Pataya further states that it has submitted additional data and information pursuant to requests of the staff and that technical conferences were held to explain more fully Pataya's proposal.

By this filing, Pataya amends its application so as to make changes in its proposed project to bring the same into conformity with comments and suggestions of the Commission's staff. Applicant asserts its belief that, as amended, the proposed project would alleviate various concerns as to certain aspects of the proposal.

Pataya states that the changes in the proposed project made by this amendment are the redesign of the evaporation pond, the location of the access road and new cost figures stated in 1983 dollars. The estimated total cost of facilities has been changed to $54,304,000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 10, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33603 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-28-000]

Texas Gas Transmission Corp.; Notice of Application

November 16, 1981.

Take notice that on October 19, 1981, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP82-28-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to the City of Munford, Tennessee (Munford) in lieu of Tipton County Utilities Company, Inc. (Tipton), all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant states that on September 18, 1981, Munford exercised its option to purchase the gas distribution system owned by Tipton. Applicant proposes herein to render natural gas service to Munford in lieu of Tipton. Applicant has filed with the Commission a *pro forma* service agreement between Applicant and Munford the term and conditions of which are identical to the present agreement between Applicant and Tipton. It is asserted that there would be no change in either quantity entitlements or contract demand with respect to the superseding agreement with Munford.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. 81-33604 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-3-013]

Transcontinental Gas Pipe Line Corp. and Michigan Wisconsin Pipe Line Co.; Notice of Petition To Amend

November 16, 1981.

Take notice that on October 23, 1981, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 and Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-3-013 a petition to amend the order issued April 4, 1979, as amended, in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas by Mich Wis for Transco from an

additional source of supply, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued April 4, 1979, as amended, they were authorized to transport and exchange natural gas pursuant to a gas transportation and exchange agreement. It is stated that such agreement provides that Transco would cause to be delivered to Mich Wis gas from certain wells located in the Mayfield West Field, Beckham County, Oklahoma, and that Mich Wis would redeliver thermally equivalent exchange volumes to Transco.

It is further stated that under the agreement Mich Wis delivers to Transco gas at receipt points in Jefferson Davis and Covington Counties, Mississippi, and that Transco take receipt of gas which Mich Wis purchases from East Cameron Block 38, offshore Louisiana. Mich Wis, it is asserted, is responsible for having such gas delivered to Transco at a point of interconnection between the Vermilion 22 pipeline with Transco's Central Louisiana Gathering System at Pecan Island, Vermilion Parish, Louisiana. It is stated that Transco redelivers thermally equivalent exchange volumes to Mich Wis at the points of redelivery designated in the agreement.

Petitioners state that Transco has obtained the right to purchase from Texaco Inc. quantities of gas from a new well in the Mayfield West Field. Petitioners propose herein to implement an amendment dated August 18, 1981, adding such new well from which Mich Wis would receive gas from Transco. It is stated that such well is the Cupp No. 2 Well.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 10, 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. 81-33805 Filed 11-19-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-3-000 and RP80-117]

Transcontinental Gas Pipeline Corp.; Order Accepting for Filing and Suspending Tariff Sheets, Subject to Conditions, Consolidating Proceedings and Establishing Procedures

Issued: November 12, 1981.

On October 13, 1981, Transcontinental Gas Pipeline Corporation (Transco) filed revised tariff sheets [1] to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff which would increase annual revenues from jurisdictional sales, transportation and storage service by $156 million or 4.97 percent above its effective base tariff rates.[2] This increase is 24.69 percent above jurisdictional revenues at present rates excluding purchased gas costs. The proposed effective date is November 13, 1981.

Transco states that the principle reasons for the filing are: (1) increases in costs related to facilities and transportation services necessary to attach new gas supplies; (2) increases in prepayments, including a provision for a potential "take-or-pay" liability; (3) increased labor and other operating expenses; and (4) an increase in the overall rate of return. Transco claims a need for an overall rate of return of 12.77 percent which would provide a 19.50 percent return on common equity. Common equity is 34.27 percent of total capitalization.

Public notice of Transco's filing was issued on October 16, 1981, providing for protests or petitions to intervene to be filed on or before November 3, 1981. Timely petitions to intervene have been filed by parties listed in Appendix B. All have demonstrated an interest in this proceeding which warrants their participation. Accordingly, the interventions will be granted. Untimely petitions to intervene have been filed by parties listed in Appendix C. These interventions will be granted on good cause shown and for having demonstrated an interest which warrants their participation in this proceeding.

Transco's increased rates are based on the twelve month period ending June 30, 1981, as adjusted for known and measurable changes in costs which are expected to be incurred by the end of the test period, March 31, 1982. Transco has reflected in the costs certain facilities which have not yet been certificated and placed in service. The Company requests a conditional waiver of § 154.63(e)(2)(ii) of the Commission's regulations to enable it ot reflect such costs in its filing, on the condition that it will eliminate the costs of facilities that have not been authorized and placed in service on the effective date of the rates.

The Commission finds that good cause exists to grant a waiver of § 154.63(e)(2)(ii) on the condition that Transco file revised tariff sheets on or before April 12, 1982, eliminating any costs associated with facilities that have not been placed in service as of March 31, 1982. Acceptance of Transco's filed tariff sheets will be further conditioned upon Transco filing revised tariff sheets and supporting data to reflect the actual balance of advance payments in Account 166 as of March 31, 1982, the cost of purchased gas reflected in the most recent PGA filing, and a statement of the effective GRI Funding Unit.

Transco has included an amount of approximately $426 million for prepayments for gas in rate base. Of this amount, approximately $142 million, represents the estimated increase in "take-or-pay" amounts relating to gas which Transco expects that it will be unable to obtain through the High Island Offshore System (HIOS). The Company states that its liability for gas prepayments is uncertain at this time. It therefore requests rate base treatment, so that the amounts may be collected subject to refund. In the alternative, Transco requests that the Commission approve, prior to April 13, 1982, *pro forma* tariff sheets [3] providing for a tracking mechanism, which will allow the Company to reflect in its sales and transportation rates any and all liability it is determined to have.

Petitioner, Public Service Commission of New York (PSCNY), requests that the *pro forma* tariff sheets that provide a tracking mechanism for "take-or-pay" amounts, be rejected inasmuch as they are proscribed by § 154.38(d)(3) of the Commission's regulations. [4]

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[1] *See, Appendix A.*

[2] The present rates are currently being collected subject to refund in Transco's proposed rate increase in Docket No. RP80-117.

[3] Original Sheet No. 259, Second Revised Volume No. 1 and Original Sheet No. 260.

[4] PSCNY, in its petitions also states that it "reserves" the right to contend that Transco's proposed issuance of long term debt at an estimated interest rates of 18 percent is imprudent. PSCNY, as party to this proceeding, is of course free to raise any relevant issues regarding Transco's proposed rate increase.

Transco filed an answer to PSCNY's request on November 4, 1981. In effect Transco states that there is no basis for rejection inasmuch as it has not proposed to make the *pro forma* tariff sheets reflecting the "take-or-pay" tracking mechanism effective pursuant to its Section 4 filing in this case. The Company has, however, requested approval of this tracking mechanism prior to April 13, 1981, *i.e.*, the effective date of the rates. We will deny without prejudice, Transco's request for advance approval of the *pro forma* tariff sheets reflecting the tracking mechanism. These *pro forma* sheets will be made part of the record of this proceeding. All parties will, therefore, be allowed to present evidence respecting the propriety of such a provision. In addition, we will allow Transco to include the prepayment amount in rate base. The issue of whether these amounts are prudent or are otherwise properly chargeable to the ratepayer, however, will be an issue in this proceeding.

Transco has also included *pro forma* tariff sheets which contain a storage tracking provision. This provision would allow the Company to track future storage cost increases by Consolidated Gas Supply Corporation and Texas Eastern Transmission Corporation. Transco submits that the tracking provision is similar to that approved in *Texas Eastern Transmission Corporation, et al., 11* FERC ¶ 61,284. Transco however, has not requested waiver of § 154.38(d)(3) of our regulations and states that it will place the provision into effect "only if and when approved by the Commission". Therefore, the *pro forma* tariff sheets will be accorded the same treatment as in Transco's last Section 4(e) rate increase filing.[5] The *pro forma* tariff sheets will be made a part of the record of this proceeding and all parties will be given an opportunity to present evidence with respect to the propriety of such a provision for possible prospective applications.

Based upon a review of Transco's filing, the Commission finds that the proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept Transco's revised tariff sheets for filing subject to the conditions set forth above.

In a number of suspension orders, the Commission has addressed the considerations underlying the Commission's policy regarding rate suspensions.[6] 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, unreasonable or in violation 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. No such circumstances have been presented here. Accordingly, the Commission will suspend the effectiveness of Transco's proposed rate increase for a period of five months until April 13, 1982.

In addition, Transco's last Section 4(e) rate increase filing, Docket No. RP80–117, is still pending. A review of the instant rate increase filing indicates that a number of issues of law and fact are common to both proceedings. Accordingly, Docket No. RP80–117 and RP82–3–000 will be consolidated for purposes of hearing and decision.

The Commission Orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Section 4, 5, 8 and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the rate increase proposed by Transco.

(B) Pending hearing and decision, and subject to the conditions of the ordering paragraphs below and those described in the body of this order, Transco's revised tariff sheets are accepted for filing and suspended for five months until April 13, 1982, subject to refund.

(C) Waiver of § 154.63(e)(2)(ii) of the regulations, to permit the inclusion in its cost of service of facilities not certificated and not in service, is granted subject to the condition that Transco file on or before April 12, 1982, revised tariff sheets reflecting the elimination of all costs associated with facilities not in service by March 31, 1982, provided that no offsetting adjustments shall be permitted except pursuant to Commission approved tracking provisions, or as required by this order, or as required by other Commission orders.

(D) The granting of the waiver is further conditioned upon Transco's revising its tariff sheets on or before April 12, 1982, to reflect the actual balance of advance payments in Account 166 as of March 31, 1982; the cost of purchased gas reflected in the most current PGA filing; and, the effective GRI Funding Unit, provided however, that the inclusion of a higher advance payments balance will not be permitted to increase the level of the original, suspended March 15, 1982.

(E) Docket Nos. RP80–117 and RP82–3–000 are hereby consolidated for purposes of hearing and decision.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge (18 C.F.R. § 3.5(d)), shall convene a prehearing conference in this proceeding to be held within 10 days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary to conduct further proceedings in accordance with this order.

(G) The Petitioners identified in Appendix B to this order are permitted to intervene in this proceeding subject to the rules and regulations of the Commission, *provided, however,* that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

Second Revised Volume No. 1

Twenty-Third Revised Sheet No. 12
Fourth Revised Sheet No. 13
Twenty-Third Revised Sheet No. 15

Original Volume No. 2

Twenty-Ninth Revised Sheet No. 52
Eleventh Revised Sheet No. 53
Twenty-Ninth Revised Sheet No. 121
Twenty-Fifth Revised Sheet No. 321
Eleventh Revised Sheet No. 351
Twenty-Second Revised Sheet No. 416
Sixth Revised Sheet No. 499
Second Revised Sheet No. 617–A
Second Revised Sheet No. 925–A
Second Revised Sheet No. 1018–A
Second Revised Sheet No. 1039–A
Second Revised Sheet No. 1200–A
Original Sheet No. 1546–A
Second Revised Sheet No. 1724–A
Second Revised Sheet No. 1730–A
Second Revised Sheet No. 1792–A
First Revised Sheet No. 1954–A
Second Revised Sheet No. 2169–A

[5] *See,* 12 FERC ¶61,096.

[6] *E. G., Valley Gas Transmission, Inc.,* 12 FERC ¶61,197 (one day suspension); *Great Lakes Gas Transmission Co.,* 12 FERC ¶61,293 (five month suspension).

Appendix B

Atlanta Gas Light Company
Brooklyn Union Gas Company
Carolina Pipeline Company
Columbia Gas Transmission Corporation
Commonwealth Gas Pipeline Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Delmarva Power & Light Company
Eastern Shore Natural Gas Company
Elizabethtown Gas Company
Frederick Gas Company, Inc.
General Motors Corporation
Long Island Lighting Company
National Fuel Gas Supply Corporation
New Jersey Zinc Company, Inc.
North Carolina Natural Gas Corporation
Owens-Corning Fiberglass Corporation
Pennsylvania Gas and Water Company
Philadelphia Electric Company
Philadelphia Gas Works
Public Service Commission of the State of New York
Public Service Company of North Carolina, Inc.
Public Service Electric & Gas Company
Union Oil Company of California
Virginia Electric & Power Company
Washington Gas Light Company

Appendix C

CF Industries, Inc.
Farmers Chemical Association, Inc.

[FR Doc. 81-33606 Filed 11-19-81; 8:45 am]
BILLING CODE 6717-01-M

Office of the Special Counsel

Ashland Oil, Inc.; Action on Consent Order

AGENCY: Department of Energy (DOE).

ACTION: Adoption of Proposed Consent Order As Final.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with Ashland Oil, Inc. ("Ashland"), executed on January 16, 1981 and published for comment in 46 FR 8096 on January 26, 1981, as a final order of DOE. The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period January 1, 1973 through July 31, 1980. To remedy any violations that may have occurred during the period, Ashland has agreed to refunds totalling $25 million.

As required by the regulation cited above, OSC received comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. Twenty-one comments were received by February 25, 1981, the thirtieth day following publication of the notice of the proposed Consent Order. Several comments were received after that deadline. OSC has considered all comments, including those that were filed late, and determined that the Consent Order should be made final with the modifications set forth herein. The Consent Order, as modified, was made effective by execution of the modified Consent Order on November 12, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20461 (202) 633-9165.

Copies of the Consent Order may be received free of charge by written request to: Ashland Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW, Room 3109, Mail Stop 4111, Washington, D.C. 20461

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C.

SUPPLEMENTARY INFORMATION:

The Consent Order

On January 26, 1981, OSC published notice in the **Federal Register** at page 8096, announcing the execution of a Consent Order between Ashland and OSC. In compliance with DOE regulations, that notice, and a press release issued on January 21, 1981, summarized the Consent Order and the facts behind it. The notice and press release also gave instructions for obtaining copies of the Consent Order.

The proposed Consent Order can be summarized as follows:

1. The Consent Order marks the conclusion of OSC's audit of Ashland's compliance with the Mandatory Petroleum Price and Allocation Regulations, including the entitlements and mandatory oil import programs, for the period January 1, 1973 through July 31, 1980 (the audit period). With the exception of the matters excluded from the settlement in the Consent Order, the Consent Order resolves all civil issues not previously resolved concerning the allocation and sale of covered products during the audit period.

2. Ashland was to distribute $10,000,000 to certain of its motor gasoline reseller customers to satisfy claims against Ashland. The initial **Federal Register** notice on January 26, 1981 set forth the procedures by which motor gasoline reseller customers of Ashland could assert a claim against Ashland for alleged violations of the Federal Petroleum Price and Allocation Regulations occurring during the period of the Consent Order. All payments from this fund are subject to the approval of OSC.

3. Ashland was to implement a program of price reductions or credit memoranda in the amount of $7,500,000 in sales of distillate and residual fuel oils to certain of its public utility customers, and in the amount of $7,500,000 to certain of its bulk transportation account customers and its current purchasers of middle distillates for residential space heating. To receive refunds or price reductions, the utility customer's rates must be subject to fuel adjustment clauses. Transportation account customers would receive refunds if they made purchases of products subject to federal controls. The amount of credit issued to each recipient would be determined according to a volumetric percentage of purchases and is subject to the approval of OSC.

4. Effective September 30, 1981, Ashland reduced its "banks" of unrecovered increased costs for motor gasoline to $75,000,000 and its "banks" of unrecovered increased costs for propane to $7,500,000. This reduction represents a substantial reduction in Ashland's banks.

5. Ashland was to make a commitment to increase its expenditures for domestic exploration and production by $100,000,000 in projects designed to enhance U.S. energy independence and the efficiency of Ashland's refineries and related capital facilities.

6. The Consent Order also provides details concerning the conclusion of the audit procedures concerning enforcement of the provisions of the Consent Order. These matters include Ashland's obligation under DOE recordkeeping regulations and DOE's obligation to maintain the confidentiality required by law of proprietary data received from Ashland. The Consent Order also provides that Ashland has waived its right to an administrative or judicial appeal of the Consent Order. The Consent Order does not constitute an admission by Ashland nor a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Modifications to the Consent Order

After careful consideration of the comments received in response to the

Notice of Proposed Consent Order and further negotiations with Ashland pursuant to paragraph 901 of the proposed Consent Order, the proposed Consent Order was modified as set forth below:

(1) The claims fund to be established by Ashland on behalf of its gasoline reseller customers pursuant to paragraph 401 of the Consent Order was increased to provide for payments of $18,911,889 to Ashland's gasoline reseller customers in satisfaction of all known or potential claims against Ashland arising out of the price and allocation regulations. Within 30 days of the effective date of the Consent Order, Ashland shall make distributions to reseller customers who submitted claims to Ashland before July 31, 1981. At the expiration of 15 days after the effective date, any undistributed funds will be set aside in a constructive fund from which distributions will continue to be made, and to which interest will be computed at the 90 day Treasury bill rate in effect at the first auction after the effective date of the Consent Order. At the expiration of 45 days after the Consent Order has become effective, the then existing balance of the constructive fund, if any, will be added to the amount to be credited to residential space heating customers pursuant to the remedy described below.

(2) The price reduction program in paragraph 402 of the proposed Consent Order was modified to provide that Ashland will issue credit memoranda in the aggregate amount of $6,088,111 to four categories of customers against future purchases from Ashland of distillates, residual fuel oils and aviation turbine fuel. Credit memoranda will be issued against future purchases of these products to (1) public utility customers whose rates are subject to fuel adjustment clauses, (2) bulk transportation account customers and (3) commercial aviation customers, who made purchases of the products when the products were subject to federal price and allocations regulations ("the control period"). All home heating customers will recieve a credit at a rate between 1.5 cents and 3 cents per gallon on purchases of middle distillates after November 1, 1981 until the amount allocated for that product is absorbed. The distribution among products and among customers is based on a volumetric allocation of the amount of product sold to Ashland's customers during the control period.

(3) Paragraph 503 was inserted to provide that Ashland shall dismiss with prejudice its action in *Mobil Oil Corp.* v. *Department of Energy;* and,

(4) Paragraphs 404 and 405, providing for $100,000,000 in exploration, production and refinery improvement projects by Ashland, were deleted. These modifications are discussed in greater detail below in response to specific comments.

Comments Received

As noted above, OSC received numerous comments on the proposed Ashland Consent Order. Comments were filed by customers of Ashland, the State of Minnesota, a school district and the Air Transportation Association. A law firm accounted for thirteen of these comments by filing separate, but virtually identical, comments on behalf of thirteen independent marketers of products purchased from Ashland. In addition, two organizations, the Transportation Group and the National Consumer Law Center, submitted comments that while generally addressed to all nine of the Consent Orders published for comment on January 26, 1981, raised issues pertinent to, or commented on features present in, this Consent Order.

The Transportation Group is an organization representing four trade associations—the Air Transport Association of America, Inc., the American Bus Association, the American Trucking Association, Inc., and the Association of American Railroads—whose members are major consumers of refined petroleum products. The Transportation Group indicated in its comments its approval of OSC's enforcement efforts and the settlement process that resulted in the Consent Orders announced in the January 26, 1981 **Federal Register** notices. The organization also expressed the following concerns regarding the nine Consent Orders: OSC should endeavor to identify overcharged purchasers or categories of purchasers in order to provide for direct refunds or payments based volumetrically on the amount of petroleum products purchased; transportation firms should receive a larger share of the refunds than they have heretofore; and OSC should provide additional information concerning refund amounts and methods of refund computation.

The Department's aim in structuring remedies is to achieve some form of restitution. In its enforcement actions, the Department attempts to identify individual purchasers or classes or types of purchasers, to the maximum extent possible, and to implement restitutionary remedies. However, there are several reasons why the audits do not ordinarily result in the identification of specific customers who may have been overcharged. First, audits are necessarily conducted on a sample basis and, as such, may not focus on specific purchasers, even where they generally identify aggregate violations regarding specific products to classes of purchasers. Second, these audits focus predominantly on "cost violations" and because of the nature of the regulations, would require tracing the violation to specific products sales in order to determine overcharge impact, a difficult task. Third, these violations occurred as much as seven years ago, and given the mobility within the distribution chain, it would be extremely difficulty to identify and locate injured customers. Finally, purchasers of products from a major refiner may have resold those products to others, passing on the consequences of any violation to their customers. However, as stated previously, the Department's priority is to seek remedies that provide some form of restitution, where possible. In order to achieve an equitable distribution of monies, the refunds have generally been determined according to a volumetric allocation based on the amount of product purchased by the recipient.

The Transportation Group accurately notes that OSC has previously determined that the refunds received by regulatd transportation firms will not constitute a "windfall" to the receipients. OSC's review of the operation of the agencies which regulate transportation companies and their applicable regulations indicate that refunds are factored into the fuel cost aspects of their rate making systems. Similarly, OSC is examining the passthrough of refunds by utilities to end users. To that end, OSC has contacted the public service commissions for the states in which the recipient utilities are located as well as a number of utilities themselves. The commissions have assured OSC that utilities receiving refunds will be required to pass those refunds through to their consumers. It has been determined that the utility customers will receive the benefit of the refunds by operation of fuel adjustment clauses in which the refund would appear as an offset to fuel costs in the computation of any fuel adjustment factor, or in the reconciliation of current costs, or, finally, reflected as direct credit to customers. OSC has also obtained assurances that the passthrough will be documented either in public records or through the assistance of the staffs of the various utilities and commissions.

The Transportation Group believes that refund recipients should be enlarged to include purchasers of

kerosene based jet fuel in addition to purchasers of diesel fuel. As discussed herein, the Consent Order has been modified to allow Ashland's airline customers to receive credit on future purchases from Ashland of aviation turbine fuels.

The Transportation Group's comment with regard to other remedies, e.g., that any benefit to the bank reduction remedy is compromised and made meaningless with the advent of decontrol, has been dealt with below.

The National Consumer Law Center (NCLC), a non-profit legal organization representing low-income individuals and groups, also submitted comments that were addressed generally to all nine Consent Order published for comment on January 26, 1981. The NCLC comments, however, raise several issues that are pertinent to this Consent Order.

Although the NCLC initially recognizes that the "limited flow of information * * * is admittedly somewhat inherent in the nature of the private settlement/public comment process," the NCLC nevertheless complains that the Consent Orders and the **Federal Register** notices are "extremely skimpy on relevant detail * * * ." The DOE regulations at 10 CFR 205.199J(a) require that a Consent Order "set forth the relevant facts which form the basis for the Order." The Consent Order itself indicates that, with the exception of the matters explicitly excluded from the settlement, it settles and finally resolves "all civil and administrative disputes, claims and causes of actions * * * relating to Ashland's compliance with the federal petroleum price and allocation regulations * * * ." Because the Consent Order constitutes neither an admission by the company nor a finding by DOE that Ashland has violated any federal petroleum price or allocation regulation, it would not be appropriate, as the NCLC suggests, to detail and quantity in the Consent Order the preliminary claims and issues that arose in the course of the settlements negotiations and to relate these claims and issues to the terms and conditions of the Consent Order. Further, to reveal how OSC and the company arrived at the dollar figures for the various components of the settlements would breach the confidentiality necessarily accorded to the negotiation process and would impinge upon OSC's prosecutorial discretion. Thus, OSC believes that it has provided the necessary information in the Consent Order and **Federal Register** notice to enable the public to comment meaningfully upon this settlement.

The NCLC also maintains that the Consent Orders do not provide adequate benefits, focusing particularly on the bank reduction provisions, and the "heavy reliance" placed on them in these settlements. NCLC seeks renegotiation of the agreements to convert the bank reductions to some cash value.

In the process that leads to settlement, OSC determines the potential liability of a refiner based on its audit of that refiner. That audit addresses all areas of dispute under the price regulations. As a result, the disputes focus on issues of the determination, recognition, allocation and carryover of costs, which form the basis for the determination of maximum lawful selling prices. Because of the carryover or banking provision, a refiner may have lawful costs available from previous periods to offest disputes in later months. The existence of those legitimate costs militates against the existence of overcharges. In litigation, a refiner is likely to argue that those banks obviate the possibility of overcharge. Thus, in determining a firm's potential liability, two factors are addressed: the legitimacy of the costs claimed and banked and the potential for overcharges, given the existence of banks and a firm's pricing practices. In reaching settlement, OSC has determined the amount of cash refund necessary to reasonably settle any possible overcharges, and the amount of bank reduction appropriate to settle the cost disputes. Bank reductions are appropriate to remedy certain types of disputes resulting from the audit. OSC had intended bank reductions to serve the dual purpose of satisfying the alleged cost violations and of placing some limitations on the refiner's prospective pricing of covered products. Accordingly, in negotiating the bank reduction, OSC sought a reduction to the lowest level consistent with allowing the refiner to maintain, but not increase, prices as a result of the existence of banks. That reduction may have even exceeded the reduction in costs necessary for a satisfactory resolution of the outstanding cost issues. As the NCLC and the Transportation Group point out, decontrol prevents the reduction from having the long-range prospective impact that was originally intended. However, the bank reduction was implemented by Ashland to be effective September 30, 1980, four months prior to the decontrol of crude oil. The refiner's pricing practices will be reviewed to determine that no overcharge has occurred as a result of reliance on the banks available before the reduction was implemented. In any event, the amount of refund remedies stands on its own in each case as the result of our negotiation of an appropriate refund, given the disputes raised.

NCLC questioned the use of capital investment commitments on similar grounds. The investment commitments are not directly restitutionary in nature nor do they represent compensation for violations. They work to the indirect benefit of the public by providing incremental domestic exploration and production, and expanded or improved refining capacity, all of which are designed to reduce dependence on foreign crude oil and foreign petroleum products. In this case, however, the parties agreed to delete the investment commitment provision due to economic incentive provided as a result of the decontrol of crude oil and petroleum products following the execution of the Consent Order.

With respect to the claims funds established in some of the Consent Orders, including this one, the NCLC expresses several concerns. Although the NCLC believes that the existence of the claims funds has not been adequately publicized, the inquiries OSC has received indicate that a wide spectrum of the public is aware of these settlements. A claims fund provides an option to those who believe they may have been overcharged to negotiate a settlement of their claims with the company. The Consent Orders provide the structure to enable interested claimants to file their claims. The process of negotiating a settlement of a claim is a matter between the company and claimant. In any event, claimants who do not believe that the settlement offered adequately satisfies their claims need not accept the offer and relinquish their rights and claims against the company.

As previously mentioned, for a variety of reasons discussed below, the amount set aside in the proposed Consent Order for the Ashland claims fund has been increased and claims were accepted beyond the original deadline. Ashland received a much larger number of claims than originally anticipated. Also, OSC and Ashland received inquiries from persons who did not learn of the initial **Federal Register** notice until after the stated deadline for filing claims had expired, and therefore, these claimants, who believed themselves entitled to a portion of the claims fund, would have been precluded from participating in the fund. Lastly, there were unanticipated delays in finalizing this Consent Order. The President's Executive Order to decontrol crude oil on January 27, 1981

and the large number of comments received on this Consent Order necessitated that the OSC reconsider the proposed Consent Order in order that the final Consent Order contain remedies appropriate in a decontrolled environment. The OSC believed that in light of the large number of claims by Ashland gasoline customers that the remedies should be reapportioned, and that those customers filing before July 31, 1981 should be accommodated.

The NCLC expresses concern that the refunds to many of the refiners' immediate purchasers may not be passed through to ultimate consumers. Each of these settlements utilizes "conduits" for passing a substantial portion of the refunds through to ultimate consumers. OSC chose as conduits regulated industries, such as the utility and transportation industries, for which some mechanism exists to assure a passthrough of benefits to their customers and state and local government entities that purchased petroleum products in their proprietary capacities. Specifically identifying the refund recipients in the Consent Orders would not only be cumbersome in those instances in which there are a large number of such recipients, but by revealing a firm's customers it would also disclose confidential and proprietary commercial information. Refunds to these conduits are, therefore, intended to provide general restitution to those unidentifiable ultimate consumers who, through their utility, transportation, or tax bills, may have borne any overcharges that might have occurred.

As already noted, OSC received many comments that were specifically addressed to the Ashland Consent Order. These comments raised many of the same issue addessed in the Transportation Group and NCLC comments, such as the need generally for more information about the settlement and the value of the bank reduction provisions in light of decontrol. OSC has addressed these points in its response to the Transportation Group and NCLC comments above, and will focus below on other matters raised in the specific comments.

Like the NCLC comments, other comments assert that OSC should have included more information about the settlement in the Consent Order. The types of information suggested for inclusion, however, involve either confidential or proprietary commercial or financial data (e.g., Ashland's price determinations) or information concerning confidential aspects of the settlement process. Many of these comments allege that OSC's failure to include more information in the Consent Order violated the provision in DOE's regulations, 10 CFR 205.199J(a), requiring that a Consent Order "set forth the relevant facts which form the basis for the Order." In *U.S. Oil Company, Inc.* v. *Department of Energy*, No. 81–C–196 (E.D. Wisc., March 27, 1981), Fed. En. Mgmt. (CCH) ¶ 26,312, in which the court refused to enjoin the proposed Consent Order with Koch Industries, Inc. (*see* 46 FR 8100 (January 26, 1981)), the court considered the issue of the sufficiency of the information provided in the Consent Order and held that "as a matter of law, the information set forth by DOE in * * * the proposed Consent Order compl[ies] with its own regulations requiring the setting forth of relevant facts upon which the order is based." *Id.* at p. 28,415. *See* also, *Minnesota* v. *Standard Oil*, No. 4–80–461 (D. Minn., June 18, 1981), Fed. En. Mgmt. (CCH), ¶ 26,316 (upholding the sufficiency of information in a DOE Consent Order). Many of the comments—the separate, but virtually identical, comments filed by a law firm on behalf of 13 independent marketers—also assert that DOE's failure to disclose the audit data on which it relied in reaching the settlement violates fundamental fairness and the Fifth Amendment to the Constitution. Neither the Administrative Procedure Act, nor any other statute, however, requires DOE to provide the public with notice of, or set forth relevant facts regarding agency Consent Orders. Nor do persons who are not parties to a Consent Order have a "property" or "liberty interest" sufficient to invoke rights to procedural due process under the Fifth Amendment to the Constitution. *See Action on Safety and Health* v. *FTC*, 498 F. 2d 757 (D.C. Cir. 1974). In short, the information set forth in the Consent Order complies with all applicable legal requirements.[1]

Comments submitted by the law firm on behalf of the 13 independent marketers of Ashland's products complained that the Consent Order "permits the destruction of all records relevant to Ashland's violations * * * [and that] the exemption from the recordkeeping requirement would make it impossible for * * * [an] overcharged purchaser to discover evidence necessary to support its claims and to prosecute a potential action for damages pursuant to Section 210 of the ESA." In paragraph 601, which relieves Ashland of its duty to comply with the recordkeeping requirements of 10 CFR 210.92 for the period covered by the Consent Order, OSC has exercised the authority conferred by 10 CFR 210.92(d)(2)(B) to remove a requirement, the need for which no longer exists. With the completion of OSC's audit and the settlement of all disputes and claims for the period covered by the Consent Order, the records which were maintained by the company to demonstrate to DOE its compliance with the pricing and allocation regulations are no longer needed. Moreover, as the court in *U.S. Oil, supra*, noted. "[t]he recordkeeping provisions established by DOE were never intended to assist private litigants. They were designed and created to assist the DOE in determining whether the * * * major oil refiners and producers were complying with the price regulations." Fed. En. Mgmt. (CCH) at p. 28,413.

The State of Minnesota requested the release of information gathered by DOE as a result of its audit of the company and questioned the recordkeeping provision in the Consent Order. DOE's response to the NCLC comments and the comments submitted by the law firm representing independent marketers adequately deals with each of the respective issues.

Minnesota also expressed reservations with the provision which states that DOE will not voluntarily participate adversely to the company in any administrative or civil proceeding relating to Ashland's compliance with the federal petroleum price and allocation regulations settled by this Consent Order. The purpose of the Consent Order is to resolve the outstanding issues between DOE and the company. DOE's agreement to forego voluntary participation in private party litigation involving these issues conforms to the understanding between the company and DOE that such disputes are separate and apart from the matters resolved by this order. However, the agreement to avoid DOE involvement in such private actions does not bar DOE from complying with

[1] Moreover, neither case cited in the comments [*Armstrong* v. *Manzo*, 380 U.S. 545 (1956) and *U.S. Lines* v. *Federal Maritime Commission*, 584 F.2d 519 (D.C. Cir. 1978)], supports the commentors' position. In *Armstrong*, the Supreme Court held that in a situation involving an adjudicative hearing concerning a step-father's adoption of his step-daughter, the court must give the natural father prior notice of the hearing so that he may object to the adoption and demonstrate his compliance with the applicable state law. A Consent Order is not analogous to an adjudicative hearing and, in any event, DOE has provided interested persons with notice before taking any final action. In *U.S. Lines*, there was a statutory requirement that the agency hold a hearing before taking any final action, and the court determined that agency action resulting from that hearing must be based upon substantial evidence on the record of that hearing. There are no similar requirements for DOE Consent Orders.

any court order requiring the agency to participate in such litigation.

The Air Transport Association of America ("ATA") filed comments supporting the Consent Order process, and in particular, the process of instituting refunds through volumetric distribution. However, it commented that the cash component was relatively small and urged larger cash payment provisions in the future. OSC and Ashland mutually agreed on the remedies in the instant Consent Order after prolonged negotiation and assessment by OSC of the benefits to be gained from this settlement in contrast to what would be derived from pursuing these violations through enforcement actions. The total remedies are a satisfactory resolution of Ashland's potential liability given the expenditure of time and resources necessary to litigate the enforcement issues to their conclusion, and thus, it is believed, the Consent Order is in the public interest.

The ATA also advocated the inclusion of purchasers of aviation jet fuel in the group of refund recipients. As noted above, to the extent that Ashland's customers purchased jet fuel during the period of the Consent Order, those customers will now be permitted to receive a credit on future purchases of aviation turbine fuel. Such purchasers, representing a small component of Ashland's sales, will be eligible to obtain credit memoranda on the same bases as other transportation customers.

A utility customer questioned whether it would be eligible to receive a credit under the Consent Order because it purchased residual fuel from Ashland during 1978–1979 pursuant to an arrangement between Ashland and another refiner with which the utility had a contract. The amount of the recipients' credit pursuant to the Consent Order is determined by the amount of product purchased during the period in which the product was controlled. Because residual fuel oil was decontrolled in 1978 and 1979, the utility is not eligible to receive a credit as a former utility customer of Ashland based on its purchases of residual fuel in 1978–1979.

Several comments, some of which were filed after the deadline for the comment period had expired, advocated the extension of the claims fund to expand the opportunity to file a claim with Ashland. These small customers believe that otherwise they would be precluded from obtaining from Ashland. As noted above, due to the relatively large number of calls and comments received by OSC and Ashland concerning the deadline for submitting claims, the parties agreed to expand the fund to include all claims received by July 31, 1981.

Having considered all comments submitted, DOE has determined that the proposed Consent Order with Ashland should be made final with modifications, summarized herein. The Consent Order became effective on November 12, 1981, the date the Consent Order containing the modifications was executed.

Issued in Washington, D.C. November 16, 1981.

Bethel Larey,

Acting Special Counsel.

[FR Doc. 81-33458 Filed 11-19-81; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and high cost gas incremental pricing threshold which are to be effective December 1, 1981. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. Ave., N.W., Rm 4121, Washington, DC 20461, (202) 633–9710.

Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	3.81
Arizona [1]	3.66
Arkansas [1]	3.22
California	3.63
Colorado [1]	3.82
Connecticut [1]	4.13
Delaware [1]	3.91
Florida	3.97
Georgia [1]	4.03
Idaho [1]	3.82
Illinois	3.94
Indiana [1]	3.98
Iowa [1]	4.03
Kansas	3.69
Kentucky [1]	3.98
Louisiana	3.16
Maine	4.10
Maryland [1]	3.91
Massachusetts	4.09
Michigan [1]	3.98
Minnesota [1]	4.03
Mississippi [1]	4.03
Missouri	3.71
Montana [1]	3.82
Nebraska [1]	4.03
Nevada [1]	3.66
New Hampshire [1]	4.13
New Jersey [1]	3.91
New Mexico [1]	3.22
New York	3.85
North Carolina [1]	4.03
North Dakota [1]	4.03
Ohio	3.82
Oklahoma [1]	3.22
Oregon [1]	3.66
Pennsylvania [1]	3.91
Rhode Island [1]	4.13
South Carolina [1]	4.03
South Dakota [1]	4.03
Tennessee	4.01
Texas [1]	3.22
Utah [1]	3.82
Vermont [1]	4.13
Virginia [1]	4.03
Washington [1]	3.66
West Virginia [1]	3.98
Wisconsin [1]	3.98
Wyoming	3.52

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79-21.

Section II. Incremental Pricing Threshold for High Costs Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during September 1981 was $40.11 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective December 1, 1981, is $8.99 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. 81–28, established that price ceilings should be published for only the 48 contiguous states on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of July 1981, August 1981, and September 1981.[1] All reports of volume sold and price were identifed by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective December 1, 1981, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, July 1981, August 1981, September 1981. Reported prices for sales in July 1981 were adjusted by the percent change in the nationwide volume-weighted average price from July 1981 to September 1981. Prices for August 1981 were similarly adjusted by the percent change in the nationwide volume-weighted average price from August 1981 to September 1981. The volume-weighted 3-month average of the adjusted July 1981 and August 1981, and the reported September 1981 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Prices.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base of determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4.) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* the EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending November 13, 1981, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of September 1981. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C., November 18, 1981.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 81-33836 Filed 11-19-81; 10:25 am]

BILLING CODE 6450-01-M

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1990-1]

Availability of Environmental Impact Statements

Responsible Agency: USEPA, Office of Federal Activities.

Information Contact: Ms. Kathi Wilson, (202) 245-3006.

EIS's Filed: November 9-13, 1981.

Comment Due Dates:

Drafts—January 4, 1982.

Finals—December 21, 1981.

DOC: National Oceanic and Atmospheric Administration (NOAA): Draft—Atlantic Groundfish Interim Fishery Management Plan (EPA EIS #810935)

DOC: NOAA: Final—Groundfish FMP, Bering Sea and Aleutian Islands, Alaska (EPA EIS #810928)

DOI: Bureau of Indian Affairs: Final—Crow/Shell Coal Lease Agreement, Big Horn County, Montana (EPA EIS #810937)

DOI: Bureau of Reclamation: Final—Modification of Buffalo Bill Dam, Shoshone Project, Park County, Wyoming (EPA EIS #810929)

DOT: Federal Aviation Administration: Final—Tweed-New Haven Airport Approach Lighting System, New Haven County, Connecticut (EPA EIS #810932)

DOT: Federal Highway Administration (FHWA): Final—CO-82/Carbondale-East, CO-133 to Wingo Junction, Garfield and Eagle Counties, Colorado (EPA EIS #810933)

DOT: FHWA: Final—TN-61, Hillcrest Street to Clinch River, Anderson County, Tennessee (EPA EIS #810931)

Department of Housing and Urban Development: Draft—San Jacinto Heights, Mortgage Insurance, Montgomery County, Texas (EPA EIS #810936)

USDA: Soil Conservation Service: Final—Plum Bayou Watershed Protection, Jefferson County, Arkansas (EPA EIS #810930)

Department of the Navy: Final—Feral Animal Removal, San Clemente Island, California (EPA EIS #810934)

Extended review: DOI: National Park Service: Draft—US 101 Bypass, California—Due 12-1-81 (EPA EIS #810779)

COE: Draft—Cowanesque Lake Reformulation Study, Pennsylvania—Due 12-21-81 (EPA EIS #810883)

Reestablishment of review period: USDA: SCS: Final—Indian Creek-Van Buren Watershed, Iowa and Missouri—based on actual availability: Date filed 11-13-81; due 12-21-81 (EPA EIS #810899)

Dated: November 17, 1981.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 81-33582 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-37-M

[OPTS-51351; TSH-FRL-1989-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirments for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of two PMNs and provides a summary of each.

DATE: Written comments by: PMN 81-578 and 81-579, January 8, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51351]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-578

Close of Review Period. February 7, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over $500 million.

Manufacturing site—Midwest region.

Standard Industrial Classification Code—28.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Modified polyethylene oxide.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 2 workers may experience dermal exposure 1 hr/day, 30 days/yr during transfer operations.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is to an approved landfill or by incineration.

PMN 81-579

Close of Review Period. February 7, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over $500 million.

Manufacturing site—Midwest region.

Standard Industrial Classification Code—28.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polyglycol styrene acrylic polymer.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in a contained use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture, processing and use a total of 16 workers may experience dermal exposure up to 4 hrs/day, up to 100 days/yr during transfer operations.

Environmental Release/Disposal. The manufacturer states that 10-100 kg/yr will be released to water. Discharge will be less than 50 kg/yr. Disposal is to a publicly owned treatment works (POTW), an approved landfill or by incineration.

Dated: November 12, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-33524 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51352; TSH-FRL-1989-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of four PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-580, 81-581, 81-582 and 81-583, January 9, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51352]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, D.C. 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-580

Close of Review Period. February 8, 1982.

Manufacturer's Identity. Sandoz Colors and Chemicals, Route 10, East Hanover, NJ 07936.

Specific Chemical Identity. Poly[oxy-1,2-ethanediyl], alpha-[carboxymethyl]-omega-[4-nonylphenoxy].

Use. The manufacturer states that the PMN substances will be used as an emulsifier.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear yellow liquid
pH of 10% solution—2.8
Specific gravity—1.05
Boiling point—103°C
Flash point, closed cup—Over 200°F
Solubility:
water—Insoluble
toluene—Insoluble

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and use 1 worker may experience dermal exposure 1 hr/day, 10 days/yr during drumming, sampling, weighing or metering out of the liquid from drums and cleanup.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and land and between 10-100 kg/yr will be released to water. Disposal is to a publicly owned treatment works (POTW).

PMN 81-581

Close of Review Period. February 8, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:
Annual sales—$10,000,000-99,999,999.
Manufacturing site—Northeast region.
Standard Industrial Classification Code—286.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: 2,5-Dimethoxy-4-p-tolythiobenzene di-azonium salt.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in imaging.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Solid-free flowing, coarse powder
Melting point—103-108°C
Solubility:
acetone—Very slightly
methanol—Soluble
hexane—Insoluble
Color—Greenish yellow

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing a total of 12 workers may experience dermal and inhalation exposure up to 8 hrs/day, up to 24 days/yr during transfer operations. Exposure levels will average at 0-1 mg/m³.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air up to 24 hrs/day, up to 240 days/yr. Disposal is to an approved landfill.

PMN 81-582

Close of Review Period. February 8, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of polymer diol, monocarboxylic acid diol, diamine and a diisocyanate.

Use. Claimed confidential business information.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	30,000	100,000
2d year	100,000	300,000
3d year	300,000	500,000

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Ames salmonella—Non-mutagenic.

Exposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure five 8-hour shifts per week during loading and transferring.

Environmental Release/Disposal. The manufacturer states that release to the environment will be negligible.

PMN 81-583

Close of Review Period. February 8, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:
Annual sales—Over $500,000,000.
Manufacturing site—East North Central region.
Standard Industrial Classification Code—2869.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Fatty acid esters with a polyol and oleic acid.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Specific gravity 25°C/25°C—0.91
Flash point (COC), °F—555
Viscosity centistokes @ 77°F—52
Centistokes @ 100°F—32
Solubility:
Water—Negligible
Acid value, mg KOH/g—1
Color, Gardner—12
Hydroxyl number, mg KOH/g—9

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 6 workers may experience dermal exposure 2 hrs/day, 15 days/yr during filtration, sampling, drumming and analysis. Exposure level will average at 0-1 mg/m³.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water 12-24 hrs/day, 15 days/yr and 100-1,000

kg/yr will be released to land. Disposal is to an approved landfill or by incineration.

Dated: November 12, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-33525 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51353; TSH-FRL-1989-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of three PMNs and provides a summary of each.

DATE: Written comments by: PMN 81-584, 81-585, and 81-586, January 11, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51353]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-755-5687).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-584

Close of Review Period. February 10, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Sulfonated metallized heteropolycycle, salts.

Use. The manufacturer states that the PMN substance will be used as a colorant for cellulosic substances.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. Claimed confidential business information.

Exposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure 4 hrs/day, 34 days/yr during sampling and drumming.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated.

PMN 81-585

Close of Review Period. February 10, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: N-(substituted organo functional)methanamine.

Use. The manufacturer states that the PMN substance will be used as a curing agent in industrial, commercial, and consumer use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear, colorless liquid with ammoniacal odor
Boiling point—122°C @ 760 mm/Hg
Flash point: 68°F
Solubility: Water—Reacts vigorously to form $MeNH_2$
Density—0.9 g/ml

Toxicity Data

Acute oral toxicity LD_{50} (rat)—796 mg/kg
Acute dermal toxicity LD_{50} (rabbit)—>2,000 mg/kg
Skin irritation (rabbit)—Severe
Eye irritation (rabbit)—Severe

Exposure. Claimed confidential business information.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated.

PMN 81-586

Close of Review Period. February 10, 1982.

Manufacturer's Identity. Claimed confidential business information.

Organization information provided:
Annual sales—Over $500,000,000
Manufacturing site—East North Central region
Standard Industrial Classification Code—285

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polyester with both di and tri basic acids and diols.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in industrial coatings.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

% volatile by volume—0.4
Weight/gallon—9.1-9.3

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during processing, use and disposal 8 workers may experience dermal and inhalation exposure up to 8 hrs/day, up to 80 days/yr during sampling, flaking, and loading.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to the air, land and water. Disposal is by incineration.

Dated: November 13, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-33526 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-31-M

[PF-132A; PH-FRL-1989-7]

Ciba-Geigy Corp.; Amendment to Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This gives notice that a pesticide petition proposing a tolerance for the combined residues of the herbicide metolachlor in or on potatoes has been amended.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the agency. The comments are to be identified by the document control number "[PF-132A]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of

June 7, 1979 (44 FR 32737), announcing that Ciba-Geigy Corp., P.O. Box 11422, Greensboro, NC 27409, had submitted a pesticide petition (PP 9F2203) to EPA. The petition proposed that 40 CFR 180.368 be amended by establishing tolerances for the combined residues of the herbicide metolachlor [2-chlor-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-l-methylethyl) acetamide] and its metabolites determined as (2-[2-ethyl-6-methylphenyl)-amino]-1-propanol] and (4-[2-ethyl-6-methylphenyl]-2-hydroxy-5-methyl-3-morpholinone], each expressed as parent metolachlor, in or on the raw agricultural commodity potatoes at 0.1 part per million (ppm).

Ciba-Geigy Corp. has submitted an amendment to the petition increasing the proposed tolerance on potatoes from 0.1 ppm to 0.2 ppm. The proposed analytical method for determining residues is by gas chromatography with a Coulson N2 detector.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: November 9, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-33523 Filed 11-19-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL MARITIME COMMISSION

[Docket No. 81-69]

Damar Cargo Services, Inc.—Independent Ocean Freight Forwarder Application; Order of Investigation and Hearing

Damar Cargo Services, Inc. (Damar), has applied for an independent ocean freight forwarder license. Information has been developed by the Commission's staff which indicates that Damar may have engaged in unlicensed forwarding activities between October 1, 1979 and August 31, 1980. Section 44(a) Shipping Act, 1916 (46 U.S.C. 841(b)) specifically prohibits any person from carrying on the business of forwarding unless such person holds a license issued by the Commission.

Section 44(b), Shipping Act, 1916, requires that applicants be found fit, willing and able to properly 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 Damar may have engaged in unlicensed forwarding activities violative of the Shipping Act, 1916, it 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 section 510.8 of the Commission's General Order 4 (46 CFR 510.8), on August 20, 1981, the Commission advised Damar of its intent to deny its application for a license and also advised Damar of its opportunity to request a hearing. By letter dated August 27, 1981, Damar 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 Damar Cargo Services, Inc. is fit, willing, and able properly to carry on the business of forwarding in accordance with the provisions of the Shipping Act, 1916, and rules and regulations of the Commission as issued thereunder; and

It is further ordered, That Damar Cargo Services, Inc. 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 hearings 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 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 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; 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.

Francis C. Hurney,

Secretary.

[FR Doc. 81-33533 Filed 11-19-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

American Bancorporation, Inc.; Acquisition of Bank

American Bancorporation, Inc., Longview, 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 percent of the voting shares of Town North National Bank, Longview, 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 Reserve Bank to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33510 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

First City Bancorporation of Texas, Inc.; Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, 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 percent of the voting shares of First City Bank-Addison, Addison, 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 December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33466 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bankshares Corp.; Acquisition of Bank

Mercantile Bankshares Corporation, Baltimore, Maryland, 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 The Peoples Bank of Maryland, Denton, Maryland. 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 Richmond. 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 December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33470 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

American Southwest Bancshares, Inc.; Formation of Bank Holding Company

American Southwest Bancshares, Inc., El Paso, 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 per cent or more of the voting shares of American Bank of Commerce, El Paso, 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 Reserve Bank, to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33511 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Bancomer S.A., et al.; Formation of Bank Holding Companies

Bancomer S.A., Mexico City, Mexico; Bancomer Holding Company (Antilles) N.V., Netherlands Antilles; Bancomer Holding Company (Netherlands) B.V., The Netherlands; and Bancomer Holding Company, San Diego, California, have 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 bank holding companies by acquiring 100 per cent of the voting shares, less directors' qualifying shares, of Grossmont Bank, La Mesa, California. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. 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 December 11, 1981. Any comment on an applications 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33463 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Caruthersville National Bancshares Co.; Formation of Bank Holding Company

Caruthersville National Bancshares Company, Caruthersville, Missouri, 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 86 per cent or more of the voting shares of The National Bank of Caruthersville, Caruthersville, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33464 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Central Corp.; Formation of Bank Holding Company

Central Corporation, Monroe, Louisiana, has applied for the Board's approval under section 3(a)(1) of the

Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Central Bank, Monroe, Louisiana. 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 Reserve Bank, to be received not later than December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33465 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Citizens Financial Corp.; Formation of Bank Holding Company

Citizens Financial Corporation, Belzoni, Mississippi, 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 per cent or more of the voting shares of Citizens Bank and Trust Company, Belzoni, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33512 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

First Midlothian Corp.; Formation of Bank Holding Company

First Midlothian Corporation, Midlothian, 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 per cent or more of the voting shares of First National Bank in Midlothian, Midlothian, 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 Reserve Bank, to be received not later than December 11, 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.

Borad of Governors of the Federal Reserve System, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33467 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Flag, Inc.; Formation of Bank Holding Company

Flag, Inc., Cambridge, Minnesota, 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 86 per cent of the voting shares of Peoples State Bank of Cambridge, Cambridge, Minnesota. 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 14, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33468 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Hayesville Bankshares, Inc.; Formation of Bank Holding Company

Hayesville Bankshares, Inc., Hayesville, Iowa, 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 Hayesville Savings Bank, Hayesville, Iowa. 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 December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33469 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

National Canton Bancshares, Inc.; Formation of Bank Holding Company

National Canton Bancshares, Inc., Canton, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of the successor by merger to the National Bank of Canton, Canton, Illinois. 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 December 9, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33462 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Old Capital Financial Corp.; Formation of Bank Holding Company

Old Capital Financial Corporation, Corydon, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Old Capital Bank and Trust Company, Corydon, Indiana, successor by merger with Capital Service Bank, Corydon, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33513 Filed 11-13-81; 8:45 am]

BILLING CODE 6210-01-M

Point West Bancorps; Formation of Bank Holding Company

Point West Bancorp, Sacramento, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Point West Bank, Sacramento, California. 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 11, 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, November 12, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33461 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Ramona Bankshares, Inc.; Formation of Bank Holding Company

Romona Bankshares, Inc., Ramona, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Ramona State Bank, Ramona, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33514 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Rotan Bancshares, Inc.; Formation of Bank Holding Company

Rotan Bancshares, Inc., Rotan, 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 100 per cent or more of the voting shares of The First National Bank of Rotan, Rotan, 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 Reserve Bank, to be received not later than December 15, 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, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33515 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than December 15, 1981.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; (sale of travelers' cheques at retail; Arizona): To engage, through its indirect subsidiary, Chase Manhattan Financial Services, Inc., in the sale of travelers' cheques at retail from an office of Phoenix, Arizona, serving the State of Arizona.

2. *Citicorp,* New York, New York (commercial lending activities; all of Kentucky, Southern Ohio, Western West Virginia, Southern Indiana): To engage through a *de novo* office of Citicorp Industrial Credit, Inc. in making or acquiring, for its own account or the account of others, commercial loans and other extensions of credit. Such activities would be conducted from an office in Cincinnati, Ohio serving the area identified in the caption above.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia (underwriting credit life and disability insurance; Arizona): To engage, through its subsidiary, Bank South Life Insurance Corporation, in the activity of underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Bank South Corporation. This activity would be conducted at an office in Phoenix, Arizona, serving the State of Georgia.

2. *Citizens and Southern Georgia Corporation,* Atlanta, Georgia (financing, servicing, and insurance activities; Louisiana): To engage, through its subsidiary, Family Credit Services, Inc., in consumer and commercial finance activities, including the extension of direct loans to consumers, the discount of retail and installment notes or contracts, the purchase of real estate notes, the extension of direct loans to dealers for the financing of inventory (floor planning) and working capital purposes; making or acquiring, for its own account or for the account of others, loans and other extensions of credit; servicing loans and other extensions of credit for any person; and acting as agent for the sale of life, accident and health, and physical damage insurance directly related to its extensions of credit. These activities are presently conducted by Family Credit from an office in New Orleans, Louisiana. Applicant proposes to relocate this office to Gretna, Louisiana, to serve the greater New Orleans metropolitan area.

3. *First Atlanta Corporation,* Atlanta, Georgia (financing and insurance activities; Georgia): To engage through its subsidiary, Gulf Finance Corp., in making and acquiring for its own account, loans, discounts, acceptances and other extensions of credit and such other business as is customarily engaged in by consumer credit and finance companies, and acting as insurance agent and broker in selling insurance to borrowers from such finance subsidiary to include credit life insurance, credit accident and health insurance, property damage and liability insurance, with respect to extensions of credit made by the finance subsidiary. These activities would be conducted from an office in Kingsland, Georgia, serving Camden County, Georgia. This notification is for the relocation of an existing office within Camden County, Georgia.

C. **Federal Reserve Bank of Minneapolis** (Lester G. Gable, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

Intermountain Bancorporation, Columbia Falls, Montana (consumer financing activities; Flathead County, Montana): To engage through its subsidiary, Union Finance Ltd., in making or acquiring loans and other extensions of credit such as would be made by a consumer finance company, including loans secured by household appliances, furniture, automobiles, mobile homes, home improvements and various types of sporting vehicles and equipment. These activities would be conducted from an office in Columbia Falls, Montana, serving the city of Columbia Falls and County of Flathead, Montana.

D. **Other Federal Reserve Banks:** None.

Board of Governors of the Federal Reserve System, November 16, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33509 Filed 11-19-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Federal Employee Alcoholism Programs Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism; Meeting Cancelled

In FR Doc. 81-31288, appearing on Page 53525, in the Thursday, October 29, 1981 issue, the December 1 meeting of The Federal Employee Alcoholism Programs Work Group was announced. This meeting has been cancelled.

Dated: November 16, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-33454 Filed 11-19-81; 8:45 am]

BILLING CODE 4110-88-M

Centers for Disease Control; National Institute for Occupational Safety and Health

Grants for Educational Programs in Occupational Safety and Health; Availability of Funds Based on Fiscal Year 1982 Continuing Resolution

The Centers for Disease Control, National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds for fiscal year 1982 for training grants in occupational safety and health as authorized by Section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are contained in 42 CFR Part 86. The objective of this grant program is to award funds to eligible institutions or agencies to pay part of or all of the costs of the combination of long-term and short-term training activities in occupational safety and health.

It is possible that between $6 and $7 million will be available in fiscal year 1982 for competing and continuation Educational Resource Center grants which provide for multidiscipline and multilevel training and continuing education in occupational safety and health under a single grant serving a geographic area. Grant applications to be considered for funding during fiscal year 1982 must be received not later than January 2, 1982.

Grants are usually awarded for a 3- to

5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

Applications are subject to review as detailed in 42 CFR Part 86. Program guidelines, information on applications and review procedures, deadlines, the consequence of late submission and other materials may be obtained from the offices listed below.

FOR FURTHER INFORMATION CONTACT:

Dr. Alan D. Stevens, Director, Division of Training and Manpower Development, NIOSH, 4676 Columbia Parkway, Cincinnati, OH 45226, Phone: (513) 684–8221

Mr. Joseph W. West, Grants Management Officer, NIOSH, 5600 Fishers Lane (Rm. 8–33), Rockville, MD 20857, Phone: (301) 443–3122

(Catalog of Federal Domestic Assistance No. 13.263, Occupational Safety and Health Training Grants)

Dated: November 12, 1981.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 81–33455 Filed 11–19–81; 8:45 am]

BILLING CODE 4110–87–M

Food and Drug Administration

[Docket No. 81N–0257]

Studies of Effects of Marketed Drugs; Cooperative Agreements

Correction

In the issue of Tuesday, November 10, 1981, in the first column of page 55564 there was a correction to FR Doc. 81–28977 which had been published on page 49206 on October 6, 1981.

In paragraph (1) of the correction some information was omitted. Paragraph (1) should have said, "On page 49208 in the third column, in the second line from the top of the column, "BD–DDE–81–1" should have read "BD–DDE–82–1".

BILLING CODE: 1505–01–M

Advisory Committees; Meetings

Corrections

In FR Doc. 81–29785 appearing at page 51035 in the issue for Friday, October 16, 1981 make the following corrections on page 51035:

1. In the first column, in the fourth paragraph, in the second column, in the sixth paragraph, under *General function of the committee,* in the second line, "evalustes" should have read "evaluates";

2. In the third column, in the first line, *"Closed committee deliberations"* should have read *"Closed presentation of data";*

3. In the third column, in the fourth paragraph, in the seventh and eighth lines, "public hearing" should have read "public participation, and an open public hearing."

BILLING CODE 1505–01–M

[Docket No. 81M–0347]

Dow Corning Ophthalmics, Inc.; Premarket Approval of Silcon (Silafilcon A) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Silcon (silafilcon A) Contact Lens, sponsored by Dow Corning Ophthalmics, Inc., Midland, MI. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 21, 1981.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On August 28, 1980, Dow Corning Ophthalmics, Inc., Midland, MI, submitted to FDA an application for premarket approval of Silcon (silafilcon A) Contact Lens. The application was reviewed by the Opthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On October 26, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of an approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with an approved contact lens. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act

(Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity For Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of PDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 21, 1981, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33110 Filed 11-19-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80F-0401]

Eastman Chemicals Division, Eastman Kodak Co.; Amended Notice of Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Amended notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a notice that appeared in the Federal Register. The notice announced the filing of a food additive petition to broaden the mole percentages of ethylene glycol and 1,4-cyclohexane dimethanol to 99-66 and 1-34, respectively, in the mixture used as a reactant with dimethyl terephthalate in the production of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for food-contact use. The petitioner, Eastman Chemicals Division, Eastman Kodak Co., also proposed that the food additive regulations be amended to provide for the safe use of the molecularly oriented ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer in contact with non-alcoholic carbonated beverages.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice was given in the Federal Register of October 17, 1980 (45 FR 69043) that a petition had been filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, proposing that § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer* (21 CFR 177.1315) be amended to broaden the mole percentages of ethylene glycol and 1,4-cyclohexane dimethanol to 99-66 and 1-34, respectively, in the mixture used as a reactant with dimethyl terephthalate in the production of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for food-contact use.

Notice is given that the petition also proposes that the regulation provide for the safe use of the molecularly oriented ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer in contact with non-alcoholic carbonated beverages.

The agency has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 9, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-33153 Filed 11-19-81; 8:45 am]

BILLING CODE 4160-01-M

Office of the Secretary

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SAA). Sections SX.00, SX.10 and SX.20 of the SSA statement, as published in the Federal Register on August 7, 1979 (44 FR 46352-46353), describe the mission, organization and functions of SSA's Office of Public Affairs (OPA). Sections SM.00, SM.10 and SM.20 of the SSA statement, 44 FR 46328-46334, dated August 7, 1979, as amended by 45 FR 83025-83026, dated December 17, 1980, describe the mission, organization and functions of SSA's Office of Management, Budget and Personnel (OMBP).

Notice is given that sections SX.00, SX.10 and SX.20 are amended to: Reflect the establishment of the Office of Internal Communications as a major component of OPA; abolish the Support Services Staff in OPA's Office of Information and transfer the function of coordinating SSA public affairs activities with the Regional Offices to the immediate Office of the Associate Commissioner for Public Affairs; and clarify the Freedom of Information Act activities of the Office of Information.

Notice is also given that sections SM.00, SM.10 and SM.20 are amended to: Delete the Management-Employee Communications Staff from OMBP's Office of Human Resources (OHR), whose functions are transferred to OPA's Office of Internal Communications; abolish the Division of Program Accounting in OMBP's Office of Financial Resources (OFR); retitle the Division of Management Programs and Coordination as the Management Coordination and Programs Staff in OMBP's Office of Management Planning

and Analysis (OMPA); transfer the functions of directing, developing and controlling the SSA-wide Management by Objectives (MBO) System and the Operations Management System (OMS), as required by HHS and SSA needs, from OMPA's former Division of Management Programs and Coordination to OMPA's Division of Management Planning; amend the Office of Training statement as published in the **Federal Register** on December 17, 1980 (45 FR 83025–83026) to reflect office level functions; and reflect miscellaneous minor editorial changes.

The OPA and OMBP material is amended as follows:

Sec. SX.00 *The Office of Public Affairs—(Mission):*

Add as the last sentence: "It publishes a variety of informational materials to promote effective information exchange with SAA employees."

Sec. SX.10 *The Office of Public Affairs—(Organization):*

E. *The Office of Information* (SXN)

Delete "3. The Support Services Staff (SXN3)"

Add "F. *The Office of Internal Communications* (SXE)"

Sec. SX.20 *The Office of Public Affairs—(Functions):*

C. *The Immediate Office of the Associate Commission for Public Affairs* (SX)

Delete the period and add: "and coordinates SSA nationwide public affairs activities with the regional Offices."

E. *The Office of Information* (SXN)

Add "Provides direction for SSA's Freedom of Information Act (FOIA) activities. It develops FOIA policies and procedures after consultation with the Office of the General Counsel and prepares SSA's portion of the Department's annual report to Congress on these FOIA activities. The Office decides whether records are to be disclosed to members of the public and prepares FOIA appeals for decision by the Commissioner or the Commissioner's delegate. It identifies problems with respect to disclosure of information and recommends corrective action as necessary."

1. *The Editorial Staff* (SXN1)

a. Delete from lines 3 and 4: "and public relations"

2. *The Audio-Visual Staff* (SXN2)

c. Delete from line 4: "public relations"

3. *The Support Services Staff* (SXN3)

Delete all material.

Add "F. *The Office of Internal Communications* (SXE): Directs the internal communications program in SSA. The Office publishes a variety of informational materials, including a monthly employee magazine, a central office bulletin, Commission's Bulletin and the annual report to Congress. It prepares and edits administrative reports and presentations. The Office plans new initiatives in SSA internal communications; provides assistance to and appraises internal communications activities in the SSA field organization; identifies weaknesses in internal communications SSA-wide; and recommends improvements."

Sec. SM.00 *The Office of Management, Budget and Personnel—(Mission):*

3. Delete from lines 4 and 5: "manpower utilization"; insert "workforce effectiveness."

Sec. SM.10 *The Office of Management, Budget and Personnel—(Organization):*

D. *The Office of Management Planning and Analysis* (SMP) Retitle "5. The Division of Management Programs and Coordination (SMP6)" as "5. The Management Coordination and Programs Staff (SMP8)."

E. *The Office of Financial Resources* (SMF) Delete "5. The Division of Program Accounting (SMF)"

F. *The Office of Human Resources* (SMH).

3. *The Evaluation and Field Liaison Staff* (SMHK) Change the organization code from "(SMHK)" to "(SMHD)."

Delete "4. The Management-Employee Communications Staff (SMHE)."

Renumber the following Office of Human Resources components as shown:

"4. The Division of Employee Health and Occupational Safety (SMHH).

5. The Division of Labor Relations (SMHJ).

6. The Division of Disciplinary and Adverse Actions (SMHM).

7. The Executive Recruitment and Services Staff (SMHN).

8. The Division of Personnel Operations (SMH9)."

Sec. SM.20 *The Office of Management, Budget and Personnel—(Functions):*

D. *The Office of Management Planning and Analysis* (SMP) Delete from sentence three: "manpower utilization"; insert "workforce effectiveness."

2. *the Division of Management Planning* (SMP2): Add subparagraph "d. directs agencywide Management by Objectives (MBO) and other planning and control systems, including SSA participation in the HHS Operations Management System (OMS) and agencywide management of OMS, as required by HHS and SSA needs; develops and controls objectives and initiatives for government-wide, HHS, SSA and component MBO and OMS systems; monitors MBO and OMS objectives and initiatives for the Commissioner and Associate Commissioners; evaluates progress in achieving MBO and OMS objectives; identifies problems in these areas; and recommends corrective action, as necessary."

3. *The Division of Workforce Effectiveness* (SMP3) Make the following changes to subparagraphs a., b., and c.: replace "manpower" with "workforce", and "utilization" with "effectiveness."

"5. *The Division of Management Programs and Coordiation* (SMP6)" retitle as "5. *The Management Coordination and Programs Staff* (SMP8)"; delete subparagraph c. and redesignate subparagraph d. as c.

E. *The Office of Financial Resources* (SMF)

1. *The Division of Administrative Budget* (SMF1) c. Replace "man-year" with "work-year."

"5. *The Division of Program Accounting* (SMF5)" Delete all material.

F. *The Office of Human Resources* (SMH) Delete all material for "4. *The Management-Employee Communications Staff* (SMHE)"

Renumber the following Office of Human Resources components as shown:

"4. the Division of Employee health and Occupational Safety (SMHH)"

"5. The Division of Labor Relations (SMHJ)"

"6. The Division of Disciplinary and Adverse Actions (SMHM)"

"7. The Executive Recruitment and Services Staff (SMHN)"

"8. The Division of Personnel Operations (SMH9)"

H. *The Office of Training* (SMK)

Add "Is responsible for the management and administration of a national training program to enhance SSA's capability of providing effective and efficient service to the public. It develops and issues agencywide policy, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training activities. It provides managerial oversight of training conducted by component technical training staffs in both headquarters and throughout the field, the SSA instructor training cadre, other government agencies, and outside contractors to insure that the results of all training are consistent with agency needs. It directs the financial management of training moneys to insure accountability of money spent to train and develop the agency's

employees—from new hires to senior level executives—located throughout the nation."

Dated: November 13, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc 81-33806 Filed 11-19-81; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-81-1100]

Regulatory Flexibility Act; Plan for Periodic Review of Regulations

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Plan for periodic review of regulations pursuant to the Regulatory Flexibility Act.

SUMMARY: The Regulatory Flexibility Act (5 U.S.C. 610) requires that HUD review periodically its existing regulations that have or may have a significant economic impact on a substantial number of small entities. The plan below describes how HUD will perform this review.

COMMENT DUE DATE: Comments solicited in this plan are due by January 19, 1982.

ADDRESS: Comments should be submitted to the following address: Rules Docket Clerk, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6207. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1980, the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601, *et seq.*, was signed into law.

It became effective on January 1, 1981. This statute requires that Federal agencies take into account how their proposed and final regulations affect small entities, including small businesses, small governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, an agency must either prepare a Regulatory Flexibility Analysis or certify that the regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 of the Act requires that HUD issue an Agenda of Regulations identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities. HUD included this identification in its Semiannual Agenda of Regulations which was published on August 17, 1981, at 46 FR 41708. Such identification will continue to be made in future Semiannual Agendas.

Section 610 of the Regulatory Flexibility Act mandates that Federal agencies review existing regulations. It requires that HUD publish a plan in the **Federal Register** explaining how it will review those of its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations in effect on January 1, 1981, must be reviewed within ten years. Regulations in effect after January 1, 1981, must be reviewed within ten years of their publication as final rules.

Section 610(c) requires that HUD publish annually in the **Federal Register** a list of its rules having a significant economic impact on a substantial number of small entities which it will review during the succeeding 12 months. The list must describe the rule, explain the need for it, give the legal basis for it and invite public comment.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities. In deciding whether change is necessary, the Regulatory Flexibility Act establishes several factors that must be considered:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received from the public concerning the rule;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) how long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

HUD will begin to screen certain of its existing regulations, in accordance with 610 of the Act, during the current fiscal year. This initial review will focus on those existing rules already categorized as "under review" (Part D rules) in the Department's Semiannual Agenda of Regulations. The Semiannual Agenda is published under Executive Order 12291 and in compliance with Section 602 of the Regulatory Flexibility Act. It includes rules being reviewed under the criteria established by Executive Order 12291, as well as rules specifically determined to have a substantial economic impact on a substantial number of small entities.

After identifying those regulations that may have significant impact on a substantial number of small entities, HUD will review these regulations based upon the best available information. In deciding whether a regulation imposes a significant impact, HUD will look at such factors as the extent of reporting or recordkeeping burden, the relationship of compliance costs to benefits received, and the anticompetitive effects on small businesses. The result of the review will be a decision to: (1) Revise the regulation; (2) rescind the regulation; or (3) leave the regulation unchanged. After concluding its review of any specific rule, the Department will indicate the results of that review, including Regulatory Flexibility Act determinations, in the next succeeding Semiannual Agenda.

To help us select additional regulations which should be reviewed in future years, we welcome suggestions from the public. If any member of the public thinks that specific existing regulations have a significant impact on a substantial number of small entities (especially if the regulation has a disproportionately negative effect on small entities), we would appreciate receiving suggestions that we review those regulations. We would also welcome detailed comments or data to support those suggestions.

Issued at Washington, D.C., November 16, 1981.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc 81-33471 Filed 11-19-81; 8:45 am]

BILLING CODE 4212-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-3674, C-3674-WR]

Colorado; Proposed Continuation of Withdrawal

In accordance with the provisions of section 204 of the Federal Land Policy and Management Act, the Bureau of

Land Management (BLM) is reviewing possible continuation of an existing North Sand Dune Natural Area withdrawal made by virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831) and the authority contained in section 3 of the act of June 17, 1902, as amended.

The Bureau of Land Management, Department of the Interior, withdrew 551.58 acres under Public Land Order 3530 effective January 29, 1965, and 126.07 acres under Public Land Order 3701 effective June 10, 1965, for the following described lands:

Sixth Principal Meridian

T. 10 N., R. 78 W.,
Sec. 6, Lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼.
T. 10 N., R., 79 W.,
Sec. 1, Lot 1, SE¼NE¼, NE¼SE¼.
Containing 671.65 acres in Jackson County.

Public Land Order 3530 erroneously stated acreage as 671.25 instead of 551.58. The correct acreage when consolidated with Public Land Order 3701 is 671.65.

The Bureau proposes continuation of the withdrawal in its entirety for a period of 4 years. The purpose of the withdrawal is to protect the natural sand dune area. The withdrawal closed the described lands to all forms of appropriation under the public land laws, including the mining laws, but not to leasing under the mineral leasing laws. No change in the segregative effect or use of the land would be effected by the continuation.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuation. All interested persons who desire to heard on the proposal must submit a written request for a hearing to the undersigned on or before December 21, 1981. Upon a determination by the State Director, Bureau of Land Management, that a public hearing should be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the BLM on or before December 21, 1981.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

Dated: November 10, 1981.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 81-33450 Filed 11-19-81; 8:45 am]

BILLING CODE 4310-84-M

Utah; Call for Expressions of Leasing Interest in Coal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Call for expressions of leasing interest in Federal coal.

SUMMARY: This call for expressions of coal leasing interest, Phase II, is to integrate potential lessees' data and needs into the coal activity planning phase of the Federal coal management program in the Uinta-Southwestern Utah Coal Production Region. The data received from this call will be used along with existing data to delineate tracts which would be considered for possible competitive leasing.

DATE: Responses to this notice may be received until January 15, 1982.

ADDRESS: Responses should be sent to State Director (930), Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111, *and* to District Conservation Manager for Resource Evaluation, U.S. Geological Survey, Conservation Division, 2070 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT:

Max Nielson, Coal Project Manager, Utah State Office, BLM, 136 East South Temple, Salt Lake City, Utah 84111; telephone (801) 524–5326.

Gene Nodine, District Manager, Moab District, BLM, 125 West 2nd South Main, P.O. Box 970, Moab, Utah 84532, telephone (801) 259–6111.

Donald Pendleton, District Manager, BLM, Richfield District, BLM, 150 East 900 North, P.O. Box 768, Richfield, Utah 84701, telephone (801) 896–8221.

Kent Taylor, Forest Supervisor, Fishlake National Forest, 155 East 900 North, Richfield, Utah 84701, telephone (801) 896–4491.

Reed Christensen, Forest Supervisor, Manti/LaSal National Forest, 599 West Price River Drive, Price, Utah 84501, telephone (801) 637–2817.

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that the official call for expressions of interest in Federal coal leasing, Phase II is now in effect for the second round of coal leasing activity in the Uinta-Southwestern Utah Coal Region for possible lease sales beginning in December 1983.

Parties interested in submitting an expression in the following areas should do so by January 15, 1982:

Planning Area or Unit and *Coal Field (KRCRA)*

Forest (BLM and F.S.)—Wasatch Plateau/Emery
San Rafael (BLM)—Wasatch Plateau/Emery
Wattis (BLM)—Wasatch Plateau
Ferron-Price (F.S.) (Portion of area)—Wasatch Plateau
Price River (BLM)—Book Cliffs

This call for expressions of interest is the first step in activity planning under the Federal coal management program. It is being made before any tract boundaries are delineated within an area found suitable for further consideration for coal leasing through the application of the unsuitability criteria. The results of this call will provide significant information than will be employed in delineating tracts that might be put up for lease sale after they have been through the tract ranking, selection, scheduling and analysis processes that are integral parts of the Federal coal management program defined in 43 CFR Subpart 3420.

Expressions of interest from small businesses and public bodies are invited in accordance with the provisions of 43 CFR 3420.1–4 which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses. Entities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for possible public body set asides. Proof of public body status and evidence of qualifications as required by 43 CFR 3420.1–4(b)(1)(ii) shall be submitted with the expression of interest.

A major purpose of this call for expressions of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units which will be considered prior to a lease sale. The BLM hopes to gain sufficient information from this call,

as well as from its own site specific analyses, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination on specific tracts.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so and the coal included in the modified or relocated tract is of approximately equal quality and tonnage to that shown in the expression of interest. Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resource conservation and State preferences and priorities.

These expressions of leasing interest should include the following data where applicable:

1. *Quantity needs* (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. *Quality needs* (types and grades of coal) for both producers and users.

3. *Location:*

(a) Tracts desired by mining companies (narrative description with delineation on a surface minerals management quad map, available for purchase from the BLM State Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the joint BLM/GS delineation team will locate the tract.

4. *Type of Mine:*

a. Surface or underground

b. Technique of mining (i.e., longwall, room and pillar, strip mining, etc.)

5. *Proposed Uses of Coal:*

a. By mining companies

b. By public and private industries

6. *Where coal is consumed (include extra-regional markets)*

7. *Transportation Needs (i.e., railroads, pipelines, etc.)*

a. Existing facilities

b. Proposed facilities and development timing

8. *Available Sources of Coal:*

a. Presently operative

b. Contingency or other sources

9. *Information Relating to Mineral Ownership:*

a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owners or for associated non-Federal coal.

10. *Special qualifications* for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 3472.2–5.

Data which are considered proprietary should not be submitted as part of this expression of leasing interest.

An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

Planning information is available in the respective office in which the planning was completed including:

Forest (BLM Richfield or USFS Richfield) San Rafael, Wattis and Price River (BLM Moab and Price Area office) Ferron-Price (USFS Price).

A map which clearly indicates the Phase II area open for expression of interest and acceptable for further consideration for coal leasing is being printed and will be sent to BLM-Utah "coal mailing list" as soon as it becomes available. The map may also be obtained when available by contacting the Coal Program Manager in the BLM Utah State Office at the location indicated above.

Dated: November 13, 1981.

Roland G. Robison, Jr.,

State Director, Utah, Bureau of Land Management.

[FR Doc. 81-33351 Filed 11-19-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 10)), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, December 11, 1981.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows:

Dexter M. Keezer, Truro
Francis R. King, Wellfleet
Nathan Malchman, Provincetown
Barbara S. Mayo, Provincetown
Joshua A. Nickerson, Chatham
David F. Ryder, Chatham
Sherrill B. Smith, Jr., Orleans
Clifford H. White, Wrentham
Elizabeth F. Worthing, Eastham
Paul F. Nace, Jr., Woods Hole

At the meeting at 1:30 pm the Commission will consider the following matter: Evaluation of Off Road Vehicle Use in 1981.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663, Telephone 617–349–3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent Cape, Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

November 10, 1981.

[FR Doc. 81-33579 Filed 11-19-81; 8:45 am]

BILLING CODE 4310-70-M

Dudley Food and Beverage, Inc.; Intention to Negotiate Concession Contract Within Gulf Islands National Seashore

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969 (16 U.S.C. 20)), public notice is hereby given that on December 21, 1981, the Department of the Interior, through the Regional Director, Southeast Region, National Park Service, proposes to negotiate a concession contract with Dudley Food & Beverage, Inc., authorizing it to continue to provide limited merchandising and related services for the public within Gulf Islands National Seashore, Florida, for a period of ten (10) years from March 1, 1982, through February 29, 1992.

This proposed contract has been determined to be a categorical exclusion under the National Park Service regulations implementing the National Environmental Policy Act and no environmental document will be prepared.

Dudley Food & Beverage, Inc., has been conducting certain concession operations under the immediate supervision of the Superintendent, Gulf Islands National Seashore, pursuant to a long-term concession agreement which expires by limitation of time on February 28, 1992.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the negotiation of a new contract. This provision, in effect, grants Dudley Food & Beverage, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if thereafter, the proposal of Dudley Food & Beverage, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of Dudley Food & Beverage, Inc., (as determined by the Secretary) is submitted, Dudley Food & Beverage, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Dudley Food & Beverage, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before December 21, 1981 to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: November 5, 1981.

Neal G. Guse,

Acting Regional Director, Southeast Region.

[FR Doc. 81-32580 Filed 11-19-81; 8:45 am]

BILLING CODE 4310-70-M

Intent To Prepare General Management Plan and Environmental Assessment and To Conduct Public Workshops and Scoping Meetings for Glacier Bay National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Prepare a general management plan and environmental assessment and conduct public workshops and scoping meetings for Glacier Bay National Park and Preserve.

Pre-planning workshops and scoping meetings will be held during fall/winter of 1981, to identify the major environmental and wilderness issues to be addressed in the environmental assessment and to solicit ideas for the development of reasonable and practical strategies. The time and place of public workshops will be announced in the regional news media. A draft general management plan/environmental assessment will be prepared, and public meetings will also be held in the summer/fall of 1982 for public review of those documents in compliance with the requirements of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487 (ANILCA). These meetings will be announced in the **Federal Register** as well as in local media. The general management plan will be finalized following these meetings.

SUMMARY: The National Park Service intends to prepare a general management plan for Glacier Bay National Park and Preserve to chart the strategies to be utilized over the next 10 years for addressing the park and preserve's problems and meeting its management objectives for resources management and protection, visitor use and interpretation, and general development. An environmental assessment will be prepared in concert with the plan to evaluate major environmental issues and to determine if the environmental consequences on the human environment are significant enough to require the preparation of an environmental impact statement.

The planning effort will consider the alternative of continuing existing conditions and trends (no action alternative); the minimum actions required to meet the purpose of the area under Pub. L. 96-487 (ANILCA); and those reasonable and practical strategies developed during public and other agency participation in the planning process.

The plan as directed by Pub. L. 96-487 (ANILCA) will contain a review of wilderness suitability for those lands not already so designated by Congress. Subsistence, sport hunting, access, and similar activities will continue as specified in the Alaska National Interest Lands Conservation Act and the regulations of 36 CFR Part 13.

FOR FURTHER INFORMATION CONTACT:

John F. Chapman, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 1089, Juneau, Alaska 99801 (907) 586-7559. In the lower 48 contact Dr. Dan E. Huff, Team Captain, U.S. National Park Service, Denver Service Center (LCD), P.O. Box 25287, Denver, Colorado, 80225, (303) 234-6106.

Dated: November 6, 1981.

Douglas G. Warnock,

Acting Regional Director, Alaska Region.

[FR Doc. 81-33578 Filed 11-19-81; 8:45 am]

BILLING CODE 4310-70-M

Intent To Prepare Reports/Environmental Impact Statements and To Hold Public Meetings for Study of Four Potential Additions to National Wild and Scenic Rivers System

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is currently leading multi-agency study teams which are evaluating the eligibility and suitability of four Alaska rivers as possible additions to the National Wild and Scenic River System pursuant to section 5(a) of the Wild and Scenic Rivers Act, Pub. L. 90-542, as amended. The National Park Service intends to prepare a combination report/environmental impact statement for each of these rivers which will identify alternatives and evaluate the impact of each of the alternatives. At least one alternative plan calling for national designation will be prepared for all river segments found eligible for the National Wild and Scenic Rivers System. The four river are:

(a) *Porcupine River:* The entire river within Alaska, from the U.S.-Canada border to its confluence with the Yukon River near Fort Yukon.

(b) *Lower Sheenjek River:* Those portions of the Sheenjek River lying outside of the Arctic National Wildlife Refuge. (Portions of the river within the Arctic National Wildlife Refuge are already designated to the National Wild and Scenic Rivers System.)

(c) *Melozitna River:* The entire river from headwaters to its confluence with the Yukon River near Ruby.

(d) *Kisaralik River:* The entire river from its origin at Kisaralik Lake to its mouth on the Kuskokwim River.

This notice is to announce that the National Park Service, in cooperation with other agencies on the study teams, will hold public meetings during January/February for the purpose of identifying issues and receiving input in the identification of alternative plans as well as preferred plan for each river. The intent is to hold meetings in:

Fort Yukon and Chalkyitsik for the Porcupine and lower Sheenjek River studies.

Ruby for the Melozitna River study.

Bethel for the Kisaralik River study.

Anchorage and Fairbanks for all four river studies.

Actual meeting times and locations will be publicized in local newspapers and other local notices.

Comments may be submitted orally or in writing. Written comments may be submitted to the Regional Director, Alaska Regional Office, National Park

Service, 540 W. 5th Avenue, Anchorage, Alaska 99501.

Further public comments will be sought on the draft report/environmental impact statements through a later **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Jim Morris, National Park Service, U.S.D.I., Alaska Regional Office, 540 W. 5th Avenue, Anchorage, Alaska 99501, 907/271–4216.

Dated: November 6, 1981.

Douglas G. Warnock,

Acting Regional Director, Alaska Region.

[FR Doc. 81–33577 Filed 11–19–81; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an appliant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: November 16, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

MC–F–14718, filed October 19, 1981. Applicant: WHITEFORD TRUCK LINES, INC. (Whiteford) 640 W. Ireland Rd., South Bend, IN 46680)—Purchase—Downs Transportation Co., Inc. (Downs) (P.O. Box 465, Conyers, GA 30207), D&W Systems, Inc., Creditor in Possession. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 45240. Whiteford seeks authority to purchase the interstate operating rights of Downs. Ronald Whiteford and Florence Whiteford seeks authority to acquire control of said rights through the transaction. Whiteford is purchasing those rights contained in Down's certificate in MC–144041 and sub-numbers thereunder, which authorize the transportation of: General and certain specified commodities from, to and between certain named points in the U.S. and from, to and between certain named points on the one hand and points in the U.S. on the other. Whiteford is a common carrier operating under certificates issued in MC–136635. Condition: Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of a copy of Rockdale County, State of Georgia authorizing the sales of Downs to D&W Systems, Inc.

MC–F–14719, filed October 22, 1981. Applicant: QUALITY CARRIERS, INC., Merger of Beaver Transport Co. and Bulk Transport Company and Continued Control of Quality Carriers, Inc. and Roland's Transportation Services, Inc. by Liquid Bulk Services, Inc., all of 100 North Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: John R. Sims, Jr., 195 Pennsylvania Bldg., 425 13th Street, N.W., Washington, D.C. 20004. Quality Carriers, Inc. (MC 110420) seeks authority to merge its two wholly-owned subsidiaries, Beaver Transport Co. (MC 119767) and Bulk Transport Company (MC 112893) into Quality Carriers, Inc., and for Liquid Bulk Services, Inc., a non-carrier holding company to continue in control of Quality Carriers, Inc. and Roland's Transportation Services, Inc. (MC 138512). Liquid Bulk Services, Inc. is controlled by Charles J. O'Brien and Richard T. Lewis. Quality Carriers, Inc. is an interstate common carrier of commodities in bulk between points in the United States. Beaver Transport Co. is an interstate common carrier of specified commodities, generally those requiring temperature control equipment, and of such commodities as are dealt in by chain grocery and food business houses between points in 30 states. Bulk Transport Company is an interstate common carrier of commodities in bulk between points in 16 states. Roland's Transportation Services, Inc. is an interstate contract carrier of specified commodities, generally those related to the food industry, from points in Wisconsin, Missouri, Illinois, Indiana and Kentucky.

[FR Doc. 81–33516 Filed 11–19–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease

operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers, Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: November 16, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams.

Agatha L. Mergenovich,

Secretary.

MC–F–14713F, filed October 13, 1981. TALMADGE E. BORDEN (BORDEN) d.b.a. WEST VIRGINIA COACH LINES (WVC), (P.O. Box 336, 105 Sycamore Street, Ravenswood, WV 26164)—Purchase (Portion)—Greyhound Lines, Inc. (Greyhound) (Greyhound Tower, Phoenix, AZ 85077) Representative: Anthony P. Carr, Esq., Greyhound Tower, Phoenix, AZ 85077. WVC seeks authority to purchase a portion of the interstate operating rights of Greyhound and Borden sees to acquire control of the rights through the transaction. WVC seeks to purchase that portion of Greyhound's rights (1) in No. MC–1501 (Sub-Nos. 172 and 175) authorizing transportation of passengers and their baggage, express and newspapers between (a) Charleston, WV and the junction of WV Hwy 3 and Int. Hwy 77 (over U.S. Hwy 119 and WV Hwy 3 and 77); (b) the junction of U.S. Hwy 60 and WV Hwy 16 and Beckley, WV (over WV Hwy 16 and U.S. Hwy 19 and an unnumbered Hwy) (b) between Clarksburg, WV and Charleston, WV (over US Hwy 19, WV Hwy 4 and US Hwy 119) or (over US Hwys 19 and 119); and (d) between Glenville, WV and Millstone, WV (over US Hwy 5 and WV Hwy 16). WVC holds authority to operate as a motor common carrier interstate or foreign commerce pursuant to No. MC–59235 (Sub-No. 41) issued to Virginia Stage Lines, Inc. d.b.a. Virginia Truckings and acquired by WV in No. MC–FC–79275.

Note.—(1) An application for temporary authority has not been filed. (2) This application is directly-related to No. MC–157389 (Sub-No. 2) published elsewhere in this **Federal Register** (Hearing site: Washington, DC).

MC 1515 (Sub-303), filed October 13, 1981. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Anthony P. Carr, Greyhound Tower, Phoenix, AZ 85077. Transporting *passengers and their baggage and express and newspapers*, in the same vehicle with passengers, between the junction of US Hwy 119 and Interstate Hwy 79 near Clendenin, WV and Charleston, WV: over Interstate Highway 79 and serving all intermediate points. Condition: This application is not directly related to No. MC–F–14713. Therefore, prior to Commission issuance of an effective notice, the applicant shall pay the $350.00 filing fee for this application.

MC 157389 (Sub-2), filed October 13, 1981. Applicant: TALMADGE E. BORDEN, d.b.a. WEST VIRGINIA COACH COMPANY, Ravenswood, WV 26165. Representative: Anthony P. Carr, Greyhound Tower, Phoenix, AZ 85077. Transporting *passengers and their baggage* in the same vehicle with passengers: (a) Between Charleston, WV and the junction of U.S. Hwy 60 and WV Hwy 16 (near Chimney Corner, WV), from Charleston, WV over U.S. Hwy 60 to the junction of U.S. Hwy 60 and WV Hwy 6, thence over WV Hwy 6 to Montgomery, WV, thence return over WV Hwy 6 to junction of U.S. Hwy 60 and WV Hwy 6, thence over U.S. Hwy 60 to junction U.S. Hwy 60 and WV Hwy 16 (near Chimney Corner, WV) and return over the same route serving all intermediate points, (b) Between the junction of Interstate Hwy 77 and WV Hwy 3 and Beckley, WV, over WV Hwy 3, serving all intermediate points: This application is directly related to No. MC–F–14713 (published elsewhere in this **Federal Register**) whereby applicant is seeking authority and approval to purchase all of Greyhound Lines' local service routes between Charleston, WV and Beckley, WV. (Hearing site: Washington, D.C.)

[FR Doc. 81-33517 Filed 11-19-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28272]

Star Lake Railroad Co., Rail Construction and Operation in McKinley County, N. Mex.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of time for filing comments on the supplemental environmental analysis.

SUMMARY: On October 26, 1981, the Commission issued a supplemental environmental analysis and stated that comments on the document should be filed by November 25, 1981. Notice of availability of that analysis was published at 46 FR 52249, October 26, 1981. The Commission has decided to extend the due date for those comments.

DATES: Comments are now due on December 10, 1981.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, Interstate Commerce Commission, Washington, D.C. 20423, Tel. (202) 275-7393.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-33518 Filed 11-19-81; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Brockway Glass Company, Inc., McCullough Avenue, Brockway, PA 15824.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) Standard Container Company, P.O. Box 336, Homerville, GA 31634.
(b) Captainer Plastics Corporation, 11 Cliffside Drive, Cedar Grove, NJ 07009.

1. Principal: Coil Metal Industries, Inc., 15 Van Dyke Avenue, New Brunswick, New Jersey 08903.

2. Wholly-owned subsidiaries which will participate in the subject transportation:

Coil Metal Sales Corp., 15 Van Dyke Avenue, New Brunswick, New Jersey 08903, a New Jersey Corporation;
Coilmet Corporation, 15 Van Dyke Avenue, New Brunswick, New Jersey 08903, a New Jersey Corporation;
Coil Metal Trucking Co., 15 Van Dyke Avenue, New Brunswick, New Jersey 08903, a New Jersey Corporation;
Newark Steel Company and Coil Metal Trucking Co. of Ohio, Inc., 550 Wehrle Drive, Newark, Ohio, an Ohio Corporation.

1. Parent corporation and address of principal office: Jeno's Inc., 525 Lake Avenue South, Duluth, MN 55802.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Northland Computer Service Co., a Minnesota corporation.
(ii) Northland Foods, Inc., a Minnesota corporation.
(iii) Wilderness Express, Inc., a Minnesota corporation.

1. Parent corporation and address of principal office: Johnson & Johnson, 501 George Street, New Brunswick, NJ 08903.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(a) Chicopee—NJ
(b) Codman & Shurtleff, Inc.—MA
(c) Critikon, Inc.—MJ
(d) Devro, Inc.—NJ
(e) Ethicon, Inc.—NJ
(f) Extracorporeal Medical Specialties, Inc.—PA
(g) J&J Baby Products Co.—NJ
(h) J&J Dental Products Co.—NJ
(i) J&J International—NJ
(j) J&J Products, Inc.—NJ
(k) McNeil Consumer Products Co.—PA
(l) McNeil Laboratories—PA
(m) Ortho Diagnostic Systems, Inc.—NJ
(n) Ortho Pharmaceutical Corp.—NJ
(o) Permacel—NJ
(p) Personal Products Co.—NJ
(q) Pitman-Moore, Inc.—NJ
(r) Surgikos, Inc.—NJ

1. Parent corporation and address of principal office: K Mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation: K Mart Apparel Corporation, a New York corporation.

1. Parent corporation and address of principal office: Levi Strauss & Co., a Delaware Corporation, 1155 Battery Street, San Francisco, California 94106.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation: (i) Santone Industries, Inc., a Texas Corporation, 6818 South Zarzamora Street, San Antonio, Texas 78224.

1. Lyall Electric, Incorporated—Kendallville, IN.

2. Wholly-owned subsidiaries/affiliates which will participate in the operations, and address of their respective principal offices:

(a) Lyall Albion Corp.—Albion, IN
(b) Hamilton Products, Inc.—Hamilton, IN
(c) Silicones, Inc.—South Milford, IN
(d) Wolf Lake Products, Inc.—Wolf Lake, IN
(e) Indiana Insulated Wire, Inc.—Kendallville, IN
(f) O.E.M. Electric, Inc.—Kendallville, IN
(g) Automachine, Inc.—Albion, IN
(h) North Webster Products, Inc.—North Webster, IN
(i) Heaters, Inc.—North Webster, IN
(j) Pent, Inc.—Wolcottville, IN
(k) Cromwell Products, Inc.—Cromwell, IN
(l) Albion Wire, Inc.—Albion, IN
(m) Ashley Products, Inc.—Ashley, IN
(n) Washington Products, Inc.—Cromwell, IN
(o) NEI Development Company, Inc.—Kendallville, IN
(p) Webster Wire Products, Inc.—North Webster, IN
(q) RAD, Inc.—Albion, IN
(r) Fine Wire, Inc.—South Milford, IN
(s) PVC Compounders, Inc.—Kendallville, IN
(t) X-Link Wire, Inc.—South Milford, IN
(u) El Paso Wire, Inc.—El Paso, TX
(v) El Paso Assemblies, Inc.—El Paso, TX
(w) Auto-Assemblies, Inc.—El Paso, TX
(x) Autojectors, Inc.—Albion, IN
(y) Kendallville Products, Inc.—Kendallville, IN
(z) Lyall International, Inc.—Kendallville, IN
(aa) Reclaimers, Inc.—Kendallville, IN
(bb) Wire Equipment, Inc.—Albion, IN
(cc) Wire Tech, Inc.—Albion, IN
(dd) Electro de Mexico—SADECV, Juarez, Mexico
(ee) Lucas Products, Inc.—Lucas, IA
(ff) Murray Assemblies, Inc.—Murray, IA
(gg) Lamoni Products, Inc.—Lamoni, IA

1. Parent corporation and address of principal office: Nuckolls County Implement Inc., North Highway 14, P.O. Box 463, Superior, NE 68978.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation: Byron Implement Co., an Ohio corporation, Byron, NE 68325.

1. Parent corporation and address of principal office: Union Oil Company, Blue Run Rd., P.O. Box 309, Maysville, KY 41056.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation: Pipeline Oil Company, an Ohio corporation, 233-A Northland Blvd., P.O. Box 46247, Cincinnati, OH 45246.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-33520 Filed 11-19-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-82 (Preliminary)]

Hard-Smoked Herring Filets From Canada; Institution of Preliminary Countervailing Duty Investigation and Scheduling of Conference

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Canada of hard-smoked herring filets, classified under item 111.80 of the Tariff Schedules of the United States.

EFFECTIVE DATE: November 17, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202-523-0439).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a revised petition on November 2, 1981, from the McCurdy Fish Co., Lubec, Maine. Originally filed on September 30, 1981, McCurdy's petition was found by Commerce to have insufficient data in support of its subsidy allegations, and on October 22, 1981, the company withdrew its complaint to acquire additional information. Accordingly the U.S. International Trade Commission terminated its investigation (No. 701-TA-81 (Preliminary) pending the petitioner's resubmission. Notice of the termination of investigation No. 701-TA-81 (Preliminary) and the cancellation of the public conference therefore was published in the **Federal Register** of October 29, 1981 (46 FR 53544).

Authority

Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1673b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority (Commerce). Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b). Accordingly, the Commission, on November 17, 1981, instituted preliminary countervailing duty investigation No. 701-TA-82. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457) and particularly, subpart B thereof.

Written Submissions

Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before December 4, 1981. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submission must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.s.t., on November 30, 1981, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202-523-0439) by 5:00 p.m., e.s.t., November 25, 1981. It is anticipated that parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by Mr. MacHatton.

Inspection of the Petition

The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Issued: November 17, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-33547 Filed 11-19-81; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-12,526]

Cape Horn Shake, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1981 in response to a worker petition received on March 20, 1981 which was filed on behalf of workers at Cape Horn Shake, Inc., Sedro Wooley, Washington.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33585 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,730]

Centerton Manufacturing Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 29, 1981 in response to a petition received on May 29, 1981 which was filed on behalf of workers at Centerton Manufacturing Company, Bridgeton, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C., this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33586 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-10,880]

Compo Industries, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980 in response to a worker petition received on September 10, 1980 which was filed on behalf of workers at Compo Industries, Inc., Waltham, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33587 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,633]

Empire Clothing Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 10, 1980 in response to a worker petition received on November 3, 1980 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Empire Clothing Co., Kewanee, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33588 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,570]

Ford Motor Co., Engineering and Research Staff; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1980 in response to a petition received on October 29, 1980 which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Engineering and Research Staff, Detroit, Michigan, of Ford Motor Company.

An active certification covering the petitioning group of workers remains in effect (TA-W-6996). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33589 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,679]

Lebanon Garment Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 17, 1980, in response to a worker petition received on November 13, 1980, which was filed on behalf of the workers at Lebanon Garment Co., Lebanon, Tennessee.

An active certification covering the petitioning group of workers remains in effect (TA-W-6097). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33590 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,756]

Rockwell International; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 24, 1980, in response to a worker petition received on September 5, 1980, which was filed by the Allied Industrial Workers on behalf of workers at the Kenton, Ohio plant of Rockwell International.

An active certification covering the petitioning group of workers remains in effect (TA-W-10,885). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33591 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,820]

Singer Co.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1981 in response to a worker petition received on May 25, 1981 which was filed on behalf of workers at the Singer Co., Syosset, New York.

An active certification covering the petitioning group of workers remains in effect (TA-W-7362). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33592 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,926]

Universal Fashions, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1980 in response to a worker petition received on December 5, 1980 which was filed on behalf of workers at Universal Fashions, Incorporated, Newark, New Jersey.

No public hearing was requested and none was held.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-11,686). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33593 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive

with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 30th day of October 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner; Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Davis-En-tech, Lundsten Plastics (workers)	Flint, Michigan	10/29/81	10/16/81	TA-W-13,079	Washers—hydromatic, thrust; rings—slip, Ford; farrals, bars—commutator, Chrysler.
Long Island Coat & Suit Company (ILGWU)	Long Island City, N.Y	10/29/81	10/19/81	TA-W-13,080	Jackets, skirts, pants, coats, raincoats and blouses—ladies.
Mitchell Manufacturing Co., Inc. (company)	Corinth, MS	10/30/81	10/26/81	TA-W-13,081	Shirts—men, ladies' and some boys.
Stafford & Jackson Screw Machine Shop (workers)	Atlas, Michigan	10/29/81	10/26/81	TA-W-13,082	Components—for fuel pumps housing; diesel engines parts; transmission shells; spark plugs.
Stuttgart Shoe Corp. (workers)	Stuttgart, Ark	10/29/81	10/22/81	TA-W-13,083	Shoes—men's and womens'.
Union Carbide Corp., Emerson Operation, Metals Div. (company).	Alamo, Nevada	10/26/81	10/9/81	TA-W-13,084	Tungsten—mining and milling.

[FR Doc. 81-33583 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 9–13, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proporation of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,073; Johnson Steel & Wire Corp., Worcester, MA
TA-W-11,687; Lord's Caseware, Porter, IN
TA-W-11,217; Jameson Corp., Saginaw, MI
TA-W-10,994; Ingersoll Johnson Steel Co., New Castle, IN
TA-W-10,565; Whitaker Cable Corp., Brookfield, MO
TA-W-10,554; San-Den, Inc., Corona, NY
TA-W-11,044; Blue Ridge Shirt Mfg. Co., Fayetteville, TN
TA-W-11,045; Dee Cee Apparel, Inc., Hohenwald, TN
TA-W-11,045; Dixie Mfg. Co., Columbia, TN
TA-W-11,047; Elkton Apparel Co., Inc., Elkton, KY
TA-W-11,048; Heavy Duty Mfg. Co., Gainesboro, TN
TA-W-11,050; Kentucky Pants Co., Plant #1, Glasgow, KY
TA-W-11,051; Milan Shirt Mfg. Co., Milan, TN
TA-W-11,240; Kentucky Pants Co., Plant #2, Glasgow, KY
TA-W-11,244; Washington Overall Co., Scottsville, KY
TA-W-11,622 & 11,622A; E&W of Dover, Dover, TN, and Mammoth Cave, Cave City, KY
TA-W-11,815; Linden Apparel Corp., Plant #1, Linden, TN
TA-W-11,816; Linden Apparel Corp., Plant #2, Linden, TN
TA-W-11,818; McEwen Mfg. Co., McEwen, TN
TA-W-12,251; McMinnville Garment Co., McMinnville, TN
TA-W-12,254; Turner Mfg. Co., Goodlettsville, TN
TA-W-10,609; Union Carbide Corp., Metals Div., Marietta, Ohio Plant & Steam Power Station, Marietta, OH
TA-W-11,435; Dover Corp., Rotary Lift Div., Madison, IN

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,659; Compo Industries, Inc., Roberts St. Plant, South St. Plant, Waltham, MA

In each of the following cases the investigation revealed that criterion (3) has not been met for the reason(s) specified.

TA-W-12,285; Gates Blouse Co., Inc., Brooklyn, NY

All workers were separated more than one year prior to the date of the petition.

TA-W-10,727; Lasalle Steel Co., Inc., Griffith, IN

Aggregate U.S. imports of industrial chrome plated steel bars are negligible.

In the following case the investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA-W-10,932; Designers Label, Lodi, NJ

Affirmative Determinations

TA-W-12,033; Gunter Shake, Inc., Forks, WA

A certification was issued in response to a petition received on December 31, 1980 covering all workers separated on or after December 22, 1979.

TA-W-12,398; International Silver Co., Factory C, Meriden, CT

A certification was issued in response to a petition received on March 3, 1981 covering all workers of Factory C engaged in employment related to the production of stainless steel and silver plated flatware separated on or after December 13, 1980.

With respect to workers engaged in employment related to the production of industrial metal tube products or tools and dies at Factory C, the investigation revealed that criterion (3) has not been met.

I hereby certify that the aforementioned determinations were issued during the peroid November 9–13, 1981. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 durifig normal business hours or will be mailed to persons who write to the above address.

Dated: November 16, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-33614 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Idaho

This notice announces the beginning of a new Extended Benefit Period in the State of Idaho, effective on October 18, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, the Idaho unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Idaho has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on October 3, 1981, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, a new Extended Benefit Period commenced in that State with the week beginning on October 18, 1981.

Information for Claimants

The duration of extended Benefits payable in the new Extended Benefit Period, and ther terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended Benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period (20 CFR 615.13(d)(1)). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year (20 CFR 615.13(d)(2)).

Persons who believe they may be entitled to Extended Benefits in the State of Idaho, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State Employment Office of the Idaho Department of Employment in their locality.

Signed at Washington, D.C., on November 6, 1981.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 81-33615 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 16th day of November 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Steel Corp. (USWA)	Sparrows Point, Md.	11/5/81	10/30/81	TA-W-13,094	Steel—basic, hot rolled sheet, wire and wire products, flanged and dished steel products, tin plate.
General Electric Co., Television Business Div. (company)	Portsmouth, Va.	11/12/81	11/6/81	TA-W-13,095	Receivers—television, color monochrome.
Martin Greenfield Clothiers, Ltd (company)	Brooklyn, N.Y.	11/6/81	11/2/81	TA-W-13,096	Suits, pants, sportcoats—men
Precision Film Capacitor (workers)	Great Neck, N.Y.	11/9/81	11/3/81	TA-W-13,097	Capacitors—film

[FR Doc. 81-33584 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-81-198-C]

Deer Creek Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Deer Creek Mining Company, P.O. Box 235, Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its mine located in Webster County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety for the miners affected because the cabs and canopies would severely impair visibility and encumber head clearance. This would force the equipment operator to lean out from the machine during operation, exposing him or her to additional safety hazards.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 21, 1981. Copies of the petition are available for inspection at that address.

Dated: November 12, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-33616 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-23-M

Office of Pension and Welfare Benefit Programs

[Application No. D-2473]

Proposed Exemption for Certain Transactions Involving Allan Dee Corp., Defined Benefit Pension Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the contribution of a land contract by the Allan Dee Corporation (the Employer) to the Allan Dee Corporation Defined Benefit Pension Plan (the Plan), West Bloomfield, Mich. The proposed exemption, if granted, would affect the Plan participant Dr. Paul L. Fraiberg (Dr. Fraiberg), the Employer, and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before December 20, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2473. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the

proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer adopted the Plan on December 19, 1979. The Plan was submitted to the Internal Revenue Service and a favorable determination letter was issued on October 29, 1980. The Plan trustee is Detroit Bank and Trust Company (the Trustee). The only Plan participant is Dr. Fraiberg. Fifty percent of the stock of the Employer is owned by a corporation which is owned by Dr. Fraiberg and his wife. The remaining stock of the Employer is owned by trusts established for Dr. Fraiberg's children

2. The Plan is a defined benefit pension plan and provides participants with an annual pension at age 65 of 100% of such participant's average compensation not to exceed $100,000. Midwest Pension Actuaries, Inc. of Farmington Hills, Michigan, the Plan's actuary, has projected that the normal cost required to fund the Plan for the calendar year 1980 is approximately $553,141. The Employer has insufficient cash with which to make the necessary contribution. The Employer proposes to contribute to the Plan $105,000 in cash and a land contract dated March 31, 1980, entered into between the Employer and Standard Vienna Associates (Standard), an independent third party.

3. The land contract provides for the sale by the Employer of a parcel of improved real property to Standard for $1.3 million. The land contract provides for a downpayment of $250,000, a payment of $50,000 on or before March 31, 1981 (payment was received on April 1, 1981) with the entire principal of said contract to be paid by March 31, 1983; provided that Standard has the option to extend the land contract up to an additional three years by serving written notice to the Employer and by payment of an annual extension fee of $37,500 for each additional year. Interest of 11% per annum on the unpaid balance is due monthly. Standard has agreed, among other things, to pay all taxes, to keep the premises insured against loss and damage and to maintain the property in good condition.

4. The underlying security for the land contract, an apartment complex, was appraised on January 23, 1981 by Edward J. McDonnell of Edward J. McDonnell Appraisal Company, an M.A.I. appraiser, as having a value of $1.6 million. When the land contract is contributed to the Plan, title to said property will be recorded in the Plan's name pending payment of the amount due under the land contract.

5. The fair market value of the land contract, in the opinion of the Trustee, is approximately $750,000. In addition, Mr. Sidney Goldman of Victor Management Investment Counselors on April 8, 1981 placed a value of $700,000 on the land contract based upon a discount factor of 30 percent.

6. The Employer has agreed to value its income tax deduction for contribution of the land contract in accordance with section 404 of the Code at the lesser of the fair market value of the contract or its cost basis. In no event will the Employer claim an income tax deduction in excess of the permissible limit under section 404 of the Code, nor will the Employer claim a loss on its federal income tax return with respect to the contribution of the land contract.

7. The Employer will reimburse the Plan for an amount equal to the difference in value if the land contract is disposed of by the Plan for a price less than fair market value, determined as of the date of contribution, or in the event of default by Standard.

8. Dr. Fraiberg, the sole participant in the Plan has approved of the proposed transaction. The Trustee has reviewed the proposed transaction and concluded that the terms of the land contract, in view of current economic conditions are fair and reasonable. Also, the cash flow from the monthly interest payments on the land contract will allow the Trustee to diversify the Plan's portfolio. The Trustee will have the authority and responsibility for reviewing the advisability of retention or sale of the land contract.

9. In summary, the applicant represents that the proposed transaction meets the criteria for an exemption under section 408(a) of the Act because (1) the contribution would be a one-time transaction; (2) the fair market value of the contract has been determined by an independent appraisal; (3) the land contract is secured by property having an appraised value of $1.6 million; (4) the Employer agrees to make up any loss suffered by the Plan on disposition of the land contract; and (5) Dr. Fraiberg who is the sole participant in the Plan and therefore the only participant affected by the transaction, has approved the transaction and desires that the transaction be consummated.

Notice to Interested Persons

Since Dr. Fraiberg is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution of the land contract by the Employer of the Plan provided the contribution is valued at no more than its fair market value on the date of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33495 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1370]

Proposed Exemption for Certain Transactions Involving Alliance Capital Management Corporation

AGENCY: Department of Labor, P&WBP.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation (DLJ Securities) to clear and settle securities brokerage transactions that are initiated on behalf of employee benefit plans and directed to independent broker-dealers by Alliance Capital Management Corporation (Alliance), an affilite of DLJ Securities, acting as investment manager for the plans, provided that the conditions set forth in the exemption are met. The proposed exemption, if granted, would affect fiduciaries participants, and beneficiaries of those plans.

DATES: Written comments and requests for a hearing on the matter must be received by the Department on or before January 4, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1370. The application for exemption, together with all comments and requests for a hearing on the matter, will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Doris F. Jacobs, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, telephone (202) 523-6844. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by Alliance pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Alliance, an investment adviser registered under the Investment Advisers Act of 1940, seeks an exemption in connection with the direction of brokerage for employee pension benefits plans, for which Alliance acts as an investment manager and fiduciary (within the meaning of section 3(21) of the Act), to broker-dealers for which the Pershing Division (Pershing) of DLJ Securities, a broker-dealer registered under the Securities Exchange Act of 1934 (the Exchange Act), acts as correspondent.

2. Alliance and DLJ Securities are wholly-owned subsidiaries of Donaldson, Lufkin & Jenrette, Inc., a diversified supplier of financial services. Alliance provides both discretionary and nondiscretionary investment advisory services to, among others, employee pension benefit plans. Pershing is engaged almost entirely in providing execution, clearance, settlement and other transactional services to over 100 correspondent securities firms located throughout the country. None of the correspondents for which Pershing performs those services is an affiliate of DLJ Securities.

3. Alliance directs brokerage to various broker-dealers in consideration of research services provided to Alliance by those firms. Some of the firms (Pershing Correspondents) have entered into correspondent relationships with Pershing on an omnibus account basis under which Pershing performs execution, clearance and settlement functions for those firms. Under those arrangements, a Pershing Correspondent is free to effect all or any portion of such functions either itself or through an entity other than Pershing. In the usual case, however, a Pershing Correspondent submits substantially all of its transactions to Pershing for the performance of one or more of those functions. Alliance's selection of a broker-dealer (1) from whom it obtains research services in connection with its performance of investment management functions for employee benefit plans, or (2) whom it selects to effect transactions on behalf of such plans for which it acts as investment manager, is made in either case without reference to whether the broker-dealer is a Pershing Correspondent.

4. The submission of transactions by Alliance to Pershing Correspondents, which are then executed by the Correspondent and then in some instances cleared and/or settled through Pershing, will in those instances result in commissions charged on the transaction being paid in part to the Pershing Correspondent and in part, through the Pershing Correspondent, to Pershing. Alliance represents that the receipt of compensation by Pershing from Pershing Correspondents is not the result of any

arrangement or agreement between Alliance and the Pershing Correspondent, but, rather, results from the independent selection by the broker-dealer of Pershing to provide certain services in connection with the transaction.[1]

5. Alliance does not know whether a particular transaction directed to a Pershing Correspondent will be cleared and/or settled by Pershing. In addition, because of the omnibus account arrangements Pershing has with its correspondents, Pershing is unable to identify Alliance's customer accounts on behalf of which Alliance has directed trades to Pershing Correspondents. For these reasons, and because the commissions retained by Pershing that are attributable to a given transaction depends, among other things, upon the value of transactions submitted to Pershing by the correspondent in question, Alliance is unable to determine precisely the extent to which the compensation Pershing receives is attributable to trades directed to Pershing Correspondents on behalf of an Alliance customers account.

6. The direction of plan brokerage to Pershing Correspondents results in a sporadic, indirect use of Pershing for a small percentage of the transaction completion services employed in administering the plans. Supplying a quarterly report, as is required by Prohibited Transaction Exemption 79–1 (PTE 79–1)[2], for a period during which little or no compensation is received by Pershing would, in the opinion of Alliance, be unduly burdensome and costly when compared to the informative value of the report.

Notice to Interested Persons

Notice will be given by Alliance to a fiduciary, independent of Alliance, with respect to each plan for which Alliance acts as a fiduciary as of the date of publication of this notice in the **Federal Register**, on or before December 7, 1981. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform the independent fiduciaries of their right to comment and to request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plans involved and of their participants and beneficiaries, and protective of the rights of the participants and beneficiaries of such plans; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Requests for Hearing

All interested persons are invited to submit written comments or requests for hearing on the pending exemption to the address above, within the time period set forth above. All such comments and requests will be made a part of the record. Comments and requests should state the reasons for the writer's interest in the pending exemption. They will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the exemption set forth below under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective on or after the date of publication of the final exemption in the **Federal Register**, the restrictions of section 406 of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the direction of securities transactions, initiated by Alliance Capital Management Corporation (Alliance), an affiliate of Donaldson, Lufkin and Jenrette, Inc. (DLJ), on behalf of an

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[1] Pursuant to section 11(a)(1) of the Exchange Act and Rule 11a2–2(T) thereunder (17 CFR 240.11a2–2(T)), a member of a national securities exchange may clear and settle (but not execute) transactions on its exchange for an account with respect to which it or an associated person exercises investment discretion. In the case of brokerage transactions directed to Pershing Correspondents by Alliance in its capacity as investment manager, Pershing would therefore be permitted by those provisions to perform clearing and settlement functions in connection with the transactions, but not to execute the transactions.

[2] PTE 79–1, published at 44 FR 5963 (January 30, 1979), allows persons who serve as fiduciaries for employee benefit plans to effect securities transactions for those plans upon complying with a number of specific requirements, contained in the exemption, which are designed to protect the interests of plan participants and beneficiaries. The exemption is available to fiduciaries except, generally, when a person is a fiduciary with respect to a plan by reason of being a plan trustee or plan administrator, or is an employer of employees covered by the plan. In order to engage in brokerage transactions on behalf of the plans, the broker-dealer who is a fiduciary must receive written authorization expressly permitting such activities from a plan fiduciary who is independent of the broker-dealer. The written authorization cannot be effective for more than one year unless the independent fiduciary approves its continuance in writing at least annually.

The exemption places on the fiduciary a duty to provide any information which it reasonably believes to be necessary, and which is reasonably available, to enable the independent plan fiduciary to determine whether to grant or renew an authorization to provide both advisory and brokerage services. Moreover, the independent fiduciary has the right to request, and the broker has the obligation to supply, any additional information reasonably necessary and available to make this determination.

The exemption also requires a person effecting or executing securities transactions on behalf of a plan to disclose periodically certain additional information to the authorizing plan fiduciary. Specifically, the broker must supply the fiduciary with a report not less frequently than every three months disclosing the total of all transaction-related charges the broker has retained and the portion it has paid to other persons for execution or other services. The report must also contain a statement that makes clear that brokerage commissions in the United States are not fixed by any stock exchange or by any other authority and are subject to negotiation. In addition, the independent plan fiduciary must be furnished with information concerning transaction-related commission rates which the broker anticipates assessing in the coming three months for transactions of the type normally entered into by the plan.

The Department has taken the view that estimates may be used, in appropriate cases, in compiling the information required by these reports. See note 15 to PTE 79–1 (44 FR at 5966); see also, letter from Alan D. Lebowitz, Assistant Administrator for Fiduciary Standards, to Anthony C. J. Nuland July 21, 1980.

employee benefit plan in Alliance's capacity as a fiduciary for such plan, to a securities broker or dealer (Pershing Correspondent) who is not an affiliate of DLJ and who has a correspondent relationship with the Pershing Division (Pershing) of Donaldson Lufkin & Jenrette Securities Corporation on an omnibus account basis, and where such securities transactions are cleared and/or settled by Pershing, provided that the conditions set forth below are met:

(a) There is no arrangement or understanding between Alliance and the Pershing Correspondent that part or all of such clearing and settlement functions will be directed to Pershing;

(b) Neither Alliance nor any affiliate of Alliance is a trustee or administrator of the plan or an employer of any employee covered by the plan;

(c) The direction of brokerage to the Pershing Correspondent is made by Alliance pursuant to a written authorization executed by a fiduciary of the plan who is independent of Alliance;

(d) Such written authorization is terminable by the plan, without penalty to the plan, on not more than 60 days' notice, and shall continue in effect for more than one year only if such continuance is authorized in writing, at least annually, by a plan fiduciary who is independent of Alliance;

(e) No such authorization is made or renewed unless Alliance furnishes the authorizing plan fiduciary with any reasonably available information that Alliance reasonably believes to be necessary to determine whether such authorization should be made or renewed and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request;

(f) Alliance shall furnish the authorizing fiduciary with a report containing the information described in this paragraph (f), not less frequently than at the times specified in paragraph (g) of this exemption. Such report shall disclose:

(i) The total of all transaction-related charges incurred by the plan during the period covered by the report in connection with transactions to which this exemption applies;

(ii) The amount of the transaction-related charges retained by Pershing and the amount of such charges paid to other persons for execution or other services; and

(iii) Rates for transaction-related charges anticipated to be charged in the coming three months for transactions of the type normally entered into by the plan;

(g) The report required by paragraph (f) of this exemption shall cover the periods described in, and shall be furnished at the times specified in, this paragraph (g);

Except as provided in paragraph (g)(4), such report shall be furnished:

(1) Not later than 45 days following the end of any consecutive three (3) month period during which 25% or more of the total dollar amount of brokerage incurred by the plan in connection with transactions initiated by Alliance is directed to Pershing Correspondents;

(2) Not later than 45 days following the end of any consecutive six (6) month period in which 20% or more of the total dollar amount of brokerage incurred by the plan in connection with transactions initiated by Alliance is directed to Pershing Correspondents; and

(3) Within 45 days following the end of each calendar year, notwithstanding the foregoing.

(4) No report otherwise required to be furnished pursuant to paragraph (g)(1), (g)(2) or (g)(3) of this section shall be required to be furnished for any period during which Pershing receives no compensation in connection with transactions to which this exemption applies; and

(h) The report described in paragraph (f) of this exemption contains a statement to the effect that brokerage commissions in the United States are not fixed by any stock exchange or other authority and are subject to negotiation.

For purposes of this exemption, the term "affiliate" of another person shall include:

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, partner, or employee of such other person; and

(c) Any partnership of which such other person is a partner.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33490 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2768]

Proposed Exemption for Certain Transactions Involving the Central Fidelity Banks, Inc. Retirement Plan, Lynchburg, Va.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a parcel of real property and improvements (the Property) by the Central Fidelity Banks, Inc. Retirement Plan (the Plan) to the Central Fidelity Bank, N.A. of Lynchburg, Virginia (the Employer). The proposed exemption, if granted, would affect the Employer, the Plan, the participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 26, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2768. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telphone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in

accordance with procedures set forth in ERISA Procedure 751 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit pension plan with approximately 2,955 participants and total assets, as of January 1, 1980, of §11,578,220. The Employer is the trustee of the Plan.

2. On December 30, 1968, the Employer sold to the Plan the Property for a sum of $325,000. The Property consisted of land, a bank building and other improvements located in Blackstone, Virginia. Simultaneously with the sale, the Plan entered into a lease (the Lease) with the Employer for a ten year term expiring on December 31, 1978. The Lease provided that rent would be $10,500 for 1969, $21,000 for 1970 and $31,500 for each year from 1971 through 1978. In addition, the Employer was to pay all utilities, taxes assessments and costs of repair and insurance. Upon expiration of the Lease the Employer continued to occupy the Property (the Holdover) and pay rent to the Plan. The Employer represents that under Virginia law, the Holdover continued the terms of the Lease on a year to year term. Subsequent to the Holdover, the Employer and the Plan entered into a renewal (the Renewal) of the Lease effective through December 31, 1981.

3. The applicant concedes that the Holdover did not constitute a proper renewal within the meaning of section 414(c)(2) of the Act and therefore was a prohibited transaction for which transitional relief under section 414(c)(2) of the Act is not available. An exemption for the Holdover is not requested. Accordingly, the Employer represents that it will pay all excise taxes which are applicale under section 4975(a) of the Code by reason of the Holdover within 90 days of the publication in the **Federal Register** of a final notice of the granting of the exemption proposed herein. However, the applicant has applied to the Department for an exemption for the Renewal. This application is presently under consideration by the Department.

4. Because transitional relief under section 414(c)(2) of the Act is not available for the Renewal and the Renewal expires on December 31, 1981, the applicant requests an exemption for the sale of the Property by the Plan to the Employer for the higher of $525,000 or the fair market value of the Property on the date of the sale. The price of $525,000 was determined as the fair market value of the Property as of October 23, 1980, by Frank B. Daniels, S.R.A., an independent appraiser from Lynchburg, Virginia. Robert B. Miller, M.A.I., S.R.P.A., an independent appraiser from Richmond, Virginia, determined the fair market value of the Property, as of January 10, 1980, to be $510,000. The Employer represents that there will be no real estate commissions charged the Plan in relation to the sale of the Property and that the Employer will bear all costs and expenses related to the sale of the Property. The purchase price will be paid in cash on the date of the sale.

5. In summary, the applicant represents that the proposed sale satisfies the criteria of section 408(a) of the Act because: (1) it will be a one time transaction for cash; (2) the sales price for the Property was determined by an independent appraiser; (3) no real estate commissions will be charged the Plan; (4) with respect to the Holdover the Employer will fully comply with the excise tax provisions of section 4975(a) of the Code; and (5) the Plan will realize a substantial profit.

Notice to Interested Persons

Notification will include a copy of the notice of pendency of the proposed exemption and a statement informing interested persons of their right to comment or request a hearing. Notification will be made by mail or personal delivery within five days of this publication of the notice of pendency in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply

to the sale of the Property by the Plan to the Employer for $525,000, provided that this amount is at least the fair market value of the Property at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33485 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2897]

Proposed Exemption for Certain Transactions Involving Central States; Southeast and Southwest Areas Pension Fund

AGENCY: Office of Pension and Welfare Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale by the Central States, Southeast and Southwest Areas Pension Fund (the Plan), Chicago, Ill., of the Sheraton Savannah Inn & Country Club (Savannah Inn) to the Sheraton Corporation (Sheraton), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, Equitable Life Assurance Society of the United States (Equitable), Sheraton, and any other persons participating in the transaction.

DATE: Written comments must be received by the Department on or before December 23, 1981.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2897. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8884. (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by legal counsel for Equitable, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multiemployer defined benefit pension plan established and maintained pursuant to collective bargaining agreements between employers and certain affiliated unions of the International Brotherhood of Teamsters. As of December 31, 1980, the total number of participants in the Plan was in excess of 505,000.

2. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States.

3. Pursuant to an agreement dated June 30, 1977, Equitable serves as the named fiduciary of the Plan having responsibility for, among other things, monitoring, appointing and removing investment managers and custodians, allocating available investment funds among different investment managers, and developing and implementing investment objectives and policies. Under the same and a related agreement, Equitable also serves as the investment manager for those real estate-related assets of the Plan which generally relate to property located east of the Mississippi River, including the Savannah Inn, with exclusive discretionary authority and responsibility to manage and dispose of such assets.

4. During the past year, Equitable, acting in its capacity as an investment manager for the Plan, has determined that it is now appropriate for the Plan to sell its 100 percent ownership interest in the Savannah Inn, a 204 room hotel, located on Wilmington Island, Georgia.

Equitable has had substantial experience in real estate investments. Of the more than $34 billion in total assets under Equitable's management at year-end 1980, Equitable's general account held approximately $10.6 billion in mortgage loans on real property and over $1.6 billion in equity investments in real property. Additionally, more than $1.1 billion in real property investments were held in Separate Account No. 8, a pooled separate account maintained by Equitable.

5. In November, 1980, Equitable contracted for an independent professional appraisal to be performed with respect to the Savannah Inn. The Atlanta real estate consulting firm of Couch & Associates performed the appraisal and estimated the fair market value of the property to be $5,100,000 as of December 31, 1980.

6. As a result of Equitable's solicitation of offers from various potential purchasers, the best offer received was an all-cash offer of $7,500,000 made by Sheraton. Sheraton and its affiliates own, operate and manage an extensive system of hotels in the United States and Canada and other foreign countries. Sheraton, through its subsidiary, Sheraton Inns, Inc., also grants selected operators of motor and resort hotels licenses to operate as Sheraton Inns. In the fall of 1978, a Sheraton franchise was obtained for the Savannah Inn. The franchise is a standard license agreement granted by Sheraton Inns, Inc., a wholly-owned subsidiary of Sheraton, under which the licensee, for a fee, acquires, among other things, the right to use the name "Sheraton" and the right to participate in Sheraton's reservation service; Sheraton does not, however, manage the Savannah Inn.[1]

[1] Although the franchise relationship between Sheraton Inns, Inc. and the Savannah Inn might be

Continued

7. The sale of the Savannah Inn to Sheraton may, however, constitute a prohibited transaction as a result of an unrelated joint venture relationship between Equitable and Sheraton. Accordingly, an exemption is herein requested to permit the sale of the Savannah Inn to Sheraton.

8. Sheraton and Equitable are currently participants in a joint venture formed in January, 1979, which was effective as of December 30, 1978. As of December 30, 1978, Equitable, Sheraton anf Flagship International, Inc. (a subsidiary of American Airlines) formed a joint venture (called First Hotels) to acquire from Flagship International leasehold interests in both the Sheraton Centre (formerly the Americana) and the City Squire Hotels located in New York City. Equitable acquired a 50 percent interest in the venture (having contributed $17,000,000 in cash), Sheraton acquired a 31 percent interest (having contributed $10,500,000 in cash), and Flagship International acquired a 19 percent interest (having contributed the equivalent value of $6,500,000). Also, First Hotels has entered into long-ferm operating subleases for both hotels with Hudson Sheraton Corporation, a Wholly-owned subsidiary of Sheraton, whereby both hotels are operated and managed by Hudson Sheraton Corporation. On November 28, 1979, Equitable and Sheraton purchased their proportionate shares of the joint venture interest held by Flagship International, resulting in Equitable obtaining a 61.76 percent interest and Hudson Sheraton obtaining a 38.24 percent interest in the joint venture. Ownership in the joint venture has not changed since November, 1979.

9. The sale of the Savannah Inn by Equitable to Sheraton (or a wholly-owned nominee thereof) on behalf of the Plan might be deemed to constitute a prohibited transaction under section 406(a) of the Act. Sheraton may be a party in interest to the Plan by reason of its participation with Equitable, a Plan fiduciary, in the above described joint venture.

10. Despite the fact that the proposed sale may constitute a prohibited transaction under the Act, Equitable represents there is significant justification for an exemption. Equitable believes that the proposed sale constitutes an excellent opportunity for the Plan. The Sheraton offer is for $2.4 million more than the year-end 1980 appraised value of the property, and is higher than any other offer received in response to Equitable's solicitation of competitive bids for the property. The terms and conditions of the sale were negotiated on an arm's-length basis by Equitable and Sheraton. In addition, Equitable represents that although there is the joint venture relationship between Equitable and Sheraton described above, that relationship has had no bearing on, and was not used in any way to influence, the terms and conditions of the proposed transaction.

For more than a year Equitable has been discussing the sale of the Sheraton Savannah Inn with various interested persons. The first serious offer was received during the summer of 1980 in the amount of $6,500,000. Although the offer was subsequently raised to $6,700,000, the offer was rejected because the Plan was being asked to grant a purchase money mortgage and Equitable was not satisfied with the offerer's ability to manage the facility.

In the fall of 1980, Equitable opened negotiations with Sheraton, which had previously expressed an interest in purchasing the property. These negotiations led to an initial offer from Sheraton for $7,000,000. The offer included a request for a purchase money mortgage for $6,000,000. Although Equitable believed the offer was reasonable, it decided to approach all parties known to have an interest in purchasing the property in order to seek a more favorable offer. Upon being informed by Equitable of its intention to solicit additional offers, Sheraton modified its offer, making it an all-cash offer of $7,000,000, with no request for a purchase money mortgage.

Thereafter, on May 18, 1981, Equitable sent a letter to ten individuals and corporations believed to have a serious interest in buying the property. The letter indicated that an acceptable offer had been received by Equitable, but that additional offers would be considered if received before June 1, 1981. In an effort to discourage frivolous offers, the letter further stated that only cash offers accompanied by a certified check in the amount of 10 percent of the offering price would be considered.

As a result of the invitation for additional offers, Sheraton revised its offer to an all-cash payment of $7,500,000 and forwarded certified checks for $750,000. The only other offer submitted was for $7,200,000. This offer was accompanied by a certified check for $25,000, an amount significantly less than the requested 10 percent deposit.

The applicant states that when Sheraton's all cash offer of $7,500,000 is viewed in light of the December 31, 1980, appraised value of $5,100,000, Equitable's efforts to secure other competitive bids as described above, and the other offers received, the Sheraton offer not only appears to be an appropriate offer given current market conditions, but is significantly better than any other offer that has been made to purchase the property.

11. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The requested exemption would permit Equitable, acting on behalf of the Plan to sell an investment property on favorable terms, thereby furthering the investment objectives and funding needs of the Plan;

(b) The sale of the Savannah Inn represents an excellent opportunity for the Plan because of the favorable price and all-cash terms of the offer. Not only is the Sheraton offer significantly in excess of the year-end 1980 appraised value of the property, but it also is higher than any other offer received in response to the efforts made by Equitable over the past year to market the property; and

(c) Equitable, in its capacity of Plan fiduciary, has determined that the proposed transaction is in the best interests of the Plan.

Notice to Interested Persons

Notice of the pending exemption will be sent by certified mail within 3 days of publication in the **Federal Register** to each current trustee and to each employer association and employee organization which is a signatory to the trust agreement. The notice will include a copy of the Notice of Pendency as published in the **Federal Register** and a statement informing interested persons of their right to comment on the pending exemption within the time period set forth in the Notice of Pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act,

considered to make Sheraton a service provider and, therefore, a party in interest with respect to the Fund. PTE 77-11 (42 FR 54041, October 4, 1977) provides, *inter alia*, a general exemption from the prohibited transaction provisions for transactions between the Plan and service providers with respect to the Plan.

which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) and (D) of the Code shall not apply to the cash sale by the Plan of the Savannah Inn to Sheraton for $7.5 million, provided that this amount is not less than the fair market value at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November, 1981.

Morton Klevan,

Deputy Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33497 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-111; Exemption Application No. D-1675]

Exemption From the Prohibitions for Certain Transactions Involving Employee Benefit Plans and 205 Columbia Corporation and Intermodal Equipment Associates

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits purchases by Self-Employed Retirement Plans (Keogh Plans) and Individual Retirement Accounts (IRA's, collectively, the Plans) of partnership interests in 205 Columbia Corporation (205) and Intermodal Equipment Associates (IEA), Seattle, Wash. Both 205 and Foster and Marshall, Inc. (F and M), a party in interest with respect to the Plans, are wholly owned by the F and M Corporation (Parent). The Parent owns one-third of IEA.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 1981, notice was published in the **Federal Register** (46 FR 38175) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the requirements set out in the proposed exemption. Seven public comments were received by the Department, six of which supported and one opposed the granting of the proposed exemption. The objecting commentator stated that the proposed purchases of partnership interests would be inappropriate for employee benefit plans due to: (1) Their tax-sheltering orientation; (2) the majority of risk in the partnerships being assumed by the Keogh Plans and IRA's; and (3) the lack of a secondary market for the partnership interests. The applicant has responded to these three objections as follows: (1) the tax-sheltering aspects of most of the partnerships are nominal and incidental; (2) the liability of the Keogh Plans and IRA's as limited partners is limited to their investment; and (3) while it is true that there is currently no secondary market for the partnership interests, this factor, in and of itself, should not preclude a Keogh Plan or IRA from investing in a partnership. Furthermore, the applicant stresses that Plan fiduciaries who are independent of the Parent, F and M, 205 and IEA, make all investment decisions regarding a Plan's purchase of partnership interests, so that the appropriateness of such an investment is determined by an independent party. The Department has reviewed the above-described objections and the applicant's response to those objections, and has determined that the exemption should be granted as proposed. The Department believes that there are adequate protections for the Keogh Plans and IRA's in that the appropriateness of each investment in a partnership will be determined by an independent fiduciary. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase by the Plans of securities issued by partnerships or other entities affiliated with 205 or interests in marine dry cargo container programs from IEA or other entities affiliated with IEA, as described in the proposed exemption.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 17th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33494 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2556]

Proposed Exemption for Certain Transactions Involving the Custom Machine, Inc. Profit Sharing Trust Located in Woburn, Massachusetts

AGENCY: Department of Labor, P&WBP.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the proposed loans (the Loans) of money for a period of five years by the Custom Machine, Inc. Profit Sharing Trust (the Plan) to Custom Machine, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Plan, the Employer and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 30, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2556. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restriction of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested person are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which as of April 30, 1981 had 16 participants and assets of approximately $65,000. The trustees (the Trustees) of the Plan are Cosmo Pasciuto (Pasciuto) and Anna Pasciuto. Pasciuto is the president and sole owner of the Employer. The Employer is a machine shop engaged primarily in the business of custom machining and milling of various metals and plastics. The Employer owns and leases a number of milling and metal working machines (the Machines).

2. The Employer is requesting an exemption to allow the Plan for a period of five years to make Loans on a recurring basis to the Employer. The proceeds of the Loans will be used by the Employer to purchase Machines, some of which will be used by the Employer and some of which will be leased to unrelated machine shops. The five year Loan period will begin on the date the exemption for the proposed

transactions is published in the **Federal Register**. The Loans will be subject to the following conditions:

(a) All Machines and Equipment purchased will be new.

(b) Each Loan will be collateralized by a promissory note and a security agreement.

(c) Each Loan will have a first lien on the purchased Machine and in addition will be collateralized by additional Machines owned by the Employer, such that at all times each Loan will be collateralized in an amount at least equal to 200% of the outstanding balance of such Loan.

(d) No Loan will exceed 80% of the purchase price of the Machine financed, excluding tax and transportation costs.

(e) The maximum length of any Loan will be 48 months.

(f) The interest rate on the Loans will be fixed at a rate of 1% above the prevailing prime rate of the Woburn Bank and Trust Company located in Woburn, Massachusetts.

(g) At the time of its making, no Loan, together with the outstanding balances on other Loans will exceed 25% of the market value of the assets of the Plan.

(h) The Employer will adequately insure the Machines and all other collateral against fire and all other relevant hazards with the Plan being the named beneficiary of such insurance.

3. Prior to the Plan entering into any Loan an independent fiduciary, Mr. Roy Henshaw (Henshaw) must certify that such Loan will be an appropriate investment for the Plan and that the terms of such Loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated pafty. Henshaw will also be responsible for monitoring the fair market value of the collateral used in securing the Loans and for enforcing the terms and conditions of the Loans on behalf of the Plan. Henshaw is a C.P.A. who is located in Braintree, Massachusetts and is represented by the applicant to have experience in business and investment matters.

4. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act as follows: (1) The Trustees of the Plan represent that the Loans will be in the best interests of the Plan; (2) Loans will be approved and monitored by an independent fiduciary; (3) the Plan will receive a high rate of return on their investments; (4) the Loans will be secured at all times in an amount at least equal to 200% of the outstanding balance of the Loans; and (5) the exemption will be for a five year period.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register**, a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be posted at the Employer's worksite in a place where all participants and beneficiaries of the Plan will see it. Any participant or beneficiary of the Plan not at the Employer's worksite will be mailed the same information within the ten day period.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of five years to the Loans by the Plan to the Employer provided that the terms and conditions of such Loans are at least equal to those which the Plan could receive in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33488 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2700]

Proposed Exemption for Certain Transactions Involving First Federal Savings and Loan Association of Arizona

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit: (1) The past and proposed sale, exchange or transfer between First Federal Savings and Loan Association of Arizona (First Federal), Phoenix, Ariz., and certain pension plans (the Plans) of pools of mortgage loans (Pools) or participation interests (participation Interests) in the Pools which are packaged by First Federal and the holding of such Pools or Participation Interests by the Plans. This exemption would apply solely to the First Federal and the Plans; and (2) certain past and proposed transactions related to the servicing and operation of the Pools or participation Interests by First Federal. The proposed exemption, if granted would affect the Plans and their participants and beneficiaries, First Federal and other persons involved in the above-described transactions.

EFFECTIVE DATE: The exemption, if granted, would be effective January 1, 1975.

DATES: Written comments and requests for a hearing must be received by the Department on or before December 28, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–2700. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and (2) and 407 of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by First Federal, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. First Federal is a federally chartered savings and loan association regulated by the Federal Home Loan Bank Board having its principal offices in Phoenix, Arizona. First Federal is engaged both in Arizona and nationally in the making of single family and multi-family residential loans and commercial loans. From January 1, 1975 to December 11, 1980, First Federal assembled the Pools, which consisted of single family, multi-family or commercial first mortgage loans originated or owned by First Federal. First Federal sells either the entire Pool or a Participation Interest (typically 90%) to an individual Plan, and retains whatever portion of the Pool is not purchased by such Plan. First Federal has no pre-existing relationship to any Plan investing in a Pool for the first time, however, First Federal services the Pools and thereby becomes a party in interest to the Plans, so that a subsequent sale of Pools or Participation Interests to the Plans constitutes a prohibited transaction under section 406 of the Act. The transactions which are described in this request are customary secondary market transactions regularly performed in First Federal's business environment. These transactions are also customary and usual in the savings and loan industry. The applicant further represents that the transaction do not involve a conflict of interest or present a situation where advantage could be taken of the Plans or of the trustees of such Plans because all Plan decisions regarding investment in Pools or Participation Certificates are made by Plan fiduciaries who are independent of First Federal. The applicant is requesting a retroactive and a prospective exemption for the aforementioned transactions which are described below.

2. The average term of the single family and multi-family residential loans included in the Pools is 30 years and the average term of commercial loans is 25 years. The average loan to value ratio for single family residential loans is 80%, but may be as high as 95%. If the loan to value ratio is above 90%, private mortgage insurance guaranteeing the top 25% of the loan is required. For multi-family and commercial loans, the average loan to value ratio is 66.55% but may be as high as 80%. The delinquency rate for all loans has been 1.37% in the past 12 months. This delinquency rate corresponds to that rate experienced by First Federal in the management of its total mortgage loan portfolios for a comparable time period. The documentation for these transactions provides that the yield to the respective Plans would be at the then prevailing market interest rate.

3. The Plans pay no investment management, investment advisory, sales commission or similar fee to First Federal with regard to the acquisition or sale of a Pool or a Participation Interest. The applicant represents that the Plans pay no more for the Pools or Participation Interests than would be paid by an unrelated party in an arm's length transaction.

4. All transactions relating to the Pools or Participation Interests are controlled by a loan participation agreement (the Loan Agreement) which the applicant represents is the standard form of agreement promulgated and recommended by the United States Savings and Loan League, a national trade association whose membership includes a majority of federal savings and loan associations. The Loan Agreement, which is submitted to Plan fiduciaries for their review prior to a Plan's purchase of a Pool or Participation Interest, requires First Federal to secure the following documentation for each individual loan in a Pool: (a) an appraisal of the real property concerned; (b) a policy of title insurance insuring First Federal in an amount at least equal to the outstanding principal balance of the loan; (c) a policy of fire and extended coverage insurance in an amount at least equal to the outstanding principal balance of the loan, which policy is payable to First Federal to the extent of its interest; and (d) a security instrument in the form of a deed of trust, realty mortgage or contract for the sale of real property securing payment of the morgagor's promissory note.

5. First Federal's duties as servicer under the Loan Agreement include the following: (a) To collect all payments

due under the terms of each promissory note as they become due; (b) to deposit all funds received on behalf of each mortgage loan in a separate general ledger account held by First Federal who shall maintain detailed records showing the respective interests of each individual borrower in such account; (c) to keep a complete and accurate account of and properly apply sums collected from each borrower on account of each respective mortgage loan for principal, interest, taxes, assessments and other charges including insurance premiums; (d) to make its records available for inspection at reasonable times for the Plans agents; (e) to retain physical possession of the promissory note, security instrument and applicable insurance policies; (f) when appropriate or upon default in a mortgage loan, to determine when to accelerate the entire balance due under the loan and when to foreclose; and (g) to decide whether to buy the security at the foreclosure sale or accept a deed in lieu thereof, and decide whether to improve or sell the underlying property.

6. First Federal's compensation for servicing the Pools or Participation Interests is disclosed in and controlled by the Loan Agreement. The applicant represents that First Federal's servicing fee is determined on the same basis as are the fees of investors in Pools other than the Plans. Also, First Federal's fee is consistent with servicing fees charged throughout the secondary market in the United States for similar services.

7. It is understood by the parties to the Loan Agreement that the sale of a Pool or Participation Interest shall be without recourse as required by law; [1] however, the Loan Agreement states that in the event of default on a mortgage loan, First Federal, at its option, may repurchase a Plan's interest in such loan for an amount representing a Plan's pro rata interest in the outstanding principal balance plus accrued interest. The Loan Agreement further provides that after each sale and transfer of a Participation Interest the interest owned by a Plan and the retained interest owned by First Federal shall be ratably concurrent and neither shall have any priority over the other. Also, First Federal may make advances upon any mortgage loan in payment of premiums due on any policy of life, health or accident insurance where such policy by its terms inures to the benefit of the mortgagee. Furthermore, First Federal may make any other advances to the mortgagors that it deems in the Plans' interests.

[1] 12 CFR 563.23 states that "All loans and participation interests in loans sold by an insured insitution shall be sold without recourse."

8. In summary, it is represented that the transactions discussed herein satisfy the statutory requirements of section 408(a) due to the following: (a) The exemption relates to transactions between the Plans and First Federal (a federally regulated institution) which are customary secondary market transactions regularly performed by the First Federal; (b) all Plan decisions regarding investment in the Pools were and will be made by Plan fiduciaries who are independent of First Federal; (c) the Plans have paid and will pay no more for Pools or Participation Interests than would be paid by an unrelated party in an arm's length transaction; (d) First Federal's servicing fee has been and will continue to be consistent with fees charged in the secondary market for similar services and also consistent with fees charged other investors in Pools; and (e) the warranties and representations made by First Federal relative to the mortgage loans constituting the Pools or Participation Interests are standard for such secondary market transactions.

Notice to Interested Persons

Notice of the proposed exemption will be provided to the appropriate fiduciaries of Plans that have invested in the Pools by certified mail within seven (7) days of the date the proposed exemption is published in the **Federal Register**. The notice will include a copy of the proposed exemption and will inform each recipient of his right to comment on the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive or whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

(1) Effective January 1, 1975, the restrictions of sections 406(a) and 407 [2]

[2] The prohibitions in Title I of the Act also may apply where an employer of employees covered by an investing Plan leases property subject to a mortgage loan included in a Pool. Under certain circumstances, the acquisition of such real property, through foreclosure or otherwise, by the Pool on behalf of a Plan may be prohibited under section 406(a)(1)(E) of the Act as the acquisition of employer real property, as defined in section 407(d)(2), in violation of section 407(a) of the Act. Furthermore, the Pool may acquire mortgage notes arising from loans made to and secured by property owned by an employer of employees covered by an investing Plan. The acquisition of such loans may involve the acquisition of employer securities prohibited under section 407(a) of the Act. Also the continued holding in a Pool of such property and mortgages secured thereby, and the continued

Continued

of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale, exchange or transfer of the Pools or Participation Interests only between the Plans and First Federal and the holding of such Pools or Participation Interests by the Plans provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of First Federal who has authority to manage or control those Plan assets being invested in the Pools or Participation Interest;

B. The Plan pays no more for the Pools or Participation Interests than would be paid in an arm's length transaction with an unrelated party;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to First Federal with regard to such sale, exchange or transfer; and

D. The following record-keeping requirements are satisfied:

(1) First Federal shall maintain for the duration of any Pool or Participation Interest therein which is sold to a Plan pursuant to this exemption, records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that:

(a) A prohibited transaction will not be deemed to have occurred, if, due to circumstances beyond the control of First Federal, records are lost or destroyed prior to the termination of the Plans holding of a Pool or Participation Interest,

(b) No party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (2) below; and

(2) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service;

(II) Effective January 1, 1975, the restrictions of section 406(b) (1) and (2) of the Act [3] and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to transactions in connection with the servicing and operation of the Pools or Participation Interests by First Federal provided that:

A. Such transactions are carried out in accordance with the terms contained in the Loan Agreement;

B. The Loan Agreement is made available to Plan fiduciaries before they purchase Pools or Participation Interests; and

C. The sum of all payments made to, retained by, or inuring to the benefit of First Federal as a result of the administration of the Pools and Participation Interests represent not more than adequate consideration for such sale, exchange or transfer.

(III) Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act), solely because of the ownership of a Pool or Participation Interest by such Plan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions that are the subject of the exemption.

Signed at Washington, D.C., this 16th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33491 Filed 11-19-81; 8:45 am]

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holding by a Plan of a Pool or Participation Interest may also be prohibited under sections 406(a)(2) and 407(a) of the Act.

[3] No exemption from section 406(a) of the Act is being granted for the transactions discussed in this section beyond that which is provided by the statutory exemption provided by section 408(b)(2) of the Act.

[Application No. D-2512]

Proposed Exemption for a Certain Transaction Involving the Heifetz Pension Plan and the Heifetz Profit Sharing and Retirement Plan, Wood-Ridge, N.J.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the past sale of a U.S. Treasury Note by the Heifetz Profit Sharing and Retirement Plan (the Profit Sharing Plan) to the Heifetz Pension Plan (the Pension Plan) on October 7, 1976. The Pension Plan and the Profit Sharing Plan had the same trustees at the time of the sale. The proposed exemption, if granted, would affect the Pension Plan, the Profit Sharing Plan, the participants and beneficiaries of both Plans, and other persons who participated in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 20, 1981.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective October 7, 1976.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2512. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed on behalf of the Plans, pursuant to section 408(a) of the

Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Pension Plan had 22 participants and a net worth of $83,923 as of October 1976. The Profit Sharing Plan had 17 participants and a net worth of $44,441 as of October 1976. The Plans were terminated on December 31, 1978. Assets were distributed to most participants on May 15, 1980 and the final distribution of assets was made on April 1, 1981.

2. The trustees of the Pension Plan and the Profit Sharing Plan were Sidney T. and Claire I. Heifetz, the principal shareholders of Heifetz Metal Crafts, Inc., the Plan sponsor.

3. The applicant requests an exemption for the sale of a $5,000 U.S. Treasury Note (the Note) by the Profit Sharing Plan to the Pension Plan on October 7, 1976.

4. In October 1976 the Profit Sharing Plan required approximately $5,000 to fulfill its financial obligation to its retiring participants. In order to obtain the needed cash, the Profit Sharing Plan sold the Note to the Pension Plan. At this time, the Pension Plan had approximately $5,000 more cash than it required to distribute to its retiring participants.

5. On October 7, 1976, the Profit Sharing Plan sold the Note to the Pension Plan. The Note had a face value of $5,000 and bore interest at 7¾%. It was Series B–1981, dated November 15, 1974, and due on November 15, 1981. The interest on the Note was payable on May 15th and November 15th of each year. The accrued interest was included in the sales price at the time of the sale of the Note.

6. The Profit Sharing Plan sold the Note for $5,263.30. This amount equalled the cost of the Note to the Profit Sharing Plan on August 23, 1976 plus accrued interest to October 7, 1976. The Profit Sharing Plan held the Note for 44 days before sale to the Pension Plan. The applicant represents that this price represented the fair market value of the Note. The applicant further represents that by the sale of the Note by the Profit Sharing Plan to the Pension Plan, the Profit Sharing Plan was able to save additional fees which it would have had to incur in the sale of the Note to an unrelated party. These additional fees included brokers' commission, bank charges, and registered mail fees.

8. In summary, the applicant represents that the sale of the Note by the Profit Sharing Plan to the Pension Plan, as described above, satisfied the statutory criteria of section 408(a) of the Act because:

(1) it was a one-time cash transaction;

(2) the Pension Plan paid fair market value for the Note;

(3) the Profit Sharing Plan did not incur any additional costs in connection with the sale of the Note, i.e. brokers' commission, bank charges, and registered mail fees;

(4) the Profit Sharing Plan was able to promptly satisfy its obligation to its retiring participants as the cash for the sale of the Note was made available to the Profit Sharing Plan immediately; and

(5) the Plan trustees believed that the sale of the Note by the Profit Sharing Plan to the Pension Plan was in the interest of an protective of the Plans and their participants and beneficiaries.

Notice to Interested Persons

Since the Plans have been terminated and all assets have been distributed, publication in the **Federal Register** is deemed to be sufficient notice to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Internal Revenue Code (the Code) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(2) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the past sale of a $5,000 U.S. Treasury Note, bearing interest at 7¾%, by the Profit Sharing Plan to the Pension Plan for the amount of $5,263.30, paid in cash, provided this amount was the fair market value of the Note at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33463 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2511]

Proposed Exemption for a Certain Transaction Involving the Heifetz Pension Plan, Wood-Ridge, N.J.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the past sale of a U.S. Treasury Note by the Heifetz Pension Plan (the Plan) to Claire I. Heifetz, a trustee of the Plan (the Trustee). The proposed exemption, if granted, would affect the Trustee, the Plan, and other persons who participated in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 20, 1981.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 26, 1978.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2511. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Hamilton of the Department of Labor, telephone (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), and 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan was a pension plan with 11 participants at the time the subject transaction took place. The Plan was terminated on December 31, 1978 and the final distribution of assets was made on April 1, 1981. The Plan had total assets of $79,862 as of July 25, 1978, the time of the subject transaction.

2. The trustees of the Plan were Sidney T. and Claire I. Heifetz, the principal shareholders of Heifetz Metal Crafts, Inc., the Plan sponsor.

3. The applicant requests an exemption for the sale of a $5,000 U.S. Treasury note (the Note) by the Plan to the Trustee on July 26, 1978.

4. In July 1978 the Plan needed $10,103 in cash to distribute to a retiring participant. The Plan had only $5,222 in bank deposits at the time. The remainder of the assets of the Plan were invested in U.S. Treasury notes. A note of $5,000 had to be sold to provide the needed cash.

5. On July 26, 1978 the Plan sold the Note, which had a face value of $5,000 and bore interest at 7¾% to the Trustee. The Note was Series B-1981, dated November 15, 1974, due on November 15, 1981. The interest on the Note was payable on May 15th and November 15th of each year. The accrued interest was paid at the time of the sale of the Note by the Plan to the Trustee.

6. The Plan received $4,977.60, the "asked price" for the sale of the Note as published in the *New York Times* on the date of the sale. The applicant represents that this price represented fair market value at the time of the sale. The applicant further represents that by the sale of the Note by the Plan to the Trustee, the Plan was able to save additional fees which it would have had to incur in a sale of the Note to an unrelated party. These additional fees included the broker's commission, bank charges, and registered mail fees.

8. In summary, the applicant represents that the sale of the Note by the Plan to the Trustee, as described above, satisfied the statutory criteria of section 408(a) of the Act because:

(1) it was a one-time cash transaction;

(2) the Plan received fair market value for the sale of its Note;

(3) the Plan did not incur any additional costs in connection with the sale of the Note to the Trustee, i.e. broker's commission, bank charges, and registered mail fees;

(4) the Plan was able to promptly satisfy its obligation to a participant because the cash for the sale of the Note was made available to it immediately; and

(5) the Plan trustees believed that the sale of the Note by the Plan to the Trustee was in the interest of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Since the Plan has been terminated and all assets have been distributed, publication in the **Federal Register** is deemed to be sufficient notice to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of a $5,000 U.S. Treasury Note, bearing interest at 7¾%, by the Plan to the Trustee on July 26, 1978 for $4,977.60 cash, provided the amount received by the Plan was not less than the fair market value of the Note at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33484 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2343]

Proposed Exemption for Certain Transactions Involving the Hub Surgical Co., Inc., Profit Sharing Plan Located in Williamsport, Pa.

AGENCY: Department of Labor, P&WBP.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of the improvements on the real property described below (the Property) by the Hub Surgical Co., Inc. Profit Sharing Plan (the Plan) and the proposed transfer of the Plan's interest as ground tenant of the Property to Messrs. Kenneth E. McNulty, Orvis A. Koser, and Dale Young (the Owners), who are all parties in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan, its participants and beneficiaries, the Owners, the sponsors of the Plan, and the Bank of Central Pennsylvania, which is the mortgagee in a mortgage loan on the improvements.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2343. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued soley by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined contribution plan covering 8 participants as of December 31, 1980. The Plan sponsors are Hub Surgical Company, Inc. and Hub's Patient Care Supplies, Inc. (collectively, the Employer). The Owners are the officers, directors, and shareholders of the Employer. They are also participants in the Plan, and two are trustees of the Plan.

2. The Property consists of two parcels of improved real property whose addresses are 900 and 906 Arch Street, Williamsport, Pennsylvania. the Property was acquired by the Owners from unrelated third parties on February 14, 1975, on which date the Owners entered into a ground lease with Hub Surgical Company and Home Health Services, Inc. (which subsequently became Hub's Patient Care Supplies, Inc.) for the purpose of constructing and leasing a commercial building.

3. On October 17, 1975, the Plan and Hub's Patient Care Supplies, Inc. became mortgagors under a construction loan from the Bank of Central Pennsylvania in the principal amount of $100,000 (the Mortgage). The Mortgage has a term of 15 years and 5 months and bears interest at the rate of 9.25 percent per year. The total payments thereon each year are $12,350.40. It is represented that it was intended that the Plan would be primarily responsible for repaying the Mortgage. Shortly thereafter, the improvements were constructed by the Employer. The Plan owns the improvements.

4. On February 14, 1976, the Employer assigned its interest as ground tenant of the Property to the Plan. The ground rent paid by the Plan to the Owners is $4,500 per year. On January 1, 1976, the Plan

executed two leases, beginning March 1, 1976, of space in the improvements to the Employer. These are net leases. The rent paid to the Plan by the Employer is $18,000 per year, resulting in net income to the Plan of $1,150 per year, after subtracting the Plan's yearly Mortgage payments ($12,350.40) and yearly ground rent ($4,500).

5. Having been advised of the prohibited transactions inherent in the leases described above and the Mortgage, the Plan proposes to sell the improvements on the Property and to transfer its leasehold interests to the Owners. The Plan's leasehold interest and the improvements will be sold for their fair market value, based on the appraisal of an independent expert. There will be no purchase money financing; the entire consideration will be paid to the Plan at the time of conveyance. The Owners will assume the Plan's obligations under the Mortgage and will apply the outstanding balance thereunder against the sales price. As of December 31, 1980, the outstanding balance on the Mortgage was approximately $81,000. The Owners will bear all cost of legal and related expenses to consummate the proposed transactions. It is represented that selling the Plan's interests in the Property to independent third parties, rather than to the Owners, would disrupt the operation and control of the Employer's business and would be unwise from a commercial standpoint.

6. Mr. F. Donald McKernan, M.A.I., an independent appraiser, has estimated the fair market values of the improvements on the Property and the Plan's interest in the ground lease as of February 25, 1981, as $120,000 for the property located at 900 Arch Street, and $27,500 for the property located at 906 Arch Street. Accordingly, the consideration for the sale of the improvements and the transfer of the Plan's interest in the ground lease will be $147,500.

7. It is represented that the Owners were unaware of the prohibited transactions referred to above and that the arrangement was not established with the benefit of legal counsel. However, the Owners have agreed to file Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans, reporting these prohibited transactions to the Internal Revenue Service and paying the excise taxes due thereon within 60 days after the proposed exemption is granted.

8. In summary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act because:

(a) The proposed sale and transfers will be one-time transactions, the entire consideration for which will be paid to the Plan at the time of conveyance;

(b) The proposed sale and transfers will allow the Plan to exchange assets producing a relatively low return for a sizeable amount of cash which can be invested more profitably for the benefit of Plan participants and beneficiaries;

(c) The removal of the Plan's debt obligation will prevent a potential lien on Plan assets;

(d) Consideration for the proposed transactions has been determined by independent appraisals;

(e) The Owners will bear all cost of legal and related expenses to consummate the proposed transactions; and

(f) The trustees of the Plan believe the proposed transactions are in the best interest of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Within fifteen days of its publication in the **Federal Register**, a copy of the notice of pendency and a statement advising interested persons of their right to comment and/or request a hearing will be mailed to all present and former participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be make a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of the improvements on the Property by the Plan to the Owners and the proposed transfer to the Owners of the Plan's interest as tenant in the ground lease for a total consideration of $147,500, provided this amount is not less than the aggregate fair market value of such improvements and such leasehold interest at the time of conveyance.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to

be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33488 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1820]

Proposed Exemption for Certain Transactions Involving the Minnesota Farms Company 1976 Revised Employees' Pension Plan Located in Appleton, MN

AGENCY: Department of Labor, P&WBP.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of certain improved real property (the Property) by Minnesota Farms Company 1976 Revised Employees' Pension Plan (the Plan) to Minnesota Farms Company (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect paticipants and beneficiaries of the Plan and the Employer.

DATE: Written comments and requests for a public hearing must be received by the Department on or before December 29, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-1820. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Lewis of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan by Dr. Edward J. Kaufman, the trustee (the Trustee) of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of the 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined benefit pension plan with two participants, Dr. Edward J. Kaufman and his wife, Dorothybelle Kaufman. The Plan was terminated in 1977 (i.e. benefits ceased to accrue), at which time the two participants elected to have the assets of the Plan retained in their individual accounts. As of January 31, 1980, the Plan had net assets of approximately $155,115.

2. Among the assets of the Plan is the property, an eighty acre parcel of agricultural land located near Highway 7 in Appleton, Minnesota. The Property reporesents approximately 36 percent of the Plan assets. The Property is adjacent to land already owned by the Employer, which is used by the Employer for agricultural purposes.

3. The Property was purchased by the Plan in 1959 for $6,400. Taxes and insurance premiums paid by the Plan since the Property was purchased amount to approximately $4,660. Further, the Plan made improvements to the Property in the amount of $24,763.34, for a total capital investment of $31,163.34. The Property has been used solely for agricultural purposes and has been farmed by a series of tenants unrelated to the participants in this transaction. Income to the Plan from the Property has been variable. The average rate of return to the Plan for the years 1959 to 1977 was 2.7% per annum. During 1978, 1979 and 1980, the annual return to the Plan averaged 21.4%, but the Trustee states that this brief period of high income was due to the planting of a specialty crop of hybrid corn that cannot be planted again in the near future because of soil exhaustion.

4. The Trustee states that the Property is, at this point, an inappropriate investment for the Plan because of an increased need for liquidity of Plan investments. Both participants in the Plan are over 65 years of age. The Trustee states, further, that the Property will be an unprofitable investment for the Plan unless a center pivot irrigation system is installed. This type of irrigation is not feasible for the Property alone, but would work well if the Property is combined with adjoining property. The Plan Trustee has determined that the sale of the Property for a fair price and the subsequent reinvestment of the sale proceeds into income-producing assets with an established market would provide the Plan with more liquidity and a satisfactory return.

5. The Property has been appraised by two independent appraisers. Mr. Norman Massey of Farmers and Merchants State Bank, Appleton, Minnesota, stated that the fair market value of the Property on June 11, 1980 was $52,000. On July 20, 1980, Mr. Norman Pederson (Pederson), of Pederson Insurance and Real Estate Company, Appleton, Minnesota, valued the Property at $60,000. Pederson states that the value of the Property to the Employer is not any greater than it would be to an unrelated third party. He states further that there is virtually no interest in farm real estate at this time in the area in which the Property is located. The Trustee has been unable to find any purchasers for the Property, other than the Employer.

6. The Trustee proposes that the Plan sell the Property to the Employer for $60,000, or the fair market value of the Property on the date of sale, whichever is higher. The sale will be for cash only and no sales commission will be paid. Attorney's fees and other expenses connected with the sale will be paid by the Employer.

7. In summary, the applicant represents that the proposed sale of the Property meets the statutory criteria under section 408(a) of the Act because:

(1) It is a one-time transaction for cash;

(2) The Property has been appraised by two independent appraisers;

(3) All expenses connected with the sale will be paid by the Employer;

(4) No sales commissions will be paid;

(5) The Plan's liquidity will be enhanced in that the Plan will be able to reinvest the proceeds in more liquid, income-producing assets;

(6) The Plan will be able to dispose of an asset with a variable income history, uncertain income potential and limited marketability; and

(7) The Trustee has determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

Notice to Interested Persons

Notice to both participants shall be made by giving each participant a copy of the Notice of Pendency no later than 10 days after publication, and each participant shall be informed in writing of his or her right to comment or request a hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of the Property by the Plan to the Employer for the greater of (1) $60,000; or (2) the fair market value of the Property on the date of the sale. The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33467 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-2843 and D-2844]

Proposed Exemption for a Certain Transaction Involving the Oppenheimer Funds Self-Employed Individual Retirement Plan and the Master Profit Sharing Retirement Plan for Self-Employed Individuals With the Home Savings Bank-Boston, of Edwin T. Nadeau, Located in Winchester, Massachusetts

AGENCY: Department of Labor, P & WBP.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $26,800 by the Oppenheimer Funds Self-Employed Individual Retirement Plan (the Oppenheimer Plan) and the Master Profit Sharing Retirement Plan for Self-Employed Individuals with the Home Savings Bank-Boston (the Home Bank Plan) of Edwin T. Nadeau (Nadeau) to Mr. Nadeau and Patricia E. Nadeau, his wife and participant in the Plan. Since Nadeau and his wife, Patricia E. Nadeau, are the only participants in the Oppenheimer Plan and the Home Bank Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act (the Act) pursuant to 29 CFR 2510.3–3(c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. The proposed exemption, if granted, would affect the Oppenheimer Plan, the Home Bank Plan, the Home Savings Bank, Mr. Nadeau and Patricia E. Nadeau.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 20, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2843 and D–2844. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:
Ms. Linda Hamilton of the Department of Labor, telephone (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Mr. Nadeau, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Home Bank Plan was established by Mr. Nadeau for himself. The Trustee of the Home Bank Plan is the Home Savings Bank of Boston, Massachusetts (the Trustee). The Home Bank Plan had total assets of $33,614 as of August 19, 1981.

2. The Oppenheimer Plan was established by Nadeau for himself and his wife, Patricia E. Nadeau (the Nadeaus). It has total assets of $35,000 as of August 19, 1981.

3. The Nadeaus propose to borrow $26,800 from the Plans (the Loan) for the purchase of real estate described as Lot #5 on Robbins Hill Road on Cape Cod in Massachusetts (the Property). The Nadeaus will repay the Loan monthly over a 20-year period, with interest at 19%. The Property will be the security for the Loan.

4. The Trustee represents that a residential mortgage loan is a suitable investment for the Home Bank Plan, and that it would agree to accept the mortgage loan as an asset of the Home Bank Plan if the requested exemption is granted. The proceeds for the Loan will come from the Home Bank Plan and/or the Oppenheimer Plan. A portion of the assets of the Oppenheimer Plan may be transferred to the Home Bank Plan which will hold and administer the Loan.

5. The Sentry Co-operative Bank of Capetown, Massachusetts, an independent financial institution, represents that it would require an interest rate of 18% for loans for the purchase of individual lots similar to the lot to be purchased by the Nadeaus.

6. An appraisal by a local realtor, Herbert E. Montgomery, states that the fair market value of the Property is $42,500. He also notes that the appreciation factor has been about 20% per year for this type of land.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because:

(1) The Bank will accept the mortgage and administer the collection and record keeping of the Loan;

(2) The Oppenheimer Plan and the Home Bank Plan will receive a greater return on the Loan than they currently receive from their other investments;

(3) The Loan will be secured by property whose fair market value exceeds the amount of the Loan;

(4) The Trustee represents that the Loan is a suitable investment; and

(5) The Nadeaus, who are the only participants in the Plans and the only persons affected by the transaction, have approved of the proposed transaction and desire that it be consummated.

Notice to Interested Persons

Because the Nadeaus are the only participants in the Plans, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments recieved will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the loan of $26,800 by the Oppenheimer Plan and the Home Bank Plan to the Nadeaus provided the terms of the loan are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November, 1981.

Ian D. Lanoff,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33486 Filed 11-19-81; 8:45 am]
BILLING CODE 4510-29-M

[Application Nos. D-2605, D-2606, and D-2607]

Proposed Exemption for a Certain Transaction Involving Palmetto Spinning Corporation Salaried and Clerical Employee Profit Sharing Plan, Etc.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase by the Palmetto Spinning Corporation Salaried and Clerical Employee Profit Sharing Plan, the Palmetto Spinning Corporation Hourly Employee Profit Sharing Plan, and the Palmetto Spinning Corporation Salaried and Clerical Employee Pension Plan (the Plans), Laurens, S.C., of a portion of a loan to be made to the Palmetto Spinning Corporation and its wholly-owned subsidiary, Bulkspun Mills, Inc. (collectively, the Employer) by Citizens and Southern Financial Corporation, and unrelated party. The proposed exemption, if granted, would affect the Plans, the Employer, the Palmetto Bank, Farmers Home Administration, Citizens and Southern Financial Corporation, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 31, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D-2605, D-2606, D-2607. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), and 406(b) (1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plans had 169 participants and total assets of $851,638 as of December 31, 1980. The trustee of the Plan is the Palmetto Bank (the Trustee), which has full discretion with respect to the investment of the assets of the Plans.

2. The Employer has applied for a loan and guarantee from the Farmers Home Administration (FmHA), an agency of the Federal government, in the amount of $1,000,000 (the Loan). The Loan is to be made by the Citizens and Southern Financial Corporation (C&S), an independent third party lender with no relationship to the Employer. On February 27, 1981, C&S issued its commitment to make the Loan and on May 4, FmHA issued its commitment to guarantee the Loan.

3. Under the terms of the Loan, C&S will make the Loan to the Employer for use as working capital. The Loan will be repaid over a 17-year period with monthly installments of principal and interest at ⅞ of 1% above the secondary market rate as of the date of the closing of the Loan. The secondary market rate was 16% on May 18, 1981. If the Loan had closed on that date, the yield would have been 16⅞%.

4. The prevailing secondary market rate will be determined on the day that the Loan is closed. C&S will determine the rate at which they will be able to sell the Loan on the secondary market at par. In determining what rate the market will bear on that date, C&S will examine the then current rates for treasury bills, rates for long term money market funds, rates paid by various agencies of the Federal government, rates paid on commerical paper, and similar indices which are published and can be readily determined. Upon reviewing these indices, C&S make a determination of the prevailing rate on the market for that date.

5. As security for the Loan, a first security interest will be given in all machinery and equipment, furniture and fixtures, spare parts and accessories, owned by the Employer. Textiles Products, Inc., an independent appraiser, made a physical inventory of the plants owned by the Employer. On September 26, 1980, Textiles Products, Inc. represented that the fair market value of the plants owned by the Employer is $3,808,511.

6. The Plans proposed to purchase a portion of the Loan from C&S, not to exceed 40% of the total assets of each of the Plans. This would mean that the Plans would invest approximately $340,000 in the purchase of the Loan. C&S will retain $100,000 of the Loan. Any portion of the Loan not purchased by the Plans will be sold by C&S at par on the secondary mortgage market. The portion of the Loan to be purchased by the Plans will be fully guaranteed by FmHA.

7. William Fred Davis and William Fred Davis, Jr., the principal shareholders of the Employer, will personally guarantee the Loan. The application represents that the shareholders have a net worth in excess of $2.9 million.

8. The Trustee will monitor the repayment of the Loan to the Plans and will have the power to foreclose and assert all legal rights of the Plans in the event of a default.

9. The applicant represents that Mr. Fred Davis, Jr., a principal stockholder or the Employer, is a menber of the Board of Directors of the Trustee. However, it is represented that the trust department is operated autonomously. The trust department has made its own independent determination that the proposed transaction would be in the best interest of the Plans and its participants and has the authority to make this determination totally independent from the Board of Directors. The Board of Directors is not a party to this decision and its approval was not sought or necessary. It is further represented that the Employer has an outstanding loan with the Trustee. However, this loan represents less than 1% of the total loans outstanding of the Trustee.

10. The Trustee represents that the proposal transaction is in the interests of and protective of the Plans and their participants and beneficiaries.

11. In summary, the applicant represents that the proposed transaction satisfied the criteria of section 408(a) of the Act because:

(1) The transaction will be continuously monitored by an independent fiduciary;

(2) The Plans will receive an interest rate of ⅞ of 1% above the secondary market rate on the date of the closing of the Loan;

(3) The Plans' interest in the Loan will be guaranteed by an agency of the Federal govenment;

(4) The Loan will be collateralized by a first security interest in property which greatly exceeds the amount of the Loan;

(5) The Loan will be guaranteed by the principal shareholders of the Employer; and

(6) The Trustee of the Plans represents that the proposed transaction is in the interests of and protective of the Plans and their participants and beneficiaries.

Notice to Interested Persons

Notice will be given to all participants and beneficiaries of the Plans within 5 days after the publication of the Notice of Pendency in the **Federal Register.** Such notice will be by hand delivery and will include a copy of the notice of pendency and a statement informing the interested persons of their right to comment and/or request a hearing within the time period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975 (c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase by the Plans of an interest in the Loan to be made to the Employer by C&S in an amount not to exceed 40% of the total assets of the Plans, provided the terms of the Loan are as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 17th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33493 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2657]

Proposed Exemption for a Certain Transaction Involving the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada and the Los Angeles Sheet Metal Workers Joint Apprenticeship Committee, Local 108, Los Angeles, Calif.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the loan of $2,200,000 by the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada (the Pension Plan) to the Los Angeles Sheet Metal Workers Joint Apprenticeship Committee, Local 108 (the Apprenticeship Committee). Seven of the 32 trustees of the Pension Plan also serve on the 12 member Board of Trustees of the Apprenticeship Committee. The proposed exemption, if granted, would affect the Pension Plan, the Apprenticeship Committee, their participants and the beneficiaries, and others participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 5, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. D-2657. The application for exemption and the comments received will be available for public inspection in the

Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523–7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed on behalf of the Pension Plan, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Pension Plan has 5,400 active participants and 2,000 retirees. It had total assets of $124,000,000 as of June 11, 1981.

2. The Apprenticeship Committee was established under a collective bargaining agreement between the Sheet Metal and Air Conditioning Contractor Employers and the Sheet Metal Workers Local Union #108. It has 2,415 participants and total assets of $793,607 as of June 30, 1980.

3. The Pension Plan and the Apprenticeship Committee are multi-employer, jointly trusteed employee benefit plans. There are 32 trustees on the Board of Trustees of the Pension Plan. Seven of the 12 trustees of the Apprenticeship Committee also serve as trustees of the Pension Plan. The Pension Plan also has trustees from 10 other local unions and 10 employer associations.

4. The Pension Plan proposes to loan a maximum of $2,200,000 (the Loan) to the Apprenticeship Committee for the construction of a building to house the offices of the Apprenticeship Committee at 464 South Lucas, Los Angeles, California (the Property). This amount represents less than 2% of the total assets of the Pension Plan.

5. The Loan will be repaid in monthly installments to the Pension Plan over a period of 25 years at an interest rate of 16¾% or the prevailing rate for such loans at the time of closing. There will be a 10 year "call" provision which would give the Pension Plan the right to require the Apprenticeship Committee to repay the Loan after a 10 year period. The Loan will be secured by a first mortgage on the Property.

6. The applicant represents that the Apprenticeship Committee has a sufficient monthly cash flow to enable it to repay the Loan. The Apprenticeship Committee has a monthly income of between $42,000 and $45,000. Further, the Apprenticeship Committee will lease 5,000 square feet of the Property to the Sheet Metal Workers Local Union #108.[1] This lease will generate an additional $10,000 per month in income.

7. By letter dated August 21, 1981, the Bank of America, an independent financial institution, stated that it has reviewed the proposed loan agreement and has represented that the loan agreement is standard and that the interest rate of 16¾% as of August 21, 1981 is appropriate for this type of loan. The Bank of America noted that the rate may change due to market conditions at the time of closing.

8. An independent appraisal of the Property to be used as collateral for the Loan was made by John F. Curry, A.S.A. of Los Angeles, California, on July 21, 1981. Mr. Curry states that upon completion of construction the Property will have a fair market value of $3,400,000. This amount is in excess of 150% of the amount of the Loan. The mortgage on the Property will be duly recorded.

9. All of the trustees of the Pension Plan and the Apprenticeship Committee represents that the proposed transaction is in the interests of and protective of the Pension Plan and the Apprenticeship Committee and their participants and beneficiaries.

10. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(1) the Loan represents less than 2% of the total assets of the Pension Plan;

(2) the Pension Plan will be provided with a good, secure investment;

(3) the Loan will be secured by a first mortgage on real property owned by the Apprenticeship Committee and valued at more than 150% of the amount of the Loan; and

(4) the trustees of the Pension Plan and the Apprenticeship Committee represent that the proposed transaction is in the interests of and protective of the Pension Plan and the Apprenticeship Committee.

Notice to Interested Persons

A copy of the Notice of Pendency as published in the **Federal Register** will be mailed to all participants and beneficiaries of the Pension Plan and the Apprenticeship Committee within 15 days after its publication in the **Federal Register.** These interested persons will be informed of their right to comment and request a hearing within the time period set forth in the Notice of Pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Internal Revenue Code of 1954 that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a) and 406 (b)(1) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

[1] The Sheet Metal Workers Local Union #108 is a party in interest with respect to the Apprenticeship Committee. However, no exemption is sought for this lease because the applicant represent that it is within the scope of Prohibited Transaction Exemption 76–1 (41 FR 12740, March 26, 1976) and Prohibited Transaction Exemption 77–10 (42 FR 33918, July 1, 1977). The Department is not proposing an exemption in this notice beyond that which is provided in the above-cited class exemptions.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the loan of $2,200,000 by the Pension Plan to the Apprenticeship Committee, provided the terms of the loan are those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application and true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33482 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2247]

Proposed Exemption for Certain Transactions Involving Teamsters Local No. 20 Insurance, Health and Welfare Plan and Trust

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the assignment of a lease by the Teamsters Local No. 20 Insurance, Health and Welfare Plan and Trust (the Plan), Toledo, Ohio, to Dental Plans, Inc. (DPI), a party in interest with respect to the Plan, and the cash sale of furniture, equipment and leasehold improvements by the Plan to DPI. The proposed exemption, if granted, would affect DPI, participants and beneficiaries of the Plan, and other persons participating in the transactions.

DATES: Written comments must be received by the Department on or before January 26, 1982.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2247. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act. The proposed exemption was requested in an application filed on behalf of the trustees of the Plan, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is an employee welfare benefit plan established and maintained as a result of collective bargaining between Teamsters Local Union No. 20, I.B.T. (the Union) and various employers employing members of the collective bargaining unit represented by the Union. The Plan is administered by a Board of Trustees. The Plan has approximately 2,000 participants.

2. In 1977, the trustees determined that it was desirable to provide dental benefits to Plan participants. The trustees determined to establish a dual choice program and to be a provider of the dental benefits to those participants who did not elect the indemnification form of dental benefits. However, after having made the preliminary decision, the trustees were unable to find an independent contractor to establish and operate the Dental Care Center. Accordingly, the trustees made the following arrangements to establish and operate the Dental Care Center.

3. The trustees entered into a lease agreement (the Lease) with Forty Four Corporation (FFC) as owner-lessor for the premises in the basement of 435 S. Hawley Street, Toledo, Ohio, at which the Dental Care Center would be located. FFC is a party in interest with respect to the Plan, but the applicants represent that the Lease is statutorily exempt under section 408(b)(2) of the Act. FFC is a non-profit Ohio corporation which serves the sole purpose of holding title to real estate on behalf of Teamsters Joint Council 44, which is a District Council of all Teamster Unions in the Northwest Ohio area. The trustees then purchased from recognized suppliers all of the equipment and furniture to fully equip the Dental Care Center. The trustees entered into an agreement with Health Systems Group (HSG) to administer and operate the Dental Care Center. HSG then entered into an agreement with Kenneth A. Tannenbaum, D.D.S., Inc. (KAT), an Ohio professional corporation, whereby KAT agreed to provide all professional and dental services at the Dental Care Center.

4. The trustees have recently reviewed the situation and determined to attempt to "get out of the dental care business" and return to the position of purchaser of dental benefits. Accordingly, the trustees proposes to assign the Lease to DPI, an Ohio corporation whose principal shareholders are Dr. Kenneth A. Tannenbaum and Mr. John W. Davies. DPI would then purchase all of the furniture, equipment and leasehold improvements in the Dental Care Center for the greater of its depreciated book value or its current fair market value for cash. DPI would then enter into an agreement with the trustees to provide dental benefits for all eligible participants in the Plan and their dependents in accordance with the plan of benefits established by the trustees for a fee per eligible participant not to exceed the present fee. Mr. Davies and Dr. Tannenbaum are parties in interest with respect to the Plan solely by reason

of providing services to the Plan. Neither Mr. Davies nor Dr. Tannenbaum had any influence over the trustees with regard to the subject transactions. The trustees made an independent determination to enter into the proposed transactions.

5. The trustees have determined that the proposed reorganization of the Dental Care Center would be in the best interests of the Plan's participants and beneficiaries. The Plan would be released from its obligations under the Lease and would receive cash for the sale of equipment, furniture and leasehold improvements at the highest obtainable price. The equipment is not providing a cash return to the Plan, but the proceeds of the sale would be invested at a good rate of return. The same benefits will be provided to the Plan participants by DPI, and the monthly per capita charge based upon eligible participants will be maintained at or below the current level.

6. The applicants have submitted a letter from Mr. Harold Damrauer, C.P.A., who states that the cost of the furniture and equipment to the Plan was $154,914, and the cost of the leasehold improvements was $88,125. Mr. Damrauer states that the depreciated book value of the furniture and equipment was $102,200, and the depreciated book value of the leasehold improvements was $72,735, both as of December 31, 1980.

7. Mr. Glenn R. Tole of the Patterson Dental Company of Toledo, Ohio, an independent appraiser, has appraised the fair market value of the furniture and equipment to be $80,675 as of April, 1981 Mr. Ronald Frazier of the H. Meer Dental Supply Co., Berkley, Michigan, another independent appraiser, has appraised the value of the furniture and equipment to be $83,770 as of March, 1981. Accordingly, the applicants propose to sell the furniture and the equipment for its depreciated book value of $102,200, since that is greater than its appraised value. The applicants represent that they were informed by the appraisers that no market value could be given for the leasehold improvements because there is no secondary market for them. Accordingly, the applicants represent that the depreciated book value of $72,735 for the leasehold improvements is the appropriate sales price, because, to the best of their knowledge, information and belief, it represents the fair market value of the leasehold improvements.

8. In summary, the applicants represent that the proposed transactions meet the statutory criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash at a price considerably above the appraised value, and no commission will be paid on the sale; (2) the Plan will be able to invest the proceeds of the sale of non-income producing assets; (3) DPI will provide the same dental benefits at a monthly per capita charge at or below the current level; and (4) the trustees have determined that the transactions are appropriate for the Plan and in the best interests of its participants and beneficiaries.

Notice to Interested Persons

Within 30 days following the publication of this notice in the **Federal Register**, notification will be provided to the Union, to employers contributing to the Plan, and to Plan participants. The Union and the employers will be notified by letter, and the Plan participants will be notified by publication in the Union's newsletter, "Team and Wheel." Notification shall include a copy of the proposed exemption and will inform interested persons of their right to comment on the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the adress above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the assignment of the Lease by the Plan to DPI, and the cash sale of the furniture, equipment and leasehold improvements in the Dental Care Center by the Plan to DPI for a total of $174,935, provided such amount is not less than their fair market value at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November, 1981.

Morton Klevan,

Deputy Administrator, Pension and Welfare Benefit programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33492 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-2406 and D-2407]

Proposed Exemption for Certain Transactions Involving Money Purchase Plan of Wilco Trading Co. and Defined Benefit Pension Plan of Wilco Trading Co.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the proposed loans of money for a period of five years by the Money Purchase Plan of the Wilco Trading Company and the Defined Benefit Pension Plan of the Wilco Trading Company (the Plans), Lakewood, N.J., to the Wilco Trading Company, Inc. (the Employer) and the personal guarantee of repayment by Mr. Harold Wilensky (Mr. Wilensky). The proposed exemption, if granted, would affect the Plans, the Employer, Mr. Wilensky, and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before December 30, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W, Washington, D.C. 20216, Attention: Application Nos. D-2406 and D-2407. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to the making of any loan. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plans, as of February 3, 1981, each had four participants. As of May 14, 1981, total assets for the Plans totaled $733,435.11. The Plans' trustee is Mr. Wilensky.

2. The Employer is a corporation organized under the laws of the State of New Jersey with principal offices located in Lakewood, New Jersey. The Employer engages in the business of buying groceries and paper goods and selling them at wholesale to retail supermarket chains and other retailers.

3. In its normal course of business, the Employer borrows funds, pursuant to a $2.5 million line of credit from the United Jersey Bank. These loans are secured by the Employer's accounts receivable and inventory. The United Jersey Bank charges the Employer an interest rate on these loans of the prime rate plus 1 percent.

4. The Plans' trustee proposes to finance a portion of the Employer's commodity and paper goods inventory on an annual basis. The Employer's inventory averages approximately $500 thousand. The proposed financing arrangement would be administered on a monthly basis with a pro rate portion of the principal amount of the loans, plus interest on the total unpaid balance accrued to date, being repaid to the Plans at the end of each month. The loan agreement would provide that the Employer can borrow up to an aggregate of 35% of the Plans' assets. The loans would occur over a period of five years and each loan will have a maturity date which will not exceed the end of such five year period. The interest rate for the loans, which will be adjusted quarterly, will be the greater of 1 percent above the prime rate charged by the United Jersey Bank or 11 percent per annum.

5. The loans will be secured by all of the Employer's inventory which consists of food commodities and dry goods, presently owned or hereafter to be owned by the Employer (the Collateral). The Plans will maintain perfected first security interests in the Collateral through the execution and filing by the Employer of security agreements on behalf of the Plans. The Employer will incur all costs necessary to obtain and preserve the Collateral, including, but not limited to, paying all taxes, assessments, insurance premiums, rent and storage costs. The Employer will warrant to own throughout the term of the loans all Collateral free from any adverse claims, security interests or encumbrances. The Collateral will be kept fully insured throughout the term of the loans and the Plans will be named insureds. In addition, the loans will be personally guaranteed by Mr. Wilensky, who has a net worth of approximately $2.5 million.

6. The Plans' trustee will use loan documents which are similar to those currently used by the United Jersey Bank and the Employer. The loan documents would indicate that the loan is secured by inventory of the Employer in an amount not less than 200% of the outstanding loan value. The principal balance of the loans will be reduced in amount if the inventory of the Employer ever falls below an amount equal to 200 percent of the outstanding principal balance of the loans so that the inventory used to secure the loan will always be not less than 200 percent of the outstanding principal balance of the loans.

7. Mr. Warren Hartmen, C.P.A., of Brick Town, New Jersey, has agreed to serve as an independent fiduciary manager for the proposed loans.

Mr. Hartman in a letter dated May 6, 1981, made the following representations. He has been requested to serve as an independent fiduciary manager for the proposed loans from the Plans to the Employer. He is a certified public accountant who is experienced with pension and profit sharing plans and has no relationship with the Employer or the Plans. After examining the terms of the proposed loans, he has initially determined that the proposed loans would be appropriate and suitable for the Plans. He will make the same determination immediately prior to the consummation of each loan transaction. He will be empowered and directed to enforce the terms of the loan agreement between the Plans and the Employer, including making demand for timely payment, bringing suit or other appropriate process against the

Employer in the event of default, keeping accurate records, and reporting at least annually to the Plans' trustee on the performance of the loans specifically including whether the value of the collateral securing the loans remains equal to at least 200 percent of the outstanding balance of the loans. He will be entitled to such information from Employer and the Plans as may reasonably be necessary to fulfill his responsibilities, and will be paid reasonable compensation plus reimbursement for reasonable expenses, if any, including legal or appraisal fees or costs. All such compensation and costs shall be paid by the Employer.

If Mr. Hartman is unable or unwilling to serve, dies, resigns, or becomes incapacitated, another unrelated, qualified independent person or institution will be appointed to serve as an independent fiduciary manager for the proposed loan.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because (1) The loans will be approved and monitored by an independent fiduciary; (2) the Plan will receive an interest rate of 1 percent over prime with a guaranteed minimum of 11 percent; (3) the loans will be secured by collateral which at all times will be equal to at least 200 percent of the outstanding loan balances and by the personal guarantee of Mr. Wilensky; (4) the exemption will be for a five year period; and (5) the trustee and the independent fiduciary have determined that the transactions are appropriate for the Plans and are in the best interests of the Plans' participants and beneficiaries and protective of their interests.

Notice to Interested Persons

Within 10 days after the notice of pendency is published in the Federal Register notice will be furnished to all participants of the Plans by certified mail. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loans of money for a period of five years by the Plans to the Employer and to the guarantee of repayment by Mr. Wilensky, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33496 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2300]

Proposed Exemption for Certain Transactions Involving Carpenters Retirement Trust of Western Washington

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt prior commitments for and purchases by the Carpenters Retirement Trust of Western Washington (the Plan), Seattle, Wash., of first mortgage loans from banks, savings and loan institutions and mortgage bankers (Financial Institution(s)) which were parties in interest and disqualified persons with respect to the Plan solely by reason of servicing mortgages which they previously had sold to the Plan. Such loans were secured by mortgages on multiple unit residential, industrial and commercial buildings constructed by persons who are contributing

employers with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Financial Institutions involved, contributing employers to the Plan and other persons who participated in the transactions.

DATES: Written comments must be received by the Department on or before February 1, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective from August 6, 1975 until April 4, 1980.[1]

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2300. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4577, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a Taft-Hartley multi-employer pension plan which covers approximately 18,000 participants employed by both commercial and residential building contractors in western Washington. Plan assets as of April 30, 1980 total approximately $68,000,000.

2. Historically, the Joint Board of Trustees of the Plan (the Board) had adopted an investment policy (the Investment Policy) which provided the broad investment philosophy to be used as a basis for investment decisions. The Investment Policy indicated that the Plan could retain investment managers and enumerated a general listing of investment vehicles which could be considered for Plan investments. The Board appointed several trustees of the Plan to an investment committee (the Investment Committee) which was to be responsibile for investment decisions for that portion of the investment portfolio not delegated to investment managers. The Investment Policy permitted the Investment Committee to authorize investments in real estate mortgages subject to specific guidelines (discussed below). Mortgage investments have traditionally been included in the Plan's investment portfolio although the party responsible for such investment decisions has shifted between the Investment Committee and selected investment managers. Whereas the authority had originally been with the Investment Committee, with the advent of the Act the authority to make mortgage investments was delegated, in late 1974, to the Plan's investment managers. However, the performance of the investment managers demonstrated to the Board that mortgage investments could be more efficiently and economically made for the Plan if they were handled by the Investment Committee. Therefore, on June 14, 1979, the Board voted to return all authority for mortgage investment decisions to the Investment Committee.

3. In order to obtain construction loans, developers or owners of sites upon which buildings are to be constructed must have a commitment from a Financial Institution to provide permanent mortgage financing once construction has been completed. Such Financial Institutions often do not hold for their own investment those mortgage loans which they have made on such commercial and industrial buildings; but instead, sell the mortgage loans to long-term investors, pursuant to a written commitment made by such an investor. In many instances the Financial Institution relies on the commitment of the long-term investor in giving its own financial commitment for the original permanent mortgage loan. On numerous occasions the Plan has engaged in such transactions by the issuance of commitments to Financial Institutions. Such commitments have obligated the Plan to purchase promissory notes originated by the Financial Institutions and secured by first mortgages (both new and seasoned) which have been taken in exchange for permanent financing. Many of the contributing employers to the Plan are potential contractors for the types of construction projects that would qualify under the Investment Policy guidelines for mortgage investments.

4. The procedure which had been adopted by the Plan for considers of such investments included the following steps: (a) A Financial Institution would approach the Plan with a specific mortgage; (b) credit reports (including an MAI appraisal) developed by the Financial Institution regarding the owner of the property would be furnished to the Plan (a requisite to Plan consideration was that the report be of the highest rating of such Financial Institution); (c) legal counsel for the Plan would review the proposal and issue a written opinion as to the legal sufficiency of the documents governing the purchase agreement and mortgage insurance; (d) where the Plan made a decision to purchase, a commitment letter was issued setting forth the significant terms of the purchase agreement; and (e) in most instances, the Financial Institution would agree to service the mortgage at a stated fee. At the time of the purchase by the Plan the documents governing the purchase agreement would be assigned to the Plan. Thereafter, the Finacial Institution serviced the mortgage by assuming responsibility for collecting payments, sending late notices and handling foreclosures. It was expected that more than one mortgage would be purchased from the same Financial Institution.

5. When the Plan delegated authority to make mortgage investments to certain investment managers the Investment Policy was incorporated as an appendix to their investment contracts. Adherence to the Investment Policy was monitored by the Investment Committee. The Investment Policy contained specific criteria to be followed when making investment decisions regarding real estate mortgages. These criteria stated that each mortgage accepted for investment must:

(a) Be a first lien mortgage or deed of trust insured by a standard form ATA

[1] The applicants have previously sought and obtained an administrative exemption for prospective transactions. See Prohibited Transaction Exemption 81-5 (January 13, 1981, 46 FR 3095).

policy of mortgage insurance issued by a recognized title insurance company;

(b) Constitute permanent financing and, if the mortgage is for new construction, the project shall be one on which one or more contributing employers are major contractors or subcontractors;

(c) Be a mortgage of industrial property or commercial property (including multiple unit residential dwellings), located with the geographical limits of the [Plan]; mortgages on the following type properties are expressly excluded for investment purposes: motels, nursing homes and bowling alleys;

(d) Not exceed in amount 5% of the value of the total [Plan] assets.

(e) Not be one where the mortgagor (owner) is a contributing employer to the [Plan]; and

(f) Be either federally insured FHA (Federal Housing Administration) or GI mortgages, GNMA (Government National Mortgage Association) packages, conventional mortgages insured by MGIC (Mortgage Guarantee Insurance Corporation) or equivalent.

6. The Plan retained Loomis—Sayles & Company (Loomis) and Rainier Investment (Rainier) as investment managers with discretionary authority to invest in real estate mortgages. All mortgages invested in by Loomis and Rainier were discretionary; in other words, the Plan had no requirement that a percentage of assets be invested in mortgages. Rather, such investments were selected by the individual investment managers as a prudent investment compared to other available investments. While Loomis and Rainier had discretionary authority with respect to the individual mortgages they would acquire, both investment managers have represented their adherence to the Investment Policy guidelines. Both investment managers have also represented that there is no affiliation or relationship between themselves and any of the real estate brokerage firms from whom they have purchased mortgages on behalf of the Plan.

7. This application request has identified specific mortgages (collectively referred to as the Mortgages) which were acquired in the normal course of investment conduct both by Loomis and Rainier, the acquisition of which may have been in violation of the Act and the Code. In addition, the Investment Committee made additional investments secured by real estate for which relief has also been sought.

On August 6, 1975, Loomis purchased the first of three deed of trust mortgages for units in a condominium development. These acquisitions were from Seafirst Mortgage Co. who had become a party in interest with respect to the Plan based on an existing servicing arrangement which resulted from a prior purchase by Loomis on behalf of the Plan. These investments involved unrelated borrowers who had purchased individual residential units in such development. The amounts financed on such properties ranged from $42,000 to $75,000, had interest rates between 9 and 9¼ percent and were all for a period of 30 years. On August 10, 1978, Loomis made an additional commitment to Washington Mortgage Company, an existing service provider to the Plan. The actual purchase did not occur until October 1, 1979, hence the purchaser of record was the Investment Committee which had retaken investment authority involving real estate earlier that year. The mortgage was to Executive Estates and was secured by an apartment building complex. The original amount of the mortgage was $687,000 with interest at a rate of 10⅛ percent for a period of 30 years.

Rainier made commitments and subsequently purchased several commercial mortgages from existing service providers as follows:

(a) The Vanderstaay Mountford & Yarshrut mortgage, secured by a medical building, was acquired on November 1, 1978 in the amount of $915,000 with an interest rate of 9½ percent for a period of 15 years;

(b) The Brack Investment Co. mortgage, secured by an office warehouse building, was acquired on October 24, 1979 in the amount of $176,000 with an interest rate of 10⅜ percent for a period of 15 years;

(c) The Annest, Johnson and Kunz mortgage, secured by a warehouse building, was acquired on November 9, 1979 in the amount of $386,000 with an interest rate of 10⅜ percent for a period of 15 years; and

(d) The Earl McCarthy mortgage, secured by a retail store in a shopping center, was acquired on March 19, 1980 in the amount of $1,000,000 with an interest rate of 10¼ percent for a period of 24½ years.

As previously stated, on June 14, 1979, the Board voted to shift the mortgage investment responsibility from outside investment advisors to its Internal Investment Committee. The Board specifically designated the administrator of the Plan (the Administrator) to act on its behalf in the selection of mortgages for investment. The Administrator was to screen all prospective mortgage investments to determine whether they satisfied the Investment Policy criteria for approved mortgage investments. Before a final commitment to any mortgage was given, the Investment Committee, acting on behalf of the Board, was to give approval to the mortgage investment. As a result of this shift of investment authority, the administrator made commitments to two borrowers in August and September of 1979. The August commitment resulted in the Plan loaning money to R & S Associates, secured by a newly constructed warehouse facility. This mortgage was acquired April 4, 1980 from Executive House Inc., a party in interest service provider who is also represented as being independent of and unrelated to any party representing the Plan. The mortgage was issued in the amount of $825,000 at 11 percent interest for 15 years. The September commitment resulted in the Plan loaning money on April 1, 1980. The mortgage loan extended credit to Mr. Charles D. Scott and was secured by a mortgage interest in a newly constructed warehouse, office and storage building. This mortgage was in the amount of $565,000 at 11½ percent for a term of 15 years. The mortgage commitment and subsequent purchase was from Washington Federal Savings and Loan (WFSL). WFSL is also represented to be independent of and unrelated to any party representing the Plan; however, WFSL is a party in interest by virtue of servicing arrangements emanating from a previous mortgage sale to the Plan.

8. In summary, the applicant represeents that the statutory criteria contained in section 408(a)of the Act have been satisfied as follows: (1) The exemption provides that the terms of the Mortgages were not less favorable to the Plan than the terms generally available in arms-length transactions between unrelated parties; (2) the Mortgages extended credit only to entities who were not parties in interest with respect to the Plan; (3) the Mortgages were either federally insured, insured by private mortgage insurance or did not exceed 75% of the MAI appraised value of the property; (4) none of the individual Mortgages exceeded 5% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets; and (5) the Board has represented that the Mortgages were in the best interest of the Plan at the time they were acquired.

Notice to Interested Persons

Within ten days following the publication in the Federal Register, notice of the proposed exemption will be mailed to all associations which represent employees of covered

employers, and all current parties to the collective bargaining agreement creating the Plan; and within forty-five (45) days following publication in the **Federal Register**, notice of the proposed exemption will be summarized and printed in the "Carpenters Family Health" a quarterly publication which is mailed to all participants and beneficiaries. Such summary shall include notice of participants and beneficiaries right to comment within the period set forth in the notice.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan, and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, from August 6, 1975 until April 4, 1980, to commitments for and purchase by the Plan of the Mortgages in accordance with guidelines and procedures set forth in the application from certain Financial Institutions, which were parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they had previously sold to the Plan. The foregoing exemption will be applicable only if the following conditions were met:

(a) At the time the transactions were entered into, the terms of the transactions were not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties;

(b) The Plan maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the 6 year period, and (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained, or not available for examination as required by paragraph (c) below;

(c) Notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) are unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any Trustee of the Plan or any duly authorized employee or representative of such Trustee;

(3) The Plan's investment manager(s) or any duly authorized employee or representative of such investment manager(s);

(4) Any employer or Plan participants,

(5) Any employee organization or duly authorized representative of such organization, whose members are covered by the Plan; and

(6) Any participant or beneficiary.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Program, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33475 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2311]

Proposed Exemption for Certain Transactions Involving Commerce Southwest, Inc. and Subsidiaries Employees Retirement Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of real property (the Land) and improvements (the Building) to the Commerce Southwest, Inc. and Subsidiaries Employees Retirement Plan (the Plan), Dallas, Tex., by the National Bank of Commerce of Dallas, Texas (the Bank), a party in interest with respect to the Plan, and subsequent leaseback of the Land and Building by the Plan to the Bank. The proposed exemption, if granted,

would affect Commerce Southwest, Inc. (Commerce Southwest), the sponsor of the Plan, the Bank, participants and beneficiaries of the Plan, and other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 6, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2311. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Campagna of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Commerce Southwest, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a unit benefit pension plan with approximately 181 participants. As of September 30, 1980, the Plan had total net assets of $2,316,370. The Trust Department of the Bank is responsible for managing the Plan's investment assets. Commerce Southwest was formed in 1978 for the purpose of acquiring the Bank. The Bank is presently a wholly owned subsidiary of Commerce Southwest. The Bank's net worth, as of December 31, 1979, was $21,604,352.

2. In June of 1980, the Bank purchased the Land, which consisted of an unimproved tract of real property located in Dallas, Texas, for the sum of $51,272. In April of 1981, the Bank completed construction of the Building on the Land. The Building consists of a one story office warehouse which will be utilized as a records and storage facility for the Bank. Costs to the Bank for the construction of the Building totalled approximately $450,000. On November 21, 1980, Joe Foster (Foster), M.A.I., S.I.R., an independent appraiser from Dallas, Texas, determined that the fair market value of the Land and Building, upon completion of the Building, would be $535,000.

3. The Bank proposes to sell the Land and Building to the Plan for cash at its cost of $501,272 and subsequently enter into a lease (the Lease) for the Land and Building with the Plan. No brokerage commission or transfer taxes will be charged the Plan in connection with the sale. The Lease will provide for an initial five-year term with options to renew by the Bank for three consecutive five-year terms. The Lease will be a triple net lease whereby the Bank would pay all costs associated with maintenance, insurance and taxes on the Land and Building. The Bank will pay the Plan a monthly rental of $4,175. Foster determined on November 21, 1980 that the fair market monthly rental value of the Building upon completion would be $3,933. Upon expiration of the initial five-year term of the Lease and upon each succeeding renewal date an updated appraisal would be made of the Land and Building by a qualified independent appraiser and the rental payments will be adjusted to reflect then current fair market rental values. Based upon the initial monthly rentals of $4,175 on the Lease and not taking into account the expected appreciation of the Land and the Building, Commerce Southwest estimates the proposed transactions would provide the Plan with a net rate of return of approximately 10%.

4. Mr. Lovell M. Turner, Jr. (Turner), a licensed real estate broker of Dallas, Texas, will be appointed ancillary trustee of the Plan. Turner will have complete authority to deal with or transact any business concerning the acquisition, ownership, management, sale, exchange or other disposition of the Land and Building. Turner will determine prior to the sale and Lease of the Land and Building, whether the transactions should be entered into by the Plan. Turner will also monitor the terms of the Lease during its duration. Turner is independent of the parties to the transactions except that he has a checking account with a balance of $11,240, certificates of deposit of $11,800 and an unsecured loan of $3,000 with the Bank. Turner's net worth is approximately $492,740. The Bank will deposit with Turner upon execution of the Lease $25,050, the equivalent of 6 months rent, to be used as security for the Bank's obligation pursuant to the Lease. This deposit will be kept at the Bank in an account over which only Turner has signatory control.

5. The Bank represents that it will pay to the Plan upon the sale, exchange or other legal disposition of the Land and Building during the initial five year term of the Lease or any of the renewal terms of the Lease by the Bank the difference between the amount received by the Plan and $501,272, assuming the fair market value of the Property decreases to less than $501,272. The agreement insures the Plan will not lose its original investment in the Land and Building. Commerce Southwest represents that the Land and Building is located in an industrial park in Dallas and would be readily adaptable to the needs of other prospective tenants or buyers.

6. In summary, the applicant represents that the proposed sale and Lease will satisfy the statutory criteria of section 408(a) of the Act because (1) Turner, an independent party, will determine prior to the execution of the proposed sale and Lease whether the transactions are in the best interests of the Plan; (2) the transactions will allow the Plan to obtain a valuable property at less than the appraised value; (3) the Plan will receive a cash deposit upon execution of the Lease to be used as security for the Bank's obligations under the Lease; (4) rentals received by the Plan will be adjusted every five years to reflect the fair market rental value of the Property and Building; (5) Turner will maintain complete responsibility with respect to the Property and Building and will monitor the terms of the Lease; and (6) the Bank will reimburse the Plan for any loss occurred in the sale, exchange or other disposition of the Property and Building during the initial five year term of the Lease and any of the renewal terms of the Lease.

Tax Consequences of Transactions

The Internal Revenue Service has determined that payments of amounts in

excess of fair market value to a plan constitutes a contribution to the plan to the extent of such excess and therefore must be examined under Code sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice will be provided to all participants and beneficiaries of the Plan within 15 days after the publication of the notice of pendency in the **Federal Register**. Notice will be by mailing or posting at locations within the premises of the Bank which are customarily used for notices to Bank employees. Such notice will include a copy of the notice of pendency as published in the **Federal Register** and a statement informing interested persons of their right to comment or request a hearing on the pending exemption within the period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following:

(1) The facts that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representation set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the cash sale of the Land and the Building by the Bank to the Plan for $501,272, provided that the price is not greater than the fair market value of the Land and Building at the time of sale; and (2) the Lease of the Land and Building by the Plan to the Bank provided rental payments under the Lease are not less than the fair market rental value.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the applications are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33478 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application Nos. D-2695 and D-2696]

Proposed Exemption for certain Transactions Involving East Tennessee Orthopedic Clinic P.C. Money Purchase Pension Plan, and East Tennessee Orthopedic Clinic P.C. Profit-Sharing Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed purchase of certain real property (the Property) by the East Tennessee Orthopedic Clinic P.C. Money Purchase Plan (the Money Purchase Plan) and the East Tennessee Orthopedic Clinic P.C. Profit Sharing Plan (the Profit Sharing Plan) collectively, (the Plans), Knoxville, Tenn., from C.G.C. & B. Properties (the Partnership) which is party in interest with respect to the Plans, and (2) the proposed subsequent lease (the Lease) of the Property by the Plans to the East Tennessee Orthopedic Clinic (the Employer), the sponsor of the Plans. The proposed exemption, if granted, would affect the Plans, the Partnership, the Employer and other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before December 30, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application Nos. D–2695 & D–2696. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the

Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Money Purchase Plan is a pension plan which as of August 20, 1981, had assets of $1,188,819 and 15 participants. The Profit Sharing Plan as of August 20, 1978 had assets of $1,068,760 and 15 participants. The Valley Fidelity Bank and Trust Company (the Trustee) located in Knoxville, Tennessee is the Trustee of the Plans and is responsible for the investment decisions of the Plans. The Trustee is independent of all the parties to the proposed transactions. The Employer is a Tennessee corporation formed on January 1, 1970 specializing in the practice of orthopedic medicine. The stockholders, officers and directors (the Principals) of the Employer are John H. Bell, Archer W. Bishop, Jr., C. Sanford Carlson, Dennis Coughlin, William Gallivan and William Hovis. The Partnership is a general partnership composed of the Principals.

2. The applicant is requesting an exemption that will permit the Plans to purchase the Property for cash of $800,000 and subsequently lease the Property to the Employer. The Plan will not pay any sales commission or fees in such sale. Each Plan will contribute $400,000 to the purchase price and each Plan will own a one-half interest in the Property. The Property consists of land, a parking lot and a clinic building which is presently leased by the Partnership to the Employer at an annual net rental of $89,784. The Property was appraised (the Appraisal) on June 13, 1980 by Mr. Jeff Fletcher C.C.I.M. (Fletcher), an independent appraiser. Flectcher represents that as of June 13, 1981 the Property had a fair market value of $860,000. The applicant is proposing that the Plans, after their purchase of the Property, enter into the Lease of the Property to the Employer. The Lease will be for a period of 10 years with a 5 year option commencing at the closing of the purchase of the Property by the Plans. The rent which was established by the Appraisal will be $107,500 annually payable in advance in 12 equal monthly payments. In addition, the rent will be adjusted annually to a rate equal to the fair market rent at that time. The Lease will be a triple net lease and the Employer will be responsible for maintaining adequate insurance on the Property as well as being solely responsible for the condition, operation, repair, maintenance, renovation, improvement and management of the Property and the payment of taxes on the Property.

3. Prior to the Plans' entering into the proposed transactions, the Trustee must examine the proposed transactions and certify that the transactions will be in the best interests and protective of the participants and beneficiaries of the Plans. The Trustee must also certify that the terms and conditions of the proposed transactions will be at least as favorable to the Plans as those which the Plans could receive in a similar transaction with an unrelated party. The Trustee will also monitor the terms and conditions of the proposed transactions and will have the responsibility of enforcing the terms and conditions of the proposed transactions on behalf of the Plans.

4. The applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act as follows: (1) The independent Trustee of the Plans represents that the transactions will be in the best interests of the Plans; (2) an independent Trustee will approve and monitor the terms and conditions of the transactions; (3) the price of the Property and rental rate were determined by an independent appraiser; (4) the Plans will receive the Property at a cost less than the fair market value, and (5) the Plans will lease the Property at its fair market value throughout the duration of the Lease.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register**, a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plans of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Plans.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415. The applicant represents that the difference between fair market value of the Property and the sale price of the Property in the subject transaction will be treated as a contribution to the Plans and that the contribution to the Plans will conform to the applicable provisions of the Internal Revenue Code sections 401(a)(4), 404 and 415.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(C)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed purchase of the Property by the Plans for $800,000 from the Partnership provided that this price is not more than the fair market value of the Property at the time of sale and (2) the Lease of Property by the Plans to the Employer provided that the terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could receive in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33472 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1896 and D-1897]

Proposed Exemption for Certain Transactions Involving Genesco Retirement Plan and Roos-Atkins Retirement Trust

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The acceptance by the Gesco Pooled Investment Trust Fund (the Fund), a pooled investment trust fund operated by Genesco Retirement Plan and Roos-Atkins Retirement Trust (the Plans), Nashville, Tenn., from Genesco, Inc. (Genesco), the Plans' sponsor, on March 24, 1980, of a settlement of a class-action suit which included cash and Genesco common stock warrants; and (2) the proposed exercise of the warrants, which would result in Fund acquisition and holding of qualifying employer securities and qualifying employer real property in excess of the limits set out in section 407(a) of the Act, provided that the Fund is in full compliance with the limitations of section 407(a) prior to January 1, 1985. The proposed exemption, if granted, would affect the trustees (Trustees), participants and beneficiaries of the Fund and Plans, Genesco and Roos-Atkins, Inc., a subsidiary of Genesco.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 20, 1982.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of March 24, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D-1896 and D-1897. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in two applications filed on behalf of the Fund, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. The Plans are defined benefit plans with a total number of approximately 23,300 participants and beneficiaries. Investment decisions for the Fund are made by its independent investment managers, Bernstein-Macaulay, Inc., New York, New York and Commerce Union Bank, Nashville, Tennessee and also by the Trustees. The four Trustees, who are shareholders and are also former executives and officers of Genesco, are Noble Caudill, William Blackie, W. S. Wigginton and J. P. Saunders.

2. A class-action lawsuit against Genesco, *Lila Zipkin* v. *Genesco, Inc.*, 74 Civ. 959 (S.D.N.Y.), is presently pending before the United States Federal District Court for the Southern District of New York (the Court). The class of persons involved in the proceeding (the Class) includes all persons who purchased

shares of the common stock of Genesco from August 21, 1972 until August 27, 1973 and who continued to hold those same shares on August 27, 1973. By notice mailed May 20, 1977, the Fund was notified of its right to be included as a member of the Class by virtue of its purchase of 140,000 shares of Genesco common stock during the period involved.

3. Prior to the time the action was commenced, the Fund was unaware of any cause of action that could have been brought against Genesco and the other defendants in the lawsuit. When the action arose and the Fund was given notice of its right to be included in the membership of the Class, its sole alternative was to bring a separate action on the same grounds. Due to the speculative nature of the suit, the specialized skills of the attorneys handling the matter and the prohibitive costs of maintaining a separate action relative to any potential judgment or settlement, the Fund chose to become a member of the Class. The Trustees state that they are unaware of any separate actions being brought aginst the defendants.

4. A stipulation of "Compromise and Settlement" was presented to the Court and on January 25, 1980, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court conditionally approved a proposed settlement and authorized submission of the proposed settlement to members of the Class. Notice of the proposed settlement was sent to 1,761 members of the Class whose ownership represented an unknown quantity of Genesco common stock. Of that number, 1,211 people accepted the proposed settlement. All members of the Class had to file on or before April 25, 1980, a sworn proof of claim indicating the number of shares of Genesco common stock purchased during the applicable period.

5. Notice of the proposed settlement was delivered to the Trustees, on the Fund's behalf, in the first week of March 1980 and they accepted the settlement on March 24, 1980. On April 18, 1980, the exemption application was filed with the Department. The Trustees had to act prior to April 25, 1980 and they felt it was clearly in the Plans' interests to accept the proposed settlement. It is represented that the circumstances were compelling in that the Plans would have been excluded from participation in the settlement if the Trustees had not acted in a timely fashion.

6. The terms and conditions of the settlement fund were negotiated at arm's length by the parties to the class-action suit. The Fund played no role in those negotiations other than as a member of the Class. The settlement fund, valued at a maximum of approximately $1,000,000, will be composed of:

(a) $250,000; and

(b) Warrants for the purchase of an aggregate of 350,000 shares of common stock of Genesco. The holder of each warrant shall be entitled at any time during the period from November 1, 1983 to June 30, 1985, to purchase one share of Genesco common stock at an exercise price equal to the average closing price of Genesco common stock on the consolidated tape for New York Stock Exchange issues for the twenty trading days immediately preceding the day chosen within the above period.

7. The value of the warrants was determined in the following manner. At the time the settlement was negotiated, the common stock of Genesco was selling for approximately $5 per share and experts retained by counsel for both parties relied on this value in all assumptions related to valuation of the warrants. Counsel for both parties concluded that for the purposes of the settlement fund, the warrants had a value of $750,000.

8. It has been indicated by counsel for the plaintiff that it is expected that the amount of cash available for distribution to all members of the Class will not exceed $100,000. Furthermore, it will be impossible for any member of the Class to receive only cash as his share of the settlement.

9. The stipulation of "Compromise and Settlement" has not as yet been formally approved by the Court. A hearing was held on May 6, 1980, for purposes of arguing the merits of the proposed settlement. At that time, counsel for both the plaintiff and defendant argued in favor of the proposed settlement and it is currently under advisement by the Court. The applicants represent that the only adjustments to the settlement that may be made by the Court will be related to the assessment of reasonable attorney's fees, expenses and other costs of the litigation.

10. The Trustees believe that the acquisition of Genesco warrants, and the exercise of those warrants during their period of existence, will constitute violations of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act, in that each will constitute, respectively, the acquisition and holding of non-qualifying employer securities and the acquisition of qualifying employer securities in excess of the limits set out in section 407(a). At the present time, the Fund has approximately 12% of its assets invested in qualifying employer securities and qualifying employer real property. If the warrants are exercised, based on their current value, the amount of additional Genesco common stock held by the Fund would represent less than one percent of the Fund's assets, making a total of approximately 13% of Fund assets invested in qualifying employer securities and qualifying employer real property. Nevertheless, it is represented that whether or not the warrants are exercised, the Fund will be in compliance with 407(a)(3)(B) prior to January 1, 1985. Bernstein-Macaulay, Inc. will have the sole responsibility of determining whether the Fund's warrants should be sold or exercised and will also determine the timing of such sale or exercise.

11. The Trustees state that an exemption is necessary for the exercise of the warrants because without it, the Fund's only option would be to sell the warrants. The Trustees believe that there is currently no market for the warrants since the option period does not begin until November 1, 1983. Also, the Trustees state that if a market would develop, the Fund would be subject to certain restrictions on the sale or other disposition of the warrants under Rule 144 of the Securities Act of 1933. Accordingly, the Trustees believe that giving the Fund the option of selling or exercising the warrants would be in the Fund's best interests because of the added management flexibility thereby afforded the Fund.

12. In summary, the Trustees represent that both the past and prospective transactions satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) There were compelling circumstances for the Trustees to accept the settlement prior to obtaining an exemption, in that the Fund could not otherwise have participated in the settlement and would have been barred from any attempt to recover independently for damages;

(b) The terms and conditions of the settlement were negotiated at arm's length;

(c) A substantial majority of the members of the Class accepted the settlement;

(d) The amount of the Genesco common stock that the Fund would obtain through exercise of the warrants would, at their current valuation, represent less than one percent of Fund assets, making a total of approximately 13% of Fund assets invested in qualifying employer securities and qualifying employer real property, and, whether or not the warrants are exercised, the Fund will be in compliance with 407(a)(3)(B) limits prior to January 1, 1985;

(e) An independent investment manager, Bernstein-Macaulay, Inc., would have the sole responsibility of determining whether the Fund's warrants should be sold or exercised and will also determine the timing of such sale or exercise; and

(f) Providing the Trustees the alternative of exercising the warrants and purchasing Genesco stock would be in the best interests of the Fund because the Trustees would thereby be afforded additional management flexibility.

Notice to Interested Persons

Notice of the proposed exemption will be given to all inerested parties, including the participants and beneficiaries of the Plans, within 30 days of the publication of the proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and will inform the recipient of his/her right to comment on or request a hearing with regard to the proposed exemption. Participants who are currently Genesco employees will be notified by posting the notice on bulletin boards normally used for employee communications. Other participants and beneficiaries will be notified by first class mail.

General Information

The attention of interested persons is directed to the following:

The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The acceptance by the Fund from Genesco on March 24, 1980, of a settlement of a class-action suit which included cash and Genesco common stock warrants; and (2) the future exercise of the warrants and resultant acquisition of Genesco common stock, provided that the Fund is in compliance with section 407(a)(3)(B) prior to January 1, 1985.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in these applications are true and complete, and that the applications accurately describe all material terms of the transactions that are the subject of the exemption.

Signed at Washington, D.C. this 13th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33474 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2390]

Proposed Exemption for Certain Transactions Involving James W. Good, M.D., Inc.; Defined Benefit Pension Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of two parcels of real property to the James W. Good, M.D., Inc. Defined Benefit Plan (the Plan), San Francisco, Calif., by Dr. James W. Good (Dr. Good) and Dona E. Good (Mrs. Good), disqualified persons with respect to the Plan, and the loan of $29,000 by Dr. and Mrs. Good to the Plan to fund the Plan's purchase of the parcels. Since Dr. Good is the sole stockholder of James W. Good, M.D., Inc. (the Employer), and the only participant in the Plan, there is no jurisdictioin under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant ot section 4975 of the Code. The proposed exemption, if granted, would affect the beneficiaries of the Plan and Dr. and Mrs. Good.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 28, 1981.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 26, 1979.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2390. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit pension plan with one participant, Dr. Good. Dr. Good is also the trustee of the Plan and responsible for the investment decisions of the Plan.

2. On November 8, 1977, Dr. and Mrs. Good purchased from an unrelated party two parcels of unimproved real property in Bodega Harbour, California, (the Property) for a total of $57,800. The applicant represents that these parcels are exceptionally unique and have appreciated rapidly because they are part of a development which contains probably the last available parcels of ocean view homesites with a natural harbor.

3. In early spring of 1979, Dr. Good as trustee for the Plan decided that the purchase of the Property by the Plan from Dr. and Mrs. Good would be in the best interests of the Plan. Dr. Good made this decision after a thorough investigation, which caused him to conclude that investment in real estate in California was the singularly best investment for the Plan to make, both from the standpoint of rate of return and investment risk.

4. On July 26, 1979, Dr. and Mrs. Good sold the Property to the Plan for $89,500. Mr. Mark Pearson of WEC, Inc., exclusive agents for the developer of Bodega Harbour at that time, represents that the fair market value of the Property was $90,000 as of the date of sale.

5. Because the Plan did not have sufficient cash to consummate the transaction, the Plan executed a promissory note for $29,500 in favor of Dr. and Mrs. Good on the date of sale. The credit arrangement was based upon then current interest rates which were determined before the closing by inquiring of financial and lending institutions as to the terms they would have required for a such a loan. The Plan repaid the loan in full as of January 25, 1980.

6. Since the purchase of the Property by the Plan, the Property has continued to appreciate. By letter dated October 24, 1980, Mr. Steven G. Carpenter of Bodega Harbour Real Estate, Inc., estimates the value of the Property at between $115,000 and $130,000.

7. In summary, the applicant represents that the transactions meet the statutory criteria for an exemption under section 4975(c)(2) of the Code because (1) the Plan acquired the Property at its fair market value; (2) the Property has already appreciated considerably in value since its acquisition by the Plan, and it is expected to appreciate further; (3) the terms of the credit arrangement were determined by inquiring of local financial institutions as to the terms they would have required; and (4) the only Plan participant affected by the transactions was Dr. Good and he desired and caused the transactions to be consummated.

Notice to Interested Persons

Because Dr. Good is the only participant in the Plan and the sole shareholder of the Employer, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale on July 26, 1979 of the Property by Dr. and Mrs. Good to the Plan for $89,500, provided that this amount was not higher than the fair market value of the Property as of the date of sale, and to the loan by Dr. and Mrs. Good to the Plan of $29,500, for the period from July 26, 1979 until January 25, 1980, provided the terms of the loan were as favorable to the Plan as those available in an arm's-length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and

representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33477 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2766]

Proposed Exemption for Certain Transactions Involving Merrill Lynch, Hubbard, Inc., and its Affiliates

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) Transactions relating to the origination, maintenance and termination of mortgage pool investment trusts (Mortgage Pools) sponsored by Merrill Lynch, Hubbard, Inc. and its affiliates (Merrill Lynch Hubbard) New York, N.Y.; and (2) the acquisition and holding of certain multi-family dwelling mortgage-backed pass-through certificates (Certificates) of Mortgage Pools under certain circumstances by employee benefit plans (Plans) when Merrill Lynch Hubbard or a trustee (Trustee) of a Mortgage Pool is a party in interest with regard to the Plans. The proposed exemption, if granted, would affect the Plans and their participants and beneficiaries, Merrill Lynch Hubbard, the Trustees, and other persons engaging in the transactions described herein.

EFFECTIVE DATE: If the proposed exemption is granted, the effective date would be July 29, 1981.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 21, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2766. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was request in an application filed by Merrill Lynch Hubbard, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Merrill Lynch Hubbard is a wholly-owned subsidiary of Merrill Lynch & Co. Incorporated (Merrill Lynch & Co.) and is engaged in the business of real estate syndications and finance, real estate asset management, mortgage banking, commercial, industrial and mortgage brokerage, and the provision of a wide variety of other diversified real estate and financial services. Merrill Lynch Hubbard is a qualified Federal Housing Administration (FHA) approved mortgagee.

2. The Government National Mortgage Association (GNMA) is a government corporation operating under the direction of the Secretary of Housing and Urban Development. GNMA operates several multi-family direct mortgage purchase programs which are designed to make low interest rate FHA insured mortgage loans (Project Loans) available to multi-family housing projects and certain health care facilities during periods of monetary stringency. GNMA accomplishes this objective by committing in advance, generally prior to commencement of construction, to purchase after completion of construction such low interest rate Project Loans at prices substantially above prices at which such mortgage loans could otherwise be sold in the private secondary market. The Project Loans generally have a 40-year muturity and an average life of 18 years. Also, pursuant to FHA regulations, the loan to value ratio on a Project Loan can be no higher than 90%. Periodically, as the inventory of these loans builds, GNMA sells the Project Loans in the private market at prevailing commercial rates, which may reflect a substantial discount from the face principal amount. The resulting loss is borne by the U.S. Treasury and is, in fact, a housing subsidy program.

3. The sale of Project Loans is accomplished through an auction procedure. Approximately one month prior to the date selected by GNMA for an auction, GNMA sends an auction invitation to all FHA approved mortgagees, such as Merrill Lynch Hubbard. GNMA warrants to each purchaser of a Project Loan that, as of the settlement date with GNMA, such Project Loan (a) is not delinquent under the original or modified terms thereof to the extent of more than one monthly installment of interest, principal or escrow deposits (subject to certain limited exemptions) and is not otherwise in default; (b) is not subject to any defect which would prevent recovery in full or in part against FHA as insured; and (c) is not subject to any outstanding advance or advances by the mortgagee to the mortgagor. GNMA's obligation under this warranty is limited to the correction of such defects as shall be specified in a written notice furnished to it by the purchaser within 90 days of the settlement date with GNMA, or to the repurchase of the related Project Loan in the event that such defects may not be corrected promptly.

4. Merrill Lynch Hubbard, acting through and with its affiliates, will purchase Project Loans and form Mortgage Pools. Project Loans which are to be assembled in a Mortgage Pool are transferred to the Trustee, whereupon the Trustee authenticates the Certificates. Merrill Lynch Hubbard determines the rate of return (the Pass-Through Rate) to be provided by the Certificates, which is calculated from mortgage tables prepared by Financial

Publishing Company on the basis of each Project Loan's stated interest rate, less Merrill Lynch Hubbard's servicing fee, a 40 year amortization and an average life of 18 years. The Certificates are then sold to investors including the Plans. The applicant represents that the total value of Certificates purchased by a Plan with assets with regard to which Merrill Lynch Hubbard or the Trustee is a fiduciary, will not exceed 25% of the amount of the Certificates in a Mortgage Pool, and furthermore, at least 50% of the aggregate amount of such Certificates will be acquired by persons independent of Merrill Lynch Hubbard or the Trustee.

5. Merrill Lynch Hubbard or the Trustee or one of their affiliates may have a pre-existing relationship as a service provider or fiduciary to the Plans. However, all decisions relating to the sale, exchange or transfer of Certificates will be made on the Plans' behalf by fiduciaries independent of Merrill Lynch Hubbard or the Trustee or any affiliate thereof. Merrill Lynch, Pierce, Fenner and Smith (MLPF&S) which is the parent of Merrill Lynch, Hubbard, may act as underwriter for the Certificates and would then receive a fee from the Plans for its underwriting services. Merrill Lynch Hubbard has formed on such Mortgage Pool and began selling Certificates to Plans on July 29, 1981. Merrill Lynch Hubbard states that it was unaware that the transactions discussed herein constituted non-exempt prohibited transactions and that it filed this application for exemption as expeditiously as possible after discovering that such transactions were prohibited.

6. The Certificates are issued pursuant to a Declaration of Trust and Pooling and Servicing Agreement, which is made available to investors prior to investment, and represent fractional undivided interests in the Mortgage Pool created by such agreement. The Mortgage Pool consists of: (a) The Project Loans, which are insured by the FHA; (b) The Certificate Account, which contains all collections of principal and interest, as well as any payments under FHA insurance; (c) any property acquired by foreclosure of a Project Loan or deed in lieu of foreclosure; (d) any FHA debentures received upon the assignment of a Section 221 Loan at the twenty year redemption point (discussed below); and (e) the FHA obligations for the insurance of the Project Loans. A single Certificate typically will evidence approximately $100,000 aggregate principal amount of Project Loans. The minimum purchase by any one purchaser of Certificates will be five single Certificates or approximately $500,000 aggregate principal amount.

7. The applicant emphasizes that although the Certificates are not insured or guaranteed by any agency or instrumentality of the U.S. Government, the Project Loans underlying the Certificates are insured by the FHA. In addition, the FHA will not insure a mortgage unless it contains a covenant, acceptable to the Commissioner of the FHA, binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner may stipulate.

8. If a mortgagor defaults on a payment, the mortgagee may either assign the mortgage to the FHA or acquire title through foreclosure proceedings, and convey title to such property to the FHA. If the mortgagee elects to assign the mortgage to the FHA, the insurance benefits payable to the mortgagee (either in cash or FHA Debentures which are discussed below) are equal to the sum of (a) the amortized principal balance of the defaulted Project Loan; plus (b) interest accrued from the end of the grace period at the interest rate of FHA Debentures, the rate of which is determined by the higher of the prevailing rate at the time (a) when the commitment for FHA mortgage insurance was issued; or (b) when the Project Loan was initially endorsed for FHA mortgage insurance; *less* (a) an assignment fee of 1% of the principal balance; and (b) legal costs and other expenses associated with the assignment of the Project Loan. The insurance proceeds may be further reduced, however, according to the terms of the GNMA Insurance Proceeds Participation Certificate (IPPC), as discussed more fully below.

9. In the event that the mortgagee elects to acquire title to the mortgaged property and convey title to such property to the FHA, the insurance benefits payable to the mortgagee are computed as above-described except that such benefits are not subject to the 1% assignment fee. The mortgagee is, however, required to pay the costs of foreclosure. Since foreclosure proceedings can be expensive and, in some cases, time consuming (during which time, for purposes of insurance proceeds, interest accrues at the applicable FHA Debenture rate rather than as the generally higher mortgage rate), the majority of mortgagees elect to assign the mortgage to the FHA (and incur the 1% assignment fee) rather than foreclose and convey title to the property to the FHA.

10. For defaulted Project Loans, the FHA generally pays 90% of the insurance claim within 15 days of the recordation of the assignment or conveyance (which action may take 30 to 90 days) and the balance of the claim, after completion of an audit, within three to six months after such recordation.

11. The Certificate holders, in the event of a default on a Project Loan and its subsequent assignment to the FHA, bear the risk of; (a) The loss of 30 days interest during the grace period; (b) forgoing principal and interest payments pending recovery from the FHA in the event Merrill Lynch Hubbard does not advance such payments; (c) the accrual of interest at the FHA Debenture rate which is generally lower than the Pass-Through Rate; and (d) the incidence of legal and other expenses associated with the assignment.

12. The winning bidder on a Project Loan for which FHA insurance proceeds are payable in cash, must sign an Insurance Proceeds Participation Certificate (IPPC) providng for the sharing of a portion of the FHA insurance proceeds with GNMA upon default on a Project Loan, during the first 36 months following the date the Project Loan was purchased from GNMA. The reason for the IPPC is to prevent a potential windfall to a mortgagee due to the fact that a Project Loan is purchased at a discounted price from GNMA because of the low interest rate, however, FHA insurance is based on 100% of the principal of the Project Loan.

13. A number of the Project Loans will be Section 221 Loans, under which a mortgagee has the right, pursuant to 24 CFR 221.770, to assign such Section 221 Loan to the FHA at the expiration of 20 years from the date of final endorsement of the related mortgage, if the Section 221 Loan is not in default at such time. Such option to assign a Section 221 Loan to the FHA may be exercised at any time during the one year period following the twentieth anniversary of the final endorsement of the related mortgage.

14. Any mortgagee electing to assign a Section 221 Loan to the FHA will receive in exchange therefore, FHA Debentures having a total face value equal to the then outstanding principal balance of the Section 221 Loan plus accrued interest to the date of assignment. The FHA Debentures will mature 10 years from the date of assignment of the related Section 221 Loan and will bear interest at the "going Federal rate"at

such date. The "going Federal rate" is defined to be the annual rate of interest specified by the Secretary of the Treasury for the six month period which includes the issuance date of the Debentures.

15. In connection with the Mortgage Pools, Merrill Lynch Hubbard agrees to service and administer the Project Loans pursuant to the Declaration of Trust and Pooling and Servicing Agreement. As loan servicer, Merrill Lynch Hubbard will have the full power and authority to do any and all things in connection with such servicing and loan administration which it may deem necessary or desirable. In addition, Merrill Lynch may advance delinquent payments on Project Loans to Certificate holders.

16. As compensation for its activities pursuant to the Declaration of Trust and Pooling and Servicing Agreement, Merrill Lynch Hubbard is entitled to retain its servicing fee from interest payments on the Project Loans (including, for this purpose, the portion of FHA insurance proceeds allocable to interest). The aggregate of such servicing fees is an amount equal to the difference between the interest rate passed through to Certificateholders and the interest rate for each Project Loan in the Mortgage Pool. In addition to its servicing fee, Merrill Lynch Hubbard is entitle to certain other compensation as described in the Declaration of Trust and Pooling and Servicing Agreement. The applicant represents that the sum of all payments made to Merrill Lynch Hubbard in connection with a Mortgage Pool will not be more than adequate consideration for the sale of the Certificates, plus reasonable compensation for services provided by Merrill Lynch Hubbard to the Mortgage Pool.

17. In summary, the applicant represents that the transactions discussed herein satisfy the statutory criteria of section 408(a) due to the following:

(a) The Mortgage Pools will be high-yielding investments which will provide a steady flow of income to the Plans. The Pass-Through Rate to the Plans on Certificates in the July 29, 1981 Mortgage Pool is 15.125%;

(b) The Project Loans will be insured by the FHA and will be secured by geographically disbursed property, thereby reducing the chance that unfavorable economic developments in one geographic area will adversely affect Mortgage Pool yields;

(c) Investment in the Certificates will represent a sound method by which the Plans may be able to diversify their investments to include investments in real estate mortgages;

(d) All of the transactions for which Merrill Lynch Hubbard seeks exemptive relief will be approved by independent fiduciaries acting on the Plans' behalf and will be governed by the terms of the Declaration of Trust and the Pooling and Servicing Agreement, which is made available to investors prior to investment;

(e) The total value of Certificates purchased by a Plan with assets with regard to which Merrill Lynch Hubbard or the Trustee is a fiduciary, will not exceed 25% of the amount of the Certificates in a Mortgage Pool; and at least 50% of the aggregate amount of such Certificates will be acquired by persons independent of Merrill Lynch Hubbard or the Trustee; and

(f) The applicant emphasizes that the exemption requested herein is substantially identical to the class exemption granted as PTE 81-7. The principal difference is that the Merrill Lynch Hubbard sponsored Mortgage Pools will consist of first mortgages or deeds of trust on multi-family residential property as opposed to single family residential property in PTE 81-7. The applicant represents that the risk to Plans investing in Mortgage Pools is no greater than the risk in investing in single family, residential property mortgage pools.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest, or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1:

I. Transactions

A. Effective July 29, 1981, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between Merrill Lynch Hubbard and the Plan when Merrill Lynch Hubbard or the Trustee of such Pool is a party in interest with respect to such Plan, provided that the Plan pays no more than fair market value for such Certificates, and provided further that the rights and interests evidenced by such Certificates are not subordinated to the rights and interests evidenced by other Certificates of the same Mortgage Pool; and

(2) The continued holding of Certificates acquired pursuant to subparagraph (1), above, by a Plan.

B. Effective July 29, 1981, the restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates of a Mortgage Pool between Merrill Lynch Hubbard and a Plan, and the continued holding of such Certificates, when Merrill Lynch Hubbard or the Trustee of such Mortgage Pool is a fiduciary with respect to such Plan, provided that:

(1) The Plan pays no more than fair market value for such Certificates;

(2) The rights and interests evidenced by such Certificates are not subordinated to the rights and interests evidenced by other Certificates of the same Mortgage Pool;

(3) Such sale, exchange or transfer is expressly approved by a fiduciary independent of Merrill Lynch Hubbard or the Trustee or any affiliate thereof, who has authority to manage and control those Plan assets being invested in the Certificates;

(4) The total value of Certificates purchased by a Plan does not exceed 25% of the amount of the issue; and

(5) At least 50% of the aggregate amount of the issue is acquired by persons independent of Merrill Lynch Hubbard or the Trustee.

C. Effective July 29, 1981, the restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to transactions in connection with the servicing and operation of the Mortgage Pool provided that: (1) such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement; and (2) such Pooling and Servicing Agreement is made available to investors before they purchase Certificates in a Mortgage Pool.

D. Effective July 29, 1981, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act), solely because of the ownership by such Plan of a Certificate.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The Trustee for each Mortgage Pool must not be an affiliate of Merrill Lynch Hubbard provided, however, the Trustee shall not be considered to be an affiliate of Merrill Lynch Hubbard solely because the Trustee has succeeded to the rights and responsibilities of Merrill Lynch Hubbard pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by Merrill Lynch Hubbard; and

(2) The sum of all payments made to and retained by Merrill Lynch Hubbard in connection with a Mortgage Pool, and all funds inuring to the benefit of Merrill Lynch Hubbard as a result of the administration of the Mortgage Pool, must represent not more than adequate consideration for selling the Certificates and underwriting the sale of the Certificates, plus reasonable compensation for services provided by Merrill Lynch Hubbard to the Mortgage Pool.

III. Definitions

A. For the purposes of this exemption, the term "Mortgage Pool" means an investment pool the corpus of which

(1) Is held in trust; and

(2) Consists solely of

(a) Interest bearing obligations secured by multi-family residential property;

(b) Property which had secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

B. For the purposes of this exemption, the term "Certificate" means a certificate representing a beneficial undivided fractional interest in a Mortgage Pool and entitling the holder of such certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by Merrill Lynch Hubbard.

C. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(ii) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director, or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. For the purposes of this exemption, a person will be "independent of Merrill Lynch Hubbard or the Trustee" only if:

(1) Such person is not an affiliate (as defined in paragraph III(C) of this exemption) of Merrill Lynch Hubbard or the Trustee; and

(2) Neither Merrill Lynch Hubbard nor the Trustee, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33480 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2546]

Proposed Exemption for Certain Transactions Involving Mingledorff's, Inc. Profit Sharing Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the leasing of real property by the Mingledorff's, Inc. Profit Sharing Plan (the Plan), Atlanta, Ga., to Mingledorff's, Inc. (the Employer), and the guarantee by the Employer of the payment of the Plan's loan from the Life Insurance Company of Georgia (LICG), the proceeds of which were used to purchase the property. The transactions were entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

DATE: Written comments and requests for a public hearing must b received by the Department of Labor on or before January 11, 1982.

EFFECTIVE DATES: If the proposed exemption is granted, the exemption will

be effective from January 1, 1975 to January 31, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-2546. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, the Plan and Trust Company Bank (the Trustee), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan with approximately 65 participants. In 1973, the Employer became interested in the possibility of acquiring a warehouse for use in connection with its business as a distributor. Following an economic analysis of a proposed purchase of such a warehouse by the Trustee, it was determined that it might be in the best interest of the Plan and its participants for the Plan to purchase such warehouse and to lease it to the Employer. The accounting firm of Arthur Anderson & Co. analyzed the prudence, economics and tax consequences of the proposed transaction and found it appropriate for the Plan. The Trustee indicated to the Employer that based upon such analysis, the Plan would purchase the warehouse (the Warehouse) from an unrelated party, Essex International, Inc. (Essex), and then lease the Warehouse to the Employer. There is no common ownership of the Trustee and the Employer, nor do they have any common directors. The total loans from the Trustee to the Employer are less than one percenf of the aggregate of all loans from the Trustee to its customers.

2. On September 4, 1973, the Employer and Essex signed a contract of sale for the Warehouse which contemplated that the sale would be closed no later than October 1, 1973. The contract expressly provided that the Employer would have the right to assign its rights under the contract to the Plan. On October 17, 1973, Essex and the Employer entered into a lease of the Warehouse for a term of one year until the sale of the Warehouse could be consummated, and they agreed to extend the closing date for the sale of the Warehouse to no later than November 1, 1974.

3. In May, 1974, arrangements were made and completed for a first mortgage loan from LICG to the Plan, with the Employer, pursuant to LICG's demand, guaranteeing payment of the Plan's note to LICG. In September, 1974, the Employer assigned its rights under the contract of sale to the Plan and the Administrative Committee of the Plan formally directed the Trustee to purchase the Warehouse and lease it to the Employer. The sale was then closed and the lease was executed. The price paid by the Plan was $200,000. The mortgage is a 15 year mortgage of $150,000 with interest at 9.5%.

4. The lease was to be for a term of 15 years, and the rent provided under the lease agreement was $27,120 per year. This amount was greater than the fair rental value at the date the lease was entered into, September 18, 1974, as determined by Mr. C. D. LeBey, Jr., an independent appraiser in Atlanta, Georgia. Mr. LeBey has reappraised the Warehouse as of July 15, 1981, and has concluded that the rental amount being paid by the Employer to the Plan is still within the market range that he has estimated for the subject property.

5. The Plan now intends to sell the Warehouse to an unrelated party. Negotiations with a prospective purchaser are now taking place, and the sale will be made no later than January 31, 1982. The lease between the Plan and the Employer will terminate at the time of the sale. The Employer has made all of the payments required under the lease on schedule and will continue to do so until the lease is terminated and the Warehouse is sold. Mr. LeBey has appraised the fair market value of the Warehouse at $285,000 as of July 15, 1981. The appraisal was based upon a fee simple interest of the subject property and, therefore, the existing lease was not taken into account by Mr. LeBey.

6. In summary, the applicants represent that the statutory criteria of section 408(a) of the Act have been satisfied as follows: (1) The Warehouse was leased for a higher rental value than that established by independent appraisal at the time the lease was entered into, and the rental amount remained at least equal to the fair rental value throughout the duration of the lease; (2) all payments were made in full and on schedule in accordance with the terms of the lease; (3) the lease will be terminated no later than January 31, 1982; and (4) the Trustee of the Plan determined that the subject transactions were appropriate for the Plan and in the best interests of its participants and beneficiaries.

Finally, the applicants represent that the subject transactions were entered into prior to the effective date of the Act without knowledge that the transactions would become prohibited on January 1, 1975. As soon as the applicants realized that the transactions had become prohibited transactions, the applicants submitted a good faith request for an exemption instead of terminating the transactions.

Notice to Interested Persons

Within 14 days of the publication of this proposed exemption in the **Federal Register**, notification will be made to all Plan participants and to all beneficiaries presently receiving distributions under the Plan. Notification will be made by means of posting a notice on bulletin boards which are regularly reviewed by all Plan participants, and by mailing. Notification will include a copy of this notice of proposed exemption and will inform interested persons of their right to submit comments and request a hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of

the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing by the Plan to the Employer of the Warehouse, located at 170 Ottley Drive, N.E., Atlanta, Georgia, and to the guarantee by the Employer of the payment of the Plan's loan from LICG, for the period from January 1, 1975 until January 31, 1982, provided the rental payments were not less than fair rental value, and that the Warehouse is sold to an unrelated third party no later than January 31, 1982, for a price which is no less than its fair market value on the date of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33476 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2472]

Proposed Exemption for Certain Transactions Involving R. C. Willey & Son Inc., Profit Sharing Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt for a period of eight years certain proposed loans of money by the R. C. Willey & Son Inc., Profit Sharing Plan (the Plan) Syracuse, Utah, to R. C. Willey & Son Inc., (the Employer) the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 2, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. D–2472. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.The proposed exemption was requested in an application filed by the Plan trustees (the Trustees) and the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1.The Plan is a profit sharing plan with approximately 162 participants and total net assets, as of July 31, 1980, of $3,771,928. The Trustees of the Plan who are responsible for investment decisions for the Plan are Sheldon F. Child, William H. Child and Robert L. Cheney, all of whom are employees of the Employer. The Employer is a retailer of

home furnishings, including furniture, carpets and appliances.

2. The Employer and the Trustees of the Plan are requesting an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the Employer, whereby the Plan will periodically loan certain amounts of money to the Employer. The aggregate of the outstanding balances of all loans made under the Loan Agreement at any point in time during the duration of the Loan Agreement will not be greater than the lesser of $1,000,000 or 25 percent of the assets of the Plan. All loans made under the Loan Agreement would be made over an eight year period, the first day of which would be the date the grant of an exemption for the Loan Agreement appears in the **Federal Register**. All of the proposed loans will mature and become due and payable on or before the last day of such eight year period. Any loan made during the first five years of the Loan Agreement would be payable over a period of three years. Any loan made after the end of the fifth year would be payable over the remaining term of the Loan Agreement. Payments of principal and interest on the loans will be made in equal quarterly installments. The interest rate for any loan granted under the Loan Agreement will be a floating rate adjusted monthly equal to 1¼ percent above the rate charged by the First Security Bank of Utah (the Bank) for prime commercial loans of 90 day maturity but in no event less than 12 percent.

3. All of the loans made under the Loan Agreement will be secured by a perfected first security interest in all of the accounts receivable (the Receivables) of the Employer. A security agreement and financing statement will be duly executed and filed with the Utah Secretary of State. The Plan's security interest will constitute a general lien on all the Receivables including accounts arising after the date the Loan Agreement is entered into. The applicants represent that the Employer, as of December 31, 1980, had in excess of $11,000,000 of Receivables. The Employer provides its own financing for its sales on a revolving charge account basis. The term for such financing is slightly over 29 months, but the average pay off for all Receivables is between 10 to 11 months. As of December 31, 1980, the Employer had over 22,000 separate customer accounts with an average balance of $500. The Employer represents that it has experienced less than a 1 percent loss on the Receivables in the past but as a conservative practice maintains a reserve for bad debts equal to approximately 3 percent of the total balance of the Receivables.

4. Mr. William H. Child, the president and majority shareholder of the Employer and a Trustee of the Plan has agreed to personally guarantee the Employer's loan obligations under the Loan Agreement to the Plan in the event a default by the Employer remains uncured for a period of 45 days. As of February 1, 1980, Mr. Child's net worth was $3,850,671.

5. The Bank will be appointed special loan trustee and given the authority on behalf of the Plan to approve the Loan Agreement and to approve and monitor any loans made under the Loan Agreement. The Bank is independent of the Employer and the Plan. The Bank will also be required to obtain all security agreements and other documents in connection with the Loan Agreement, to collect principal and interest payments on any loan, to enforce collection on any loan and the Plan's rights under the security agreement and to accelerate any loan in the event of default. In addition, the Bank will monitor the value of the Receivables so that at all times the Receivables will be maintained in the amount of at least 300 percent of the outstanding balance of all loans made under the Loan Agreement. No loan under the Loan Agreement will be made unless the Bank represents that the Employer is able to borrow the same amount from a commercial bank on terms that are more favorable or at least as favorable to the Employer as the terms of the loan under the Loan Agreement.

6. In summary, the applicants represent that the Loan Agreement satisfies the statutory criteria of section 408(a) of the Act because: (1) The Bank, an independent party, will represent that the proposed Loan Agreement is in the best interest of the Plan; (2) the Bank will approve and monitor each loan made under the Loan Agreement; (3) each loan made under the Loan Agreement will have a high rate of interest with a floor of 12 percent per annum and will at all times be secured by the Receivables which at all times will be maintained in the amount of at least 300 percent of the balance of all loans made under the Loan Agreement; (4) the aggregate of the outstanding balances of all loans made under the Loan Agreement will not be greater than the lesser of $1,000,000 or 25 percent of the assets of the Plan; (5) Mr. William H. Child will personally guarantee the obligations of the Employer under the Loan Agreement in the event of a default by the Employer; and (6) no loan will be made unless the Bank represents that the Employer is able to borrow the same amount from a commercial bank on terms that are more favorable or at least as favorable to the Employer as the terms of the loan under the Loan Agreement.

Notice to Interested Persons

Notice will be given to all participants and beneficiaries of the Plan within ten days of the publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of pendency as it appears in the **Federal Register** and a statement informing interested persons of their right to comment or request a hearing before the Department within the time period indicated in the notice of pendency. Notice will be provided by mail, personal delivery or by posting in the Employer's places of business in locations where notices are customarily posted.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and

not inderogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutroy exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loans of money under the Loan Agreement by the Plan to the Employer for a period of eight years from the date the grant of an exemption is published in the **Federal Register** provided that: (1) The aggregate of the outstanding balances of all such loans at any point in time shall not exceed the lesser of $1,000,000 or 25 percent of the assets of the Plan; and (2) the terms and conditions of such loans are not less favorable to the Plan than those obtainable from an unrelated party at arm's-length at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33479 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2799]

Proposed Exemption for Certain Transactions Involving Semtner Companies, Inc. Profit Sharing Plan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed $500,000 loan by the Semtner Companies, Inc. Profit Sharing Plan (the Plan), Dallas, Tex., to the Semtner Companies, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted would affect the participants and beneficiaries of the Plan, the Employer and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 30, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2799. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. This notice of pendency was originally published in the **Federal Register** on May 15, 1981 (46 FR 26953). Due to the death of the party responsible for approving and monitoring the proposed transaction on behalf of the Plan, this notice of pendency is being republished as follows:

2. The Plan is a non contributory profit sharing plan. As of May 27, 1980, the Plan has assets of $1,959,504 and 80 participants. The trustee of the Plan is the First National Bank in Dallas (the Trustee). The Trustee has the responsibility for making the investment decisions for the Plan.

3. Presently, the Employer has a line of credit with the Trustee in the amount of $600,000 for the construction of additional warehouse space (the Addition) which would be used in the business of the Employer. The Employer has arranged for a loan (the Trustee Loan) of $600,000 on such line of credit although no funds have been received to date. The Trustee Loan is collateralized by a first lien on certain real property (the Property) located at 400 S. Hall St. Dallas, Texas. The Property is a warehouse office building owned by the Employer. Construction has begun on the Addition and since no funds have been advanced on the Trustee Loan the Employer is spending its own funds to meet obligations due on the construction of the Addition.

4. Since the Employer has chosen not to use any funds from the Trustee Loan, the Employer is requesting an exemption that would permit the Employer to borrow $500,000 (the Plan Loan) from the Plan to pay off the expenses it

incurred in the construction of the Addition. The Plan Loan would be a 10 year loan with a repayment rate of $50,000 per year plus interest on the unpaid balance. The interest rate on the Plan Loan will be set in accordance with the rate that is normally charged in the Dallas, Texas area by lenders making similar loans, but will never be less than 12% per annum. Such interest rate will be adjusted every six months and will be determined by an independent party. Prior to the Plan entering into the Plan Loan, a party unrelated to the Plan or the Employer, Frank Richardson (Richardson) of Dallas, Texas will determine whether the Plan should enter into the Plan Loan and, if approval is given, will accept the responsibility for approving the 6 month interest adjustments, as well as the monitoring of the payments on the Plan Loan and enforcing the rights of the Plan in the Plan Loan. Richardson is a retired vice president and senior loan officer of the Trustee. In addition, the Trustee must certify that the Plan Loan is in the best interests of the participants and beneficiaries of the Plan and certify that the terms of the Plan Loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated party. The Plan Loan will be collateralized with a first lien on the Property. On April 15, 1980, the Property was appraised by an independent appraiser, Mr. G. William Maguire, M.A.I. (Maguire) located in Dallas, Texas. Maguire represented that on such date the Property had a fair market value of $1,400,000. The Employer represents that at all times during the Plan Loan, the Employer will maintain collateral for the Plan Loan in an amount equal to at least 150% of the outstanding balance of the Plan Loan.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the Trustee represents that the Plan Loan is in the best interests of the Plan; (2) an independent party will approve and monitor the terms of the Plan Loan; (3) the Plan will receive a high rate of interest on the Plan Loan; and (4) the Plan Loan will be adequately collateralized.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising interested persons of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Plan Loan of $500,000 by the Plan to the Employer provided that the terms of such Loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33481 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-2865]

Proposed Exemption for Certain Transactions Involving the United Mine Workers of America 1950 Benefit Plan and Trust

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would permit the trustees (the Trustees) of the United Mine Workers of America 1950 Benefit Plan and Trust (the 1950 Benefit Plan), Washington, D.C., to resolve certain disputes arising in connection with the provision of health and other benefits by certain employee welfare benefit plans (the 1981 Plans) established by individual employers pursuant to the

National Bituminous Coal Wage Agreement of 1981 (the 1981 Agreement). The proposed exemption, if granted, would affect the Trustees, the participants and beneficiaries of the 1981 Plans, the United Mine Workers of America (the Union), the members of the Bituminous Coal Operators' Association, Inc. (the Employers), and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 30, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. L-2865. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406(b)(1) of the Act. The proposed exemption was requested in an application filed by the Trustees, pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

(1) The 1950 Benefit Plan provides health, life insurance and pension benefits for eligible employees who retired before January 1, 1976. The 1974 Benefit Plan and Trust (the 1974 Benefit Plan) provides health and other benefits for active miners and for retired miners receiving pension benefits under the 1974 Benefit Plan, i.e., generally those miners who retired after December 31, 1975.

(2) In 1978, the manner in which health, life insurance and death benefits were to be provided was modified by collective bargaining, i.e., the National Bituminous Coal Wage Agreement of 1978 (the 1978 Agreement). The parties to the 1978 Agreement agreed that on or before June 1, 1978, each Employer would establish an employee welfare benefit plan (1978 Plans) through one or more insurance carriers. Each such 1978 Plan covers that Employer's active employees and those pensioners under the 1974 Benefit Plan whose last classified employment was with such Employer.

(3) Each of the 1978 Plans contained identical eligibility criteria and the benefit coverage provided by the 1978 Plans was identical to the benefit coverage provided by the 1950 Benefit Plan. The bargaining parties sought to assure uniform application of the eligibility criteria among the 1978 Plans and consistent interpretation of the benefit coverage provisions between the 1950 Benefit Plan and the 1978 Plans. The Union and the Employers, as settlors of the 1950 Benefit Plan, amended the 1950 Benefit Plan to enable the Trustees to participate in the resolution of disputes concerning eligibility and benefit coverage which arose under either the 1950 Benefit Plan or the 1978 Plans. Specifically, such change allowed the Trustees to participate in the resolution of three types of disputes (the Disputes): (1) Generic disputes relating to the nature of benefits to be provided under identical language of the 1950 Benefit Plan and the 1978 Plans; (2) generic disputes involving the eligibility criteria shared by the 1978 Plans; and (3) eligibility disputes involving individual participants of the 1978 Plans.

(4) In November 1978 the Trustees requested an exemption that would allow the Trustees to offer their opinion to assist in the resolution of the Disputes. On May 8, 1979 the Department granted exemption PTE 79-17 (44 FR 26981) which permitted such action by the Trustees. PTE 79-17 was effective until the date of the termination of the 1978 Agreement. The Department imposed this time limit because future collective bargaining agreements between the Union and the Employers might have altered the arrangement for providing benefits in such a way as to make PTE 79-17 unnecessary.

(5) The 1981 Agreement, effective June 7, 1981, does not materially alter the arrangement for providing benefits as set forth in the 1978 Agreement with one exception. Such exception is that while the 1978 Agreement was silent on the effect of the Trustees' resolutions in settling the Disputes, the 1981 Agreement provides that the decisions by the Trustees in settling the Disputes are final and binding.

(6) The Trustees are requesting an exemption which will permit them to make final and binding resolutions of the Disputes and to receive monies from the 1950 Benefit Plan as payment for providing these services. The Trustees are fiduciaries with respect to the 1950 Benefit Plan as defined in section 3(21)(A) of the Act, and parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(A) and (B) of the Act. The Union is a party in interest with respect to the 1950 Benefit as defined in section 3(14)(D) of the Act. The Employers are parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(C) of the Act. To the extent that the Trustees resolve the Disputes in connection with the 1981 Agreement, such action may be causing the Trustees to render services to the Union or to the Employers, or to both. The rendering of such services may constitute a prohibited transaction as described in section 406(a) and 406(b)(1) of the Act.

(7) The applicants represent that the requested exemption is in the interest of the 1950 Benefit Plan and its participants and beneficiaries. The applicants suggest that the 1950 Benefit Plan and its participants will benefit from Trustee clarifications of the benefit coverage provisions shared by the 1950 Benefit Plan and the 1981 Plans.[1] In addition, the applicants indicate that employer contributions to the 1950 Benefit Plan as provided by the 1981 Agreement are dependent upon fulfillment of the peripheral conditions of that agreement. The applicants also represent that the requested exemption would be protective of the rights of the participants and beneficiaries of the 1950 Benefit Plan. The application represents that the Trustees will receive no additional compensation for the performance of these functions, and that they will devote no loss time to their duties relating solely to the administration of the 1950 Benefit Plan.

[1] With regard to the generic benefit coverage disputes, the application represents that the Trustees are peculiarly suited to resolve such disputes due to their experience in dealing with the identical language of the 1950 Benefit Plan. Similarly, with regard to both the generic and individual eligibility disputes, the application states that the Trustees have developed an extensive body of knowledge and precedent in dealing with previous eligibility standards for the 1950 Benefit Plan and the 1974 Trust and Plan. The applicants submit that, in light of the Trustees' expertise and experience, allowing the Trustees to perform these dispute resolution functions is the most efficient and least burdensome method of administering the system established by the 1981 Agreement.

The 1950 Benefit Plan will bear the administrative cost related to the settlement of the Disputes. Pursuant to PTE 79–17 the cost of settling the 205 Disputes resolved as of August 24, 1981 was as follows: $13,555.40 for staff time resolving Disputes: $4,997.71 for Trustee time resolving Disputes; and $1,363.55 for developing procedures. The applicants represent that they do not anticipate the cost of settling future Disputes to vary significantly from the cost of settling the past Disputes. The applicants indicate that, regardless of the amount of administrative costs, the level of benefits provided by the 1950 Benefit Plan, as set by the 1981 Agreement, is guaranteed by the Employers.

(8) The exemption proposed herein will expire upon termination of the present collective bargaining agreement. The Department is proceeding in this manner because future collective bargaining agreements between the Union and the Employers may alter the present arrangements for providing benefits in such a way as to make the exemption unnecessary or inappropriate. However, the Trustees or any other party may in the future apply for another exemption if one is deemed necessary. In addition, the proposed exemption contains the condition that the Trustees must keep records adequate to ascertain both the costs incurred in rendering the described services and the portion of such costs which may be attributed to resolving each of the three types of Disputes which the Trustees might resolve, i.e., generic questions relating to nature of benefits, generic questions of eligibility, and individual questions of eligibility. This condition is intended to help ensure that the Trustees will be in a position to monitor the costs of such services. At the same time, the Trustees will be creating a data base which can be used in connection with the analysis of any future Plan modifications.

Notice to Interested Persons

The Employers and the Union, as settlors of the 1950 Plan, will be notified by letter containing a copy of the notice of pendency of the proposed exemption as published in the **Federal Register**. The participants and beneficiaries of the 1950 Plan and the 1981 Plans will be notified by publication in the "Union Journal" of a copy of the notice of pendency of the proposed exemption as published in the **Federal Register**. Both types of notification will also advise these persons of their rights to comment and to request a hearing within the period of time specified above. Both types of notification will be given within 60 days of the publication of the notice of pendency in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(2) and (3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Effective June 7, 1981, and until the date of termination of the 1981 Agreement, the restrictions of section 406(a) and 406(b)(1) of the Act shall not apply to the resolution by the Trustees of the Disputes arising in connection with the provision of health and other benefits by the 1981 Plans, provided that such Trustees maintain, and make available to the Department upon request, records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the three types of Disputes which the Trustees may consider.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33473 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[ORPS Application No. P-298OV]

Employee Benefit Plans; Alternative Method of Compliance for the November Electric Company Profit Sharing Trust

AGENCY: Labor.

ACTION: Grant of alternative method of compliance.

SUMMARY: The Department of Labor (the Department) hereby grants an alternative method of compliance with the summary plan description and summary of material modification requirements of the Employee Retirement Income Security Act of 1974 (the Act) for the November Electric Company Profit Sharing Trust (the Plan).

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Malagrin of the Department, (202) 523–8684. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On July 31, 1981, notice was published in the **Federal Register** (46 FR 39242) of the pendency before the Department of an alternative method of compliance with

the summary plan description (SPD) and summary of material modification requirements of the Act. The alternative method of compliance was requested in a petition, as amended, by Robert A. November, and Burton A. Curtis, trustees of the Plan, pursuant to section 110(a) of the Act. The notice set forth a summary of the facts and representations contained in the petition for an alternative method of compliance. The petition has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested alternative method of compliance to the Department. The Department received one comment on the proposal, which appeared to suggest that the exemption be expanded into a class exemption. The commentator suggested that, in the case of corporate plans whose sole participants are the "owners" of the corporation, relief from the SPD requirements of Title I should be provided to the same extent now provided to (1) a so-called "Keogh" plan whose sole participants are: (a) a sole proprietor, or (b) partners, of the trade or business, and (2) a corporate pension plan whose sole participant is a 100 percent stockholder of the corporation. Those two categories of plans are not "employee benefit plans" for purposes of Title I of the Act.[1] Therefore, they are not subject to the SPD requirements of Title I. In the general case of a plan whose sole participants are also their employer's sole stockholders, however, it does not appear to the Department that all plan participants, solely because they are corporate stockholders, necessarily would have the familiarity with the terms and operations of the plan that the petitioners in this matter represent that they have with respect to the petitioners' plan. Therefore, the Department has not adopted the suggestion of the commentator.

Alternative Method of Compliance

In accordance with section 110(a) of the Act and based upon the entire record, the Department makes the following determinations:

(1) The use of the alternative method is consistent with the purposes of Title I of the Act and provides adequate disclosure to the Plan's participants and beneficiaries and adequate reporting to the Department.

(2) The application of the summary plan description and summary of material modification requirements would increase the costs to the Plan or impose unreasonable administrative burdens with respect to the operation of the Plan, and

(3) The application of the summary plan description and summary of material modification requirements of the Act would be adverse to the interests of the Plan's participants in the aggregate.

Accordingly, the Department hereby grants the following alternative method of compliance:

Effective immediately, the plan administrator of the Plan is not required to prepare and distribute summary plan descriptions and summaries of material modifications to the Plan's participants or to file such documents with the Secretary of Labor, provided that the plan administrator (1) upon the written request of any participant or beneficiary, furnishes free of charge a copy of the instruments under which the Plan is established or operated, and (2) furnishes free of charge to each plan participant and beneficiary a copy of each amendment or other change to the Plan in the event the plan is amended or changed.

The availability of this alternative method of compliance is subject to the express conditions that (1) the Plan has no participants other than those described in the petitioner's submissions, and (2) the material facts and representations contained in the petition are true and complete and the petition accurately describes all factors material to the granting of the alternative method of compliance.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33244 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[1] See regulation 29 CFR § 2510.3-3. The views expressed by the commentator might also be read to suggest that the corporate plans he refers to should also be excluded from coverage under Title I. That issue is outside the scope of this proceeding.

[Prohibited Transaction Exemption 81-109; Exemption Application No. D-2615]

Exemption From the Prohibitions for Certain Transactions Involving the ABC Freight Forwarding Corp., Employees Profit Sharing Plan and Trust Located in New York City, N.Y.

AGENCY: Department of Labor, P&WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale by the ABC Freight Forwarding Corporation Employees Profit Sharing Plan and Trust (the Plan) of the Stock (the Stock) of Paramount Freight Handling, Inc. (Paramount) and Paramount handling of North Carolina, Inc. (Paramount of North Carolina) to ABC Air Freight, Inc. (ABC Air Freight), a wholly owned subsidiary of ABC Freight Forwarding Corporation (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44918) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have satisfied the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a

fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of the Stock by the Plan to ABC Air Freight for the greater of, either $400,000 or the fair market value of the Stock at the time of sale but subject to the settlement of the NYC Claim as described in the notice of pendency.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33219 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-108; Exemption Application No. D-2156 and D-2517]

Exemption From the Prohibitions for Certain Transactions Involving the Aluminum Coating Manufacturers, Inc., Money Purchase Pension Plan and Trust and the Aluminum Coating Manufacturers, Inc. Profit Sharing Plan and Trust, located in Cleveland, Ohio

AGENCY: Department of Labor, P & WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of limited partnership interests (the Partnership Interests) in Hampton Associates by the Aluminum Coating Manufacturers, Inc., Money Purchase Pension Plan and Trust and the Aluminum Coating Manufacturers, Inc. Profit Sharing Plan and Trust (collectively, the Plans) to Richard O. Kaplan, a party in interest with respect to the Plans.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 7, 1981, notice was published in the **Federal Register** (46 FR 40349) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in an application filed on behalf of the Plans by Richard O. Kaplan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that he has complied with the requirements of notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirements of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other

provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sales of the 6.5 Partnership Interests by the Plans to Richard O. Kaplan for $11,550.50, provided the purchase price is not less than the fair market value of the Partnership Interests at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately described all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33221 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-106; Exemption Application No. D-2504]

Exemption From the Prohibitions for Certain Transactions Involving the Reading & Bates Pension Plan Located in Tulsa, Oklahoma

AGENCY: Department of Labor, P & WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed sale of the Mid-Continent Building, located in Tulsa, Oklahoma (the Property), presently owned by the Reading & Bates Pension Plan (the Plan), to Reading & Bates Development Company (the Buyer), a wholly owned subsidiary of Reading & Bates Corporation and a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44924) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of Section 4975(c)(1)(A) through (E) of the Code, for the proposed sale of the Property by the Plan to the Buyer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the requirements set forth in the notice of proposed exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of the Property by the Plan to the Buyer for $6,600,000 in cash, provided that that amount is not less than the fair market value of the Property at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33223 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-105; Exemption Application No. D-2448]

Exemption From the Prohibitions for Certain Transactions Involving the State-Record Company Retirement Plan Located in Columbia, South Carolina

AGENCY: Department of Labor, P&WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed loan of $3,000,000 by the State-Record Company Retirement Plan (the Plan) to the State-Record Company (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Program, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44929) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification requirements set forth in the notice of pendency. One comment was received by the Department which supported granting the proposed exemption in the form in which it was proposed. No requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $3,000,000 by the Plan to the Employer provided that the terms and conditions of such loan are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33224 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-107; Exemption Application No. D-2515]

Exemption From the Prohibitions for Certain Transactions Involving Thomas E. Hogan, Inc., Employee Pension Plan Located in Woburn, Massachusetts

AGENCY: Department of Labor, P&WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed loan of $100,000 by the Thomas E. Hogan, Inc., Employee Pension Plan (the Plan) to Thomas E. Hogan, Inc., (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44930) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4069b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed Loan of $100,000 by the Plan to the Employer provided that the terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc 81-33222 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81–110; Exemption Application No. D–2627]

Exemption From the Prohibitions for Certain Transactions Involving the Utah Pipe Trades Vacation Trust Fund Located in Salt Lake City, Utah

AGENCY: Department of Labor, P&WBP.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the transfer of certain uncommitted reserves, together with accrued interest, by the Utah Pipe Trades Vacation Trust Fund (the Vacation Plan) to the Utah Pipe Trades Welfare Trust Fund (the Welfare Plan).

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44931) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act), for a transaction described in an application filed on behalf of the Vacation Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to all interested persons in compliance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a) and 406 (b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(b)(2) of the Act shall not apply to the transfer by the Vacation Plan to the Welfare Plan of uncommitted reserves of approximately $24,596, together with accrued interest which may accrue to the Vacation Plan due to its termination.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-33220 Filed 11-19-81; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-104; Exemption Application No. D-2429]

Exemption From the Prohibitions for Certain Transactions Involving the Jeffrey A. Marmelzat, M.D., Medical Corp. Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of certain rare stamps (the Stamps) to the Jeffrey A Marmelzat, M.D. Medical Corporation Profit Sharing Plan (the Plan) by Jeffrey A. Marmelzat, M.D. (Dr. Marmelzat), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington D.C. 20216, (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44923) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was provided to interested persons in accordance with the requirements set forth in the notice. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons in directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the

entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a) and 406 (b)(2) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by Dr. Marmelzat of the Stamps to the Plan, provided that the terms and conditions of this transaction are at least as favorable to the Plan as those obtainable in a similar transaction with an unrelated third party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33223 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-103; Exemption Application No. D-2355]

Exemption From the Prohibitions for Certain Transactions Involving the Metex Corp. Employees Retirement Plan Located in South Plainfield, New Jersey

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain loans of money by the Metex Corporation Employees Retirement Plan (the Plan) to Metex Corporation (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 1981, notice was published in the **Federal Register** (46 FR 38182) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(C)(1) (A) through (E) of the Code, for certain transactions described in an application filed by the Employer and the trustees of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loans of money as described in the notice of pendency by the Plan to the Employer for a period of five years, provided the terms and conditions of the loans are at least as favorable to the Plan as those which the Plan could receive in similar transactions with unrelated parties.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33226 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-101; Exemption Application No. D-1815]

Exemption From the Prohibitions for Certain Transactions Involving the Service Brokerage Company, Inc., Pension Trust Located in Houston, Texas

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits (1) the leasing of automobiles for a period of five years by the Service Brokerage Company, Inc. Pension Trust (the Trust) to Service Brokerage Company, Inc. (the Employer); (2) the Employer's agreement to indemnify and hold the Trust harmless regarding any losses or damages to leased vehicles; and (3) the sale, on April 28, 1980, of a gasoline tank, pump and related environmental controls by the Trust to the Employer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44927) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The applications has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons in compliance with the requirements set out in the proposed exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Trust and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Trust.

Accordingly the restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The leasing of automobiles by the Trust to the Employer for a period of five years from the date the exemption is granted, provided that the terms and conditions of the leases are at least as favorable to the Trust as the Trust could obtain from an unrelated third party; (2) the Employer's agreement to indemnify and hold the Trust harmless regarding any losses or damages arising out of the use or condition of any leased vehicles; and (3) the sale on April 28, 1980 of the Trust's gasoline tank, pump and related environmental controls to the Employer for a cash price of $1,854, provided that this amount was not less than the fair market value on the date of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions that are subject of this exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81-33227 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-102; Exemption Application No. D-2070 and D-2071]

Exemption From the Prohibitions for Certain Transactions Involving HMK Financial, Located in Los Angeles, California

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption involves certain aspects of the provision of real estate services by HMK Financial (HMK) to employee benefit plans (the Plans) which may contract for certain other pension services with HMK.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit

Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523–6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 8, 1981, notice was published in the **Federal Register** (46 FR 44933) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (E) and (F) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the requirements set forth in the notice. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 Fr 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act and section 4975(c)(1) (A) through (D) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply to the provision of real estate brokerage services and the receipt of compensation in conjunction with the provision of such services by HMK to the Plans which contract for services with HMK.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of November 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 81–33228 Filed 11–19–81; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Order on Motion for Consolidation of Air Traffic Controller Appeals

Correction

In FR Doc. 81–33023 appearing at page 56521 in the issue of Tuesday, November 17, 1981, the following changes should be made:

1. On page 56521, first column, the address in the **"ADDRESS"** paragraph is incorrect. The **"ADDRESS"** paragraph should read as follows:

ADDRESS: Robert E. Taylor, Secretary, Merit Systems Protection Board, ATTN: ATC Appeals, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

2. On page 56522, third column, the address for Richard L. Leighton is incorrect. Richard L. Leighton's address should read as follows:

Richard L. Leighton, Esquire, Counsel to David A. Trick, 2033 M Street, N.W., Suite 800, Washington, D.C. 20036

BILLING CODE 1505–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Education Panel; National Council on the Arts, Artists-in-Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Artists-in-Education Panel to the National Council on the Arts will be held on December 7–10, 1981, from 8:30 a.m.—8:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be future program directions and State applications review.

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.

November 17, 1981.

[FR Doc. 81-33503 Filed 11-19-81; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts, Inter-Arts Panel (Folk Arts Section); 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 Inter-Arts Panel (Folk Arts Section) to the National Council on the Arts will be held on December 10–12, 1981, from 9:00 a.m.-6:00 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, N.W. Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 12, 1981, from 10:00 a.m.-12:00 noon to discuss guidelines.

The remaining sessions of this meeting on December 10–11, 1981, from 9:00 a.m.-6:00 p.m. and on December 12, 1981, from 9:00 a.m.-10:00 a.m. and noon-6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

November 16, 1981.

[FR Doc. 81-33502 Filed 11-19-81; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts, Media Arts Program (Prescreening for Production: Film/Video); 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 Media Arts Program (Prescreening for Production: Film-Video) to the National Council on the Arts will be held on December 7–9, 1981, from 9:00 a.m.-5:30 p.m. in the 12th floor screening room 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.

November 17, 1981.

[FR Doc. 81-33500 Filed 11-19-81; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts, Music Panel (Centers); 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 Music Panel (Centers) to the National Council on the Arts will be held on December 11–12, 1981, from 9:00 a.m.-5:30 in room 1225 of the Columbia Plaza Office Complex, 2401 E Street, NW., 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.

November 16, 1981.

[FR Doc. 81-33501 Filed 11-19-81; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Accreditation of Organizations Performing Qualification Testing of Equipment

The NRC and the Institute of Electrical and Electronic Engineers, Inc. (IEEE) have entered into an agreement, effective October 1981, regarding the accreditation of testing organizations which perform qualification testing of certain equipment for nuclear power generating facilities. It involves IEEE's issuance of certifications of accreditation to testing organization based upon an assessment by the IEEE that the organization has the capability to perform qualification tests on certain equipment. Copies of the agreement are available on request from Frederick Forscher, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Certain equipment in a nuclear facility must be capable of performing its required safety functions for the entire range of conditions in which it must operate, including conditions that may obtain from severe accidents or natural phenomena. The capability of this equipment to perform under these conditions must be demonstrated by appropriate means such as qualification testing because it is impractical to simulate many of these severe conditions in situ. To aid in achieving consistency, reliability, and reproducibility of test results, and to provide adequate control of equipment qualification testing, the establishment of a testing organization accreditation program, administered by an independent entity, is considered necessary. With such a program as its cornerstone, a more efficient, effective regulatory program will evolve that reduces the need for NRC resources, assures fair treatment of all, and results in a more consistent, high quality product.

In order to assess, in a fair and equitable manner, the various testing

organizations applying for accreditation, the IEEE has agreed to establish:

1. A program of accreditation, based on an organization's technical program, quality assurance program, and a demonstrated ability to meet specified technical requirements applicable to qualification testing of equipment;

2. An accreditation review committee assigned the responsibility for granting or withholding accreditation. (Auditors or survey teams will not be given this authority.) Membership on this committee will be sufficiently diversified and working procedures structured so that accreditation will reasonably be available to all qualified applicants;

3. Requirements to assure that audit personnel and the accreditation review committee are technically qualified and reasonably free of conflict of interest;

4. An appeals process available when accreditation is refused or withdrawn;

5. Procedures for periodic reaudits to maintain a testing organization's accreditation, i.e., an organization's capability to perform specified qualification testing; and

6. Procedures for the conduct and ongoing documentation of accreditation activities.

The NRC has agreed to develop a regulation endorsing IEEE's accreditation program and requiring its use. The NRC will periodically audit and inspect IEEE's accreditation activities to assure that the purposes of the program are accomplished. The NRC has also agreed that an IEEE accreditation may be used by NRC licensees and license applicants to satisfy NRC requirements relating to the evaluation of testing organization's quality assurance and technical programs.

It is expected that during calendar year 1982 interested testing organizations will apply to the IEEE for accreditation, permitting testing organizations to be fully accredited by the effective date of the endorsing regulation (which is anticipated to be early 1983). For further information contact Frederick Forscher, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, D.C. 20555, phone: (301) 443–5942.

Dated at Bethesda, Md., this 4th day of November 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-33807 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Granting an Exemption From Certain Fire Protection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted an exemption from the requirements of 10 CFR 50.48 and Appendix R, "Fire Protection Program for Operating Nuclear Power Plants," to Carolina Power and Light Company (the licensee).

This exemption related to a requirement for a fixed fire suppression system in the control room. The basis for this action set forth in the Commission's exemption dated November 13, 1981.

The Commission has determined that the granting of this exemption 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 an environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the licensee's request dated March 11, 1981 and (2) the Commission's Exemption dated November 13, 1981. Items (1) and (2) are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington D.C., and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29550. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 13th day of November 1981.

For the Nuclear Regulatory Commission.

Marshall Grotenhuis,

Acting Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-33808 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-213 and 50-336]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant) and Northeast Nuclear Energy Co., et al. (Millstone Nuclear Power Station, Unit 2); Exemption

I

The Connecticut Yankee Atomic Power Company (Connecticut Yankee) is the holder of Facility Operating License No. DPR–61 which authorizes operation of the Haddam Neck Plant, a pressurized water reactor located in Middlesex County, Connecticut. The Connecticut Light and Power Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Northeast Nuclear Energy Company (the licensees), are the holders of Facility Operating License No. DPR–65, which authorizes Northeast Nuclear Energy Company to operate the Millstone Nuclear Power Station, Unit 2, a pressurized water reactor located in the Town of Waterford, Connecticut. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section III.0 of Appendix R to 10 CFR Part 50 requires that the reactor coolant pump be equipped with an oil collection system if the containment is not inerted during normal operation. Because the Haddam Neck Plant and Millstone Station Unit 2 are not inerted during normal operation, under this provision an oil collection system is required. Section III.0 of Appendix R specifies that the oil collection system shall be so designed, engineered, and installed that failure will not lead to fire during normal or design basis accidents and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake (SSE).

By letter dated March 19, 1981, Connecticut Yankee and the licensees indicated that the installed oil collection system does not meet the SSE requirements and further asserted that a seismically qualified oil collection system would not enhance fire protection safety at the Haddam Neck Plant and Millstone Station Unit 2 because alternative means to fulfill the stated objective of the Commission has previously been implemented. Accordingly, Connecticut Yankee and the licensees requested an exemption from the requirements of Section III.0 of Appendix R to 10 CFR Part 50.

The exemption request is based on the following:

1. The lubrication oil systems for the reactor coolant pumps are qualified to remain functional during and after seismic events up to and including an SSE, and

2. The installed oil collection system would not cause loss of operability of safety related equipment nor would it cause a fire in the event of an SSE.

Because the lubrication oil systems for the reactor coolant pumps are qualified to remain functional during and after an SSE, oil leaks should not be expected as a result of such an event. Further, because the installed oil collection

system itself is designed so that the dropping of components during an SSE should not cause loss of operability of safety related equipment nor cause a fire, the systems for each plant would not degrade safety features within containment.

Based on our evaluation, we conclude that the licensees' currently installed oil collection system at both Haddam Neck and Millstone 2 meets the objectives of Section III.O, "Oil Collection System for Reactor Coolant Pump," of Appendix R to 10 CFR Part 50. Therefore, the request to be exempted from the requirement that the oil collection system be so designed, engineered, and installed that there is reasonable assurance that the system for both plants will withstand the Safe Shutdown Earthquake should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the exemption request identified above.

The NRC staff has determined that the granting of this exemption 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 this action.

Dated at Bethesda, Md., this 11th day of November 1981.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 81-33609 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-106]

Oregon State University; Order Terminating Facility License

By application dated September 13, 1978, as supplemented December 18, 1978, and July 10, 1980, Oregon State University (the licensee) requested authorization to dismantle the AGN 201 Reactor (the facility), a research reactor located in Corvallis, Oregon, to dispose of the component parts in accordance with the plan submitted as part of the application, and to terminate Facility License No. R-51. 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 November 9, 1978 (43 FR 52305). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has found that the facility has been dismantled and decontaminated, and that satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security or to the health and safety of the public. The facility was dismantled pursuant to the Commission's Order dated March 8, 1979 (44 FR 16509, March 19, 1979).

The facility area has been inspected by the Commission's Office of Inspection and Enforcement and radiation surveys confirm that radiation levels meet the values defined in the decommissioning plan, and the area is available for unrestricted access.

Therefore, pursuant to the application by the Oregon State University, Facility License No. R-51 is hereby terminated as of the date of this Order.

For further details with respect to this action, see (1) application for authorization to dismantle facility and dispose of component parts and for termination of facility license dated September 13, 1978, as supplemented December 18, 1978, and July 10, 1980, (2) the Commission's Order Authorizing Dismantling of Facility and Disposition of Component Parts dated March 8, 1979, and (3) the Commission's related Safety Evaluation. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., 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, Md., this 10th day of November 1981.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 81-33610 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 OL, 50-323 OL]

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2); Change of Date of Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's November 10, 1981 order, oral argument on the appeals of Governor Brown and the joint intervenors from the July 17, 1981 partial initial decision of the Licensing Board will be heard at 8:45 a.m. on Friday, November 20, 1981, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland, instead of at the earlier scheduled time. In accordance with the Board's October 29, 1981 order, oral argument will also be heard on the joint intervenors' full-power contentions rejected by the Licensing Board's ruling of August 4, 1981.

Dated: November 12, 1981.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 81-33611 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-64, issued to the Power Authority of the State of New York (the licensee), which revised the license and Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective as of the date of issuance.

The amendment revises license condition 2.J to require the steam generator inspection outage at the end of Cycle 3 to begin no later than March 31, 1981. It also revises the Technical Specifications on a one-time only basis to allow a steam generator tube inspection to be performed on the cold leg side up to the second support plate and to temporarily modify the limit for plugging a tube from 40 percent to 65 percent degraded for a specified area on the cold leg side of the steam generators.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 6, 1981, (2) Amendment No. 41 to License No. DPR-64, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Maritine Avenue, White Plains, New York. 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, Md. this 13th day of November 1981.

For the Nuclear Regulatory Commission.

Marshall Grotenhuis,

Acting Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-33612 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259 and 50-260]

Tennessee Valley Authority; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR-33 and Amendment No. 73 to Facility Operating License No. DPR-52 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Unit Nos. 1 and 2, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

These amendments change the Technical Specifications to modify the conditions under which start buses 1A and 1B must be operational.

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 the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and 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 September 17, 1981, (2) Amendment No. 77 to License No. DPR-33 and Amendment No. 73 to License No. DPR-52, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commisson's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. 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 16th day of November 1981.

For the Nuclear Regulatory Commission.

Philip J. Polk,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-33613 Filed 11-19-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18256; File No. SR-CBOE-81-24]

Chicago Board Options Exchange Inc.; Self-Regulatory Organizations; Proposed Rule Change

Propose rule change by Chicago Board Options Exchange, Incorporated, relating to GNMA Margin Amendment. Comments requested on or before December 10, 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 November 3, 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 Rules Change

Additions are italicized; deletions are bracketed.

Definitions

Rule 20.1

(a)-(e) [No change]

(f) The term "covered" [has the same meaning as set forth in Rule 1.1(y), except the long positions must match short positions on the basis of the remaining unpaid principal balance of the underlying GNMA within the variation permitted by Rule 20.8(c), and all "covering" underlying GNMAs must bear a qualifyinf rate of interest] *in respect of a short position in a GNMA call option contract means that the writer's obligation is secured by: (1) A long position in underlying GNMAs bearing a qualifying rate of interest held in the same account with a remaining unpaid principal balance which matches, within the variation permitted by Rule 20.8(c), the nominal principal amount of GNMAs subject to the short call; (2) a long position in a GNMA call option held in the same account for the same nominal principal amount of GNMAs as the short call where the expiration date of the long call is the same as or subsequent to the expiration date of the short call and the exercise price of the long call is equal to or less than the exercise price of the short call; or (3) a "custodial receipt" meeting the conditions of Rule 20.24(c)(5). The term "covered" in respect of a short position in a GNMA put option contract means that the writer holds in the same account a long position in a GNMA put option for the same nominal principal amount of GNMAs as the short put where the expiration date of the long put is the same as or subsequent to the expiration date of the short put and the exercise price of the long put is equal to or greater than the exercise price of the short put.*

(g)-(l) [No change]

* * * Interpretations and Policies [No change]

Rule 20.1 and the Interpretations and Policies 20.1.01, .02 and .03 replace definitions set forth in Rule 1.1 (n), (o), (s), [and] (t), *and (y).* [and supplement the definition set forth in Rule 1.1(y).]

Margin Requirements

Rule 20.24. (a) This rule sets forth the minimum amount of margin which must be *deposited and* maintained in margin accounts of customers having positions in GNMA option contracts dealt in on the Exchange. The Exchange may at any

time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. *The Initial deposit of margin required under this rule must be made within seven full business days after the date on which a transaction giving rise to a margin requirement is effected.*

(b) [No change]

(c) The requirements set forth in paragraph (b) hereof are subject to the following exceptions, which in each case may be applied at the discretion of the Member Organization with which the account is maintained.

(1) Short call covered by long GNMA. No margin is required in respect of a GNMA call option contract carried in a short position which is covered by a long position in underlying GNMAs within the meaning of Rule[s 1.1(y) and] 20.1(f).

(2) [No change]

(3) [No change]

(4) Short put and short GNMA. No margin is required in respect of a GNMA put option carried in a short position which is offset by a short position in underlying GNMAs with a remaining unpaid principal balance which matches, within the variation permitted by Rule 20.8(c), the nominal principal amount of GNMAs subject to the put option.

(5) Custodial receipts and bank guarantee letters. No margin is required in respect of GNMA call or put options carried in a short position where the customer has delivered, within seven full business days after the options are written, to the Member Organization with which such position is maintained a custodial receipt or letter of guarantee, in a form satisfactory to the Exchange, issued by a bank pursuant to specific authorization from the customer which certifies that:

(A) in the case of a custodial receipt (covering calls), the bank holds underlying GNMAs for the account of the customer which the bank will deliver at the order of the Member Organization against payment of the exercise price of the calls in accordance with the terms of the custodial receipt; or

(B) in the case of a letter of guarantee (covering puts), the bank holds cash for the account of the customer which the bank will pay to the Member Organization against delivery of the underlying GNMAs in accordance with the terms of the letter of guarantee.

. . . Interpretations and Policies

.01 For purposes of Rule 20.24(c)(5), the term "bank" shall mean a bank or trust company suspervised and examined by a State or Federal bank regulatory authority. The provisions of Rule 20.24(c)(5) shall not apply with respect to a custodial receipt or letter of guarantee issued by a bank if the aggregate value of the securities and cash held by the bank pursuant to all outstanding custodial receipts, escrow receipts and letters of guarantee issued by the bank in respect of options on any securities exceeds 25% of the bank's stockholders' equity.

Rule 20.24 supplements Rule 12.3.

Determination of Value for Margin Purposes Rule 20.25. For margin purposes, positions in GNMAs shall be valued at the current cash market price for GNMAs bearing the same stated rate of interest as those in the positions. For purposes of Rule 20.24, the term "current market value" as to any position in a particular GNMA option series (as used in that Rule) shall mean the closing price of that series on the Exchange on the day with respect to which a determination of current market value is made. All long GNMA options must be paid in full *within seven full business days after the date on which the options are purchased.*

Rule 20.25 supplements Rule 12.5.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The general purpose of these proposed rules changes is to clarify the operation of CBOE's margin rules with respect to GMNA options. This clarification is needed because the Board of Governors of the Federal Reserve System, by order dated October 2, 1981, took final action to amend Regulation T so that the initial margin requirement for writers of uncovered options on exempted debt securities, such as GNMAs, will be determined by the rules of the exchange on which the option is traded.

The proposed change in Rule 20.1(f) would specify the ways in which a short GNMA option could be "covered" and would delete the cross-reference to Rule 1.1(y) which applies to stock options.

The proposed change in Rule 20.24(a) would make it clear that CBOE's GNMA margin rules apply to the initial deposit of margin and would specify that initial margin must be deposited within seven full business days after the date on which a transaction giving rise to a margin requirements is effected. The proposed change in Rule 20.24(c)(4) would afford special margin treatment to a short GNMA put option offset by a short position in underlying GNMAs. The proposed change in Rule 20.24(c)(5) would afford special margin treatment to short GNMA options secured by a custodial receipt or letter of guarantee issued by a bank which meets certain requirements.

The proposed change in Rule 20.25 would clarify that all long GNMA options must be paid in full within seven business days after the date on which the options are purchased.

The statutory basis of these proposed changes is Section 6 of the Securities Exchange Act of 1934, in that they will facilitate transactions in GNMA options and promote the protection of investors and the public interest.

III. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes set forth herein would impose no burden on competition.

IV. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rules changes were neither solicited nor received.

V. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before December 28, 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.

VI. 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 at the Commission's Public Reference Section,

1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 10, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-33571 Filed 11-19-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7627]

Wainoco Oil Corp.; Application to Withdraw From Listing and Registration

November 16, 1981.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Wainoco Oil Corporation ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on March 19, 1981, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before December 8, 1981, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-33570 Filed 11-19-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of proposed new system of records, Treasury/OS.006—Building Passes.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Chief, Security Operations Branch, gives notice by this publication of a proposed new system of records Treasury/OS.006—Building Passes. This system of records is maintained in a manual card file and is used to control and limit access by Treasury personnel to buildings under the Department's jurisdiction.

DATES: Comments must be received not later than December 21, 1981. If no comments are received, to which the Department publishes a revision to incorporate comments, this system will become effective on January 19, 1981.

ADDRESS: Comments may be sent to Chief, Security Operations Branch, Room 1050, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Clarence Scruggs, (202) 566-5489, Chief, Security Operations Branch.

SUPPLEMENTARY INFORMATION: Prior to November, 1979, the Building Pass function was under the jurisdiction of the Physical Security Staff, and their records were covered under Treasury/OS.196, Physical Security Information Systems, published at 41 FR 45200. For management purposes, 48 systems of records (Treasury/OS.196 included) were consolidated into one system, Treasury/OS.001, published at 42 FR 49106. The latter system proved inadequate because the system failed to list all the routine uses and authorities of the separate systems it incorporated. Therefore, the consolidated system was deleted and the original separate systems were reinstated, 44 FR 7009. At the time this action was taken, Treasury/OS.196 was withheld from reinstatement because of the pending reorganization of the Physical Security Staff. Upon completion of the reorganization, the Building Pass function was transferred to the Security Operations Branch. However, due to administrative oversight, system OS.196 was never revised to reflect the necessary changes. Therefore, we are establishing a separate Privacy Act system of records to cover the Building Pass function within the Security Operations Branch. The remaining parts of OS.196, still under the jurisdiction of the Physical Security Staff, are presently under review and revision and will be published at a later date.

Dated: November 2, 1981.

Cora P. Beebe,

Assistant Secretary (Administration).

Treasury/OS.006

SYSTEM NAME:

Building Passes—Treasury/OS.006

SYSTEM LOCATIONS:

Security Operations Branch, Room 1050, Main Treasury Building, Washington, DC 20220.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All current and retired employees of the Office of the Secretary, Comptroller of the Currency, Bureau of Government Financial Operations, Bureau of the Mint, Bureau of the Public Debt, U.S. Savings Bonds Division, and Office of Tax Policy.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Treasury Form 4074, Request for Building Pass, which contains information such as name, office building address, type of appointment, issuance and expiration dates, and the action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301, Treasury Directive 71-11.A, April 30, 1976.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information will be used to provide: Building pssses for current and retired employees; Security Operations Branch with a record of persons who were issued passes; and expirations and renewal information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Manual cards stored in locked file cabinets located in the Security Operations Branch.

RETRIEVABILITY:

By name of individual employee, or by expiration date.

SAFEGUARDS:

Access is limited to Security Operations Personnel who have been designated as having a need-to-know by the Branch Chief and who have been given authority to access and disseminate information in accordance with the established routine uses.

RETENTION AND DISPOSITION:

Forms are maintained for current employees until expiration, renewal or cancellation. Forms on current employees are destroyed (by shredding or burning) 3 months after transfer or termination of employment. Forms for retired persons are retained for 3 years.

SYSTEM MANAGER(S) ADDRESS:

Chief, Security Operations Branch, Room 1050, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Submit written request in accordance with instructions in 31 CFR Part 1. Mail to Chief, Disclosure Branch, Room 501, Washington Building, c/o 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORDS ACCESS PROCEDURE:

See notification above.

CONTESTING RECORDS PROCEDURES:

See notification above.

RECORD SOURCE CATEGORIES:

All information contained on Form 4074 is provided by the personnel office from information supplied by the subject individual.

[FR Doc. 81-33460 Filed 11-19-81; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 224
Friday, November 20, 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 Crop Insurance Corporation	1
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1

FEDERAL CROP INSURANCE CORPORATION

[NOM–81–2]

TIME AND DATE: 9:45 a.m., Wednesday, December 2–3, 1981.

PLACE: Room 126, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, MO 64131.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Creation of two Vice President positions.
2. Docket on Dockets.
3. Debt Management policy.
4. Expansion of Soybean insurance.
5. Peanut policy—tentative.
6. Representation Fund.

CONTACT PERSON FOR MORE INFORMATION: Peter F. Cole, Secretary, 202–447–3325.

Dated: November 17, 1981.

Federal Crop Insurance Corporation.

Peter F. Cole,

Secretary.

[S–1739–81 Filed 11–18–81; 3:25 pm]

BILLING CODE 3410–08–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the following matter is expected to be added to the "Summary Agenda" for consideration at the open meeting of the Corporation's Board of Directors to be held at 2:00 p.m. on Monday, November 23, 1981:

Memorandum and Resolution re: Amendments to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which would permit insured nonmember banks to operate international banking facilities (IBFs) in the same manner as other depository institutions.

No earlier notice of the change in the subject matter of the meeting was practicable.

Dated: November 17, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1738–81 Filed 11–18–81; 11:27 am]

BILLING CODE 6714–01–M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, November 25, 1981.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of new members to the Consumer Advisory Council.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: November 17, 1981.

James McAfee,

Assistant Secretary of the Board.

[S–1740–81 Filed 11–18–81; 3:50 pm]

BILLING CODE 6210–01–M

4

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Sunshine No. 1727.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, November 24, 1981.

CHANGES IN THE MEETING: Correction of previously announced time and date.

The notice for the meeting the week of November 23, 1981, incorrectly stated that the meeting would be held on Tuesday, November 24, 1981, beginning at 10:00 a.m. The correct date and time should have been Monday, November 23, 1981, beginning at 2:00 p.m. There are no other changes to the agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1737–81 Filed 11–18–81; 9:56 am]

BILLING CODE 7020–02–M

federal register

Friday
November 20, 1981

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Delaware: DE81–3028	May 8, 1981.
Oklahoma:	
OK81–4067	Aug. 21, 1981.
OK81–4066	Do.
OK81–4051	July 10, 1981.
OK81–4054	Do.
OK81–4056	July 17, 1981.
OK81–4069	Sept. 4, 1981.
OK81–4070	Do.
OK81–4071	Sept. 11, 1981.
OK81–4072	Sept. 4, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida: FL80–1061 (FL81–1313)	July 7, 1980.

Signed at Washington, D.C. this 13th day of November 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

Modification Page 1

DECISION NO. DE81-3028
MOD. NO. 8
(46 FR 25909 - May 8, 1981)
State of Delaware

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Building & Heavy(Sussex County)	$13.17	.80	1.00		.06
Laborers: Building Construction:					
New Castle County					
Class 1	10.80	1.10	1.10		
Class 2	11.05	1.10	1.10		
Class 3	11.30	1.10	1.10		
Class 4	11.80	1.10	1.10		
Class 5	12.05	1.10	1.10		
Kent & Sussex Counties					
Class 1	10.75	.90	1.10		
Class 2	11.00	.90	1.10		
Class 3	11.25	.90	1.10		
Class 4	11.35	.90	1.10		
Class 5	12.00	.90	1.10		
Laborers: Heavy Construction:					
New Castle County:					
General laborers, asphalt tamper, asphalt raker, concrete pitman, landscraper, planter, puddler, railroad trackman, rubber magazine tender, seeder and arboriate and signalman	8.55	1.10	1.10		
Pileleyers	8.70	1.10	1.10		
Blasters, caissons, and cofferdams (open air below 8 feet where excavations for circular caissons and cofferdams are 8 feet or more below level of natural grade adjacent to start point), diamond point drills, form setters, gunite nozzle operators, and wagon drills	8.85	1.10	1.10		

Modification Page 2

DECISION NO. DE-81-3028
MOD NO. 8, CONT'D

Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lathers	$14.55	1.29	1.40		.05
Millwrights:					
Sussex County	13.17	.80	1.50		.06
Plasterers	13.62	.90			.01
Plumbers & Steamfitters:					
New Castle & Kent (North of Southern boundary of Dover City)Counties:					
Plumbers	15.89	1.35	1.60		.15
Steamfitters	14.30	1.50	1.00	f	.05
Soft floor layers:					
New Castle & Kent Counties	14.55	1.29	1.40		.05
Sussex County	13.17	.80	1.50		.06
Truck Drivers:					
Building Construction:					
Group 1	10.285	1.0675	1.225	f	
Group 2	10.185	1.0675	1.225	f	
Group 3	10.035	1.0675	1.225	f	
Heavy Construction:					
Group 1	9.435	1.0675	1.225	f	
Group 2	9.335	1.0675	1.225	f	
Group 3	9.185	1.0675	1.225	f	
OMIT:					
Laborers, Building Construction, Issued in MOD. NO. 6 - 46FR 50221, dated, October 10, 1981					
Class 1	10.95	.90	1.10		
Class 2	11.20	.90	1.10		
Class 3	11.45	.90	1.10		
Class 4	11.55	.90	1.10		
Class 5	12.20	.90	1.10		

DECISION #OK81-4067-Mod. #6
46FR44646-August 21, 1981
Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Lincoln, Logan, McClain, Grady, Seminole and Pottawatomie Counties, Oklahoma

DECISION #OK81-4066-Mod.#5
46FR42610-August 21, 1981
Garfield County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Zone I	$14.35	.70	8%+.10		1%
Zone II	14.60	.70	8%+.10		1%
Zone III	14.85	.70	8%+.10		1%
CABLE SPLICERS:					
Zone I	14.60	.70	8%+.10		1%
Zone II	14.85	.70	8%+.10		1%
Zone III	15.10	.70	8%+.10		1%

ELECTRICIANS-CABLE SPLICERS ZONE DEFINITIONS

ZONE II

The area between the twelve mile radius of the zone I Post Office, except where zone II intercepts another zone I area.

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.

GROUP VIII

Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

DECISION #OK81-4051 - Mod. #6
46FR35886 - July 10, 1981
Pittsburg County, Oklahoma

DECISION #OK81-4054 - Mod. #5
46FR35888 - July 10, 1981
Muskogee, Adair, Cherokee and Okmulgee Counties, Oklahoma

DECISION #OK81-4056 - Mod. #6
6FR37209 - July 17, 1981
Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma

DECISION #OK81-4069 - Mod.#4
46FR444646 - September 4, 1981
Wagoner County, Oklahoma

DECISION #OK81-4070 - Mod. #5
46FR44651 - September 4, 1981
Comanche County, Oklahoma

DECISION #OK81-4071 - Mod. #4
46FR455535 - September 11, 1981
McIntosh County, Oklahoma

DECISION #OK81-4072 - Mod.#4
46FR44648 - September 4, 1981
Latimer, Leflore, Haskell, Sequoyah & Pushmataha Counties, Oklahoma

CHANGE:

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP VII

Locomotive engineer; boring machine; tug boat; mixer, 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; fireman; boiler operator; crushing plants; oiler distributor; pulvimixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.

GROUP VIII

Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

STATE: FLORIDA

COUNTIES: Hardee, Highland, Polk, and DeSoto

DECISION NO.: FL81-1313

DATE: Date of Publication

Supersedes Decision No.: FL80-1081, 45 FR 45793, July 7, 1980.

DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 (four) stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$5.50				
BRICKLAYERS	8.50				
CARPENTERS	6.00				
CEMENT MASONS	6.00				
DRYWALL FINISHERS	7.50				
DRYWALL HANGERS	7.50				
ELECTRICIANS	7.45	7%	6%	5%	.05
IRONWORKERS	6.00				
LABORERS	4.91				
PAINTERS	5.25				
PLUMBERS & PIPEFITTERS	8.88				
POWER EQUIPMENT OPERATORS:					
Bulldozer	7.00				
Loader	6.33				
Scraper	6.00				
ROOFERS	6.00				
SHEET METAL WORKERS	5.71				
TILE SETTERS	6.78				
TRUCK DRIVERS	4.91				
WELDERS - Rate for Craft					

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 81-33252 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
November 20, 1981

Part III

Department of Labor

Mine Safety and Health Administration

Metal and Nonmetal Mining and Milling Operations; Safety and Health Standards; Advance Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Metal and Nonmetal Mining and Milling Operations; Safety and Health Standards; Advance Notice of Proposed Rulemaking

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking

SUMMARY: This notice announces the Mine Safety and Health Administration's (MSHA) initial priorities for its comprehensive standards review of Parts 55, 56, and 57 of Title 30 Code of Federal Regulations (CFR) covering metal and nonmetal mining and milling operations. The notice also announces the agency's intention to hold informal conferences open to the public throughout the country regarding those standards initially selected for regulatory relief and reevaluation.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Consistent with Executive Order 12291 and related legislative and Departmental initiatives, MSHA's standards review project is designed primarily to improve its existing standards and further the goals of regulatory relief. It involves a comprehensive reevaluation of the safety and health standards for metal and nonmetal mining and milling operations set forth in 30 CFR Parts 55, 56, and 57. In its review, MSHA will consider reducing unnecessary reporting and recordkeeping requirements, deleting irrelevant standards, and consolidating existing standards. MSHA will also seek to improve the standards by updating, clarifying and reorganizing them, where appropriate.

On March 25, 1980, MSHA published an Advance Notice of Proposed Rulemaking in the **Federal Register** (45 FR 19267) inviting the metal and nonmetal mining community and the public to participate in this standards review project to determine the applicability and effectiveness of its regulations. A comment period was established and extended to August 5, 1980 (45 FR 38087), to enable full and early public participation. Over 100 commenters submitted many constructive recommendations and suggestions for improving MSHA's existing standards. These comments have been extremely helpful to the agency by assisting in the establishment of priorities and focusing the review to enhance the goals of regulatory relief and improvement. MSHA has established safety and health standards development committees to carefully review existing standards and evaluate public comment.

In addition to public comments and internal agency input, seven other information sources have been used to make preliminary evaluations of MSHA's existing standards. The information sources included:

1. Decisions of Administrative Law Judges and the Federal Mine Safety and Health Commission;
2. Fatality reports;
3. Program directives and policy memoranda;
4. Petitions for modifications;
5. Incorporations of consensus standards by reference;
6. Citations and Orders; and
7. Comments from Vice President's Regulatory Relief Task Force.

On the basis of an analysis of the information available to the ageny and other policy considerations, the Assistant Secretary has established the following initial priorities for standards review listed in order of sequence within 30 CFR Parts 55/56/57:

—Section .3 (Ground Control)
—Section .4 (Fire Prevention)
—Section .5 (Air Quality)
—Section .6 (Explosives)
—Section .9 (Loading, Hauling, Dumping)
—Section .12 (Electricity)
—Section .14 (Equipment, Material Storage and Handling)
—Section .21 (Gassy Mines)

As the next step in this review process, the appropriate standards development committees will hold informal open conferences to provide greater opportunity for public input and participation on specific issues and regulatory concepts. Notices of the individual open conferences will be published in the **Federal Register** at a later date. The notices will include specific issues for discussion and other pertinent information. Following these open conferences, the committees will develop draft proposals of revised standards. After review by the Assistant Secretary and other appropriate officials within the Department, proposed rules will be published in the **Federal Register**. Full public hearings will be held pursuant to the Federal Mine Safety and Health Act, if specifically requested. After evaluation of all testimony and comments received, final rules will then be published. In issuing its final rules, MSHA will make every attempt to be responsive to the concerns of the metal and nonmetal mining community and advance the objectives of regulatory relief, while retaining the necessary protections for effective miner safety and health.

As part of this review, MSHA is also collecting data in accordance with the rulemaking requirements of Executive Order 12291 (February 17, 1981), the Regulatory Flexibility Act (5 U.S.C. Section 601) and the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). A regulatory analysis as appropriate under Executive Order 12291 will be undertaken for each rulemaking.

To assure that the above regulatory requirements are fully considered, the public will be given further opportunities to comment and submit data on those standards which could impose unnecessary costs, duplicate or overlap recordkeeping and reporting requirements of other Federal agencies, or adversely impact on small businesses or organizations. In addition, the public will be asked to submit alternative compliance provisions, where appropriate, which may reduce regulatory burdens without jeopardizing the safety and health of miners.

MSHA has benefitted greatly from public comments regarding problem areas associated with its existing standards, and as it pursues the goals of regulatory relief, the agency will continue to encourage the participation of the mining community.

Dated: November 16, 1981.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 81-33500 Filed 11-19-81; 8:45 am]

BILLING CODE 4510-43-M

federal register

Friday
November 20, 1981

Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Community Block Grants: State's Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-81-940]

Community Development Block Grants: State's Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim Rule.

SUMMARY: This interim rule establishes policies and procedures for the State Community Development Block Grant (CDBG) Program. Under the State's Program, each State may elect to administer the CDBG funds for its nonentitlement areas. The statute which authorizes the State's Program and these regulations allow States a great degree of flexibility to design their method of distributing funds and to establish the policies and procedures for their programs.

DATES: Effective date: Upon expiration of first period of 30 calendar days of continuous sessions of Congress after publication, subject to waiver. Further notice of the effectiveness of this interim rule will be published in the Federal Register.

Comments Due Date: January 19, 1982.

ADDRESS: Interested persons should submit written comments on or before the comment due date to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading above. A copy of each comment will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jody Ann Cook Benjamin, Small Cities Division, Office of Community Planning and Development, Washington, D.C. 20410; telephone (202) 755-6322. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Although the Housing and Community Development Act of 1974 has provided since its inception for discretionary block grants to smaller communities, the Omnibus Budget Reconciliation Act of 1981 made a fundamental change to transfer power and decisionmaking in making such grants to States. Under the 1981 amendments to the community development block grant legislation, each State now has the option to administer the block grant funds for all its nonentitlement areas. In States which elect to administer the program, the State will replace HUD under new Subpart I of Community Development Block Grants regulations (Part 570), and the regulations at Subpart F governing the Small Cities Program administered by HUD will not apply.

These regulations maximize the legislative thrust to provide States sufficient flexibility in administering the program. Accordingly, the regulations do not contain the programmatic detail or delineated requirements applicable elsewhere in Part 570 to entitlement communities, the HUD-administered Small Cities Program, or to the Secretary's discretionary fund. For example, the regulations specifically follow the statutory requirement that each funded activity benefit low- and moderate-income families, aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. The regulations also state that within these criteria, eligible activities are limited to those listed in section 105(a) of the Act. However, the regulations do not overlay the statutory requirements with additional regulatory detail by mandating adherence to interpretive guidelines utilized by HUD for the block grant programs administered by it, such as is contained in Subpart C (Eligible Activities). In exercising his obligation and responsibility to review a State's performance, the Secretary will give maximum feasible deference to the State's interpretation of the statutory requirements consistent with the Secretary's obligation to enforce compliance with the manifest intent of Congress as declared in the statutory enactment.

The regulation also does not contain a definition of the term "low- and moderate-income families." This term has never been defined in the Act itself. It has been defined administratively since 1974 in the Department's regulations to be equivalent to the term "lower income" (which appears separately in the Act) and to mean families whose incomes do not exceed the Section 8 housing assistance eligibility limits of 80 percent of median family income. The Department intends to continue utilizing that definition for its own purposes in administering the entitlement and HUD-administered nonentitlement block grant programs. The Department believes, however, that other definitions may be equally consistent with Congressional intent. Some States may already have legislatively adopted definitions under State agency housing or community development programs. Whether or not other definitions already exist, States administering the program have discretion to adopt HUD's definition or to fashion a definition based upon State conditions or determinations and consistent with the overriding Congressional intent. It will be essential, however, that States formulate definitions of sufficient clarity and utility to permit determination of compliance with the primary objectives of the Act.

Similarily, the Department will not prescribe cost principles and other financial management procedures required to be adhered to by States administering the program, such as are contained in subpart J (Grant Administration) of Part 570. Moreover, the Director of the Office of Management and Budget has excepted States administering the program from the requirements of Circulars A-87 (Cost Principles for Grants to State and Local Governments) and A-102 (Uniform Requirements for Grants to State and Local Governments). Instead, States may apply equivalent procedures of their own for financial management and control of the programs. However, States electing to follow the principles and procedures established under Circulars A-87 and A-102 will be considered in compliance with their accountability obligations under the Act.

The regulations are designed to support, not supplant, the responsibility of the State in administering its own program, establishing the policies and procedures for that program, distributing funds from its block grant to recipients, and reviewing the performance by those recipients. Again, the regulations track the statutory emphasis on review by the State of its funded units of general local government to determine whether they have satisfied the appliable performance criteria described in section 104(d)(1) of the Act. The Secretary's counterpart role under the statute and regulations consists of review of the State's performance in timely distribution of funds, compliance with certifications regarding the requirements of the Act and other applicable laws, and necessary or appropriate reviews and audits by the State of its funded units of general local government.

The Secretary's performance review and audit role with respect to the State

program is similar to his role with respect to the entitlement and small cities programs administered by HUD. His performance review responsibilities with respect to all of the programs are set out in a single provision of the Act, section 104(d). In order to perceive the paramount importance of the Secretary's performance review role, it is useful to refer to statutory changes to the Community Development Block Grant Program enacted in 1981 legislation in addition to the creation of the State-administered program.

A central and major change was the deletion of the application process for all grantees, entitlement and non-entitlement. This change derived from the intent of both the Administration and Congress to deregulate a program in which Federal regulatory intrusion had unnecessarily encumbered the process of receiving Federal funds without a concomitant contribution to program quality.

In the planning of both the Administration and Congress, however, a key element in the determination to delete the front-end application process was reliance upon the back-end review process also already provided for in the statute. As emphasized in the Senate report:

> We are * * * convinced that the integrity of the program will be protected by the present and proposed requirements for performance review as opposed to application review. In recent years, the Department of Housing and Urban Development's interpretation of the Act has placed too much emphasis on application review. The HUD regional and area office staff has used the application process far too frequently as a means for imposing HUD's view of acceptable program activity on local entities. The Committee's proposal re-emphasizes the post grant review and audit process as the proper point in time to determine consistency and appropriateness of local CD programs. Senate Report No. 97-87 at 3.

Notwithstanding the importance of the performance review and audit performed by the Secretary, the Department, recognizing the diversity of program designs which may be adopted by States, is not attempting in these regulations to prescribe in detail the manner in which States are to report their activities to the Secretary. Instead, the regulation requires that a State's annual performance report "shall be in such form and contain such information * * * as the State shall deem appropriate and sufficient to provide an adequate basis for the determinations required to be made by the Secretary pursuant to Section 104(d)(2) of the Act" (§ 570.497). Rather than detailed prescriptive record-keeping requirements, the States are required to "establish and maintain such recordkeeping requirements as the State shall deem appropriate in order to facilitate audit by the Secretary of the State's administration of grants pursuant to Section 104(d) of the Act and shall establish recordkeeping requirements for units of general local government receiving assistance which shall be sufficient to facilitate such audits of such recipients as may be necessary or appropriate to determine whether they have carried out their activities in accordance with the requirements and the primary objectives of the Act and with other applicable laws" (§ 570.496).

Special attention is directed to the statutory phrases contained in Section 104(d) of the Act, "in compliance with the requirements of this title and other applicable laws." Certain laws not referred to in the Act may be applicable by their own terms to activities assisted under the Act, while other statutes are made applicable expressly by the Act itself. The State is required specifically under Section 104(b) of the Act to certify that its grant will be conducted and administered in accordance with the Civil Rights Act of 1964 (Pub. L. 88-352) and the Civil Rights Act of 1968 (Pub. L. 90-284). In addition, Section 109 of the Act itself prohibits discrimination based on race, color, national origin, or sex under any program or activity funded in whole or in part with funds made available under the Act. By a 1981 amendment to Section 109, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 also are made applicable.

The phrase "other applicable laws" refers to statutory enactments which, although not mentioned specifically in the Act, are by their own terms applicable to activities carried out or assisted under the Act. In the case of statutes which further the purposes of the National Environmental Policy Act of 1969, the specification of such other laws in regulations issued by the Secretary is required by Section 107(f) of the Act itself and will be continued in regulations issued pursuant to that provision (currently found in 24 CFR Part 58), as indicated in § 570.495 of the regulation published herein. In the cases of other statutes, the Department currently is examining the question of their application by their own terms and, if applicable, the respective responsibilities of the Department, States, and grant recipients that flow from such applicability.

In order to provide guidance to States on the foregoing question, the Department will amend this rule upon completion of its examination. In addition, the Department will be responsive to requests from States for technical advice during the transition period.

This rule was not listed in the Department's Semi-annual Agenda of Regulations published pursuant to Executive Order 12291 on August 17, 1981 (46 FR 41708).

The State's Program is listed in the Catalog of Federal Domestic Assistance under 14.228, Community Development Block Grants/State's Program. OMB Circular A-95 does not apply to the State's Program.

The Secretary has determined that prior notice and public comment would be impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon as possible because—

(1) The rule implements the 1981 amendments, effective October 1, 1981, for transfer of responsibilities and authority to the States.

(2) Publishing a proposed rule would considerably delay States which are ready to initiate their programs.

(3) A delay in making the rule effective will delay access to Fiscal Year 1982 CDBG funds by units of general local government in all nonentitlement areas until late in the fiscal year or early in the next fiscal year.

(4) In establishing only a minimal Federal role, the regulation is limited, in major part, to implementing Congressional direction.

Accordingly, this regulation is being published as an interim rule to become effective at the earliest date permitted by law. The Secretary has determined that, for the reasons stated above, good cause exists for exempting the interim rule from the 30-day delay in effectiveness provided in the Administrative Procedure Act, 5 U.S.C. 553(d). However, Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs.

Under current expectations as to Congressional adjournment, the requirement of a period of 30 days of continuous session will not be able to be satisfied during the current session of Congress but can only be satisfied during the Second Session commencing in January 1982. The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication

of this interim rule, it is not known whether or when such waivers will be granted. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Under any circumstances, further notice of the effective date of this interim rule will be published in the **Federal Register.**

The Department also is soliciting comments from the public prior to issuing a final rule. All comments received prior to conclusion of the 60-day comment period will be considered by the Department in preparation of the final rule.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the undersigned certifies that the rule does not have a significant economic impact on a substantial number of small entities.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of No Significant Impact is on file and available for inspection in the Office of the Rules Docket Clerk.

PART 270—COMMUNITY DEVELOPMENT BLOCK GRANTS

Accordingly, 24 CFR Part 570 Subpart I, which was formerly reserved, is added to read as follows:

SUBPART I—STATE'S PROGRAM: STATE ADMINISTRATION OF CDBG NONENTITLEMENT FUNDS

Sec.

570.488 General.
570.489 Primary Ojectives; State Responsibilities.
570.490 Submission Requirements.
570.491 Prior Multiyear Commitments.
570.492 State Matching Funds.
570.493 Administrative Costs.
570.494 Grant Payments; Program Income.
570.495 Environmental Responsibilities.
570.496 Recordkeeping.
570.497 Performance Reports.
570.498 Review and Audit Response.
570.499 Remedies After Hearing.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d), Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(d))

Subpart I—State's Program: State Administration of CDBG Nonentitlement Funds

§ 570.488 General.

This subpart describes policies and procedures applicable to States which elect to receive Community Development Block Grant funds for distribution to units of general local government in the State's nonentitlement areas pursuant to Section 106(d) of the Housing and Community Development Act of 1974, as amended.

§ 570.489 Primary objectives; State responsibilities.

(a) *Primary Objectives.* Section 101(c) of the Act establishes as its primary objective "the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income." This overall objective is achieved through the undertaking of eligible activities each of which carries out one or more of the three broad national objectives set out in Section 104(b)(3) of the Act of benefitting low- and moderate-income families; aiding in the prevention or elimination of slums or blight; or meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. The definition by States of "low- and moderate-income families" may be based upon Federal standards or upon State conditions or determinations consistent with the intent and objectives of the Act. Within the foregoing criteria, activities of units of general local government which may be assisted by funds distributed by States pursuant to this Subpart are those listed in Section 105(a) of the Act.

(b) *State Responsibilities.* Primary and direct responsibility for overall administration of funds distributed pursuant to this subpart is vested in the State. States are free to develop purposes and procedures for distributing funds as State and local priorities dictate, subject to the primary objectives and other requirements of the Act. In exercising his obligation and responsibility to review a State's performance, the Secretary will give maximum feasible deference to the State's interpretation of the statutory requirements consistent with the Secretary's obligation to enforce compliance with the manifest intent of Congress as declared in the Act.

§ 570.490 Submission requirements.

(a) *Election to Receive Funds.* A State shall elect to distribute amounts allocated for nonentitlement areas in such State by its submission to the Secretary, during the month of July before the beginning of each Federal fiscal year (October 1—September 30) in which the State elects to administer such funds, of the certifications by the Governor specified in Section 106(d)(2)(C)(i)–(iii) of the Act. For Federal Fiscal Year 1982, however, the State shall submit such certifications within 60 days of the effective date of these regulations.

(b) *Final Statement and Certifications.* Before March 31 during each Federal fiscal year in which the State elects to administer the CDBG funds for its nonentitlement areas, the State shall submit to the Secretary:

(1) The Certification by the Governor specified in Section 106(d)(2)(C)(iv) of the Act;

(2) The certifications specified in Section 104(b) of the Act; and

(3) The final statement described in Section 104(a)(1) of the Act.

For Federal Fiscal Year 1982, however, the State shall submit such certifications and final statement within 180 days of the effective date of these regulations.

(c) *Certifications.* In the absense of independent evidence (which may, but need not be, derived from performance reviews and audits performed by the Secretary pursuant to Section 104(d)(2) of the Act) which tends to challenge in a substantial manner the certifications made by the State, such certifications will be deemed satisfactory to the Secretary if made in compliance with the statutory requirement. If such

independent evidence is available to the Secretary, however, the Secretary may require such further information or assurances to be submitted by the State as the Secretary may consider warranted or necessary in order to find the State's certifications satisfactory.

(d) *Failure to Submit.* The State's failure to make the submissions required by paragraphs (a) and (b) of this section by the dates specified shall constitute the State's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year.

§ 570.491 Prior multiyear commitments.

Each State administering an allocation for nonentitlement areas shall provide, in its method of distribution, for the funding of multiyear grant commitments made by HUD to units of general local government in nonentitlement areas pursuant to Subpart F in Federal Fiscal Years 1980 and 1981, if such units of general local government request the State to honor such funding commitments and unless the Secretary shall determine that any such recipient has not performed adequately with respect to funds previously distributed by HUD under such commitment (or unless the State shall make such determination with respect to funds previously distributed by the State when honoring a prior multiyear commitment pursuant to this section). HUD shall remain responsible for administration of funds distributed by HUD under multiyear commitments, and the State shall be responsible for the administration of funds distributed by the State when honoring a prior multiyear commitment pursuant to this section.

§ 570.492 State Matching Funds.

Pursuant to its certification specified in Section 106(d)(2)(C)(iii) of the Act, the State is required to provide, out of State resources, funds for community development activities in nonentitlement areas in an amount which is at least 10 percent of the CDBG funds allocated for use in the State's nonentitlement areas. For the purpose of determining compliance with such certification:

(a) "State resources" will be deemed to include State operating appropriations or proceeds of State general obligation or revenue bonds expended in nonentitlement areas. Such State funds may be used for ongoing State programs or activities; they need not be derived from special appropriations or bonds specifically designed to meet this ten percent match requirement. Funds may be provided in the form of grants, loans, direct State expenditures, or other forms of assistance.

(b) "Community development activities" need not relate directly to activities undertaken with the State's allocation nor be in the communities which receive CDBG nonentitlement funds. Activities may include, but are not limited to, activities undertaken for the improvement of distressed areas or for the benefits of low- and moderate-income households, and may be activities eligible under Section 105 of the Act, as well as housing and community development activities not eligible under the Act, such as construction of new housing and rental subsidies. "Community development activities" does not include State administration of CDBG funds.

(c) Activities may be undertaken by the State, units of general local government, or by other entities selected by the State, but must be paid for from the State's own funds.

§ 570.493 Administrative Costs.

Administrative costs paid or reimbursed from CDBG funds pursuant to Section 106(d)(3)(A) of the Act may include any administrative costs, direct and indirect, related to preparing for or carrying out the State's program. Grants provided under Section 107 of the Act may not be used for administrative costs required to be paid from the State's own resources.

§ 570.494 Grant Payments; Program Income.

(a) *Payments.* Payments will be made by electronic funds transfer whenever possible, letter of credit, or other means, pursuant to grant agreements as required by the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 *et seq.*) and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States will utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the State and the disbursement of funds by the State to recipients.

(b) *Program Income.* (1) To the maximum feasible extent, the State shall disburse to units of general local government any program income it receives prior to making additional draws from the Treasury.

(2) The State may require recipients to return program income to the State. These funds may be derived from reimbursements to and interest from a recipient's loan program, proceeds from the disposition of real property, and proceeds from special assessments, to the extent the costs were initially paid with CDBG funds.

(3) To the maximum feasible extent, the State shall require each recipient to disburse its program income not required to be returned to the State prior to requesting additional funds from the State to finance its CDBG-funded activities.

(4) Interest earned by units of general local government on funds distributed pursuant to this subpart, prior to disbursement, is not program income and must be returned to the Treasury. However, the State shall not be held accountable for interest earned on grants for which payments are made in accordance with paragraph (a) of this section, pending disbursement for program purposes.

§ 570.495 Environmental responsibilities.

The State shall assume such responsibilities for environmental review, decisionmaking, and action (and shall require the assumption of such responsibilities by units of general local government receiving CDBG funds from the State under this Subpart) as shall be specified and required in regulations issued by the Secretary pursuant to Section 104(f) of the Act.

§ 570.496 Recordkeeping.

Each State administering grants under this Subpart shall establish and maintain such recordkeeping requirements as the State shall deem appropriate in order to facilitate review and audit by the Secretary of the State's administration of grants pursuant to Section 104(d) of the Act and shall establish recordkeeping requirements for units of general local government receiving assistance which shall be sufficient to facilitate such reviews and audits of such recipients as may be necessary or appropriate to determine whether they have carried out their activities in accordance with the requirements and the primary objectives of the Act and with other applicable laws. Representatives of the Secretary, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by States and such recipients pertaining to the administration of grants and receipt of assistance under this subpart and necessary to facilitate such audits.

§ 570.497 Performance reports.

Each State administering grants under this subpart shall submit to the Secretary a performance report as

required by Section 104(d) of the Act. Such report shall be in such form and contain such information (including the assessment required by Section 104(d) of the Act) as the State shall deem appropriate and sufficient to provide an adequate basis for the determinations required to be made by the Secretary pursuant to Section 104(d)(2) of the Act. If the Secretary determines that the State's performance report falls substantially short of providing an adequate basis for such determinations, the Secretary may require the State to provide such additional information as the Secretary finds necessary for such purpose. The State shall submit its initial performance report regarding its administration of a fiscal year's allocation not earlier than nine nor more than 15 months after its initial receipt of funds under the applicable fiscal year's allocation and shall supplement such report annually, not later than October 1 of the following fiscal year, until all funds from such year's allocation have been expended by the recipients and the State has completed its reviews and audits of the units of general local government with respect to such fiscal year referred to in Section 104(d)(2) of the Act.

§ 570.498 Review and audit response.

If the Secretary's review and audit pursuant to Section 104(d)(2) of the Act results in any negative determination, the Secretary may take one or more of the following actions as the Secretary deems appropriate in order to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; or prevent a recurrence of the deficiency:

(a) Request the State to submit additional information pertinent to the negative determinations and the State's proposals for corrective action;

(b) Issue a letter of warning that advises the State of the deficiency and puts the State on notice that more serious sanctions will be imposed if the deficiency is not corrected or is repeated; advise the State that a certification will no longer be acceptable and that additional information or assurances will be required;

(c) Advise the State to suspend disbursement of funds for a questioned activity or to a recipient whose activities are determined to have not satisfied the applicable performance criteria described in Section 104(d)(1) of the Act;

(d) Advise the State to reimburse its program account or letter of credit in any amounts improperly expended;

(e) In the case of a determination that a State or recipient has failed to comply with the requirements of Section 109(a) of the Act, take the actions authorized by Section 109(b) of the Act;

(f) In the case of a determination that the State or any recipient has failed to comply substantially with any provision of the Act, refer the matter to the Attorney General of the United States pursuant to Section 111(b)(1) of the Act with a recommendation that an appropriate civil action be instituted;

(g) Condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the State. When the use of funds is conditioned, the Secretary shall specify the reasons for the conditions and the actions necessary to satisfy such conditions.

§ 570.499 Remedies after hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in § 570.498 has been taken, and only then if the recipient has not made an appropriate and timely response. Initiation of procedures toward a sanction pursuant to this section will be undertaken only after the State has been notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Remedies.* If the Secretary finds after reasonable notice and opportunity for hearing that a State or unit of general local government receiving assistance under this subpart has failed to comply substantially with any provision of the Act, the Secretary, until he is satisfied that there is no longer any such failure to comply shall:

(1) Make appropriate adjustments in the amount of the annual grants;

(2) With respect to assistance made available to units of general local government, adjust, reduce, or withdraw such assistance, or take other actions as appropriate, except that funds already expended on eligible activities under the Act shall not be recaptured or deducted from future assistance to such units of general local government;

(3) Terminate payments to the State, or direct that the State terminate payments to a unit of general local government;

(4) Reduce payments to the State, or direct that the State reduce payments to a unit of general local government, by an amount equal to the amount of such payments which were not expended in accordance with the Act; or

(5) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply:

Provided, however, That the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(c) *Proceedings.* When the Secretary proposes to take action pursuant to this section, the respondent in the proceedings will be the State. At the option of the Secretary, a unit of general local government may also be made a respondent. These procedures are to be followed prior to imposition of a sanction described in paragraph (b):

(1) *Notice of Opportunity for Hearing.* The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of the Act;

(ii) State that the hearing procedures are governed by these rules;

(iii) State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed;

(iv) Specify the action which the Secretary proposes to take and that the authority for this action is section 104(d) or 111(a) of the Act;

(v) State that if respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

(vi) Be sent to the respondent by certified mail, return receipt requested.

(2) *Initiation of Hearing.* The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with the Act and to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be

held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power:

(i) To administer oaths and affirmations;

(ii) To issue subpoenas as authorized by law;

(iii) To rule upon offers of proof and receive relevant evidence;

(iv) To order or limit discovery prior to the hearing as the interests of justice may require;

(v) To regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) To make and file initial determinations.

(4) *Ex Parte Communications.* An ex parte communications is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The Hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of the Act. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the ALJ. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's Decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The Record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the bases of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial Review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

(Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d), Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(d)))

Issued at Washington, D.C., November 18, 1981.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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