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federal register

Tuesday
November 24, 1981

Highlights

57535 **Commodity Futures** CFTC proposes to add bankruptcy regulations for commodity firm liquidation.

57457 CFTC alters Chicago Board of Trade contract market arbitration rules.

57532 **Securities** FRS proposes to amend OTC Margin Stocks List criteria.

57634 **Banks** FFIEC recommends accrual accounting guidelines and reporting requirements for adoption by Federal bank supervisory agencies.

57482 **Pensions** Treasury/IRS provides regulations on periodic actuarial reports filed for defined benefit plans.

57481 **Income Tax** Treasury/IRS modifies reporting requirements for certain grantor trusts.

57571 **Veterans Benefits** VA proposes to amend adjudication regulations on service connected disabilities for former prisoners of war.

57521 **Nuclear Safety** NRC considers altering standards for anticipated transients without scram (ATWS) events for light-water cooled plants.

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

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57464 DOE/FERC adopts definition of "produced" as use in term "production days."

57469 DOE/FERC amends "agricultural use" definition i incremental pricing regulations.

57474 **Canned Pineapple** HHS/FDA changes standard of identity and quality.

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57587 **Countervailing Duty** Commerce/ITA initiates investigation on structural steel shapes from Spai

57586 **Antidumping** Commerce/ITA initiates investigation on steel sheet piling from Canada.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 528]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

Correction

In FR Doc. 81-33650 appearing on page 56775 in the issue of Thursday, November 19, 1981, in the second column, "PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA" should read "PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA".

BILLING CODE 1505-01-M

Commodity Credit Corporation

7 CFR Part 1421

Peanuts; 1980-Crop Farm-Stored Peanut Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; technical corrections and amendment.

SUMMARY: This document corrects references and paragraph designations in FR Doc. 81-4311, at 46 FR 10900-10901, February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20013, 202/447-7987.

SUPPLEMENTARY INFORMATION:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

At 46 FR 10900-10901, February 5, 1981, the sections were numbered incorrectly. Therefore, the following corrections are made in FR Doc. 81-4311 at 46 FR 10900-10901, February 5, 1981:

1. On page 10900, the reference appearing in the third column, last paragraph, fifth line is corrected to read "7 CFR 1421.295-.298."

2. On page 10901, the reference appearing in the first column, second paragraph, first and second line is corrected to read "7 CFR 1421.295 through 1421.298."

3. On page 10901, the table of contents in the first column, third paragraph, lines 2 through 5 and the concomitant titles of the paragraphs in Subpart—1980-Crop Farm-Stored Peanut Loan and Purchase Program are corrected to read:

1421.295 Purpose.
1421.296 Availability.
1421.297 Maturity of loans.
1421.298 Loan and purchase rates.

§§ 1421.293 and 1421.294 [Removed]

4. Sections 1421.293 and 1421.294 are removed.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and 714c), secs. 101, 108, 401, 403, 405, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445c, 1421, 1423, 1425))

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

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-33662 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1464

Puerto Rican Tobacco Purchase Program; Termination

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule terminates the Puerto Rican Tobacco Purchase Program. This action is being taken since there has been no participation under the program since 1967 and it is unlikely that there will be program participation in the future.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: Harry Millner, Tobacco and Peanuts Division, ASCS, USDA, 5738 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4281. A Regulatory Impact Analysis has not been prepared with respect to this rule since eliminating the program would not have any effect on producers, consumers, or the tobacco industry.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures for implementing Executive Order 12291 and Secretary's Memorandum 1512-1. This rule has been classified "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal assistance program to which this proposed rule applies are: Title: Commodity Loan and Purchases; Number: 10.051 as found in the Catalog of Domestic Federal Assistance. This proposed action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

During the early 1960's, there was a surplus accumulation of stocks of Puerto Rican type 46 tobacco. Seven tobacco dealers handled about half the production in Puerto Rico. These dealers would acquire tobacco from producers and then sell the tobacco to manufacturers. A surplus of this type of tobacco resulted because some dealers had more tobacco in their inventory than they could market. As a result of these large inventories, many farmers were not being paid for some time for their tobacco since the dealers paid the farmers for the tobacco delivered only after the tobacco was ultimately sold.

The Puerto Rican Tobacco Purchase Program was instituted in 1967 to alleviate the foregoing situation. Under the program, CCC would purchase Puerto Rican type 46 tobacco from dealers provided such dealers paid the producers at least the level of price

support specified for this type of tobacco.

In recent years, the demand for cigar tobaccos has lessened and there has been rapidly declining tobacco production in Puerto Rico. In 1967, there were 9,000 acres of tobacco harvested compared to 1,800 harvested in 1980. Production also declined from 12.0 million pounds in 1967 to 2.5 million pounds in 1980.

There has been no program participation since 1967. To the extent dealers are still active, they apparently purchase only the amounts of tobacco which they can readily sell. Therefore, the proposed termination of the Puerto Rican Tobacco Purchase Program would have no impact upon the Puerto Rican tobacco economy. Tobacco produced would still be eligible for price support through the Commodity Credit Corporation price support loan program carried out by the two producer associations operating in Puerto Rico.

Final Rule

PART 1464—TOBACCO

§§ 1464.51–1464.60 (Subpart B) [Removed]

Accordingly, 7 CFR Part 1464 is amended by removing Subpart B—Puerto Rican Tobacco Purchase Program, §§ 1464.51 through 1464.60.

Signed in Washington, D.C. on November 16, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-33874 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins, Engineering Services for Telephone Borrowers, Bulletin 341-3

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A by issuing a File With to REA Bulletin 341-3 to announce a general revision of REA Form 217, Postloan Engineering Service Contract, Telephone System Design and Construction. The last revision of this contract was in December 1971. Since that date there have been significant changes in the telephone industry in engineering designs and procedures, in construction methods and in testing requirements. During this period there have also been changes in engineering fees, insurance requirements, supervisory responsibilities, etc. The contract is being revised to incorporate the applicable changes. This action will provide an up-to-date engineering service contract to assist REA telephone borrowers in providing their subscribers with the most modern and efficient telephone service.

EFFECTIVE DATE: November 13, 1981.

FOR FURTHER INFORMATION CONTACT: John D. Soma, Staff Engineer, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2925, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8529. The Final Regulatory Impact Analysis describing the options considered in developing this 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 hereby issues a File With to Bulletin 341-3, Engineering Services for Telephone Borrowers. This action has been reviewed under USDA procedures established to implement Executive Order No. 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required.

The last revision of the postloan engineering service contract, REA Form 217, was in December 1971. Technical advances since that date have resulted in many changes in the engineering, construction and testing aspects of telephony. Engineering fees, insurance requirements and supervisory responsibilities have also changed since the December 1971 issue. In addition, there is a need to include in the contract incentives for the completion of construction on time, requirements to minimize changes in construction after bidding and changes in methods of compensation. The format of the contract is also being changed to make it possible to use the basic contract with any of the selected services. Since the contract was out of date and no longer adequate in several areas, i.e. supervision, there was no alternative but to revise the form. Bringing the contract terms and requirements up-to-date will assist the REA telephone borrowers in continuing to provide their subscribers with the most modern and efficient telephone service.

OMB Circular A-95 review is not applicable to this action.

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

REA, in an effort to improve the engineering service contract and keep it up-to-date, hereby amends Bulletin 341-3.

A Notice of Proposed Rule Making was published in the **Federal Register** on February 29, 1980, Volume 45, No. 42, page 13470. However, no public comments were received in response to the notice.

Dated: November 13, 1981.

Jack Van Mark,

Acting Administrator.

[FR Doc. 81-33873 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

14 CFR Part 297

[Docket Nos. 38023 and 39744; Reg. ER-1265; Amdt. No. 3]

Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Errata for final rule.

SUMMARY: The CAB eliminates the requirement that foreign air freight forwarders have their registration certified by their home government in order to receive operating authority in this country.

DATES: Adopted: November 3, 1981; Effective: December 18, 1981.

SUPPLEMENTARY INFORMATION: This document published at 46 FR 56601, November 18, 1981, had an incorrect effective date. This rule becomes effective on December 18, 1981.

Dated: November 19, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-33924 Filed 11-23-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 310 and 1202

Transfer and Redesignation of Regulation on International Expositions

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration is transferring and

redesignating to 15 CFR Chapter III the regulation concerning official U.S. Government recognition of and participation in international expositions held in the United States. This document makes nomenclature changes to reflect the organizational transfer of this program to the International Trade Administration. The content of the regulation remains the same as before.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: George Pratt, 202–377–4601.

SUPPLEMENTARY INFORMATION: This document transfers the regulation on international expositions held in the United States from 15 CFR Part 1202 and redesignates this regulation as 15 CFR Part 310. Authority for issuance of this regulation (the Act of May 27, 1970 (Pub. L. 91–269, 22 U.S.C. 2801 *et seq.*), relating to participation of the United States in international expositions) has been delegated to the Under Secretary of Commerce for International Trade.

The redesignated Part 310 is being amended to reflect nonsubstantive changes in organization and position titles. The relevent provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are omitted as unnecessary because the changes are procedural and editorial in nature. The regulation is exempt from the provisions of Executive Order 12291 because it relates to agency organization and management.

PART 1202 REDESIGNATED AS PART 310

For the reasons set out in the preamble, the regulation set forth at 15 CFR Part 1202 is transferred and redesignated to 15 CFR Chapter III under a new Part 310, amended as follows:

1. Within the text of the regulation, any reference to "Part 1202" is changed to read "Part 310".

2. As redesignated, § 310.2 is amended by revising paragraph (d) to read as follows:

§ 310.2 Definitions.

* * * * *

(d) "Director" means the Director of the International Expositions Staff, Office of the Deputy Assistant Secretary for Export Development, International Trade Administration, Department of Commerce.

* * * * *

3. As redesignated, § 310.3 is amended by revising paragraph (a) to read as follows:

§ 310.3 Applications for Federal recognition.

(a) Applications for Federal recognition of an exposition shall be filed with, and all official communications in connection therewith addressed to, the International Expositions Staff, International Trade Administration, Department of Commerce, Washington, D.C. 20230.

* * * * *

Dated: November 12, 1981.

Donald Earnshaw,

Deputy Assistant Secretary for Export Development.

[FR Doc. 81-33693 Filed 11-23-81; 8:45 am]

BILLING CODE 3150-25-M

United States Travel and Tourism Administration

15 CFR Part 1202

Transfer and Redesignation

Cross Reference: The International Trade Administration in a document published elsewhere in the rules and regulations section of today's **Federal Register** transfers and redesignates a regulation concerning official U.S. Government recognition of and participation in international expositions held in the United States. See Table of Contents entry under International Trade Administration for page number.

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 7

Contract Market Rules; Disapproval and Alteration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has disapproved, pursuant to section 5a(12) of the Commodity Exchange Act ("Act"), proposed Regulation 620.01(B) of the Chicago Board of Trade ("CBT" or "Exchange") which, as interpreted by the Exchange, would have restricted the ability of customers to obtain Exchange arbitration of exchange-related claims. At the same time the Commission has altered and supplemented, under section 8a(7) of the Act, the Exchange's existing arbitration rules and regulations to assure the participation of CBT members and employees thereof in Exchange arbitration proceedings initiated by customers. The Commission has approved all other of the Exchange's arbitration rules and regulations which, as supplemented, now meet the requirements of section 5a(11) of the Act and of Part 180 of the Commission's regulations.

DATE: The disapproval, alteration and approval of the contract market rules is effective December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 5a(11) of the Act[1] and Part 180 of the Commission's regulations thereunder[2] each contract market is required to provide a fair and equitable procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof. The CBT, however, believes that section 5a(11) of the Act does not require it to compel its members to participate in customer-initiated arbitration proceedings. During 1980–1981, CBT members denied five customers the right to arbitrate their disputes with the members because those members refused to participate in the Exchange's arbitration procedures, as the Commission believes is required under section 5a(11) of the Act and the Commission's regulations thereunder. The CBT's interpretation of the statute, which is unique among all contract markets, is reflected in proposed Regulation 620.01(B) which, as interpreted by the CBT, would deny customers the right to arbitrate such claims if CBT members and their employees choose not to participate in the Exchange's arbitration proceedings.[3]

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[1] 7 U.S.C. 7a(11) (Supp. III 1979).

[2] 17 CFR Part 180 (1981).

[3] Proposed Regulations 620.01(B) and 640.04 initially were submitted to the Commission in a letter dated February 3, 1977, from Gerald Beyer, then Secretary of the CBT, to the Executive Secretariat of the Commission. In a series of letters to the Commission and its staff the CBT has taken the position that section 5a(11), as implemented under 17 CFR Part 180, does not require members of the Exchange to submit to the arbitration of claims when a customer initiates such a proceeding. Letters from Bernard F. Doyle, Jr., then House Counsel of the CBT, to John G. Gaine, then General Counsel of the Commission, dated March 6, 1979 ("CBT 1979 letter"); to William F. Tueting, then Associate Director of the Division of Trading and Markets, dated October 27, 1978; to Barbara Salmanson, then Staff Attorney of the Division of Trading and Markets, dated March 11, 1977; and to the Executive Secretariat of the Commission dated March 7, 1977.

As discussed below, the Commission believes that section 5a(11) of the Act was intended by Congress to require member participation in exchange arbitration proceedings and that the statutory provision would be without meaning if contract markets did not provide customers with the right to obtain settlements through arbitration proceedings of claims and grievances against exchange members and employees thereof.[4]

On January 13, 1981, the Commission published notice in the **Federal Register** of its proposed disapproval and alteration of the proposed and existing CBT regulations and requested public comment thereon.[5] In addition to presenting possible grounds for disapproving the proposed customer arbitration regulations and altering or supplementing the Exchange's existing arbitration regulations, the Commission stated that it was interested in receiving alternative language by which the CBT's regulations could be made to provide equal assurance of an unimpeded opportunity for the arbitration of customer claims against members or employees thereof.

In response to its request for comments, the Commission received two comment letters.[6] The CBT and Chicago Mercantile Exchange ("CME") both objected to the Commission's procedure for altering the CBT's proposed arbitration regulations. The CBT further contended that section 5a(11) of the Act does not require members of the Exchange to submit to the arbitration of claims when a customer initiates such a proceeding. In reaching its determination, the Commission has considered carefully these comments along with the other information provided by the CBT since 1977.

As set forth below, the Commission has determined that the CBT's existing and proposed arbitration regulations violate the customer protection guarantees set forth in section 5a(11) of the Act and as implemented by the Commission in Part 180 of its regulations. In order to assure that customers have an unimpeded opportunity to arbitrate claims against CBT members and employees thereof, the Commission has disapproved proposed CBT Regulation 620.01(B) and altered the CBT's existing arbitration rules and regulations by supplementing those regulations with an amended version of proposed Regulation 620.01(B). The amended version makes explicit the customer's right to compel member participation in a CBT arbitration proceeding initiated by the customer.[7]

II. Procedural Issues: Standards of Review

The CBT and CME both raise several objections to the procedures used by the Commission in this disapproval and alteration proceeding. The Commission has considered these objections and, as discussed below, finds them to be without merit.

First, both exchanges assert that the Commission is required to afford contract markets a full and complete adversarial hearing when it alters or supplements contract market rules under section 8a(7) of the Act.[8] The CBT also contends that the Commission must provide an adjudicatory hearing to disapprove contract market rules under section 5a(12) of the Act.[9] This proceeding was initiated by the Commission in order to gather facts and obtain views from contract markets and other interested persons relevant to its determination whether to disapprove and alter or supplement the arbitration rules of the CBT under section 5a(12) and 8a(7) of the Act, respectively. The proceeding does not attempt to determine whether any person has violated a provision of the Act or the Commission's regulations thereunder. Accordingly, the rights associated with formal adjudication are inapplicable to a Commission proceeding under sections 5a(12) or 8a(7).[10]

Indeed, Congress clearly confirmed its intent that sections 5a(12) and 8a(7) proceedings generally be governed by informal rulemaking procedures. During the Commission's Congressional reauthorization hearings in 1978, the CBT urged the Congress to amend various sections of the Act, including sections 5a(12) and 8a(7), to require the Commission to conduct hearings under those sections "on the record."[11] The Commission took the position that proceedings under sections 5a(12) and 8a(7) were in the nature of rulemaking

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[4] In compliance with this statutory mandate, ten contract markets have submitted arbitration rules to the Commission that require mandatory customer-member arbitration when a customer with an exchange-related claim of less than $15,000 invokes arbitration. The Commission has approved, under section 5a(12) of the Act, 7 U.S.C. 7a(12) (Supp. III 1979), those arbitration rules. *See, e.g.*, Chicago Mercantile Exchange ("CME") Rule 620, approved on December 17, 1976; Kansas City Board of Trade Rule 1333.3, approved on February 7, 1978; New York Mercantile Exchange Rule 41.05, approved on June 13, 1977; and New York Futures Exchange Rule 682, approved on May 18, 1980.

[5] 46 FR 3027. The Commission's notice also set forth the text of proposed Commission Rules 7.201 and 7.202. That text is similar to the CBT's proposed arbitration regulations but would alter the proposed regulations explicitly to require members and employees thereof to submit to a customer-initiated arbitration proceeding. The Commission's notice of proposed disapproval and alteration of the regulations followed its formal request under section 8a(7) of the Act that the CBT amend its regulations to comply with Section 5a(11) of the Act and Part 180 of the Commission's regulations thereunder (letter from Jane K. Stuckey, Secretary to the Commission, to Thomas R. Donovan, Secretary of the Exchange, dated July 8, 1980) and the CBT's written rejection of that request (letter from Mr. Donovan to Ms. Stuckey, dated October 21, 1980). For a more extensive history of the CBT's submission, *see* 46 FR 3027 at 3028, n. 6.

[6] Letters of February 10, 1981, from Robert K. Wilmouth, President of the CBT ("CBT comment letter"), and February 26, 1981, from Jerrold E. Salzman, Freeman, Rothe, Freeman & Salzman, P.C., Counsel for the CME, both to the Office of the Secretary.

[7] The text of the rule by which the Commission, pursuant to section 8a(7) of the Act, has altered and supplemented the existing regulations of the CBT is set forth at the conclusion of this document.

[8] The CBT argues, in particular, that the one time the Securities and Exchange Commission ("SEC") utilized Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78s(b) (1970), which then authorized the SEC to alter or supplement national securities exchange rules under language similar to that now contained in Section 8a(7) of the Act, it afforded the affected exchange with a full adjudicatory hearing. Nothing in former section 19(b) of the Exchange Act, however, indicates that the SEC was *required* to afford an exchange with a formal adjudicatory hearing on the record. Moreover, the CBT correctly explains that Section 19(b) of the Exchange Act was amended by Congress in 1975 and moved to section 19(c) of the Act. Section 19(c) of the Exchange Act, as amended, 15 U.S.C. 78s(c) (1976), "now clearly provides that exchange rules can be amended by informal rulemaking proceedings without a formal adjudicatory hearing." CBT comment letter at 2. The Commission believes that the 1975 amendment to Section 19(b) of the Exchange Act further demonstrates that Congress intended procedings to alter or supplement contract market rules to be governed by informal rulemaking procedures, rather than formal adversarial hearings. Moreover, in 1978, Congress expressly rejected the recommendations of the CBT and Commodity Exchange, Inc. ("Comex") to amend Section 8a(7) of the Act to require "on the record" hearings before altering or supplementing contract market rules. *Hearings on the Reauthorization of the Commodity Futures Trading Commission [S. 2391] Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition and Forestry*, 95th Cong., 2d Sess., Pt. II, 504 (1978) (remarks of the CBT) and *Hearings on H.R. 10285 Before the Subcommittee on Conservation and Credit of the House Committee on Agriculture*, Ser. No. Rep. 95-QQ, 95th Cong., 2d Sess. 282 (remarks of the CBT) and 334 (remarks of the Comex) (1978).

[9] CBT comment letter at 1–3.

[10] *See generally, United States v. Florida East Coast Ry. Co.*, 410 U.S. 224 (1973); *Ethyl Corporation v. Environmental Protection Agency*, 541 F. 2d 1 (D.C. Cir. 1976), *cert. denied*, 426 U.S. 941 (1976). The fact that a particular contract market is the sole subject of a Section 5a(12) proceeding does not, in and of itself, mandate the use of adjudicatory procedures under the Administrative Procedure Act. *See, e.g., Hercules, Inc. v. Environmental Protection Agency*, 598 F. 2d 91 (D.C. Cir. 1978).

[11] *See* Sections 554, 556 and 557 of the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557 (1976), which are applicable to adjudicatory proceedings and to certain rulemakings required to be conducted "on the record." *See also* n. 8 *supra*.

and generally should be governed by informal procedures.[12]

Congress agreed with the Commission's position and refused to require the Commission to proceed against contract markets by hearings "on the record," as requested by the CBT, except in actions taken under sections 6, 6(a) and 6(b) of the Act.[13] Furthermore, the Senate Committee on Agriculture, Nutrition and Forestry was fully cognizant of the Supreme Court's rulings at that time concerning the procedures that an administrative agency may use in rulemaking proceedings and explained that "a hearing on the record * * * is required only when the agency statute expressly requires that a hearing be held 'on the record'."[14]

In this proceeding, the Commission has determined to disapprove and alter proposed arbitration Regulation 620.01(B) and, thus, supplement the CBT's existing arbitration rules and regulations under sections 5a(12) and 8a(7) of the Act, respectively. In doing so, the Commission has made precisely the type of policy judgments inherent in the rulemaking process,[15] and has complied with the APA's notice and comment rulemaking procedures in initiating and proceeding with this disapproval and alteration action.[16]

[12] *Hearings on H.R. 10285 Before the Subcommittee on Conservation and Credit of the House Committee on Agriculture*, Ser. No. 95–QQ, 95th Cong. 2d Sess. 590–592 (1978) (testimony of William T. Bagley, then Chairman of the Commission).

[13] 7 U.S.C. 8, 8(a) and 13(a) (Supp. III 1979). S. Rep. No. 850, 95th Cong., 2d Sess. 29 (1978).

[14] The Committee cited *United States v. Allegheny Ludlum Steel*, 406 U.S. 742 (1972), and *United States v. Florida East Coast Ry. Co.*, 410 U.S. 224 (1973). The Committee further explained that it "concluded that the imposition of a requirement for a hearing on the record for rulemaking proceedings by the Commission would be extremely burdensome and would not avail the Commission of any information that it is not currently receiving in these proceedings." S. Rep. No. 850 *supra*.

[15] *See* 5 U.S.C. 551(4) (1976). *See generally, United States v. Florida East Coast Ry. Co., supra*, 410 U.S. 224. *See also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978); *Federal Communications Commission v. Schreiber*, 381 U.S. 279, 290 (1975); *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940); *Belenke v. Securities and Exchange Commission*, 606 F. 2d 193, 198–99 (7th Cir. 1979) and *Illinois v. Nuclear Regulatory Commission*, 591 F. 2d 12, 14–16 (7th Cir. 1979).

[16] 5 U.S.C. 553 (1976). In its July 8, 1980 letter, the Commission provided the CBT with a statement of its concerns and the manner in which it requested that the Exchange alter or supplement its arbitration rules. Following the CBT's failure to alter its proposed customer arbitration regulation, *see* 46 FR 3027 at 3028, n. 6 (January 13, 1981), the Commission provided public notice of the proposed disapproval and alteration proceeding by publishing in the **Federal Register** 46 FR 3027 (January 13, 1981), the grounds it was considering as a basis for disapproval and alteration of the Exchange's customer arbitration regulations pursuant to sections 5a(12) and 8a(7), respectively. The Commission also forwarded to the CBT a copy of that **Federal Register** notice by letter dated January 7, 1981, to Mr. Wilmouth from Ms. Stuckey.

[17] CBT comment letter at 2.

[18] Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93–463, 88 Stat. 1389, *et seq.* (1974). Prior to the 1974 amendments, the Act was administered by the Commodity Exchange Authority of the Department of Agriculture.

[19] H.R. Rep. No. 975, 93d Cong., 2d Sess. 48 (1974) quoting from 120 Cong. Rec. 30458 (1974) (remarks of Senator Herman Talmadge).

[20] Section 8a(7) of the Act, 7 U.S.C. 12a(7) (1976).

[21] *Id.*

[22] 7 U.S.C. 7 and 7(a) (Supp. III 1979). Under Commission regulation 1.50(b), 17 CFR 1.50(b) (1981), a contract market must continue to comply with the conditions and requirements for designation set forth in sections 5 and 5a of the Act. Section 6 of the Act requires any board of trade seeking designation as a contract market to provide the Commission with "a sufficient assurance" that it will continue to comply with the applicable conditions and requirements of the Act.

[23] 7 U.S.C. 7(g) (1976).

[24] Pub. L. No. 93–463, 88 Stat. 1401 (1974).

[25] Pub. L. No. 93–463, 88 Stat. 1393–1395 (1974), 7 U.S.C. 18 (Supp. III 1979). Of course federal and state courts are available to customers to resolve their disputes with commodity professionals.

[26] *See* discussion in text at pp. 15 and 22–23 *infra*.

[27] CBT 1979 letter at 2.

III. Basis for Commission Disapproval, Alteration and Supplementation

A. *Section 5a(11) of the Act.* The CBT asserts that "the Commission's legal position on the substantive issues involved in this proceeding is plainly contrary" to the meaning of section 5a(11) of the Act and "constitutes a violation of the due process clause of the Fifth Amendment to the United States Constitution." [17] As discussed below, the Commission believes that it has set forth an adequate basis for its conclusion that the CBT rules at issue here in fact violate section 5a(11) of the Act and Part 180 of the Commission's regulations.

Congress recognized the need for a comprehensive regulatory scheme for futures trading by extensively amending the Commodity Exchange Act and creating the Commission in 1974.[18] Commission oversight of the futures industry is intended, *inter alia*, to "guarantee fair practices and honesty on the exchanges," [19] "protect persons producing, handling, processing and consuming any commodity traded for future delivery on a contract market," [20] protect traders, and insure fair dealing in commodities traded for future delivery on a contract market.[21] Futures trading, therefore, must be conducted through the facilities of a board of trade designated as a contract market which initially and continuously has demonstrated to the Commission, under sections 5 and 5a of the Act,[22] that such designation "will not be contrary to the public interest." [23] A contract market's adoption of the arbitration procedures required by section 5a(11) of the Act is an explicit prerequisite for designation as a contract market under section 5 of the Act.

In recognition of the necessity to protect customers and the integrity of the futures markets, Congress enacted two provisions of the Act in 1974, which explicitly provide customers with alternative forums to resolve their disputes with commodity professionals—contract markets' arbitration or other settlement procedures under section 5a(11) of the Act [24] and the Commission's reparation procedures under section 14 of the Act.[25] Both of the customer dispute resolution procedures afford parties with the opportunity to obtain a final settlement of their dispute, although awards are reviewable under applicable law.[26]

Section 5a(11) of the Act provides that:

> Each contract market shall provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary, (ii) the procedure shall not be applicable to any claim in excess of $15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties, and (iv) the term "customer" as used in this subsection shall not include a futures commission merchant or a floor broker.

As the CBT correctly has stated, a contract market forum which provides "an advisory arbitration award settles nothing. The award is not enforceable." [27] Of course, a settlement procedure contemplates that the rights and duties of the parties subject to dispute will be resolved definitively. Accordingly, a contract market procedure in which exchange members are permitted to elect arbitration when initiated by a customer would not in fact provide "a fair and equitable procedure * * * for the *settlement* of customers' claims and grievances" (italics added). Section 5a(11) would not retain significant meaning if it were understood to require contract markets to establish procedures to which none of their members could be required to conform.

The Commission's interpretation of the requirements of section 5a(11) of the Act is consistent with the legislative history underlying the adoption of that Section. As introduced in the House of

Representatives by Rep. Poage, section 209 of H.R. 11955 [28] the contract market customer claims settlement provision—required that contract markets,

[P]rovide a fair and equitable procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof.[29]

Section 209 of H.R. 11955 did not specify whether either the customer or member would be required to submit to the procedure. However, it appears clear that customers would not be required to do so since, under section 105 of the bill, aggrieved customers could seek reparations for violations of the Act against registrants, a class broad enough to include certain members of exchanges and certain of their employees. Thus, at least some customer claims could be adjudicated either in reparations or settled under the exchange procedures.[30]

Four provisions were added to section 209 after the House hearings.[31] Also, a modified version of H.R. 11955 was reintroduced as H.R. 13113 as the legislation came to the House floor.[32] As amended, section 209 required the contract market to provide (italics added):

* * * A fair and equitable procedure through arbitration or otherwise for the settlement of customer's claims and grievances against any member or employee thereof: *Provided*, That (i) *the use of such procedure by a customer shall be voluntary*, (ii) the procedure shall not be applicable to any claim in excess of $5,000, (iii) *the procedure shall not result in any compulsory payment except as agreed upon between the parties*, and (iv) the term "customer" as used in this subsection shall not include a futures commission merchant or floor broker * * *[33]

The House passed section 209 without amendment or debate.[34]

During the hearings on section 209, commentators generally supported the contract market customer arbitration provisions. They expressed particular concern, however, about whether the procedures would adequately protect members as well as customers [35] and whether arbitration awards would be binding on customers as well as members, if a customer initiated an arbitration proceeding.[36] Despite these comments, the Senate passed section 209 of H.R. 13113 essentially unchanged.[37] The House and Senate

[28] H.R. 11955, 93d Cong., 1st Sess. § 209, 119 Cong. Rec. 35483 (1973).

[29] 119 Cong. Rec. 41333 (December 13, 1973).

[30] In this connection, W. F. Brooks, President and General Counsel of the National Grain Trade Counsel, testified before the House Agricultural Committee that Section 105 should be revised to require complainants to resort to the Section 209 procedures before seeking reparations. *House Hearings before the House Committee on Agriculture on H.R. 11955*, 93rd. Cong. 2d Sess. 52 (1974) (hereinafter cited as "January House Hearings").

[31] Witnesses testifying before the House Committee on Agriculture suggested certain changes to Section 209 of H.R. 11955 including amendments that counterclaims be allowed by members of an exchange and awards be binding on the customer. *See January House Hearings*, 99–100 (Statement of A. W. Donahoo, Minneapolis Grain Exchange) and 169 (Statement of F. Uhlmann, CBT) (1974). The testimony indicated that because customers could not be disciplined for failing to comply with a decision, exchange-sponsored arbitration programs were inherently deficient. No testimony addressed the issue of required participation by either the member or the customer.

[32] 120 Cong. Rec. 10737 (April 11, 1974).

[33] H.R. 13113, 93rd Cong., 2d Sess. 209 (1974) quoting from 120 Cong. Rec. 10756 (April 11, 1974).

[34] 120 Cong. Rec. 10769 (April 11, 1974). In a comparison chart of provisions of the four bills pending before the Senate Committee on Agriculture and Forestry prepared after the House had passed H.R. 13113, Section 109 of H.R. 13113 was described as follows:

"Exchanges must have claims procedure. Complainants may appeal to the Commission or take complaints directly to the Commission."

Hearings before the Senate Committee on Agriculture and Forestry, on S. 2485, S. 2578, S. 2837 and H.R. 13113, 93rd Cong., 2d Sess., Part 1, 192 (1974) (hereinafter cited as "Senate Hearings"). The Commission notes that, despite the statement in the chart, section 209 did not refer either to bringing complaints or appealing to the Commission. Each of the three Senate bills pending before the Committee also contemplated some form of contract market settlement procedures. Only S. 2837 dealt with the issue of whether arbitration would be voluntary or required. Section 201(b)(2)(I) of that bill required contract markets to establish a procedure for the settlement of traders' claims by "voluntary arbitration" or, at the election of the trader, by a committee, the majority of which would be members of the public.

[35] *Id.* at 318, 403 and 415 and Part II at 524–526. *See also January House Hearings* at 99–100, 113, 120 and 323.

[36] *Senate Hearings*, Part I at 403 and 415; and Part II at 541, 524–526 and 674. *See also January House Hearings* at 100, 113, 120, 249 and 318; and *Hearings Before the House Committee on Agriculture on H.R. 11955*, 93d Cong., 1st Sess. 73, 97, 119, 165, 197–210, 318 and 323 (hereinafter cited as "October House Hearings"). Of particular interest are remarks of two representatives of the CBT before the Senate Committee. Mr. Uhlmann testified that (italics added): "Section 209 of H.R. 13113, as passed by the House, provides that *a customer can voluntarily request arbitration but then does not require him to be bound by the arbitration proceedings*. We feel that if a customer requests arbitration of his own will he should be bound by the results. *If he is not, obviously he will take every adverse decision to the Commission or to the courts. Senate Hearings*, Part II at 524.

Warren Lebeck, also representing the CBT, testified that: "The thing that does concern us is the way the bill is written now it says the customer submits it voluntarily and then isn't bound by the result but the commission merchant is going to be bound by the result for a lot of reasons, and we thing [sic] that is not quite fair." *Senate Hearings*, Part II at 526.

[37] 120 Cong. Rec. 35003 (October 10, 1974). The House bill limited claims to $5,000 or less. The Senate bill raised the limit to $15,000. The Conference Committee accepted the Senate version. S. Rep. No. 1194, 93d Cong., 2d Sess. 15 (1974).

testimony evidences that, as interpreted by the commentators, section 209 did not bind a customer to the results of arbitration, insofar as it permitted appeals of adverse decisions. The commentators did perceive, however, that a member futures commission merchant ("FCM") would be bound under Section 209.[38] At no time during its congressional testimony did a commentator suggest that the Congressional desire for a comprehensive system of Exchange arbitration proceedings would be fulfilled by exchange rules which permitted a member to refuse to participate in those proceedings.

B. *Adoption of Part 180 of the Commission's Regulations.* In furtherance of the objectives of section 5a(11) of the Act, the Commission adopted regulations governing the administration of contract markets' customer grievance programs.[39] In particular, the Commission determined to assure that the decision to elect arbitration was voluntary for the customer. Accordingly, Commission regulation 180.3(c) provides that the settlement procedure established by a contract market pursuant to section 5a(11) and Part 180 may require the parties who utilize the procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by the award rendered in the proceedings, provided that the agreement to submit the claim to the procedure is made either in accordance with the pre-dispute agreement provisions of Rule 180.3(b) or after the claim arose.[40]

Moreover, regulation 180.2(f) provides that the required contract market procedures shall provide for written final decisions—there shall be no right of appeal to any entity within the contract market; the only right of appeal being as provided by applicable law. Read together, these sections allow a contract market to adopt rules which provide for binding arbitration, once arbitration is agreed to as a vehicle for dispute resolution by the customer.

Inasmuch as the right of a customer to choose arbitration as conferred by section 5a(11) was intended by Congress to be a meaningful right, *i.e.*, the right to a final settlement of a dispute, the Commission believes that Congress intended the customer, at his request, to have the member or employee participate in the procedure. A contract market, therefore, is required under Part 180 to provide a procedure where the member must arbitrate when called upon to do so.

The Commission believes that Congressional intent in establishing the Commission's reparations authority further illustrates Congress' desire that exchange dispute settlement procedures require the participation of exchange members. Like the Commission's reparations procedures, a contract market's dispute settlement system is intended to afford customers with an expeditious and inexpensive forum to settle disputes. There is no exception in section 5a(11) to the obligation that a contract market provide a fair and equitable procedure for the settlement of customer claims against members and employees thereof. Congress contemplated that the implementation of section 5a(11) would afford customers with the equivalent of a small claims court for the efficient and inexpensive resolution of commodity futures disputes against contract market members arising under the rules and practices of designated contract markets.[41] Congress also recognized, however, that arbitration was an incomplete remedy—it provided no forum for disputes against non-members or for other disputes arising outside of the contract markets' jurisdiction.

In response, Congress also enacted section 14 of the Act to provide

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[38] The rules of the CBT in effect in 1974 provided that it was the policy of the Exchange to "encourage, but not to compel, arbitration of disputes," either between members, or between members and non-members. The parties to the arbitration had to sign an agreement to consent that the Exchange rules would govern the proceedings. *See* CBT Rule 183, as amended November 13, 1969. However, as the Commission's March 5, 1976 hearings on this subject made clear, before a customer of an FCM could open an account with most major firms, the customer was required to sign a pre-dispute arbitration agreement. 41 FR 27526 (July 2, 1976).

[39] Commission regulations 180.1, 180.2, 180.4, 180.5 and 180.6, 17 CFR 180.1, 180.2, 180.4, 180.5 and 180.6 (1981), became effective on November 29, 1976. 41 FR 27520 (July 2, 1976) and 41 FR 42942 (September 29, 1976). Commission regulation 180.3, 17 CFR 180.03 (1981), became effective on November 29, 1976. 41 FR 42942, 42947 (September 29, 1976). Regulation 180.6 was further amended by the Commission, effective on August 13, 1980. 45 FR 47136 (July 14, 1980).

[40] The permissive language of Rule 180.3(c) serves to assure that the decision to seek arbitration remains voluntary for the customer. Thus binding arbitration may be required by contract market rules only if the customer's submission to arbitration is in accordance with the requirements of Rule 180.3(b), concerning voluntary pre-grievance agreements to arbitration, or occurs voluntarily after the claim arose. *See* 41 FR 42942 (September 29, 1976). *See also* 40 FR 54430 at 54433 (November 24, 1975) where the Commission stated that a contract market arbitration procedure established under Section 5a(11) should not result in any advisory opinions.

[41] *January House Hearings* at 169 and *Senate Hearings* at 415, 736 and 746.

customers with a more comprehensive dispute resolution process.[42] Congress contemplated that the settlement procedures required to be established by a contract market would complement the Commission's reparation procedures for handling customer complaints, and thus provide customers with an alternative forum to obtain relief from commodity professionals who allegedly had violated the Act, the regulations thereunder or the rules of a contract market.[43]

Congress, however, was well aware that the Commission's reparations procedures would not guarantee a non-judicial forum for the settlement of customer claims and grievances. Not all contract market members are required to be registered with the Commission and not all disputes with members necessarily will involve violations of the Act.[44] Thus, the Congressional intent to see a comprehensive dispute settlement program implemented through reparations and arbitration would be fulfilled only if Section 5a(11) of the Act explicitly obligates a contract market to afford customers the right to arbitrate small claims against members and employees, without the need to resort to other proceedings. Member participation clearly is essential to the achievement of that legislative objective.

The Commission's distinction in Part 180 between the voluntariness of arbitration for customers, as opposed to members, is clearly established in section 5a(11). Proviso (i) of section 5a(11) explicitly requires that the use of the contract market arbitration procedure by a customer must be voluntary. The CBT, however, suggests that proviso (i) was intended only to make clear that customers could not be forced to arbitrate.[45] Of course, this proviso was, in part, intended for that purpose, but its full significance is not so limited, since the overriding purpose of section 5a(11) is to require that contract markets provide a forum for the resolution of customer disputes.

Thus, section 5a(11)(i) states unequivocally that "the use of such procedures *by a customer* shall be voluntary" (italics added). Had Congress intended the use of the procedure to be voluntary on the part of the member as well as the customer, it could have used the term "parties" in proviso (i) as was done in proviso (iii). Indeed, the CBT's 1974 Senate testimony supports the view that a customer could compel arbitration—"a customer can voluntarily request arbitration, but then does nor require him to be bound * * *."[46] Had the CBT believed that section 209 allowed members to refuse to arbitrate, there would have been little reason for it to express concern over the unfairness of the provision as binding the member but not the customer.[47]

Commission regulations 180.4 and 180.5, similarly, are derived from the authority under section 5a(11). Regulation 180.4 provides that a contract market may permit the submission of counterclaims in the procedure, if the counterclaims are limited to claims arising out of the transaction or occurrence that is the subject of the customer's claim or grievance and do not require for adjudication the presence of essential witnesses, parties or third persons over whom the contract market does not have jurisdiction. A counterclaim, however, may not be for an amount in excess of $15,000. Other counterclaims are permissible only if the customer agrees to the submission to arbitration of the counterclaim *after* the counterclaim has arisen and if the aggregate monetary value of the counterclaim is capable of calculation and does not exceed $15,000. Under Commission regulation 180.5, a party may have the power to accept or reject voluntarily the submission to arbitration of other claims outside of the customer's claim or grievance. In the Commission's view, proviso (iii) has no bearing on whether the member must arbitrate if called upon to do so, but only on the voluntary resolution of additional claims or counterclaims.[48]

The CBT, however, asserts that proviso (iii), which requires that the procedures cannot result in any compulsory payment except as agreed to by the parties, "was drafted to preserve the voluntary nature of an arbitration proceeding for all parties involved."[49] At the same time, the CBT contends that the only alternative to an arbitration proceeding which is voluntary for both parties "is a procedure which is merely advisory."[50] The CBT, however, not only overlooks the Commission's interpretation of proviso (iii), but also the clear intent of Congress in requiring contract markets to provide customers with a right to a "fair and equitable procedure" for the settlement of their claims.

As set forth above, the Commission does not believe that proviso (iii) of section 5a(11) has any bearing on the issue of whether contract market members must submit to arbitration. Indeed, this proviso, in the context of section 5a(11) and the other provisos, can be understood to refer only to payments arising from claims other than those related to a customer's initial grievances, such as certain counterclaims.

C. *Section 5a(11) Does Not Violate the Constitution.* The CBT contends that voluntariness is essential to the Constitutional permissibility of a statutorily imposed arbitration

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[42] H.R. Rep. No. 93-975, 93d Cong., 2d Sess., 22 (1974) (italics added) states: "This section [section 14] establishes a formal complaint procedure before the Commission for the adjudication of grievances which result from violations of the Act. It is primarily intended as a forum for aggrieved customers of [certain] persons registered under the Act * * * *The procedure is also intended as a separate remedy designed to supplement the informal "settlement procedures" contemplated of the contract markets* * * which are required under other sections of the legislation (H.R. 13113, Sections 209 * * *). The Committee expects the Commission to publish regulations, commensurate with these related provisions of the Act, to implement and coordinate these * * * types of grievance proceedings and their utilization and availability for resolution of disputes."

The report also stated (*id.* at 3) that contract market settlement procedures would be "complementing the Commission's procedures" and that: "[i]t is the intent of the Committee that those complaints which can be resolved informally and settled without a formal proceeding through the mechanism contemplated of the contract market or * * * futures association should be encouraged to be resolved in such manner. (*id.* at 22)."

[43] 120 Cong. Rec. 10748 (April 11, 1974) (Statement of Rep. Thone). Congress also had received testimony that some customers did not trust the fairness of exchange arbitration proceedings and thus sought to avoid exchange arbitration as a forum for dispute resolution. *See also Senate Hearings*, Part II at 629-660 (Statements of Bernard Rosee and Melvin A. Brandt, Counsel for Mr. Rosee). The Commission has received similar comments. *See* testimony of Leonard R. Goldstein, Counsel for A. S. Csaky, before the Commission hearing on arbitration on March 5, 1976.

[44] The implementation of the National Futures Association's ("NFA") arbitration procedures, which require NFA members to proceed in arbitration if requested by a customer, similarly do not guarantee a non-judicial forum for the settlement of customer claims against floor brokers and traders. *See* the NFA Code of Arbitration, Section 2(a).

[45] *See* CBT 1979 letter at 4 and CBT comment letter at 6. The CBT suggests that Section 5a(11)(i) "was drafted by Congress to protect customers from being forced to sign binding pre-dispute arbitration agreements, which were contained in customer account agreement forms, as a condition to opening an account."

[46] *See* n. 36 *supra*.

[47] *Id.*

[48] In discussing its proposal concerning counterclaims in arbitration proceedings, the Commission noted: "Section 5a(11) was adopted by Congress as a means to provide customers with a procedure for settling disputes which would not result in compulsory payment except as agreed upon between the parties. The Commission is concerned that this aspect of Section 5a(11) will be impaired if counterclaims are allowed which do not arise out of the transaction or occurrence that is the subject of the customer's claim or grievance and which the customer does not agree to submit to the procedure." 40 FR 54433 (November 24, 1975).

[49] CBT comment letter at 7.

[50] *Id.* Relying on proviso (iii) the CBT in the past has argued that unless a true settlement of the dispute will result—*i.e.*, a binding award—the legislative intent will not be fulfilled. Apparently, the CBT now views proviso (iii) as requiring members voluntarily to agree to a binding award—*i.e.*, a final settlement of the claim—as well as to participate in the arbitration proceeding in the first instance. CBT 1979 letter at 2 and CBT comment letter at 6. In doing so, the CBT overlooks its own Regulation 630.13, which states that awards will be final. The Commission believes that the CBT's provision is consistent with the Commission's view that Section 5a(11) requires contract markets to provide customers with a fair and equitable procedure for the settlement of their claims. *See also* Commission regulations 180.2(f) and 180.4.

proceeding and that such voluntariness can be achieved only through individual determinations to arbitrate by contract market members or through contract market rules (voluntarily adopted) which require mandatory arbitration of customer-member disputes.[51] The CBT analogizes the collective willingness of contract market members to submit to arbitration provisions adopted in negotiated collective bargaining agreements.[52] The Commission believes that the CBT's analogy is incomplete and misleading. Standards for designation as a contract market are set forth by statute and include the mandatory dispute settlement provisions of section 5a(11). Thus, unlike arbitration provisions in negotiated bargaining agreements, the statutorily mandated contract market dispute settlement provision cannot be negotiated by contract markets or their member firms.[53]

The Commission notes that the customer's right to a contract market arbitration procedure under section 5a(11) of the Act is not unique, but indeed is similar to other comprehensive statutory dispute resolution systems which have been upheld as Constitutional, even though they required waiver of a party's right voluntarily to settle disputes by arbitration. For instance, the courts in a line of cases under the Railway Labor Act's [54] dispute resolution provisions have interpreted those provisions to require railroad management and employees to submit disputes to binding arbitration if the parties fail to resolve a minor dispute through negotiation and prescribed grievance procedures.[55] Those arbitration decisions rendered by the National Railroad Adjustment Board are binding, final and not subject to *de novo* review by the courts.[56] Unlike the dispute resolution procedures under section 5a(11) of the Act, those arbitration procedures are compulsory on all parties. In light of the constitutionality of other federal (as well as state)[57] arbitration statutes, it is *a fortiori* clear that the statutorily mandated contract market arbitration procedure takes precedence over the principle that arbitration is a consensual agreement between parties.

The CBT also argues that arbitration can only take place if the parties specifically agree to enter arbitration and waive the protection of a more formal proceeding including the right to appeal *de novo* to the courts.[58] The Commission notes, however, that the Supreme Court has upheld New York State's "No-Fault" Insurance Law, which permits mandatory binding arbitration of certain disputes at the demand of claimants, not insurance companies, against due process challenge.[59] As the District Court stated in that case, "[w]hen dealing with parties in unequal positions, it is not unusual to give an arbitration versus litigation decision only to the weaker or aggrieved party."[60] In this regard, the Commission also notes that the purpose of a contract market dispute settlement system is to provide an expeditious, fair and less expensive means of dispute settlement with a minimal number of appeals from arbitration awards.[61] Indeed, a contract market "settlement" procedure that would allow a party to appeal within the contract market would not fulfill its mandated purpose under Section 5a(11) of the Act of settling disputes.

D. *Commission Regulation 7.201: Alteration and Approval of CBT Regulation 620.01(B); Approval of CBT Proposed Regulation 640.04.* The Commission has set forth below the changes in the CBT's existing and proposed regulations which it believes are necessary to alleviate the concerns discussed above. In particular, the Commission has altered the CBT's arbitration regulations by supplementing those regulations with a version of Regulation 620.01(B) revised from that proposed by the CBT. The supplemental language explicitly requires members or employees thereof to submit to customer-initiated arbitration proceedings.

In addition, the Commission has altered that CBT proposal to assure that the refusal of a member or an employee to sign an arbitration submission agreement would not deprive the Arbitration Committee or Mixed Panel of jurisdiction to arbitrate a customer's claim.[62]

The CBT also has stated that if the Commission determines that arbitration is mandatory for its members and employees thereof under Section 5a(11) of the Act, as implemented under Part 180 of the Commission's regulations, then adoption of proposed Commission regulation 7.202 (altering CBT Regulation 640.04) would not appear to be necessary. In view of CBT's acknowledgement that the Exchange would have jurisdiction over members against whom arbitration proceedings are brought without further alteration of CBT Regulation 640.04, the Commission has determined to approve CBT Regulation 640.04 as proposed.[63]

On the basis of the analysis and discussion presented herein, the Commission hereby disapproves, pursuant to Section 5a(12) of the Act, and alters, pursuant to section 8a(7) of the Act, proposed Regulation 620.01(B) as set forth below. The altered CBT regulation will supplement the CBT's existing arbitration rules. The foregoing disapproval, alteration and

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[51] CBT comment letter at 3.

[52] *Id.* at 5.

[53] Congressional willingness to impose a mandatory arbitration requirement upon members of designated contract markets clearly was predicated upon the understanding that such proceedings would include those due process standards necessary to assure that such proceedings would be conducted in a fair and equitable manner. Thus, although arbitration is more informal than a court proceeding (*e.g.* the formal rules of evidence need not apply), both parties are protected by the due process requirements incorporated in Part 180 of the Commission's regulations. Indeed, the Commission has explicitly stated that the protections guaranteed customers under Commission regulation 180.2 also apply to contract market members and their employees in proceedings under section 5a(11). 40 FR 54430 at 54432 (November 24, 1975). The Commission's dispute resolution requirements also comport with those under the Federal Arbitration Act, 9 U.S.C. 1 *et seq.* (1976).

[54] *See* 45 U.S.C. 153 (1976).

[55] *See United Transp. Union v. Penn Central Transp. Co.*, 372 F. Supp. 671 (E.D. Pa. 1973), *aff'd.* 505 F.2d 542 (3d Cir. 1974); and *Joe E. Parsons v. Norfolk and W. Ry. Co.*, 442 F.2d 1075 (4th Cir. 1971).

[56] *See* 45 U.S.C. 153(p) (1976). *See also Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 592, 601 (1937); *Andrews v. Louisville and Nashville R.R. Co.*, 406 U.S. 271 (1972); *F. J. Gunther v. San Diego & Arizona E. Ry. Co.*, 382 U.S. 257 (1965); *Edwards v. St. Louis-S.F. R.R. Co.*, 361 F.2d 948, 955 (7th Cir. 1966); and *Essay v. Chicago and N.W. Transp. Co.*, 618 F.2d 13 (7th Cir. 1980).

[57] *See* n. 59 *infra*.

[58] CBT comment letter at 4–6. The CBT cites several court decisions which have upheld state compulsory arbitration laws against constitutional attack if the laws provide for an appeal *de novo* to the courts.

[59] *Country-Wide Insurance Co., v. Thomas A. Harnett*, 428 F. Supp. 1030 (S.D.N.Y. 1977), *aff'd mem.*, 431 U.S. 934 (1977). *See also Hardware Dealers' Mutual Fire Ins. Co. of Wisconsin v. Glidden Co.*, 284 U.S. 451 (1931).

[60] *Country-Wide Insurance Co.* at 1034.

[61] The Commission has stated that there should be no right to appeal to any entity within a contract market which can overturn the settlement procedure decision, such as an appeal to the board of directors of a contract market. The only right to appeal is that which is provided by applicable law. *See* 40 FR 54430, 54431–54432 (November 24, 1975).

[62] The CBT commented that the latter alteration raised questions as to when a member is presumed to have submitted to arbitration even if the member did not sign the CBT's "Arbitration Submission Agreement for Customers' Claims and Grievances." CBT comment letter at 10–11. Pursuant to Commission regulation 7.201 and CBT regulation 620.01(B), the delivery of a Statement of Claim together with the Agreement signed by the customer automatically initiates arbitration. The Commission also notes that it has changed the reference from Regulation 1706 in proposed Regulation 620.01(B) to Regulation 620.02 to reflect the CBT's reorganization of its Rule Book.

[63] The Commission had proposed to disapprove and alter proposed Regulation 640.04 to assure that the arbitrators would not decline jurisdiction or dismiss a proceeding where a customer's claim is asserted under CBT Regulation 620.01(B).

supplementation of the CBT's proposed and existing regulations is effective thirty days after publication of this notice in the **Federal Register.** In accordance with the provisions of Section 5a(12) of the Act, the Commission also hereby approves CBT Regulation 620.01(B) as altered [64] and approves without change an accompanying CBT regulation, CBT Regulation 640.04, which authorizes arbitrators to decline jurisdiction and dismiss arbitration proceedings in certain instances.[65] The approval of proposed CBT Regulation 620.01(B), as altered, and proposed CBT Regulation 640.04 also is effective thirty days after publication of this notice in the **Federal Register.**

PART 7—CONTRACT MARKET RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

Section 7.201 is added to read as follows:

§ 7.201 Regulation 620.01(B).

Customers' Claims and Grievances. The Arbitration Committee and Mixed Panels constituted pursuant to Regulation 620.02 have jurisdiction to arbitrate all customers' claims and grievances not in excess of $15,000 against any member or employee thereof which have arisen prior to the date the customer's claim is asserted. If the customer elects to initiate an arbitration proceeding of any customer claim or grievance, the member shall submit to arbitration in accordance with these Arbitration Rules and Regulations. The arbitration shall be initiated by delivery to the Administrator of (a) a Statement of Claim and a "Chicago Board of Trade Arbitration Submission Agreement for Customers' Claims and Grievances" signed by the customer or (b) a Statement of Claim and another arbitration agreement between the parties, which agreement conforms in all respects with any applicable requirements prescribed by the Commodity Futures Trading Commission. The refusal of any member or employee to sign the "Chicago Board of Trade Arbitration Submission Agreement for Customers' Claims and Grievances" shall not deprive the Arbitration Committee or a Mixed Panel constituted pursuant to Regulation 620.02 of jurisdiction to arbitrate customers' claims under these Arbitration Rules and Regulations. The Committee and Mixed Panels have jurisdiction to arbitrate a counterclaim asserted in such an arbitration, but only if it arises out of the transaction or occurrence that is the subject of the customers' claim or grievance, does not require for adjudication the presence of essential witnesses, parties or third persons over whom the Association does not have jurisdiction, and is not for an amount in excess of $15,000. Other counterclaims are subject to arbitration by the Committee, or a Mixed Panel, only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation and does not exceed $15,000.

(Secs. 5a(12) and 8a(7) of the Commodity Exchange Act, 7 U.S.C. 7a(12) and 12a(7) (1976))

Issued in Washington, D.C., on November 17, 1981, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-33698 Filed 11-23-81; 8:45 am]

BILLING CODE 6351-01-M

[64] Section 5a(8) of the Act, 7 U.S.C. 7a(8) (1976), requires each contract market to enforce all of its rules, made or issued by it, the governing board thereof or any committee which relate to the terms and conditions in contracts for sale to be executed on or subject to the rules of such contract market or relate to other trading requirements, and which have been approved by the Commission under Section 5a(12) of the Act. Under Section 5a(8) of the Act, a contract market also must revoke and not enforce any such rule which has been disapproved by the Commission.

[65] CBT Regulation 640.04 provides that: "Arbitrators may decline jurisdiction in any case, except as provided by law. The Arbitrators may, at any time during the proceeding, except as provided by law, and shall, upon the joint request of the parties, dismiss the proceeding."

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-73; Order No. 188]

Final Rule Under Section 108 of the Natural Gas Policy Act Defining the Term "Produced"

November 16, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission by this final rule adopts, without change, an interim rule which defines the term "produced" as that term is used in the definition of "production days" in section 108(b)(3) of the Natural Gas Policy Act of 1978 (NGPA). (44 FR 66783, November 21, 1979.) Natural gas is "produced", within the meaning of section 108(b)(3) of the NGPA on (1) any day during which there is measurable production of natural gas from a well, and (2) any day during which a well is open to the line but is unable to produce measurable quantities of natural gas.

DATE: This rule is effective November 16, 1981.

FOR FURTHER INFORMATION CONTACT:

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Marilyn Rand (202-357-8674), Dan White (202-357-8066), Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is amending § 271.803 by adopting a final rule to define the term "produced" as it is used in section 108(b)(3) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3318), which defines the term "production day." For the purpose of determining "production day," gas is "produced" on (1) any day during which there is measurable production of natural gas from a well; and (2) any day during which a well is open to the line but is unable to produce measurable quantities of natural gas.

I. Background

Section 108 of the NGPA establishes a maximum lawful price for natural gas purchased from stripper wells, which at their maximum efficient rate of flow (MER) (*see* § 271.807), produce an average of 60 Mcf or less of nonassociated natural gas per production day during a preceding 90-day production period. Section 108(b)(3)(A) of the NGPA defines "production day" as:

> (i) Any day during which natural gas is produced; and (ii) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

The Commission determined that certain shut-in or open valve wells that are incapable of producing and certain wells that produce on an irregular basis should be accounted for in defining the term "production day" and the term "produced" in section 108 of the NGPA. On November 9, 1979 pursuant to section 501(b) authority,[1] the

[1] Section 501(b) of the NGPA, 15 U.S.C. 3411, authorizes the Commission "to define, by rule, accounting, technical and trade terms" used in the NGPA, so long as such definition is "consistent with the definitions set forth in (the) Act."

Commission issued an interim interpretative regulation (44 FR 66783, November 21, 1979) defining, in § 271.803(e), the term "produced" as it is used in the definition of "production day" in section 108. Section 271.803(e) defined the term "produced" as follows:

(e) Natural gas is produced, within the meaning of section 108(b)(3) (A) and (B) of the NGPA:

(1) On any day during which there is measurable production of natural gas from a well, and

(2) On any day on which a well is open to the line but is unable to produce measurable quantities of gas.

This regulation provides a basis for wells that are either shut-in or open valve and are incapable of producing or that are producing on an irregular basis to qualify for stripper well status. The Commission invited public comment on the interim regulation.[2]

II. Summary of Public Comments

A. *Action by Pipelines and Operators Affecting Production.* Two comments focus on actions by pipelines and operators that would affect production rates. One commenter recommends that the Commission expand the definition of production day to include days when a well is shut-in due to actions by a pipeline.

The Commission specifically noted in the preamble to the interim rule that days on which gas is not produced for such reasons are not included in the definition of production day. We affirm that finding here because a well that is shut-in due to a pipeline's action would not be producing, attempting to produce, or shut-in to comport with state conservation practices as required by section 108(b)(3) of the NGPA.[3]

Along similar lines, a second commenter recommends that the Commission explicitly exclude days in which an operator increases the line pressure to enable a well to meet the production limitation for stripper wells. The commenter claims that operators will increase the line pressure to create a corresponding decrease in well production during a 90-day qualifying period. After a qualifying period at the stripper level has been established for the well, the line pressure will be decreased to allow increased production. The commenter suggests that this potential problem could be averted if the regulation required that production volume be measured at the historical pressure of the line into which the gas flows.

The Commission agrees with the commenter that such manipulation of line pressure circumvents the intent of section 108. The Commission, however, has no reason to believe that this activity is prevalent and does not believe that it is presently necessary to deal with this explicitly in the regulations. Should a purchaser bring such a situation to the Commission's attention or should there be a series of disqualification and requalification filings for a single well, the Commission will take appropriate action.

B. *Expansion of Time Allowed to Establish Qualifying 90-day Production Period.* Another commenter suggests that the requirement in § 271.804(c) that the qualifying 90-day production period must occur sometime within the 180-day period immediately preceding the application filing date is unduly restrictive. The commenter suggests the 180-day period should be lengthened to cover, for example, five years prior to the filing date of the application. Where a compressor has been installed on a well within the last five years, the commenter asserts that the Commission should permit the operator to utilize the 90-day period immediately preceding installation of the compressor, or the Commission should permit the operator to demonstrate what the production would have been without the use of the compressor.

The Commission addressed this issue in footnote 6 in the preamble to the interim rule where it stated in part:

> Because the statute speaks in terms of *the* preceding 90-day production period, rather than *a* preceding 90-day production period, it appears that Congress did not intend that *any* 90-day production period become the basis for a stripper well determination. Instead, Congress apparently wanted the *most recent* 90-day production period before the date of application to be the basis for the determination. Accordingly, the Commission adopted § 271.804(c), which provides that the 90-day production period upon which the application is based must fall entirely within the 180 days prior to the date the application is filed. This regulation: (1) Resolves time problems caused by the necessity of collecting data from the field by giving producers up to 90 days to file an application with the jurisdictional agency after establishing a 90-day production period; (2) attempts to comply, in as practical a manner as possible, with the intent of Congress that the 90-day production period *nearest* to the application date be the period evaluated by the jurisdictional agency when it makes a determination. 44 FR at 66784.

The commenter's statement does not present any new information which would persuade the Commission to modify the regulation. To implement the commenter's suggestion would not comport with the purpose of section 108 of the NGPA to encourage production from marginal wells that might otherwise have been abandoned or might not have justified further expenditures to increase production. In situations where producers installed compressors prior to the passage of the NGPA, the producers evidently believed that such installation was cost-justified on the basis of the expected revenues at pre-NGPA prices. Thus, the Congress limited the stripper well qualification to wells producing at qualifying levels during the immediately preceding 90-day production period and not on some period several years before a compressor or other enhanced recovery technique [4] was used on the well.

III. Summary of the Rule

The interim rule is not amended by this order but is issued as a final rule. The rule provides a definition of "produced" as that term is used in section 108(b)(3) of the NGPA. It provides that gas is produced on any day during which there is measurable production and on any day during which a well is open to the line, even if it is unable to produce measurable quantities of gas.

IV. Effective Date

Because the interim regulation is not amended by this final rule and has been effective since November 9, 1979, good cause exists to waive the 30-day publication period otherwise required by section 553 of the Administrative Procedure Act, 5 U.S.C. 553(d). Accordingly, this final rule shall be effective November 16, 1981.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301–3432); Department of Energy Organization Act, (42 U.S.C. 7101 *et seq*) E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, as a final rule effective November 16, 1981.

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[2] The Commission invited requests for a public hearing. A public hearing was scheduled and subsequently cancelled by Commission notice issued January 2, 1980 because the only request for a hearing was withdrawn.

[3] Since the comments were filed in this docket, the Commission initiated a rulemaking to establish regulations governing stripper wells that overproduce as a result of temporary pressure buildup. Docket No. RM81–12, Interim Rule issued January 15, 1981 (46 FR 6901, January 22, 1981). The resulting rule provides that in certain cases, a well which would otherwise be disqualified can retain stripper well qualification if the increase in production is the result of pressure build-up which occurred when the well was temporarily shut-in.

[4] Order No. 44, Docket No. RM79–73, issued August 22, 1979, (44 FR 49656, August 24, 1979).

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.803(e) is added as follows:

§ 271.803 Definitions.

For purposes of this subpart:

* * * * *

(e) *Produced.* Natural gas is produced, within the meaning of section 108(b)(3)(A) and (B) of the NGPA:

(1) On any day during which there is measurable production of natural gas from a well, and

(2) On any day during which a well is open to the line but is unable to produce measurable quantities of gas.

[FR Doc. 81-33855 Filed 11-23-81; 8:45 am]

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18 CFR Parts 271 and 274

[Docket No. RM81-25; Order No. 187]

Final Rule Under Section 108 of the NGPA Establishing Procedures for Operator Protests Regarding Stripper Well Natural Gas

November 16, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission by this final rule establishes procedures and filing requirements for operator protests of notices to disqualify stripper wells from the section 108 pricing category. When a stripper well over-produces, except under several limited circumstances, the operator and purchaser are required to file notices of disqualification. An operator can protest a notice of disqualification by following the procedures established by this rule.

DATE: This rule is effective January 12, 1982.

FOR FURTHER INFORMATION CONTACT:

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Marilyn Rand (202-357-8674), Dan White (202-357-8066), Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: By this rule the Federal Energy Regulatory Commission (Commission) is amending its regulations in 18 CFR Parts 271 and 274 relating to natural gas produced from stripper wells under the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301-3432). The amendment establishes procedures for filing and considering operator protests of notices of disqualification filed by their purchasers.

I. Background

Section 108 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3318) prescribes the maximum lawful price for natural gas produced from stripper wells and the criteria for qualifying such wells. In Subpart H of Part 271 of its regulations, the Federal Energy Regulatory Commission (Commission) has established rules that implement section 108. Under these regulations, a well will qualify as a stripper well if, at its maximum efficient rate of flow, it produces no more than an average of 60 Mcf of nonassociated natural gas per production day during the qualifying 90-day production period. It will be disqualified if it produces in excess of that level unless the excess production is shown to be caused by application of a "recognized enhanced recovery technique", (*see* § 271.803), seasonal fluctuations (*see* § 271.804(d)), or temporary pressure build-up (*see* Docket No. RM81-12, Interim Rule, 46 FR 6901, January 22, 1981).

Section 271.805 requires the operator and purchaser to file notices of disqualification when a stripper well exceeds the natural gas production limitation. If the purchaser files a notice of disqualification and the operator does not agree, the operator can protest the notice by filing a motion contesting the notice of disqualification in accordance with § 271.805(b)(1)(i) of the regulations.

The regulations currently do not prescribe the filing requirements for the operator's motion to contest or the procedures for considering and acting upon the motion. The Commission issued a Notice of Proposed Rulemaking on April 3, 1981 for the purpose of amending the regulations to eliminate this procedural deficiency by proposing filing requirements and protest procedures for public comment.[1]

(46 FR 21192, April 9, 1981)

II. Comment Analysis

Two comments were filed in this docket. One generally supports the Commission's initiative in this rulemaking but criticizes the provision in § 271.806(b) of the proposal that requires the jurisdictional agency to treat the motion in accordance with the provisions of Subpart A of Part 274 as if it were an application for an initial well category determination. The commenter interprets that provision as requiring the operator to refile all the documents required for an application for well category determination. Based on that interpretation, the commenter asserts that proposed § 271.806(b) required the filing of duplicative materials, causing unnecessary delay.

That interpretation is not correct. The proposed language in § 271.806(b) provides:

> A jurisdictional agency shall treat a motion contesting a notice of disqualification under § 271.805(b)(1)(i) as if it were an application for initial determination and shall comply with *applicable provisions* of Subpart A of Part 274 of this chapter (italic added).

Subpart A of Part 274 establishes the general provisions regarding initial determinations by jurisdictional agencies and the procedures for providing the Commission notice of such determinations and an opportunity to review them. Subpart A does not prescribe any filing requirements. Subpart B of Part 274 imposes filing requirements for initial jurisdictional agency well category determinations. This final rule adds other filing requirements to § 274.206(f) of Subpart B for the operator's motion to contest.

The Commission notes that the language in proposed § 271.806(b) quoted above serves a similar purpose and is parallel to existing language in § 271.806(a) that governs procedures for other petitions relating to stripper wells. Section 271.806(a) has not been implemented as the commenter would interpret that provision.

The second commenter states that it generally supports the proposed protest procedure but requests a clarification by the Commission on whether the operator may continue to collect the section 108 price during the pendency of the protest proceeding without filing for interim collection under Part 273.

Section 271.805(d) of the existing regulations permits the operator to continue to collect the section 108 price subject to refund from the last day of the production period to which the notice of disqualification applies if the motion to contest is filed within the appropriate time period. If the motion is not filed within the appropriate time period, the right to collect the section 108 price terminates as of the last day of the disqualifying production period. If a motion is later filed, the operator may commence collection of the section 108 price subject to refund from the date the motion is filed. Therefore, § 271.805(d) already provides for interim collections

[1] The Commission invited requests for a public hearing but no requests were received. Therefore, no hearing was held.

during the pendency of the protest proceeding.

However, in response to this comment, an incorrect reference to paragraph (b) in § 271.805(a)(3) (regarding termination of the right to collect the section 108 maximum lawful price) is amended to refer to paragraph (d) in accordance with which the operator may continue to collect the section 108 price.

III. Summary of Amendments to the Regulations

Section 271.806 (b) is amended by inserting the proposed paragraph providing that the jurisdictional agency shall treat a motion protesting a notice of disqualification as if it were an application for initial determination and shall comply with the applicable provisions of Subpart A of Part 274. Conforming changes are made to §§ 271.805 and 271.806.

Section 274.206 is amended by the addition of proposed paragraph (f), which provides the filing requirements for a motion to contest. They include, in substantial part: (1) A reference to the initial determination qualifying the well for stripper status; (2) a reference to the notice of disqualification; and (3) a statement summarizing the reasons why the well should not be disqualified, accompanied by any supporting documentary evidence.

IV. Effective Date

For the reasons discussed above, the Commission makes final the regulations set forth below, effective January 12, 1982.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301–3432); Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*); E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Parts 271 and 274, Subchapter H, Chapter I, Title 18, of the Code of Federal Regulations, as set forth below effective January 12, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

§ 271.805 [Amended]

1. Section 271.805 is amended in paragraph (a)(3) by removing the phrase "paragraph (b)" and inserting in lieu thereof the phrase "paragraph (d)."

2. Section 271.806 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding new paragraph (b), to read as follows:

§ 271.806 Jurisdictional agency determinations and Commission review.

* * * * *

(b) *Motion contesting a notice of disqualification.* The jurisdictional agency shall treat a motion contesting a notice of disqualification under § 271.805(b)(1)(i) as if it were an application for initial determination and shall comply with the applicable provisions of Subpart A of Part 274 of this chapter.

* * * * *

3. Section 271.806 is amended in newly designated paragraph (c) by inserting the words "or (b)" after the words "under paragraph (a)."

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

4. Section 274.206 is amended by adding a new paragraph (f), to read as follows:

§ 274.206 Stripper well natural gas.

* * * * *

(f) *Motion contesting a notice of disqualification.* An operator seeking a determination under § 271.806(b), of a motion contesting a notice of disqualification, shall file:

(1) The names and addresses of the operator and purchaser(s);

(2) An identification of the well and accurate reference to,

(i) The original determination qualifying the well as a stripper well or the pending application for the stripper well determination, and

(ii) The notice of disqualification filed by the purchaser pursuant to § 271.805(a);

(3) A statement summarizing the reasons why the well should not be disqualified;

(4) Any documentary evidence that supports the statement made pursuant to subparagraph (3) of this paragraph; and

(5) A statement, under oath, that all of the information contained in the motion is true to the best of the operator's information, knowledge, and belief and that the motion has been served on the Commission and on the purchaser(s).

[FR Doc. 81-33637 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM81-6; Order No. 186]

Final Rule Under Section 108 of the Natural Gas Policy Act; Continuing Qualification

November 16, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission by this rule amends § 271.805 (18 CFR Part 271) in paragraphs (c) and (d) regarding the 30-day period within which an operator protest must be filed in order that the operator may continue to collect the section 108 price during the pendency of disqualification proceedings. This rule enlarges the filing period by 30 days.

DATE: This rule is effective as a final rule November 16, 1981.

FOR FURTHER INFORMATION CONTACT:

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Marilyn Rand (202–357–8674), Dan White (202–357–8066), Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426

SUPPLEMENTARY INFORMATION: In Subpart H of Part 271 of its regulations, the Federal Energy Regulatory Commission (Commission) established rules implementing section 108 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3318). Section 108 sets a maximum lawful price for natural gas from stripper wells. Stripper wells are wells that produce nonassociated gas at very low production rates. To qualify for the section 108 stripper well maximum lawful price a well must produce within the prescribed production limitation and can be disqualified on the basis of overproduction. By this rule the Commission is amending § 271.805, which establishes, in part, procedures an operator must follow to collect the section 108 price during the pendency of disqualification proceedings.

I. Background

The NGPA defines a stripper well as one that produces, at its maximum efficient rate of flow, no more than an average of 60 Mcf of nonassociated natural gas per production day during the preceding 90-day production period.

If a well's production exceeds this limitation, the well will be disqualified unless the overproduction is shown to be caused by application of a "recognized enhanced recovery technique" (*see* § 271.803) or seasonal fluctuations (*see* § 271.804(d)). If such circumstances cause the overproduction, the well will continue to qualify as a stripper well.[1]

When a well overproduces, however, the Commission's regulations in § 271.805, as they existed prior to the issuance of the interim rule in this docket, required that the operator and purchaser give notice of the disqualification to the Commission and the appropriate jurisdictional agency within 90 days after the end of the production period (90 days or, in the case of a seasonally affected well, 12 months) in which the overproduction occurs. Under § 271.805(d), the operator of such a well could continue to collect the stripper well price (subject to refund) after the disqualification notice was served, if, within 30 days, the operator filed with the jurisdictional agency a petition for a determination that the increased production is the result of one of the above-described circumstances or if the operator filed a motion contesting the notice of disqualification filed by the purchaser. If timely action was not taken by the operator to oppose the notice of disqualification, the well was disqualified and ceased to be eligible for the section 108 price as of the last day of the disqualifying period.

On November 25, 1980, the Commission issued an interim rule in this docket amending § 271.805. (45 FR 80273, December 4, 1980.) Under the interim rule, a motion or petition filed within the 30-day period still permits the operator to continue to collect the section 108 price after the last day of the disqualifying period. However, failure to file timely does not permanently deprive the operator of the right to collect this price; it merely terminates the operator's right to collect the section 108 price from the last day of the disqualifying period until the date the motion or petition is later filed.

II. Comment Analysis

In the interim rule, the Commission requested interested persons to submit comments.[2] Two comments were received.

A. *Extension of the 30-day period for filing motion or petition opposing the disqualification.* One commenter suggests that the 30-day period for filing be extended to 60 or 90 days in order to provide small producers sufficient time, in view of their manpower constraints, to prepare and file the motion or petition. The commenter argues that, particularly in the case of small producers, it is important that they are able to make a timely filing to protect their right to collect the section 108 price.

The Commission agrees with the commenter that small producers who have limited manpower may not be able to file within the 30-day period. In view of such limitation, the Commission agrees to extend by 30 days the time within which to file the appropriate pleading and clarifies as discussed below when that period shall run.

The Commission is aware that some operators are confused as to the date the notion or petition must be filed in the event the notice of disqualification is filed late. Operators have applied the rule in § 271.805 as if the running of the filing period were contingent on the date the notice of disqualification was actually served regardless of whether it is timely filed. This does not comport with the Commission's intention that both the notice of disqualification and the operator's motion or petition be filed within fixed time periods after the last date of the disqualifying production period. The Commission believes that the confusion about the date for filing the operator's motion or petition will be eliminated if the filing date for the operator's motion or petition were fixed a certain period of time after the last day of the disqualifying period, rather than after the date the notice of disqualification is served. With the additional 30 days provided herein, the total period is 150 days. As revised herein, § 271.805 now requires that the operator file the motion or petition within 150 days after the last day of the disqualifying period in order to continue to collect the section 108 price. If the operator fails to file within that period, the right to collect the stripper well price terminates on the last day of the disqualifying period until the date the filing is made.

B. *Filing of Notice of Disqualification.* Another commenter supports the interim rule but suggests with regard to the filing of the notice of disqualification that the Commission should place less burden on the purchasers than on the operators for filing such notice. The commenter asserts that in many circumstances the purchaser cannot know the exact production of every stripper well connected to the line without inquiring of the operator. The commenter suggests that language be added to § 271.805 to require that the purchaser file the notice only if it acquires pertinent information in the ordinary course of business.

The Commission has previously considered and rejected the commenter's argument when final regulations were issued for section 108 in Order No. 44, Docket No. RM79–73. (44 FR 49656, August 24, 1979.) In the preamble to Order No. 44, the Commission stated that both the operator and the purchaser are obligated to report any increase in gas production above the prescribed production limitation. Thus, both the operator and pipeline must monitor the production in order to make the necessary report when overproduction occurs. The commenter did not present any new information that would persuade the Commission to reconsider its prior decision in Order No. 44.

III. Summary of Amendments to the Regulations

Section 271.805(c) is amended to provide that the operator must file a motion or petition to oppose disqualification within 150 days of the last day of the 90-day or 12-month disqualification production period in order to continue to collect the section 108 price from the last day of the disqualifying period.

Section 271.805(d) is amended to conform with revised § 271.805(c).

IV. Effective Date

This final rule relieves restrictions previously placed on applicants under the Commission's regulations and therefore the 30-day notice requirement of section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), is waived. The Commission promulgates as final the amendments set forth below effective November 16, 1981.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301–3432); Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*); E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, and issues such amendments as final rules effective November 16, 1981.

[1] Another circumstance the Commission has recognized as causing unnecessary disqualification and requalification of stripper wells is overproduction caused by temporary shut-in of the well. On January 15, 1981, the Commission issued for public comment an interim rule which permits a well to continue to qualify for stripper status even though it experiences overproduction as a result of being temporarily shut-in. (46 FR 6901, January 22, 1981.)

[2] The Commission invited requests for a public hearing but no requests were received. Therefore, no public hearing was held.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.805 is revised to read as follows:

§ 371.805 Continuing qualification.

(a) *Notice of disqualification.* (1) Unless exempt under § 271.804(d)(3), the operator and any purchaser of natural gas shall give written notice if:

(i) A well for which an application has been filed under this subpart or a determination has been made under this subpart produces natural gas at a rate exceeding an average of 60 Mcf per production day for any 90-day production period; or

(ii) A well which has been designated a seasonally affected well produces natural gas at an average rate in excess of 60 Mcf per production day for any 12-month period.

(2) Notice required under paragraph (a)(1) of this section shall be given within 90 days after the last day of the 90-day or the 12-month production period in which the increased production of natural gas occurred.

(3) Such notice shall be served on the jurisdictional agency and the Commission, and on the operator and any purchaser, as appropriate. Except as provided in paragraph (d) of this section, such notice shall terminate the right of any seller to continue the collection of the maximum lawful price set forth in § 271.802 for natural gas produced from the well identified in the notice.

(b) *Petition under § 271.806.* (1) The operator may file with the jurisdictional agency:

(i) A motion contesting a notice filed by a purchaser under paragraph (a) of this section;

(ii) A petition for a determination under § 271.806 that the increased production of natural gas is:

(A) The result of the application of an enhanced recovery technique;

(B) If the well has not been designated as seasonally affected, the result of seasonal fluctuations; or

(C) The result of pressure buildup which occurred when the well was temporarily shut-in.

(2) A petition or motion filed under paragraph (b)(1) of this section may be filed at any time after notice is given under paragraph (a) of this section. A copy of the petition or motion and of the notice required under paragraph (a)(1) of this section shall be provided to the Commission and to the purchaser.

(c) *Effect of notice.* If notice is served pursuant to paragraph (a) of this section, the well to which such notice applies shall immediately be disqualified as a stripper well and the right of any seller to collect the maximum lawful price set forth in § 271.802 shall terminate subject to paragraph (d) of this section as of the last day of the 90-day or the 12-month production period described in the notice unless within 150 days of the last date of such 90-day or 12-month production period the operator files a petition or motion with the jurisdictional agency as provided in paragraph (b) of this section.

(d) *Collection subject to refund.* An operator who files a petition or motion under paragraph (b) of this section may collect, subject to refund, the maximum lawful price set forth in § 271.802: (1) From the last day of the 90-day or the 12-month production period to which the notice applies, if such petition or motion is filed within 150 days of the last day of such 90-day or 12-month production period or (2) from the date such petition or motion is filed in all other cases.

(e) *Filing requirements for increased production based on enhanced recovery techniques.* If subsequent to the filing of a petition it is determined that the increase in production of natural gas is the result of recognized enhanced recovery techniques, neither the operator nor the purchaser shall be obligated to report average production levels above 60 Mcf per day during any 90-day production period unless there is an increase in production resulting from causes other than use of recognized enhanced recovery techniques determined to have been used.

[FR Doc. 81-33656 Filed 11-23-81; 8:45 am]

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18 CFR Part 282

Incremental Pricing

[Docket No. RM81-17; Order No. 189]

Definition of Agricultural Use

Issued: November 16, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission by this rule amends the definition of "agricultural use" in § 282.202(a)(1) of the Commission's incremental pricing regulations. (18 CFR Part 282). Section 282.202(a)(1) lists agricultural uses of natural gas that are exempt from incremental pricing. The amendment adds other products and processes to the list of processes that are already exempt from incremental pricing surcharges.

DATE: This rule is effective November 16, 1981.

FOR FURTHER INFORMATION CONTACT:

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Alice Fernandez, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-357-9095.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is amending its regulations on incremental pricing (18 CFR Part 282) under Title II of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432). Specifically, the list of agricultural uses of natural gas set forth in § 282.202(a)(1) that are exempt from incremental pricing surcharges is amended by the addition of products and processes.

I. Background

Title II of the NGPA requires the Commission, within certain guidelines, to institute and administer an incremental pricing program. The program is designed to pass through, by surcharge, a portion of the increases in the wellhead prices of natural gas allowed under Title I of the NGPA to certain industrial facilities that use natural gas as a boiler fuel. Pursuant to section 206(b)(1) of the NGPA, however, incremental pricing does not apply to any "agricultural use" of natural gas. Section 206(b)(3) defines "agricultural use" as follows:

> (3) Agricultural Use Defined.—For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—
>
> (A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, or crop drying; or
>
> (B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

The statutory term "agricultural use" has been defined in § 282.202(a)(1) of Part 282 of the Commission's regulations (18 CFR Part 282) through Commission action in several rulemaking dockets. The term is defined by a list of industrial products and processes including references to Standard Industrial Classification Codes (SIC codes) where applicable.

In Docket No. RM79-14, the Commission proposed the definition of "agricultural use". The proposed

definition listed certain uses of natural gas that were certified by the Secretary of Agriculture as "essential agricultural uses" pursuant to section 401 of the NGPA.[1] In the final rule, the Commission expanded this list to include the processing and finishing of natural fiber by the textile industry [2] and, on rehearing of the final rule, added wood processing.[3]

Subsequently, rulemaking dockets were opened to consider petitions that requested the Commission to add other products and processes to the agricultural uses listed in § 282.202(a)(1). In Order No. 114 issued in Docket No. RM80–48,[4] the Commission added the following products and processes to the list: the manufacture of hardboard, man-made cellulosic fibers, food preservative butylated hydroxanisole, food-grade waxes (food containers), metal shipping containers (food related), naturally occurring vitamins, the processing of cotton linters, and wood preserving.

In this docket, the Commission is considering a broad range of uses submitted in petitions and as comments to the rulemaking. The Commission issued a Notice of Proposed Rulemaking on April 20, 1981 (46 FR 23487, April 27, 1981) to consider a petition filed by Peter Cooper Corporations (Peter Cooper), which would amend § 282.202(a)(1) to include the manufacture of glue, gelatin, and nitrogenous fertilizer, and a request filed by Hercules Incorporated (Hercules) for an interpretation that § 282.202(a)(1) includes the manufacture of carboxy methyl cellulose (CMC).[5]

[1] Proposed Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–14, issued June 5, 1979 (44 *Fed. Reg.* 33090, June 8, 1979). See also Docket No. RM80–75, Interim Rule, issued October 6, 1980 (45 *Fed. Reg.* 67276, October 9, 1980); Order granting partial stay, issued October 23, 1980 (45 *Fed. Reg.* 76681, November 20, 1980); Order amending stay, issued April 23, 1981 (46 *Fed. Reg.* 25599, May 8, 1981).

[2] Docket No. RM79–14, Order No. 49, issued September 28, 1979 (44 FR 57726, October 5, 1979).

[3] Docket No. RM79–14, Order No. 49–A, issued December 27, 1979 (45 FR 767, January 3, 1980).

[4] Docket No. RM80–48, Notice of Proposed Rulemaking issued April 10, 1980 (45 FR 25825, April 16, 1980); Final Rule (Order No. 114), issued December 5, 1980 (45 FR 82915, December 17, 1980); Order No. 114–A, issued January 29, 1981 (46 FR 11812, February 11, 1981).

[5] Commission Staff advised Hercules that it would be necessary to amend the regulations to include a SIC code to cover such manufacture since § 282.202(a)(1) could not be construed to cover Hercules' manufacture of CMC. Hercules agreed that its request for interpretation should be treated as a request for a rulemaking and included in this docket.

II. Summary of Comments

Fifteen comments [6] were received in this docket. All but one of the commenters either supported the Commission's proposal as issued or recommended that other industrial products or processes be added.

The Commission may add other uses to § 282.202(a)(1) if they satisfy one of the categories of agricultural uses in NGPA section 206(b)(3). Most of the commenters relied on one or more of four categories described in section 206(b)(3)(A) (*i.e.* agricultural production, natural fiber processing, food processing, and food quality maintenance) to describe their products or processes. In addition to glue, gelatin, and carboxy methyl cellulose proposed in the notice, this rulemaking considers the following uses suggested by the commenters:

- The production of nitrogenous fertilizer from tankage (this process was considered in the notice and the Commission requested additional information about the process)
- The production of cross-linked sodium carboxy methyl cellulose from wood pulp and processed cotton linters
- The dyeing and finishing of man-made fibers
- The production of fatty chemicals
- The production of gum and wood chemicals
- The production of metal crowns and closures
- The production of monosodium glutamate
- The production of food-grade and animal feed salt
- The processing of guar beans
- The production of fuel-grade alcohol

A. Uses Considered in the Proposal—Production of Glue, Gelatin, Nitrogenous Fertilizer, and Carboxy Methyl Cellulose.

Gelatin. In the April 20th notice, the Commission proposed to amend the definition of agricultural use in § 282.202(a)(1)(iii) to include under SIC Code 2899[7] the production of gelatin from animal hides by natural fiber processing but solicited comments that would detail the stages in the production of gelatin so that it could determine whether the animal hides are converted to some intermediate material before being converted to gelatin. If there were an intermediate product, not all of the stages of the process would qualify as natural fiber processing.

One company that produces gelatin submitted comments demonstrating that there is no stage in the process at which an intermediate finished product exists. Comments filed by the Department of Agriculture support the producer's conclusion.

The Commission believes, in view of these comments and information submitted in the petition filed by Peter Cooper, that the processing of gelatin from animal hides represents a series of closely-linked steps in the conversion of the hides to gelatin and concludes that all of the stages of such process are natural fiber processing. Accordingly, the Commission amends § 282.202(a)(1)(iii) to include SIC code 2899 for this process.

One commenter (a producer of gelatin) also asserted that the production of gelatin is a food processing use because the gelatin it produces is an ingredient in the production of gelatin desserts. Since the Commission has decided to exempt the natural gas used in the production of gelatin as natural fiber processing, if is not necessary to reach the food processing question.

Glue. Commenters supported the proposal to amend § 282.202(a)(1)(iii) to include the production of glue under SIC Code 2891 because it involves the processing of animal hides and, as such, qualifies as natural fiber processing. The Commission, again, solicited comments that detail the stages in the production of glue so it could determine which stages would quality as natural fiber processing. In response to the Commission's inquiry, a commenter demonstrated that production of glue, like gelatin, involves no intermediate finished product of the animal hides. The Department of Agriculture supported that conclusion.

For the same reason expressed above regarding gelatin, the Commission concludes that the entire process for producing glue from animal hides is natural fiber processing. The Commission, therefore, amends § 282.202(a)(1)(iii) to include SIC Code 2891 for the production of glue from animal hides.

Nitrogenous Fertilizer. In the April 20th notice, the Commission did not propose to include nitrogenous fertilizer that is derived from tankage, a product

[6] Comments were filed in this docket by the Department of Agriculture, Peter Cooper, Hercules, Buckeye Cellulose Corporation, Humko Chemical, Reichhold Chemicals, Inc., Glass Packaging Institute, Stauffer Chemical Corporation, Morton Salt, W. R. Grace & Co., Kokomo Gas Company, the Fertilizer Institute, Celanese Plastics and Specialties Company, and Peoples Gas Light and Coke Company. An informal public hearing was held on Tuesday, June 9, 1981. The Association of Jigg Dyers presented an oral statement at the hearing but did not file written comments.

[7] SIC Code 2899 is presently listed as an exempt use, but is limited to "chemical cotton-processed cotton linters only"

of the processing of animal hides.[8] The Commission, however, requested comments on the natural fiber processing use and its preliminary conclusion that tankage is not substantially comprised of natural fiber.

Regarding the natural fiber processing use, one commenter demonstrated that tankage is comprised of 90 percent animal hair and its presence is essential to the production of nitrogenous fertilizer.

Based upon the information submitted by this commenter and the Department of Agriculture, the Commission now concludes that tankage consists substantially of a natural fiber, animal hair, and that the processing of tankage into nitrogenous fertilizer is natural fiber processing rather than merely the processing of a residue of the natural fiber. Accordingly the Commission amends its regulation in § 282.202(a)(1)(iii) to include SIC Code 2873 for the production of nitrogenous fertilizer from natural fiber.

Carboxy methyl cellulose. The Commission proposed to include the production of carboxy methyl cellulose (CMC) from wood pulp as natural fiber processing but requested comments on whether the production of CMC from processed cotton linters is also natural fiber processing.

During a public hearing held on Tuesday, June 9, 1981 in this docket one commenter that produces CMC demonstrated the similarities in the production of CMC from processed cotton linters and the production of rayon, acetate, and tri-acetate from wood pulp already approved for inclusion in § 282.202(a)(1)(iii) in Order No. 114.[9] The commenter explained, at the hearing, that the first stage in the production of rayon, acetate, and tri-acetate and CMC involves the separation of wood and cotton linters from their organic binders (lignins and rosins) and that the second stage involves only the modification of the cellulose molecules to give the respective end products their desired characteristics.[10]

Another commenter made the same recommendation for CMC and further recommended that the production of cross-linked carboxy methyl cellulose (CLD–2) from processed cotton linters and wood pulp be included in § 282.202(a)(1)(iii) as natural fiber processing. That commenter explained that the CLD–2 produced from wood pulp and processed cotton linters involves similar processing steps and the same ingredients, except in different molecular ratio, as those involved in the production of CMC. In the processing of CLD–2, the first step involves the separation of the cellulose fibers from organic binders and the second step involves a modification of the cellulose fibers, albeit a different modification than in the production of CMC, to give the fibers the desired properties.

Based upon these comments, the Commission concludes that processed cotton linters are natural fiber.[11] This finding is consistent with the Commission's determination in Docket No. RM80–48, that the processing of wood pulp is natural fiber processing. Therein, the Commission stated, "the manufacture of cellulosic man-made fibers (SIC Code 2823) involves the processing of pulp (cellulose), a fibrous substance derived from wood, into man-made fibers such as rayon, acetate, and tri-acetate." The Commission concludes, here, that processed cotton linters, a fibrous substance derived from cotton, are natural fiber.

Based upon this finding, the Commission concludes that the production of CMC from processed cotton linters and CLD–2 from wood pulp and processed cotton linters are natural fiber processing. The Commission amends its regulation in § 282.202(a)(1)(iii) to include SIC Code 28697 for CMC and CLD–2 produced from wood pulp and processed cotton linters.

Argument Against Including Proposed Uses

One commenter argued that none of the proposed processes (glue, gelatin, and CMC) qualifies as an agricultural use because each involves the processing of a residue of natural fiber, rather than the natural fiber itself.

The Commission disagrees with the commenter's statement. The Commission has included uses of natural gas in the category of natural fiber processing if it is demonstrated that they involve the processing of natural fiber. In Order No. 114, the Commission determined that the production of man-made fibers, rayon, acetate, and tri-acetate, from wood pulp or cotton linters, involves the processing of natural fibers. These processes isolate cellulose, a natural fiber, from the wood pulp or cotton linters and then chemically treat the cellulose fibers. The same process is used to produce CMC and is similar to the processing of glue and gelatin, being considered in this rulemaking. Each of these processes qualifies as natural fiber processing because each involves the processing of a natural fiber whether it be animal hides, cotton linters, or wood pulp.

B. Additional Uses Suggested by Commenters

Dyeing and Finishing of Man-Made Fibers. One commenter requested that the Commission exempt the use of natural gas to process, by dyeing and finishing, rayon, acetate, and tri-acetate on the basis that it is natural fiber processing.

In Order No. 114, the Commission exempted from the incremental pricing surcharge natural gas that is used in the production of man-made, cellulosic fibers. The Commission based the exemption on the finding that the production of man-made, cellulosic fibers is natural fiber processing. In that order, the Commission also considered the extent to which the further processing of the man-made fibers is also an agricultural use but determined that such processing did not constitute natural fiber processing. The commenter did not present any new information at the June 9th hearing that would lead the Commission to reconsider its decision in Order No. 114 regarding the further processing of cellulosic, man-made fibers. Therefore, the Commission declines to exempt the use of natural gas to process rayon, acetate, and tri-acetate.

Processing of agricultural products and agricultural by-products into fatty chemicals that are used in food, textile and pharmaceutical products. One commenter requested the Commission to expand the list of agricultural uses in § 282.202(a)(1)(iii) to include the processing of agricultural products and by-products into fatty chemicals, particularly fatty acids. The commenter asserted that its conversion of raw materials to fatty chemicals is both agricultural production and natural fiber processing and that its products are essential to food quality maintenance and food processing.

Fatty chemicals are produced by the commenter from raw materials, including tallow, tall oils, fish oils, and

[8] One company that produces nitrogenous fertilizer stated that its use of natural gas to produce nitrogenous fertilizer should be exempt as an "agricultural use" under section 206(b)(3)(A) of the NGPA because it uses natural gas as boiler fuel and not as process fuel or feedstock under section 206(b)(3)(B).

[9] See note 4 *supra*.

[10] Rayon, acetate, and tri-acetate are the ester derivatives of cellulose and an acetic acid radical. CMC is the ether derivative of cellulose and a chloro-acetic acid radical.

[11] One commenter stated inaccurately that the Commission has already determined in Order No. 114, Docket No. RM80–48, that processed cotton linters are natural fibers. In that order, the Commission determined that cotton linters are natural fibers but did not make the same finding for processed cotton linters.

vegetable oils.[12] These raw materials are transformed into fatty acids by hydrogenation (the addition of hydrogen atoms to the molecules), splitting in a continuous pressure-splitting tower, and distillation.

The Commission has previously rejected a request to have the above-described processes categorized as agricultural uses on the basis that they are not food processing and natural fiber processing. In Docket No. RM80–48, the Commission stated that:

> The described processes are too far removed from the food chain to qualify as agricultural uses. Although the raw materials which are processed may be agricultural in nature, the processing of these materials does not constitute "food processing" or "natural fiber processing".

In view of its prior decision and the fact that no new information has been submitted, the Commission rejects the present request to have these processes included in § 282.202(a)(1) as food processing, natural fiber processing, and agricultural production.

The commenter also made an additional argument, not considered in Order No. 114, that a small percentage of its products are used as food additives and as such are used in food quality maintenance. However, the products that are included in the food quality maintenance category of § 282.202(a)(1) are essentially food-related packages and containers made from metal, glass, and plastic. The only chemical included in § 282.202(a)(1) is butylated hydroxyanisole (BHA), a well-known food preservative, approved for the category of food quality maintenance in Order No. 114. The fatty acids that the commenter produces, unlike BHA, are not food preservatives. Rather, as described by the commenter in comments filed in Docket No. RM80–48, they belong to "a class of products known as chemical intermediates * * * which are used by other chemical processers in producing plastics, lubricants, detergents, food emulsifiers, pharmaceuticals, and textiles."[13]

The Commission concludes that fatty chemicals do not preserve the quality of food but are chemical intermediates in the processing of food additives which may or may not contribute to food quality maintenance. Therefore, the Commission rejects the request to include these products in § 282.202(a)(1).

Production of rosin, turpentine, resins, and fatty acids. One commenter requested that the Commission expand the list in § 282.202(a)(1)(iii) to include SIC Code 2861 for the production of rosin, turpentine, resins, and fatty acids. The commenter stated that its production of such substances involves the processing of wood and constituent elements of wood into intermediate and end products and, therefore, is natural fiber processing. In one of its operations, the commenter processes wood stumps mechanically and chemically into wood chips and then processes the wood chips further by mixing the chips with petroleum solvents to produce rosin, turpentine, and pine oil.

The Commission believes that the processing of wood by mechanical and chemical means is natural fiber processing and that the natural gas used in these processes should be exempt from incremental pricing surcharges. The Commission amends § 282.202(a)(1)(iii) to include SIC Code 2861 for the processing of wood into rosin, turpentine, and pine oil.

In other operations, the commenter upgrades rosin and turpentine into paper "sizes", a substance that is sold to paper mills, and into various types of resins sold for use by others in the production of chewing gum, food-grade beverages, container coatings, and adhesives. Tall oil, a soap derived from wood supplied by pulp mills, is also processed, by distillation, into rosin, fatty acids, and paper "sizes".

The Commission rejects the request to include the processing of tall oil, rosin, and turpentine as natural fiber processing because none of these products is fibrous in nature or could be considered a natural fiber.[14]

Manufacture of metal crowns and closures. One commenter requested that the Commission include the manufacture of metal crowns and closures, such as bottle caps and jar tops for food containers, in the list of agricultural uses in § 282.202(a)(1)(ii). This use was certified by the Secretary of Agriculture as an "essential agricultural use". (45 FR 5297, January 23, 1980.)

The Commission has already included manufacture of "food-related metal cans, glass jars, and paper cartons" in § 282.202(a)(1)(iii) under food quality maintenance. Based upon consideration of the Secretary's determination and the comments filed in this docket, the Commission believes that metal crowns and closures that are part of the food container in its final form are essential for maintaining the quality of the enclosed food. The Commission amends § 282.202(a)(1)(ii) to include the manufacture of metal crowns and closures as an agricultural use of natural gas.

Monosodium glutamate. One commenter requested that the Commission expand § 282.202(a)(1)(iii) to include SIC Code 2869 for the production of monosodium glutamate (MSG) because it constitutes food processing. The commenter manufactures MSG from molasses by mixing the molasses with ammonia, sodium hydroxide, and trace nutrients and harvesting and refining the resulting culture by adding hydrochloric acid and sodium hydroxide to produce MSG. MSG is sold to food processers who use it in canned and prepared foods; it is also sold in food stores as a food flavor enhancer.

The Commission concludes that the production of MSG is food processing within the meaning of agricultural use in § 282.202(a)(1)(iii). MSG is a food seasoning akin to spice (SIC Code 2099) that is already exempt from incremental pricing surcharges as food processing. The Commission concludes that the production of MSG should also be included in the regulations as food processing. Accordingly, the Commission amends § 282.202(a)(1)(iii) to include SIC Code 2869 for MSG only.

Food-grade salt for human consumption only. A commenter requested that the Commission include in the regulations the processing and production of salt for food for human consumption and for animal feed.

The Commission concludes, for the same reasons as stated in its discussion of MSG, that food-grade salt for human consumption is a food seasoning, akin to a spice, and its production qualifies as food processing. Accordingly, the Commission amends § 282.202(a)(1)(iii) to include SIC Code 2899 for food-grade salt for human consumption only.

The boiler fuel use of natural gas in the production of feed-grade salt is not an agricultural use. Section 206(b)(3)(B) of the NGPA limits the agricultural use of natural gas for animal feed production to the process or feedstock use of the gas.[15]

[12] Tallow is the rendered fat from cattle; tall oils are a by-product of wood pulp. Fish oils are derived from herring or menhaden. Vegetable oils are derived from rapeseed, crude soya, crude coco, and palm oil.

[13] The fact that such fatty chemicals are chemical intermediates is supported by a statement the commenter made in an application for adjustment, Docket No. SA80–72, wherein the applicant stated that it produces stearic acid that is further processed by others into stearic lactate, a food emulsifier, that is used in the baking industry.

[14] The processing of tall oil into fatty acids has previously been rejected by the Commission in Order No. 114.

[15] However, the Commission notes that a rule exempting this use was recently issued in Docket No. RM80–18 (46 *Fed. Reg.* 50060, October 9, 1981). The rule provides an exemption from incremental pricing for natural gas used as boiler fuel for the

Continued

Processing of guar beans. A commenter requested that SIC Code 2899 be expanded to include processing of guar beans as natural fiber processing on the basis that the processing of guar beans is analogous to the processes already included in § 282.202(a)(1) such as cotton ginning, leather tanning and finishing, and the processing of wood pulp and cotton linters. The commenter explained that guar beans are processed into a powder-like form for use in a large variety of applications as a gelling and thickening agent.

When the Commission considers whether a process is "natural fiber processing", it considers whether the material to be processed is fibrous in nature. The Commission believes that the processing of guar beans is not like the processing of cotton linters, which are the fibers adhering to the seeds after ginning, but is the processing of a non-fibrous substance. Therefore, the Commission concludes that the commenter's request for exemption should be denied as the processing of guar beans does not constitute the processing of a natural fiber.

Production of fuel-grade alcohol. One natural gas distributor requested that new plants using natural gas for processing grain into fuel-grade alcohol be exempted from incremental pricing surcharges. This comment would be properly considered in Docket No. RM80-64.[16] Therefore, the Commission will make the comment a part of the record in that docket.

III. Summary of Amendments to the Regulations

For the reasons stated above, the Commission amends § 282.202(a)(1)(ii) and (iii) of its regulations wherein agricultural uses exempt from incremental pricing are listed by adding the following uses:

1. In § 282.202(a)(1)(ii) under Food Quality Maintenance—Food Packaging, "3466 Metal Crowns and Closures (food related only)".

2. In § 282.202(a)(1)(iii) under Food Processing:

(a) "SIC Code 2869 Industrial Organic Chemicals, not elsewhere classified (monosodium glutamate only)"; and

(b) "SIC Code 2899 Chemicals and Chemical Preparations, not elsewhere classified (food-grade salt only)".

3. In § 282.202(a)(1)(iii) under Natural Fiber Processing:

(a) "SIC Code 2861 Gum and Wood Chemicals (the production of rosin, turpentine and pine oil from wood stumps and wood chips only)";

(b) "SIC Code 28697 Miscellaneous Acyclic Chemicals and Chemical Products, Excluding Urea (the production of carboxy methyl cellulose from wood pulp and processed cotton linters only; the production of cross-linked sodium carboxy methyl cellulose from wood pulp and processed cotton linters only)";

(c) "SIC Code 2873 Nitrogenous Fertilizer (the production of nitrogenous fertilizer from tankage substantially consisting of natural fiber)".

(d) SIC Code 2891 "the production of glue from animal hides, natural fiber processing only".

(e) SIC Code 2899 is expanded to include "the production of gelatin from animal hides, natural fiber processing only".

The amendments adopted in this final rule allow an exemption for the subject uses until such time as the Commission promulgates a rule pursuant to section 206(b)(2) of the NGPA, determining that an alternative fuel is economically practicable and reasonably available for such agricultural uses or users. All of the exemptions encompassed by § 282.202(a) will become subject to the provisions of such a rule upon its effective date. (*See* 18 CFR 282.203(b).)

IV. Effective Date

This rule grants exemptions from incremental pricing surcharges for certain products and processes described above. Because an exemption is granted by this rule, the 30-day publication prescribed by section 553(d)(1) of the Administrative Procedures Act, 5 U.S.C. 553, is not required before the rule becomes effective. Accordingly, this rule is effective November 16, 1981. However, no user can obtain an exemption provided by this rule until the user files an affidavit in accordance with the Commission's regulations in § 282.204. The effective date of such exemption affidavit is set forth in § 282.204(d)(7).

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission revises § 282.202(a)(1)(ii) and (iii) of Part 282, Subchapter I, Chapter I, Title 18, Code of Federal Regulations, as set forth below effective November 16, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 282—INCREMENTAL PRICING

Section 282.202(a)(1) is amended by revising subdivision (ii) and (iii) as follows:

§ 282.202 Definitions.

(a)(1) "Agricultural use" means: * * *

(ii) any use of natural gas certified by the Secretary of Agriculture after October 15, 1979, if the Commission issues an order adopting such certification pursuant to the provisions of paragraph (a)(2) of this section and lists such use below:

Industry SIC No. and Industry Description
Food Quality Maintenance-Food Packaging
3412 Metal Shipping Barrels, Drums, Kegs, and Pails (food related only).
Petroleum wax, synthetic petroleum wax, and polyethylene wax (food grade only) as food containers.
3466 Metal Crowns and Closures (food related only).

(iii) any use of natural gas determined by the Commission to be an agricultural use and listed below: *Provided,* That, the use of such natural gas in textile operations is limited as set forth below to the production or processing of natural fiber:

Industry SIC No. and Industry Description
Food Processing
28332 21 Naturally occurring vitamins.
2869 Industrial Organic Chemicals, not elsewhere classified (monosodium glutamate only).
2899 Chemicals and Chemical Preparations, not elsewhere classified (food-grade salt only).
Natural Fiber Processing
221 Broad Woven Fabric Mills, Cotton.
222 Broad Woven Fabric Mills, Man-made Fiber and Silk (natural fiber processing only).
223 Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing).
224 Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-made Fiber (natural fiber processing only).
2257 Circular Knit Fabric Mills (natural fiber processing only).
2258 Warp Knit Fabric Mills (natural fiber processing only).
226 Dyeing and Finishing Textiles, Except Wool Fabrics and Knit Goods (natural fiber processing only).
228 Yarn and Thread Mills (natural fiber processing only).
2291 Felt Goods, Except Woven Felts and Hats (natural fiber processing only).

production of fertilizer, agricultural chemicals, animal feed and food pursuant to section 206(d) of the NGPA. This is not an "agricultural use" exemption but rather a special exemption promulgated under the Commission's authority to establish additional categories of exemptions, subject to Congressional review.

[16] Exemption from Incremental Pricing for Distillers Who Produce Fuel-Grade Alcohol Blended to Form Gasohol, Notice of Proposed Rulemaking, issued June 9, 1980 (45 *Fed. Reg.* 40617, June 16, 1980).

2293 Paddings and Upholstery Filling (natural fiber processing only).
2294 Processing Waste and Recovered Fibers and Flock (natural fiber processing only).
2295 Coated Fabric, Not Rubberized (natural fiber processing only).
2297 Nonwoven Fabrics (natural fiber processing only).
2299 Textile Goods, Not Elsewhere Classified (natural fiber processing only).
2421 Sawmills and Planing Mills, General.
2435 Hardwood Veneer and Plywood.
2436 Softwood Veneer and Plywood.
2491 Wood Preserving.
2492 Particle Board.
24996 Hardboard, tempered and untempered.
2611 Pulp Mills.
2621 Paper Mills, Except Building Paper Mills.
2631 Paperboard Mills.
2661 Building Paper and Building Board Mills.
2823 Cellulosic Man-Made Fibers.
2861 Gum and Wood Chemicals (the production of rosin, turpentine, and pine oil from wood stumps and wood chips only).
28697 Miscellaneous Acyclic Chemicals and Chemical Products, Excluding Urea (the production of carboxy methyl cellulose from wood pulp and processed cotton linters only; the production of cross-linked sodium carboxy methyl cellulose from wood pulp and processed cotton linters only).
2873 Nitrogenous Fertilizer (the production of nitrogenous fertilizer from tankage, natural fiber processing only).
2891 Adhesives and Sealants (the production of glue from animal hides, natural fiber processing only).
2899 Chemicals and Chemical Preparations, not elsewhere classified (chemical cotton-processed cotton linters and the production of gelatin from animal hides, natural fiber processing only).

[FR Doc. 81-33854 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

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

Correction

In FR Doc. 81-28241, on page 47533, in the issue of Tuesday, September 29, 1981, the last column, correct the part heading for Part 81 to read as follows:

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

BILLING CODE 1505-01-M

21 CFR Part 145

[Docket No. 78P-0429]

Canned Pineapple; Amendment of Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the U.S. standards of identity and quality for canned pineapple to redesignate as "small cubes" or "dice" the style of pineapple currently referred to as "cubes" or "dice" and to provide for an additional optional style of canned pineapple designated as "large cubes." This action will promote honesty and fair dealing in the consumers' interest and will facilitate international trade.

DATES: Effective July 1, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance: January 25, 1982. Objections by December 24, 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: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 29, 1980 (45 FR 13474), FDA issued a proposal to amend the U.S. standards of identity and quality for canned pineapple (21 CFR 145.180 (a) and (b)) to redesignate as "small cubes" or "dice" the style of pineapple now designated as "cubes" or "dice" and to provide for an additional optional style of canned pineapple designated as "large cubes." The proposal was based on a petition by the Malaysian Pineapple Industry Board (MPIB), Ministry of Primary Industries of Malaysia, submitted through the Embassy of Malaysia, 2401 Massachusetts Avenue NW., Washington, D.C. 20008. Comments were received from the Pineapple Growers Association of Hawaii (PGAH) in opposition to the proposal. Comments also were received from the MPIB in response to the PGAH comments.

PGAH contends that the style "large cubes" is not a meaningful style in this country or around the world because it has not been recognized as such in the Recommended International Standard for Canned Pineapple (Codex standard) developed by the Codex Alimentarius Commission. PGAH believes that the style "large cubes" complies with the U.S. standard of identity for "chunks" and that another style is unnecessary.

Conversely, MPIB asserts that "large cubes" are distinctly different from "chunks" because they consist of reasonably uniform cube-shaped pieces. "Large cubes" are cut from the whole fruit, whereas "chunks" are cut from thick slices. To cut "large cubes" the ends of the pineapple are sliced off, and four vertical side cuts are made. The rectangular-shaped pineapple is sliced into "large cubes," with six planar surfaces as opposed to four planes and two curved surfaces for "chunks." MPIB also stated that despite the fact that the style "large cubes" has been omitted from the Codex standard, it is an internationally recognized style. Countries said to have accepted "large cubes" include the United Kingdom, Japan, New Zealand, and Germany. MPIB asserts that to label "large cubes" as "chunks" would not promote honesty and fair dealing in the consumers' interest.

FDA agrees that the pineapple cubes produced in Malaysia could conform to the dimension requirements for "chunks." However, FDA points out, as stated in the preamble to the proposal, that "chunks" are rectangular-shaped pieces of pineapple. Further, pieces of a style designated as "cubes" would be expected to have six planar surfaces, while pieces of the "chunks" style, commonly sold in the United States, have two curved and four planar surfaces, two of the opposing planar surfaces being nonparallel. The pieces of pineapple defined in the Malaysian petition are specified as cube-shaped. Therefore, FDA concludes that "large cubes," as defined by the Malaysian petition, are not "chunks" and that "large cubes" is an appropriate name for this cube-shaped style of canned pineapple.

After publication of this proposal, FDA issued final regulations amending the standards of identity and quality for canned pineapple (44 FR 40276; June 10, 1979 and 45 FR 43391; June 27, 1980). FDA is redesignating in § 145.180(a)(2)(viii) (21 CFR 145.180(a)(2)(viii)), as set forth below, the style of pineapple referred to as "cubes" or "dice" as "small cubes" or "dice" and adopting an additional optional style

designated as "large cubes" in § 145.180(a)(2)(xi), as set forth below. "Large cubes" are defined as consisting of reasonably uniform, cube-shaped pieces, longer than 14 millimeters (0.55 inch) along any edge, but predominately 25 millimeters (1 inch) or less in the longest edge dimensions. Further, FDA is requiring in § 145.180(b)(1)(ii)(*g*)(*2*) (proposed as § 145.180(b)(1)(ii)(*b*)), as set forth below, that not more than 15 percent of the drained weight consists of pieces weighing more than 3 grams (0.11 ounce) each for small cubes and 18 grams (0.63 ounce) each for large cubes.

After considering the comments received and other relevant information, FDA concludes that it will promote honesty and fair dealing in the interest of consumers and facilitate international trade to amend the standards of identity and quality for canned pineapple as set forth below.

PART 145—CANNED FRUITS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) 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 145 is amended by revising paragraphs (a)(2)(viii) and (b)(1)(ii)(*g*) and by adding new paragraph (a)(2)(xi), to read as follows:

§ 145.180 Canned pineapple.

(a) * * *

(2) * * *

(viii) *Small cubes or dice*—consisting of reasonably uniform cube-shaped pieces, predominately 14 millimeters (0.55 inch) or less in the longest edge dimensions.

* * * * *

(xi) *Large cubes*—consisting of reasonably uniform, cube-shaped pieces, longer than 14 millimeters (0.55 inch) along any edge, but predominately 25 millimeters (1 inch) or less in the longest edge dimensions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*g*) *Cubes.* (*1*) Not more than 10 percent of the drained weight of the contents of the container consists of pieces that will pass through a screen with square openings of 8 millimeters (0.31 inch) in the case of the small cubes or large cubes.

(*2*) Not more than 15 percent of the drained weight consists of pieces weighing more than 3 grams (0.11 ounce) each for small cubes and 18 grams (0.63 ounce) each for large cubes.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 24, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, 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. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin January 25, 1982, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: November 18, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33853 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 172 and 173

[Docket No. 81F-0158]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Alpha-Hydro-Omega-Hydroxy-Poly(Oxyethylene)/Poly(Oxypropylene) (Minimum 15 Moles)/Poly(Oxyethylene) Block Copolymer

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of α-hydro-*omega*-hydroxy-poly(oxyethylene)/poly(oxypropylene) (minimum 15 moles)/poly(oxyethylene) block copolymer as a foam control and rinse adjuvant in hog dehairing machines. This action is based on a petition filed by the Chemidyne Corp.

DATES: Effective November 24, 1981; objections by December 24, 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 St., SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 5, 1981 (46 FR 30197), FDA announced that a petition (FAP 0A3512) had been filed by the Chemidyne Corp., 8679 Freeway Dr., Macedonia, OH 44056, proposing that § 172.808 *Copolymer condensates of ethylene oxide and propylene oxide* (21 CFR 172.808) and § 173.340 *Defoaming agents* (21 CFR 173.340) be amended to provide for the safe use of α-hydro-*omega*-hydroxy-poly(oxyethylene)/poly(oxypropylene) (minimum 15 moles)/poly(oxyethylene) block copolymer as a foam control and rinse adjuvant in hog dehairing machines.

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

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.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

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)), Parts 172 and 173 are amended as follows:

1. In Part 172, § 172.808 is amended by revising paragraph (b)(3), to read as follows:

§ 172.808 Copolymer condensates of ethylene oxide and propylene oxide.

* * * * *

(b) * * *

(3) The additive identified in paragraph (a)(3) of this section is used:

(i) As a surfactant and defoaming agent, at levels not to exceed 0.05 percent by weight, in scald baths for poultry defeathering, followed by potable water rinse. The temperatures of the scald baths shall be not less than 125° F.

(ii) As a foam control and rinse adjuvant in hog dehairing machines at a use level of not more than 5 grams per hog.

* * * * *

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

2. In Part 173, § 173.340 is amended by alphabetically inserting in paragraph (a)(2) a new item in the list of substances to read as follows:

§ 173.340 Defoaming agents.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * *	* * *
α-Hydro-omega-hydroxy-poly (oxyethylene)/ poly(oxypropylene) (minimum 15 moles)/ poly(oxyethylene) block copolymer (CAS Reg. No. 9003-11-6) as defined in § 172.808(a)(3) of this chapter.	For use as prescribed in § 172.808(b)(3) of this chapter.
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 24, 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 through Friday.

Effective date. This regulation shall become effective November 24, 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. 81-33629 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 176

[Docket No. 81F-0008]

Indirect Food Additives: Paper and Paperboard Components; Methylated Poly (N-1,2-Dihydroxyethylene-1,3-Imidazolidin-2-One)

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 methylated poly (*N*-1,2-dihydroxyethylene-1,3-imidazolidin-2-one) used as a starch insolubilizer for paper and paperboard in contact with dry food. This action responds to a petition filed by the Sun Chemical Corp.

DATES: Effective November 24, 1981. Objections by December 24, 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: Vir D. Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 3, 1981 (46 FR 14970), FDA announced that a food additive petition (FAP OB3530) had been filed by Sun Chemical Corp., Chester, SC 29706, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of methylated ethylene urea-glyoxal copolymer as a starch insolubilizer for paper and paperboard which will contact dry food. Subsequent to publication of the notice of filing in the **Federal Register**, the petitioner amended the petition by changing the name of the additive from its common name to the correct chemical name, methylated poly(*N*-1,2-dihydroxyethylene-1,3-imidazolidin-2-one).

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 176.180 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 impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch, Food and Drug Administration (address above), between 9 a.m. and 4 p.m., Monday through Friday.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

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 176 is amended in § 176.180(b)(2) by inserting alphabetically a new item in the list of substances, to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * *	* * *
Methylated poly(N-1,2-dihydroxyethylene-1,3-imidazolidin-2-one).	For use only only as an in solubilizer for starch
* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 24, 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 represented 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 24, 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. 81-33027 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 436, 440, 442, 446

Antibiotic Drugs; Tests and Methods of Assay; Penicillin, Cepha, and Tetracycline

CFR Correction

In the April 1, 1981 revision of Title 21, Parts 300–499 of the Code of Federal Regulations, make the following corrections:

1. In § 436.105(a) on p. 255 the last item in the table under the heading "Incubation Temperature for the plates", the figure "37" should be corrected to read "36–37.5".

2. In § 436.106(b) on p. 264 the last eleven lines of the table under the heading "Incubation temperature" the figure "37" should be corrected to read "36–37.5".

3. In § 436.205(c) on p. 271 the third item in the table under the second heading beginning "Diluent", the figure "1" should be inserted.

4. In § 440.3(b)(5)(ii) on p. 325 in the seventeenth line the word "ampicillin" should be corrected to read "amoxicillin."

5. In § 442.105(b)(1)(ii)(c) on p. 432 the third line should read "Milligrams per tablet = $A_sXP_sXd/A_sX1,000Xn$".

6. In § 446.16(b) on page 500, the figure reading, "1.000" in the seventh line should be corrected to read, "1,000".

BILLING CODE 1505-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Primidone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of new animal drug application (NADA) filed by Med-Tech, Inc., providing for use of a 250-milligram primidone table as an anticonvulsant in dogs.

EFFECTIVE: November 24, 1981.

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

SUPPLEMENTARY INFORMATION: Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024, filed an NADA (117–689) providing for use of a 250-milligram primidone tablet as an anticonvulsant for treatment of dogs for idiopathic epilepsy, epileptiform convulsions, viral encephalitis, distemper, and hardpad disease. The product is for oral administration by or on the order of a licensed veterinarian.

Primidone tablets were the subject of a review by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study group. Section 520.1900 (21 CFR 520.1900) provides for use of primidone tablets and provides that applications for the uses reviewed by the NAS/NRC as specified in the section need not include effectiveness data as specified by § 514.111 (21 CFR 514.111), but may require bioequivalency information. Med-Tech submitted blood serum level determinations establishing equivalency. The uses provided for in the application were the subject of the NAS/NRC review. The application is approved, and the regulations are amended to reflect this approval by revising § 520.1900(b).

Section 520.1900(b) was amended in the **Federal Register** of January 27, 1981 (46 FR 8467) and April 24, 1981 (46 FR 23231). These amendments published out of sequence, and the paragraph is also being editorially revised to reflect correctly the sponsors of approved applications.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1900 by revising paragraph (b) to read as follows:

§ 520.1900 Primidone tablets.

* * * * *

(b) *Sponsor.* See No. 013983 in § 510.600(c) of this chapter for use of 250 milligram tablets; see Nos. 000725 and 000856 in § 510.600(c) of this chapter for use of 50 and 250 milligram tablets.

* * * * *

Effective date: November 24, 1981.

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

Dated: November 16, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-33626 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Removal of a Portion of a Regulation; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing that portion of the regulations reflecting approval of a new animal drug application (NADA) providing for use of a 0.4-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds. The feeds are indicated for increased rate of weight gain and improved feed efficiency. The sponsor, Farmers Feed & Supply Co., requested the withdrawal of approval.

EFFECTIVE DATE: December 4, 1981.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 98-688 is withdrawn. This document amends the regulations to revoke that portion which reflects approval of this NADA.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.265 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), Part 558 is amended in § 558.625 *Tylosin* by removing paragraph (b)(29) and marking it "[Reserved]."

Effective date: December 4, 1981.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: November 16, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-33630 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP OH5248/R92; PH-FRL-1992-7]

2-(*M*-Chlorophenoxy) Propionic Acid; Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit residues of the plant growth regulator 2-(*m*-chlorophenoxy) propionic acid in or on the feed commodity pineapple bran. This regulation to establish the maximum permissible level for residues of the plant regulator in or on the above commodity was requested by Union Carbide Co.

EFFECTIVE DATE: Effective on November 24, 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: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of April 7, 1980 (45 FR 23511) which announced that Union Carbide Co., PO Box 12014, Research Triangle Park, NC 27709, submitted a feed additive petition (FAP OH5248) proposing that 21 CFR 561.95 be amended by the establishment of a regulation permitting the residues of the plant regulator 2-(*m*-chlorophenoxy) propionic acid in or on the feed commodity pineapple bran at 3.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The relevant data pertaining to the toxicology and residue chemistry of this plant growth regulator is included in the final rule on raw agricultural commodities [PP 2303/R376] found elsewhere in today's **Federal Register**.

The plant growth regulator is considered useful for the purpose for which the feed additive regulation is sought, and it is concluded that the plant growth regulator may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) Therefore, the feed additive regulation is established in 21 CFR Part 561.95 as set forth below.

Any person adversely affected by this regulation may on or before December 24, 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 regulations establishing feed additive regulations, tolerances, 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 24, 1981.

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

Dated: November 13, 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 561.95 is revised to read as follows:

§ 561.95 2-(*m*-Chlorophenoxy) propionic acid.

A feed additive regulation is established for residues of the plant growth regulator 2-(*m*-chlorophenoxy) propionic acid in or on the following commodity:

Commodity	Part(s) per million (ppm)
Pineapple bran	3.0

[FR Doc. 81-33916 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-32-M

21 CFR Part 561

[FAP 1H5286/T77; PH-FRL-1992-5]

Thidiazuron; Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation related to the experimental use of the defoliant thidiazuron on cotton. The regulation was requested by Nor-Am Agricultural Products, Inc. This rule will permit the marketing of cottonseed hulls while further data are collected on thidiazuron.

EFFECTIVE DATE: Effective on: November 24, 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: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: On March 3, 1981, the EPA announced (46 FR 14959) that Nor-Am Agricultural Products, Inc., 350 West Shuman Boulevard, Naperville, IL 60566, had filed a feed additive petition (FAP 1H5286) proposing the establishment of a regulation permitting residues of the herbicide thidiazuron (*N*-phenyl-*N*-1,2,3,-thiadizol-5-ylurea) and its aniline-containing metabolites in or on cottonseed hulls resulting from application of the defoliant to cotton for defoliation of cotton leaves prior to harvest in a proposed experimental program with a tolerance limitation of 0.8 part per million (ppm) in accordance with an experimental use permit (2139-EUP-23) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The proposed tolerance of 0.8 ppm for cottonseed hulls supersedes the level of 0.4 ppm for that commodity. No comments were received by the Agency in response to this notice of filing.

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

The data submitted in this petition and other relevant material have been evaluated. The data considered in support of the proposed tolerance included radiotracer metabolism studies in cotton plants, rats, lactating goats, and laying hens; rat and mouse acute oral toxicity studies with a median lethal dose (LD_{50}) of 4 grams (g)/kilogram (kg) body weight (bw) and 5 g/kg bw respectively; a 90-day dog feeding study with a no-observable-effect-level (NOEL) of 200 ppm and a 90-day dog feeding study with a NOEL of 300 ppm. The acceptable daily intake (ADI) for humans is 0.0038 mg/kg bw/day based on a 300 ppm NOEL determined in the 90-day dog feeding study and a 2,000-fold safety factor. The requested feed additive tolerance of 0.8 ppm in or on cottonseed hulls will not affect the theoretical maximum residue contribution (TMRC). Proposed temporary tolerances of 0.4 ppm in or cottonseed and 0.05 in milk, yield a TMRC of 0.0681 mg/day/1.5/kg of diet for a 60-kg human, which is equivalent to 30.25 of the ADI.

A regulatory action was pending against thidiazuron based upon Industrial Bio-Test Laboratories (IBT) data of the two 90-day subacute and acute studies, but this was resolved after these data were validated.

The metabolism of thidiazuron is adequately understood, and an adequate analytical method (gas-liquid chromatography) using electron capture detector is available for enforcement purposes.

No permanent tolerances have previously been established for residues of thidiazuron, and no desirable data are lacking from the petition, nor are any other considerations involved in establishing the proposed tolerance. A related document establishing a temporary tolerance for residues of thidiazuron in or on cottonseed at 0.4 ppm appears elsewhere in this issue of the **Federal Register.** The tolerances in eggs; milk; and the meat, fat, and meat byproducts of cattle are adequate to cover residues resulting from the proposed feed additive use.

The pesticide is considered useful for the purpose for which the tolerance is sought. Therefore the regulation establishing a tolerance of 0.8 ppm in or on cottonseed hulls by amending 21 CFR Part 561 is established as set forth below.

Any person adversely affected by this regulation may, on or before December 24, 1981, file written objections with the Hearing Clerk, EPA Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. 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, the 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 regulation from the OMB review requirement 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 food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels 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 24945).

Effective on: November 24, 1981.

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Dated: November 16, 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 561.385 is amended by revising paragraphs (a) and (b) to read as follows:

§ 561.385 Thidiazuron.

(a) A tolerance of 0.8 part per million is established for the combined residues of thidiazuron (*N*-phenyl-*N'*-1,2,3-thiadiazol-5-ylurea) and its aniline containing metabolites in or on cottonseed hulls resulting from the preharvest application of the defoliant thidiazuron to cotton in accordance with an experimental use permit that expires July 1, 1983.

(b) Residues in cottonseed hulls not in excess of 0.8 part per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the defoliant is legally applied during the term of and in accordance with, the provisions of the experimental use permit and the feed additive tolerance.

* * * * *

[FR Doc. 81-33918 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 640

[Docket No. 80N-0436]

Additional Standards for Human Blood and Blood Products; Source Plasma (Human)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to make clear that an active plasmapheresis donor, who is to be immunized for the production of high-titer plasma, does not need to be reexamined before the first immunization injection if the same donor has previously received a physical examination for plasmapheresis in accordance with § 640.63(b)(1). This rule eliminates a burden on the individual plasmapheresis donor and the plasmapheresis center.

EFFECTIVE DATE: December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: After reviewing inspection reports of establishments collecting plasma, the Bureau of Biologics (the Bureau) discovered that 21 CFR 640.63(b)(2) was being misinterpreted. The inspection reports revealed that active plasmapheresis donors who were to be immunized for the production of high-titer plasma were required to undergo another medical examination even though they previously had undergone the medical examination for plasmapheresis. In the **Federal Register** of November 28, 1980 (45 FR 79092), FDA proposed to clarify the number of initial medical examinations required for an active plasmapheresis donor who subsequently may be immunized for the production of high-titer plasma. This final rule will make clear that § 640.63(b)(2) does not require a donor who is to be immunized for the production of high-titer plasma to undergo another medical examination before the first immunization injection if the same donor has previously undergone a medical examination for plasmapheresis according to § 640.63(b)(1).

Interested persons were given until January 27, 1981, to file written comments. Two comments were received and supported the proposed rule. In addition, one comment suggested that the phrase "within and not more than 7 days prior to" be substituted for the phrase "within no more than 1 week before" in the second sentence of § 640.63(b)(2). Because "21 days" is used in the last sentence of this paragraph, the comment believed that to be consistent, other time frames in that paragraph should be stated in "days" rather than "weeks." The agency disagrees and advises that the expression of the time interval as "1 week" instead of "7 days" in the second sentence of proposed § 640.63(b)(2) is consistent with the time interval expressed as 1 week in § 640.63(b)(1) and 8 weeks in § 640.63 (e) and (e)(1). The agency believes that, for consistency, the time interval expressed as 3 weeks should be substituted for 21 days in the last sentence of proposed § 640.63(b)(2).

In addition, the agency advises that proposed § 640.63(b)(2) has been rearranged for clarity by further subdividing the section into subparagraphs (i) and (ii). Section 640.63(b)(2)(i) requires that a donor who is to be immunized for the production of high-titer plasma be examined by a qualified licensed physician within no more than 1 week before the first immunization injection. The medical examination for plasmapheresis does not need to be repeated, if that donation occurs within 3 weeks after the first injection. Section 640.63(b)(2)(ii) requires that a donor who is an active participant in a plasmapheresis program, and has been examined in accordance with paragraph (b)(1) of this section, need not be reexamined before immunization for the production of high-titer plasma.

The economic impact of this rule has been assessed in accordance with Executive Order 12291. This rule is not a major rule as defined by that Order. Specifically, the rule will eliminate a burden on the individual plasmapheresis donor and the plasmapheresis center by the clarification of § 640.63(b)(2) to prevent an unnecessary duplication of the medical examination on the same donor, thereby resulting in no major increase in costs for the plasmapheresis centers. The assessment for making the determination that this is not a major rule has been placed on file with the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) 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 640 is amended in § 640.63 by revising paragraph (b)(2), to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(b) * * *

(2)(i) A donor who is to be immunized for the production of high-titer plasma shall be examined by a qualified licensed physician. The medical examination shall be performed within no more than 1 week before the first immunization injection. The medical examination for plasmapheresis need not be repeated, if the first donation occurs within 3 weeks after the first injection.

(ii) A donor who is an active participant in a plasmapheresis program, and has been examined in accordance with paragraph (b)(1) of this section, need not be reexamined before immunization for the production of high-titer plasma.

* * * * *

Effective date. December 24, 1981.

(Sec. 351, 58 Stat. 701 as amended (42 U.S.C. 262))

Dated: November 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33628 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 7796]

Reporting Requirements for Certain Grantor Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations modifying the current information and reporting requirements for certain grantor trusts. The grantor-trustee of trusts covered by these regulations will no longer be required to file Form 1041. This regulation will provide guidance to taxpayers and others responsible for filing income tax returns in the case of certain grantor trusts.

DATE: These regulations are effective for tax years beginning on or after January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen J. Small of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1980, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 671 of the Internal Revenue Code of 1954 (Code) and to the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6012 and 6109 of the Code were published in the **Federal Register** (45 FR 70478). These amendments were proposed to modify the reporting requirements for certain grantor trusts.

After consideration of all written comments received, the proposed regulations are adopted as herein revised. There are two substantive revisions to the proposed regulation and one revision for administrative purposes.

First, a number of commenters asked that the proposed rule be expanded to include the typical husband and wife grantor trust in community property states. The final rule goes beyond that by bringing within its scope all qualifying grantor trusts when one or both spouses are grantors and when the spouses file a joint income tax return.

Second, the proposed rule was limited to grantor trusts when the grantor was also the sole trustee. A number of commenters asked that the rule be expanded to include grantor trusts when the grantor is a co-trustee. This suggestion has been adopted and is also made applicable in the case of husband and wife grantor trusts.

Additional comments included suggestions to broaden the effect of the regulation even further. These suggestions were rejected because current reporting requirements for trusts outside the scope of the rule herein adopted serve a useful informational purpose.

Finally, although the new rule is mandatory for qualifying trusts created in tax years beginning on or after January 1, 1981, the rule is made optional for qualifying trusts, with an employer identification number, that have filed on Form 1041 on or before November 24, 1981. If the grantor of such a trust wishes to take advantage of the new reporting rule in the future, the grantor must file a final Form 1041 for the trust for the current tax year, with a notation on the front of the Form that will alert the Service to prospective filing changes. Without this procedure, a grantor who filed a Form 1041 for 1980 but failed to file a Form 1041 for 1981 might be asked to reply to an inquiry from the Internal Revenue Service about the status of the trust.

Some commenters were concerned about the difficulty of identifying trust assets at the death of the grantor when the annual requirement for filing the Form 1041 is eliminated. These commenters are reminded that accurate recordkeeping for trust assets will continue to be the responsibility of the grantor after this rule is adopted.

Drafting Information

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

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

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

Paragraph 1. Section 1.671-4 is amended as follows:

a. The undesignated paragraph in Section 1.671-4 is redesignated § 1.671-4 (a).

b. Section 1.671-4 Paragraph (a) as redesignated by this document is revised to read as set forth below.

c. A new paragraph (b) is inserted to read as set forth below.

d. A new paragraph (c) is inserted to read as set forth below.

§ 1.671-4. Method of reporting.

(a) *Portion of trust income taxed to grantor.* Except as provided in paragraphs (b) (1) and (2) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Code, are treated as owned by the grantor or another person should not be reported by the trust on Form 1041, but should be shown on a separate statement to be attached to that form.

(b) *Trust income taxed entirely to grantor.* (1) In the case of a trust when

(i) The same individual is both grantor and trustee (or co-trustee), and

(ii) That individual is treated as owner for the taxable year of all of the assets of the trust by the application of section 676,

A Form 1041 should not be filed. Instead, all items of income, deduction, and credit from the trust should be reported on the individual's Form 1040 in accordance with its instructions. For provisions dealing with taxpayer identifying numbers, see § 301.6109-1 (Regulations on Procedure and Administration).

(2) In the case of a trust when

(i) A husband and wife are the sole grantors, and

(ii) One spouse is trustee or co-trustee with a third party or both spouses are trustees or co-trustees with a third party, and

(iii) One or both spouses are treated as owners of all of the assets of the trust for the taxable year by the application of section 676, and

(iv) The husband and wife for the taxable year make a single return jointly of income taxes under section 6013,

A Form 1041 should not be filed. Instead, all items of income, deduction, and credit from the trust should be reported on the spouses' Form 1040 in accordance with its instructions.

(3) The grantor of a trust described in § 1.671–(b) (1) or (2) who filed a Form 1041 on or before November 24, 1981 may continue to report income, deductions, and credits of the trust pursuant to § 1.671–4(a). Alternatively, the grantor of such a trust may file a final Form 1041 for the trust's current taxable year pursuant to § 1.671–4(a). In such a case, the grantor must write across the front of the Form 1041 a statement in substance saying "Pursuant to § 1.671–4(b), this is the final Form 1041 for this grantor trust." For the next taxable year, the grantor must furnish payers of income with his or her social security number, pursuant to § 301.6109–1(a)(2), and must follow the rule of § 1.671–4(b) (1) or (2), as the case may be.

(4) This paragraph (b) of this section shall not apply to a trust if the situs of the trust or any of the assets of the trust are not in the United States.

(c) *Effective date.* Paragraphs (b) (1) and (2) of this section apply to trusts created in tax years beginning on or after January 1, 1981. Paragraph (b)(3) of ths section is effective immediately.

Par. 2. Section 1.6012–3 is amended by inserting a new paragraph (a)(9) as set forth below.

§ 1.6012–3 Returns by fiduciaries.

(a) *For estates and trusts* * * *

* * * * *

(9) *Certain grantor trusts.* A grantor who is trustee of a grantor trust to which § 1.671–4(b) (1) or (2) apply should not file a Form 1041 for the trust. See, however, § 1.671–4(b)(3). Instead, all items of income, deduction, and credit from the trust should be reported on the grantor's Form 1040 in accordance with its instructions. For provisions dealing with taxpayers identifying numbers see § 301.6109–1 (Regulations on Procedure and Adminstration).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. Section 301.6109–1 is amended as follows:

a. Paragraph 301.6109–1(a) is redesignated § 301.6109–1(a)(1).

b. Section 301.6109–1(a)(1) as redesignated by this document is amended by inserting the paragraph heading "(1) *Social Security numbers and employer identification numbers.*" immediately before the first sentence.

c. A new paragraph (a)(2) is inserted to read as set forth below.

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* * * *

(2) *Certain grantor trusts.* A grantor trust described in § 1.671–4(b) shall not obtain an employer identification number until such time as the trust is no longer described in § 1.671–4(b). Instead, the grantor of such a trust must furnish his or her social security number (or, when applicable, his or her employer identification number) to payers of income, and payees must report income as if paid to the grantor, not the trust.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 26, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 81–33837 Filed 11–23–81; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[T.D. 7798]

Procedure and Administration; Periodic Report of Actuary

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to periodic actuarial reports filed for defined benefit pension plans. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 ("ERISA"). The regulations provide necessary guidance to plan administrators who are required to file the report and to actuaries who must prepare the report.

DATES: In the case of a plan in existence on January 1, 1974, the regulations are effective for plan years beginning after December 31, 1975. In the case of a plan not in existence on January 1, 1974, the regulations are effective for plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT: George B. Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, D.C. 20224, Attention: CC:LR:T:EE–27–78, 202–566–3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1980, the **Federal Register** published at 45 FR 45926 proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under sections 6059 and 6692 of the Internal Revenue Code of 1954, as added by section 1033 of ERISA. A public hearing on the proposed regulations was held on November 12, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Actuarial Report

Code section 6059 requires that the plan administrator of a defined benefit pension plan subject to the minimum funding standards of ERISA periodically file an actuarial report of the plan. Under the regulations, the report is to be filed on Schedule B as an attachment to the Annual Return/Report of Employee Benefit Plan (Form 5500 series).

Actuary's Certification

Code section 6059(b) requires that an enrolled actuary certify on the actuarial report that to the best of his or her knowledge the report is complete and accurate, and that in the aggregate the actuarial assumptions used are reasonably related to the experience of the plan and to reasonable expectations and represent the actuary's best estimate of anticipated experience under the plan. Under the proposed regulations, an actuarial report would not be accepted as satisfying the filing requirements of Code section 6059 if the actuary in any manner sought to limit or qualify this required certification.

Several persons commenting on the proposed regulations took issue with this absolute prohibition. Others requested additional guidance on what might constitute a prohibited limitation or qualification. In this regard, several commentators expressed concern that the rule in the proposed regulations would discourage an enrolled actuary from including statements that the actuary believes necessary to fully describe how the report was prepared or to adequately disclose the actuarial position of the plan. Others expressed concern that the proposed rule might preclude an actuary from relying upon information customarily provided by other persons when the actuary has no reason to doubt the substantial accuracy of that information.

In response to these comments the proposed regulations have been revised by describing statements that, if included by an enrolled actuary, will not be considered to impermissibly qualify the required certification of the report's substantial accuracy or the reasonableness of the actuarial assumptions used. In general, the final regulations provide that an actuary's certification is not materially qualified

by a statement on the report that the actuary relied upon information provided by another person, and that the actuary has no reason to doubt the substantial accuracy of the information. Further, if the actuary encounters error in information provided by another person, the actuary may note that the error was disregarded in preparing the report, but that the effect of the error is not material. An actuary is also free to note that any statement regarding the actuarial position of the plan is made only in light of a regulation or ruling, or in light of an interpretation of a statute, regulation or ruling, including an interpretation inconsistent with a position taken by the Internal Revenue Service. These statements by an enrolled actuary are permitted by the final regulations, but are not required.

The final regulations provide that the rules precluding the actuary from materially qualifying the required certification shall apply only with respect to reports filed for plan years ending after January 25, 1982.

Group Deferred Annuity Contracts

One person commenting on the proposed regulations proposed that where a plan is funded entirely by the purchase of group deferred annuity contracts, an enrolled actuary should be permitted to decline any certification of the reasonableness of the actuarial assumptions specified in the contract. The final regulations provide no such exception. However, an actuary may rely upon Rev. Rul. 72–557, 1972–2 C.B. 227, which sets forth three conditions which, if satisfied, will result in the actuarial assumptions underlying the contributions under the contract being deemed reasonable. As described in the Revenue Ruling, where the three conditions are not satisfied, the assumptions used will be considered reasonable only if, in combination, they produce reasonable results.

Joint Liability for Penalty for Failure To File

The proposed regulations under Code section 6692 provided that in any case in which two or more persons are responsible for a failure to file the actuarial report, then all such persons are jointly and severally liable for the $1,000 penalty imposed by that section. Under section 6692, the penalty for a failure to file an actuarial report is imposed on the plan administrator. The final regulations revise the rule relating to joint liability to make it clear that the rule should not be construed as making any person not a plan administrator liable for the penalty.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Part 301 as proposed are adopted, subject to the changes indicated below:

Paragraph 1. Section 301.6059–1, as set forth in paragraph 1 of the notice of proposed rulemaking, is revised by setting forth the provisions of proposed paragraph (c)(1) in a new paragraph (c), by revising the provisions of proposed paragraph (c)(2) and setting forth such revised provisions in a new paragraph (d), and by redesignating proposed paragraphs (d) and (e) as paragraphs (e) and (f), respectively. As revised and added, paragraphs (c) and (d) read as set forth below.

Par. 2. Section 301.6692–1, as set forth in paragraph 2 of the notice of proposed rulemaking, is changed by revising paragraphs (a) and (d) to read as set forth below.

This Treasury decision is issued under the authority contained in sections 6059 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 947, 68A Stat. 917; 26 U.S.C. 6059, 7805).

Joseph T. Davis,

Acting Commissioner of Internal Revenue.

Approved: October 21, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

PART 301—PROCEDURE AND ADMINISTRATION

Sections 301.6059–1 and 301.6692–1 are added to read as follows:

§ 301.6059–1 Periodic report of actuary.

(a) *In general.* The actuarial report described in this section must be filed on behalf on a defined benefit plan to which the minimum funding standards of section 412 apply. The actuarial report must be filed by the plan administrator (within the meaning of section 414(g)) on Schedule B as an attachment to the annual Return/Report of Employee Benefit Plan (Form 5500 series). The instructions accompanying the Form 5500 series prescribe the place and date for filing Schedule B.

(b) *Plan years for which report required.* In the case of a plan in existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after December 31, 1975, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. In the case of a plan not in existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. For rules relating to when a plan is considered to be in existence, see § 1.410(a)–2(c). For purposes of this section, "plan year" means the plan year as determined for purposes of the minimum funding standards.

(c) *Contents of report.* The actuarial report of a plan filed on Schedule B must contain—

(1) The date of the actuarial valuation applicable to the plan year for which the report is filed (see section 412(c)(9) for rules relating to the frequency with which an actuarial valuation of the plan is required to be made),

(2) A description of the funding method and actuarial assumptions used to determine costs under the plan,

(3) A certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

(4) A statement by the enrolled actuary signing the report that to the best of the actuary's knowledge the report is complete and accurate,

(5) A statement by the enrolled actuary signing the report that in the actuary's opinion the acturial assumptions used are in the aggregate (i) reasonably related to the experience of the plan and to reasonable expectations, and (ii) represent the actuary's best estimate of anticipated experience under the plan,

(6) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

(7) Such other information as may be required by Schedule B or the instructions accompanying the Schedule and the Form 5500 series.

(d) *Certification by enrolled actuary.* The actuarial report filed on Schedule B must be signed by an enrolled actuary (within the meaning of section 7701(a)(35)) or there may be attached to the report a statement signed by the actuary that contains the statements

described in paragraph (d)(1)(v) and paragraph (c) (4) and (5) of this section.

An actuarial report filed for a plan year ending after January 25, 1982, does not satisfy the requirements of this section if the actuary seeks to materially qualify such statements. For this purpose, the following are not considered to materially qualify a statement required by paragraph (c) (4) or (5) of this section:

(1) A statement that the report is based in part on information provided to the actuary by another person, that such information would customarily not be verified by the actuary, and that the actuary has no reason to doubt the substantial accuracy of the information (taking into account the facts and circumstances that are known or reasonably should be known to the actuary, including the contents of any other actuarial report prepared by the actuary for the plan),

(2) A statement that the report is based in part on information provided by another person, that the actuary believes such information is or may be inaccurate or incomplete, but that the inaccuracies or omissions are not material, the inaccuracies or omissions are not so numerous or flagrant as to suggest that there may be material inaccuracies, and that therefore the acturial report is substantially accurate and complete and fairly discloses the actuarial position of the plan,

(3) A statement that the report reflects the requirement of a regulation or ruling, and that any statement regarding the actuarial position of the plan is made only in light of such requirement,

(4) A statement that the report reflects an interpretation of a statute, regulation or ruling, that the actuary has no reason to doubt the validity of that interpretation, and that any statement regarding the actuarial position of the plan is made only in light of such interpretation,

(5) A statement that in the opinion of the actuary the report fully reflects the requirements of an applicable statute, but does not conform to the requirements of a regulation or ruling promulgated under the statute that the actuary believes is contrary to the statute, or

(6) A statement reflecting the requirements of paragraph (c)(6) of this section.

A statement otherwise described in a subparagraph of this paragraph (d) shall not be considered to satisfy the requirements of such subparagraph unless the statement identifies, with particularity, that matter to which the statement relates and the facts and circumstances surrounding the statement. In addition, a statement otherwise described in subparagraph (5) of this paragraph (d) shall not be considered to satisfy the requirements of that subparagraph unless the statement indicates whether an accumulated funding deficiency or a contribution that is not wholly deductible may result if the actuary's belief is determined to be incorrect.

(e) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in the Commissioner's discretion, relieve a plan administrator from filing Schedule B or from reporting information required by Schedule B or paragraph (c) of this section.

(f) *Penalty.* For the penalty imposed in the case of a failure to file the actuarial report required by this section, see section 6692 and § 301.6692–1.

§ 301.6692–1 Failure to file actuarial report.

(a) *Penalty.* In each case in which the plan administrator (within the meaning of section 414(g)) of a defined benefit plan to which the minimum funding standards of section 412 apply fails to file the actuarial report described in section 6059 and § 301.6059–1 within the time prescribed, the plan administrator shall pay a penalty of $1,000. A failure to provide a material item of information called for in the actuarial report is considered a failure to file the report. For this purpose, the signature of an enrolled actuary (see § 301.6059–1(d)) is considered a material item of information.

Further, for any report filed for a plan year ending after January 25, 1982, if the actuary seeks to materially qualify a statement required by § 301.6059–1(c) (4) or (5) there is a failure to provide a material item of information called for in the report. For rules relating to statements not considered as materially qualifying the required statements, see § 301.6059–1(d).

(b) *Failure to make actuarial valuation.* Section 412(c)(9) and the regulations thereunder prescribe the time for making an actuarial valuation of a defined benefit plan. For purposes of this section, the failure to base information called for in the actuarial report upon an actuarial valuation of the plan which is made within the time prescribed by section 412(c)(9) and the regulations thereunder is considered a failure to file the actuarial report.

(c) *Showing of reasonable cause.* The penalty imposed by this section does not apply if it is established to the satisfaction of the appropriate district director or the director of the Internal Revenue Service Center at which the actuarial report is required to be filed that the failure to file the report was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under the penalties of perjury.

(d) *Joint liability.* If more than one person is responsible as a plan administrator for a failure to file the actuarial report, all such persons are jointly and severally liable with respect to the failure.

(e) *Manner of payment.* The penalty imposed for the failure to file an actuarial report shall be paid in the same manner as a tax upon the issuance of notice and demand therefor.

(f) *Effective dates.* In the case of a plan in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after December 31, 1975, for which the minimum funding standards of section 412 apply to the plan. In the case of a plan not in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan.

[FR Doc. 81–33721 Filed 11–23–81; 8:45 am]
BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–1977–7]

Approval and Promulgation of Implementation Plans; Alabama: Alternate TSP Control Plan for Kimberly-Clark

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves changes in the Alabama State Implementation Plan (SIP). On February 4, 1981 the Alabama Air Pollution Control Commission (AAPCC) submitted to EPA revisions in Part 4.8 of the AAPCC's Rules and Regulations; supplemental information was submitted on August 31, 1981. These changes are being made to allow Kimberly-Clark to operate the #3 bark boiler of its Coosa Pines kraft pulp mill on wood waste alone rather than a combination of wood wastes with either gas or residual fuel oil.

This approval action will be effective January 25, 1982, unless notice is

received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective January 25, 1982.

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

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.
Office of the Federal Register, Room 8401, 1100 L Street, N.W., Washington, D.C. 20005.
Library, Environmental Protection Agency, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.
Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36130.

Comments should be addressed to the Air Programs Branch, EPA Region IV, at the address above.

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

SUPPLEMENTARY INFORMATION: The Alabama Air Pollution Control Commission (AAPCC) on July 26, 1972 adopted regulations for the control of particulate emissions from wood waste boilers. On March 27, 1974, Kimberly-Clark was issued an operating permit by the AAPCC. Since that time Kimberly-Clark has maintained this permit by compliance with all required conditions, including periodic testing for particulate emissions (by approved methods) to verify compliance with the 0.30 grain per standard dry cubic foot (gr/dscf) limit. Test results have been submitted to the Alabama Air Pollution Control Commission as required.

The Commission later adopted regulations requiring continuous monitoring of stack gas opacity and establishing an opacity limit on a case-by-case basis. The boiler is presently being operated to comply with these requirements also.

The 0.30 gr/dscf limit of the 1972 Alabama regulations was developed for boilers burning a combination of wood waste and fossil fuels (gas or oil). Under the present revision, Kimberly-Clark will be allowed to emit from its #3 bark boiler a stack gas of greater particulate concentration, 0.45 gr/dscf, when burning wood waste alone, but total particulate emissions will be the same (259 pounds per hour) as the boiler would emit if burning a combination of fuels in compliance with the 0.30 gr/dscf limit, provided the boiler operates at a reduced rate. The facility's permit stipulates that automated fuel feed must be used to assure that the boiler does not exceed a steam production rate of 164,000 pounds per hour. These changes will have no effect on air quaility and will permit a substantial saving of fossil fuels.

Action. Accordingly, EPA is today approving the SIP revision submitted by Alabama. This is being done without prior proposal because the change is noncontroversial and of limited impact, and no comments are anticipated. The public should be advised that this revision will be effective January 25, 1982. However, if notice is received within 30 days of the date of this notice that someone wishes to submit adverse or critical comments, the approval 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 comment period.

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 only approves state actions. It imposes no new requirements. In addition, it applies to a single facility.

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 burden on sources.

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

Under section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this action 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. Under 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.

Incorporation by reference of the State Implementation Plan for the State of Alabama 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 19, 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 B—Alabama

In § 52.50, paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.50 Identification of plan.

* * * * *

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

* * *

(33) Alternative particulate control requirements for Kimberly-Clark Corporation's #3 bark boiler, Coosa Pines (revisions in Part 4.8 of the Alabama regulations), submitted by the Alabama Air Pollution Control Commission on February 4 and August 31, 1981.

[FR Doc. 81-33911 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A4-FRL 1971-8]

Approval and Promulgation of Implementation Plans; Florida: Continuous Monitoring Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 27, 1978, the Department of Environmental Regulation submitted to EPA regulatory revisions in the Florida State Implementation Plan: definitions for "Emission Limits," "Capacity Factor," and "Continuous Monitoring System" are revised, and regulation 17-2.08, (formerly 17-2.07) sampling and testing for continuous monitoring, is amended. (On June 10, 1981 the State again recodified this section and 17-2.08 became 17-2.710.) The changes satisfy the requirements of Appendix P to 40 CFR Part 51 and EPA is today approving them. This action will be effective January 25, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective January 25, 1982.

ADDRESSES: Copies of the materials submitted by Florida may be examined

during normal business hours at the following locations:

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

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

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

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Douglas Cook, EPA, Region IV, Air Programs Branch, at the above listed address and phone 404/881-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Florida's original continuous monitoring rule required that a source, upon request of the Department, provide continuous monitoring testing and records of contaminants being emitted from the source. There were no provisions as to what type of monitoring was acceptable, nor were there any definitions of the kinds of records to be submitted. The amended rule is intended to alleviate these problems. It requires specific industries to install continuous monitoring equipment for specific pollutants and to report the results according to specified procedures. Nitric acid plants in areas which are nonattainment for nitrogen dioxide and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries do not exist in the State and are not covered by this regulation. All existing fossil fuel steam generators with more than 250 million Btu per hour heat imput, with a capacity factor of greater than 30%, and which expect to still be in operation in 1984, are required to install opacity and sulfur dioxide monitors. If the hourly heat input for the source is greater than 1000 million Btu, a nitrogen oxides monitor must be installed as well. New sources meeting the same criteria must, during construction, have similar monitoring equipment installed. Sulfuric acid plants with a production capacity of 300 tons of acid per day must install sulfur dioxide monitoring equipment on each source.

Performance specifications, monitor location, data requirements, and data reductions must conform to federally promulgated standards, as set forth in 40 CFR Part 51, Appendix P, and 40 CFR Part 60, Appendix B, 40 FR 46240, October 6, 1975. Further, any extensions allowed by the State must satisfy the requirements of § 1.3 of 40 CFR Part 51, Appendix P.

The Department is to be notified, on a quarterly basis, of all emissions in excess of the applicable emission standard. Additionally, the Department is to be notified as to the cause or causes of these excess emissions. This rule will require the state's largest sources to monitor their own emissions. It removes the vagueness which is present in the current implementation plan without affecting the flexibility of that rule. The Department still retains the right to require other sources to monitor their emissions as part of a permit condition.

The State regulation provides that special considerations (as specified in Part 6 of Appendix P, 40 CFR Part 51) may be approved in writing on a case-by-case basis.

Action

EPA is today approving the State submittal amending FAC 17-2.02 and 17-2.07. The Public should be advised that this action will be effective January 25, 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 25, 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. 605(b), I hereby certify that the proposed rule will not if promulgated 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 burden 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 State of Florida was approved by the Director of the **Federal Register** on July 1, 1981.

(Sec. 110 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 K—Florida

In § 52.520, paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.520 Identification of plan.

* * * * *

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

* * * * *

(33) Amendments to Florida's continuous monitoring rule, submitted on January 27, 1978, by the Department of Environmental Regulation.

[FR Doc. 81-33913 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1954-4]

Approval and Promulgation of Implementation Plans; Florida, Georgia, Kentucky, South Carolina, and Tennessee: Set II VOC Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing full approval of State Implementation Plan (SIP) revisions for control of volatile organic compounds (VOC) Set II, which Georgia, Florida, and South Carolina submitted pursuant to requirements of Part D, Title I of the Clean Air Act (CAA); the State of Tennessee and the Commonwealth of Kentucky Set II VOC regulations are conditionally approved. EPA proposed on July 23, 1981 **Federal Register** (46 FR 37913), to fully approve the revisions submitted by Georgia, Florida, South Carolina and Tennessee; conditional approval of the revisions

submitted by Kentucky was proposed because of the lack of an appropriate gasoline tank truck and collection systems certification regulation. The Commonwealth of Kentucky VOC regulations are conditionally approved subject to the State's submitting an adopted regulation for leaks from gas tank trucks and collection systems by March 1, 1982. Although EPA proposed approval of Tennessee regulations, they are conditionally approved in this final notice. Due to the length of the State's administrative procedures, the State was not able to adopt a vacuum test method to be used along with the previously-adopted pressure test method and submit it prior to preparation of this notice. Therefore, the State of Tennessee's regulation for gasoline tank truck certification is approved subject to the State's submitting this compliance test method by September 1, 1982. No comments were received on any portions of the plan revisions.

DATE: These actions are effective December 24, 1981.

ADDRESSES: Copies of the materials submitted by the States may be examined during normal business hours at the EPA Region IV Library; at the Public Information Reference Unit of EPA's Washington, D.C. Office, at 401 M Street, SW.; at Office of the Federal Register, Room 8401, 1100 L St. NW., Washington, D.C.; at the Offices of the Georgia Department of Natural Resources, Florida Division of Environmental Programs, Kentucky Department for Natural Resources and Environmental Protection, South Carolina Department of Health and Environmental Control, and Tennessee Department of Public Health.

FOR FURTHER INFORMATION CONTACT: Waymond A. Blackmon, EPA, Region IV, Air Programs Branch, 404/881-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Part D of the Title I of the Clean Air Act, as amended in 1977, requires that States revise their State Implementation Plan (SIP) for all areas that have not attained the National Air Quality Standards (NAAQS).

As part of their control strategies for attainment of the NAAQS for ozone (O_3), Georgia, Florida, South Carolina, Tennessee, and Kentucky have revised their SIPs to require control of volatile organic compounds (VOC) from additional categories of sources which have emissions before control of 100 tons per year or more. Ozone nonattainment areas in these States are as follows:

- Georgia: Atlanta (Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, Paulding and Rockdale Counties); and Columbus (Muscogee County).
- Florida: Duval, Broward, Dade, Palm Beach, Orange, Hillsborough, and Pinellas Counties.
- South Carolina: Charleston (Charleston and Berkeley Counties); Columbia (Richland and Lexington Counties); and York County.
- Tennessee: Nashville (Davidson, Sumner, Rutherford, Wilson and Williamson Counties); and Shelby, Maury, Hamilton, Knox, Sullivan, Bradley and Roane Counties.
- Kentucky: Boyd, Boone, Campbell, Fayette, Henderson, Jefferson, and Kenton Counties.

EPA published Control Technique Guidelines (CTGs) to assist the States in determining RACT.

The CTGs provide information on available air pollution control techniques and provide recommendations on what EPA calls the "presumptive norm" for RACT. Group II CTGs cover the following source categories:

- Factory Surface Coating of Flatwood Paneling
- Petroleum Refinery Fugitive Emissions (Leaks)
- Pharmaceutical Manufacture
- Rubber Tire Manufacture
- Surface Coating of Miscellaneous Metal Parts and Products
- Graphic Arts (Printing)
- Perchloroethylene Dry Cleaning
- Gasoline Tank Trucks, Leak Prevention
- Petroleum Liquid Storage, Floating Roof Tanks.

SIP revisions were submitted by the State of Georgia on January 17, 1979; State of Florida on April 30, 1979; Commonwealth of Kentucky on June 6, 1979; State of South Carolina on December 22, 1978; and State of Tennessee on February 13, 1979. EPA proposed conditional approval of the Kentucky regulations because of the lack of an appropriate gasoline tank truck certification regulation. The State had indicated that they would submit an adopted VOC regulation for gasoline tank trucks and collection systems by March 1, 1982. Furthermore, EPA proposed to approve these revisions in the Georgia, Florida, South Carolina and Tennessee VOC regulations. With the exception of the missing tank truck certification provisions in Kentucky's regulations, EPA believed that all five States' regulations were consistent with RACT. Since the proposal, EPA has determined that Tennessee's tank truck regulations are also deficient and that a vacuum test method is needed. Due to the length of the State's administrative procedures, the State was not able to adopt the necessary vacuum test method along with previously-adopted pressure test method and submit it prior to preparation of this notice. The State had indicated that they would submit an adopted vacuum test method by September 1, 1982.

Action: EPA is today approving the revisions submitted by Georgia, Florida, South Carolina and conditionally approving the State of Tennessee and the Commonwealth of Kentucky VOC regulations subject to the State of Tennessee's submitting adopted and approved compliance test methods for gasoline tank trucks and collection systems by September 1, 1982 and the Commonwealth of Kentucky's submitting an adopted and approvable SIP revision for gasoline tank trucks and collection systems by March 1, 1982.

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 25, 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. 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 requirements already in effect under State law, and has no significant economic impact.

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 States of Georgia, Florida, South Carolina, Tennessee, and Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172 of the Clean Air Act as amended (42 U.S.C. 7410 and 7502))

Dated: November 18, 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 K—Florida

1. In § 52.520, paragraph (c) is amended by adding subparagraph (32) as follows:

§ 52.520 Identification of plan.

* * * * *

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

* * *

(32) Set II VOC regulations, submitted on August 28, 1980, by the Florida Department of Environmental Regulation.

Subpart L—Georgia

2. In § 52.570, paragraph (c) is amended by adding subparagraph (28) as follows:

§ 52.570 Identification of plan.

* * * * *

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

* * *

(28) Set II VOC regulations, submitted on December 18, 1980, by the Georgia Department of Natural Resources.

Subpart S—Kentucky

3. In § 52.920, paragraph (c) is amended by adding subparagraph (22) as follows:

§ 52.920 Identification of plan.

* * * * *

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

* * *

(22) Set II VOC regulations, submitted on February 5, 1981, by the Kentucky Department for Natural Resources and Environmental Protection.

4. In § 52.930, a new paragraph (a) is added as follows:

§ 52.930 Control strategy: Ozone.

(a) Part D—conditional approval. The State's Set II VOC regulations are approved on condition that the Commonwealth of Kentucky submit an adopted regulation for leaks from gas tank trucks and collection systems by March 1, 1982.

* * * * *

Subpart PP—South Carolina

5. In § 52.2120, paragraph (c) is amended by adding subparagraph (18) as follows:

§ 52.2120 Identification of plan.

* * * * *

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

* * *

(18) Set II VOC regulations, submitted on September 10, 1980, by the South Carolina Department of Health and Environmental Control.

Subpart RR—Tennessee

6. In § 52.2220, paragraph (c) is amended by adding subparagraph (39) as follows:

§ 52.2220 Identification of plan.

* * * * *

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

* * *

(39) Set II VOC regulations, submitted on December 31, 1980, by the Tennessee Department of Public Health.

7. In § 52.2225, paragraph (d) is added as follows:

§ 52.2225 Control strategy: Carbon monoxide and ozone.

Part D conditional approval.

* * * * *

(d) The State's Set II VOC regulations are approved on condition that the State by September 1, 1982, submit a compliance test method for gasoline tank trucks and collection systems.

[FR Doc. 81-33609 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL-1969-4]

Ohio; Approval and Promulgation of Implementation Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On November 20, 1980, November 24, 1980 and July 21, 1981, the State of Ohio submitted to the Environmental Protection Agency (EPA) additional information for the Youngstown and Cleveland transportation control plans. The additional information was submitted to meet the conditional approval requirements published in the October 31, 1980 **Federal Register** (45 FR 72122). EPA has reviewed the additional information submitted by the State and approves the Youngstown, Ohio, and Cleveland, Ohio Transportation Control Plans (TCPs) as satisfactorily addressing all of the requirements set forth in the conditional approval in the October 31, 1980 (45 FR 72143) and (45 FR 72122) **Federal Register**, and announces final rulemaking action today on these revisions. This action is effective January 25, 1982 unless notice is received by December 24, 1981 that someone wishes to submit adverse or critical comments.

DATE: Effective January 25, 1982.

ADDRESSES: Copies of additional information are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

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

State of Ohio Environmental Protection Agency, Box 1049, 361 E. Broad Street, Columbus, Ohio 43216

Requests for comments on this final proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne Ernstein, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: In the October 31, 1980, **Federal Register** (45 FR 72122) EPA announced final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio SIP. The State submitted these revisions to satisfy Part D of the Clean Air Act. In the October 31, 1980 **Federal Register** EPA conditionally approved the transportation control plans developed for the Youngstown and Cleveland urban areas. Discussion of the effects of conditional approval was published in the July 2, 1979 **Federal Register** (44 FR 38583) and the November 23, 1979 **Federal Register** (44 FR 67182). A conditional approval requires the State to remedy identified deficiencies by specified deadlines. The conditional approval status of the SIP continues until final action is taken and published in the **Federal Register**. In the May 1, 1981 **Federal Register** (46 FR 24562) EPA approved the conditional approval schedule developed by the State and

EPA. On November 20, 1980, November 24, 1980 and July 21, 1981, the State submitted additional information for the transportation control plans. This information was submitted to fulfill the requirements set forth in the October 31, 1980 **Federal Register**.

Presented below is a synopsis of the deficiencies identified by EPA in the October 31, 1980 **Federal Register**, the State's response to these deficiencies, and EPA's final rulemaking action.

Youngstown Urban Area

1. EPA requested commitments from the Regional Policy Board to meet specific annual emission reduction goals.

State Response: On November 20, 1980, the State submitted a copy of resolutions of commitment from the following local implementors: Trumbull County Commissioners, City of Warren, Western Reserve Transit Authority, and a copy of a resolution and commitment from the General Policy Board of Eastgate Development and Transportation Agency (EDATA) to implement those transportation measures identified in the SIP.

On July 21, 1981, the State submitted a copy of resolutions of commitment from the following local implementors: City of Youngstown, and the Board of Mahoning County Commissioners to implement those transportation measures identified in the SIP.

EPA Response: The resolutions of commitment submitted by the State on November 20, 1980 and July 21, 1981, satisfy the deficient elements in the Youngstown SIP for conditional approval.

Cleveland Urban Area

1. EPA requested a list of the additional Transportation Control Management (TCM) strategies to be implemented in the area, which, in conjunction with the additional point source regulations, will demonstrate attainment of the ozone National Ambient Air Quality Standards (NAAQS).

State Response: On November 24, 1980 and July 21, 1981, the State submitted a schedule of the list of additional TCM strategies to be implemented to demonstrate attainment of the ozone NAAQS for the Cleveland Metropolitan Area. Under the Schedule the final attainment plan will be adopted by November 1981. The strategies are scheduled for implementation by 1982.

EPA Response: The classification of TCMs submitted by the State on November 24, 1980 and July 21, 1981, satifies the conditional approval.

2. EPA also requested a schedule which delineates the dates on which the additional point source controls will be developed and implemented.

State Response: On November 24, 1980, the State submitted the schedule for development of additional point source hydrocarbon controls for the Cleveland demonstration area. This schedule provides for the adoption of final rules on July 1, 1982 and the implementation of the additional point source controls by July 15, 1985.

EPA Response: This schedule which delineates the dates on which the additional point source controls will be developed and implemented satisfies the conditional approval.

EPA Final Determination

EPA has reviewed the State's November 20, 1980, November 24, 1980 and July 21, 1981 submittals. The State has satisfactorily addressed all of the requirements set forth in the October 31, 1980 **Federal Register** (45 FR 72143) for the Youngstown TCMs. Therefore, EPA approves the Youngstown, Ohio area TCP. The State has also satisfactorily addressed all of the requirements set forth in the conditional approval in the October 31, 1980 **Federal Register** (45 FR 72122) for the TCMs for the Cleveland, Ohio area. Therefore, EPA approves the Cleveland, Ohio area TCP.

This is being done without prior proposal because the changes are non-controversial, of limited impact and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if EPA is notified within 30 days, that someone wished to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action, and establishing a comment period.

Pursuant to the provisions of the 5 U.S.C. 605(b), I hereby certify that this action which is being taken under sections 110 and 172 of the Act will not, if promulgated, have a significant economic impact on a substantial number of small entities. Today's action only proposes to approve a State action, and therefore imposes no new requirements under section 110 of the Act.

Under Executive Order 1291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation if promulgated, will not be "major" as defined by Executive Order 12291, because this action only approved a State action. This action only proposes to approve those dates by which Ohio has committed itself to submit as part of its CO and ozone SIP for Youngstown and Cleveland, Ohio. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under section 307(b)(1) of the Act, judicial review of this final 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 Act the requirements which are subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

Sec. 110 and 172 of the Act as amended (42 U.S.C. 7410 and 7502))

Dated: November 10, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

1. Section 52.1870 is amended by revising (c)(16) and (22) as follows:

§ 52.1870 Identification of the Plan.

* * * * *

(c) * * *

(16) On December 28, 1979, the State amended the attainment demonstration submitted on July 27, 1979 for the Cleveland Urban area. On November 24, 1980 and July 21, 1981, the State submitted additional information on the transportation control plans for the Cleveland Urban area.

* * * * *

(22) On June 12, 1980 and August 6, 1980, the State submitted technical support and commitments to correct the deficiencies cited in the May 16, 1980 Notice of Proposed Rulemaking. On November 20, 1980 and July 21, 1981, the State submitted additional information on implementor commitments for the Youngstown Urban area.

* * * * *

§ 52.1886 [Amended]

2. Section 52.1886 paragraphs (b)(2) and (b)(3) are removed and reserved.

§ 52.1887 [Amended]

3. Section 52.1887 paragraph (b)(3) is removed.

[FR Doc. 81-33569 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL 1969-2]

Approval and Promulgation of Implementation Plans: Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) announces approval of the Ohio State Implementation Plan (SIP) provisions which satisfy several general requirements of the Clean Air Act, as amended, including Section 121—Consultation; Section 110(a)(2)(K)—Permit Fees; Section 126—Interstate Pollution; Section 127—Public Notification; and Section 128—State Boards.

This action will be effective on January 25, 1982, unless notice is received within 30 days that someone wishes to submit comments.

DATE: This action is effective January 25, 1982.

ADDRESSES: Copies of the SIP revision are available for review at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, Regulatory Analysis Section, 230 South Dearborn Street, Chicago, Illinois 60604.

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

Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gerald S. Kellman/Toni Lesser, Air Planning Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6070 or 6037.

SUPPLEMENTARY INFORMATION:

Section 121—Consultation:

Section 121 of the Clean Air Act requires that States provide a satisfactory process for consulting with local governments and Federal land managers in the development of plans for attaining and maintaining the National Ambient Air Quality Standards. A satisfactory process of consultation must be included for transportation control plans, air quality maintenance, preconstruction review of direct sources of air pollution, nonattainment requirements, prevention of significant deterioration, and certain compliance orders. This process must be ongoing and in accordance with regulations promulgated by USEPA in the June 18, 1979 **Federal Register** (44 FR 35176).

On January 30, 1981, the State submitted Ohio Amended Substitute Senate Bill 258, which was enacted into law on December 19, 1980. Section 3704.033(A) of the Ohio State Code, requires the Director of the Ohio Environmental Protection Agency (OEPA) to establish a procedure of consultation with general purpose local governments, designated organizations of elected officials of local governments, and the secretary of any department having authority over Federal land located in the State. The procedure must meet the requirements of the Federal Clean Air Act pertaining to transportation controls, air quality maintenance plans, preconstruction review of direct sources of air pollution, nonattainment designations, prevention of significant deterioration, and enforcement orders.

The State has submitted as one part on its July 27, 1979, proposed SIP revision, a joint memorandum of understanding between OEPA and local planning organizations in the State. This agreement and Section 3704.033(A) of the Ohio State Code fulfill the requirements of the Clean Air Act, that the SIP provide an opportunity for adequate consultation with local governments and organizations of local elected officials.

Based on these documents, USEPA approves Ohio's process of consultation.

Section 110(a)(2)(K)—Permit Fees

This section requires the owner or operator of each major stationary source to pay the permitting authority, as a condition of any permit required by the Clean Air Act, the reasonable costs of processing an application for a permit and of implementing and enforcing the terms and conditions of the permit.

On July 27, 1979, Ohio submitted to USEPA, Ohio Administrative Code Rules 3745-45-01 through 3745-45-05, which establish a comprehensive permit fee system. This system defines the sources subject to fees, specifies the amount of the fee, the time period in which a fee must be paid, and provides for certain categories of exemptions. USEPA approves this system as meeting the requirements of Section 110(a)(2)(K).

Section 126—Interstate Pollution

Section 126(a)(1) of the Act requires that the SIP provide for written notice to nearby States of any proposed major stationary source which may significantly contribute to levels of air pollution in excess of National Ambient Air Quality Standards in that State.

On January 30, 1981, the State submitted Ohio Amended Substitute Senate Bill 258, which was enacted into law on December 19, 1980. Section 3704.03(f) of the Ohio Revised Code, requires that the owner or operator of each proposed new or modified air contaminant source provide notice of its proposed installation or modification to other States, as is required under the Clean Air Act. Based on this submittal, USEPA approves Ohio's conformity with section 126(a)(1) of the Act.

Section 126(a)(2) requires the State to identify major sources, which may significantly contribute to levels of air pollution in neighboring States.

In its July 27, 1979 SIP submittal, the State certified that it had sent letters to each adjacent State. These letters included a list of all major sources that may significantly contribute to levels of air pollution which are located in counties which border on these States. Based on this submittal, USEPA approves Ohio's conformity with section 126(a)(2) of the Act.

Section 127—Public Notification

Section 127 of the Act, requires the SIP to contain measures for effective notification to the public, on a regular basis, of instances or areas in which any national primary ambient air quality standard is exceeded; to advise the public of hazards associated with such pollution, and to enhance public awareness of measures which can be taken to prevent the standards from being exceeded.

In its July 29, 1979 SIP submittal, the State describes the procedures under which the public is notified of exceedances and the health hazards associated with such exceedances. On January 30, 1981, the State submitted Ohio Amended Substitute Senate Bill 258, which had been enacted into law. Section 3704.03(f) of the Ohio Revised Code requires the director of the OEPA to provide for measures to notify the public of exceedances, to advise the public of hazards associated with such pollution, and to enhance public

awareness of measures which would prevent the standards from being exceeded. Ohio regulation OAC–3745–35, submitted to USEPA on February 25, 1980, contains procedures for involving the public in regulatory and other procedures to improve air quality.

Based on these submittals, USEPA approves Ohio's public notification procedures.

Section 128—State Boards

Section 128 of the Act requires that any boards which approve permits or enforcement orders under the Act must contain a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permit or enforcement orders under the Act. It also requires that members of any such board adequately disclose any potential conflicts of interest. On July 27, 1979, Ohio submitted proposed amendments to the Ohio Revised Code, Section 3704, and on January 30, 1981, Ohio submitted an amended ORC 3704.

Chapter 102 of ORC 3704, contains provisions which require each member of a State board to file a statement which details possible conflicts of interest. The provisions of this chapter are consistent with the requirements of Section 128 of the Clean Air Act and ensure that a majority of the members of State boards will represent the public interest. Based on this submittal, USEPA approves Ohio's procedures for State boards.

Since USEPA views this action as a noncontroversial rulemaking, it is today approving the Ohio State Implementation Plan provisions which satisfy several general requirements of the Clean Air Act amending the following: Section 121—Consultation, Section 110(a)(2)(K)—Permit Fees, Section 126—Interstate Pollution, Section 127—Public Notification, and Section 128—State Boards. This action will be effective 60 days from the date of the **Federal Register** notice. However, if USEPA is notified within 30 days that someone wishes to submit comments, this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that the present rule will not have a significant economic impact on a substantial number of small entities since it imposes no burden on sources. This action only approves State actions. It imposes no new requirements.

Under Executive Order 12291 (46 FR 13193), USEPA must also 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, as defined by Executive Order 12291, because this action only approves a State action. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this final 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 from date of this publication. Under section 307(b) the subject of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

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

(Secs. 110, 121, 126, 127, 128, Clean Air Act, as amended (42 U.S.C. 7410(a), 7421, 7426, 7427, 7428))

Dated: November 18, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart KK—Ohio

Section 52.1870(c) is amended by adding (subparagraph 32) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(32) On July 27, 1979, the State of Ohio submitted materials to satisfy the general requirements of the Clean Air Act under Sections 110(a)(2)(K); 126, 127, and 128. On January 30, 1981, the State of Ohio also submitted an amended substitute Senate Bill 258, which was enacted into law on December 19, 1980, amending Ohio Revised Code 3704.

[FR Doc. 81-33914 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 55

[A-1-FRL 1975-4]

State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Delayed Compliance Order for Holyoke Water Power Company's Mt. Tom Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) announces the issuance of an administrative order called a Delayed Compliance Order (DCO) to Holyoke Water Power Company (HWPC), allowing the single boiler of its Mt. Tom Generating Station, located in Holyoke, Massachusetts to be converted from burning oil to burning coal. The increased particulate emissions caused by coal burning will mean that HWPC will be unable to comply with the Massachusetts State Implementation Plan (SIP) until February 15, 1984. Between now and February 15, 1984, HWPC will be allowed to burn coal despite this noncompliance. During this interim period, however, HWPC must install the pollution control equipment necessary to achieve final compliance with the Massachusetts SIP. This DCO sets forth a compliance schedule, emissions limitations, and other requirements of section 113(d)(5) of the Clean Air Act.

EFFECTIVE DATE: November 24, 1981.

ADDRESSES: Copies of all comments received, EPA's responses to these comments, and all reports required under the DCO are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts; and at the Pioneer Valley Air Pollution Control District, 3rd floor, 1414 State Street, Springfield, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Arnold Leriche at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts 02203 or telephone (617) 223–4448.

SUPPLEMENTARY INFORMATION: On May 21, 1981, HWPC, a subsidiary of Northeast Utilities, requested a DCO under Section 113(d)(5) of the Clean Air Act, 42 U.S.C. 7413(d)(5), to enable it to burn coal in the single 145 megawatt generating unit of its Mt. Tom

Generating Station in Holyoke, Massachusetts. HWPC proposed an immediate conversion from oil to coal burning and stated that this would cause temporary noncompliance at Mt. Tom with the following regulations contained in the EPA approved Massachusetts SIP:

310 CMR 7.02(8)—limiting particulate emissions to 0.12 pounds per million Btu heat input;

310 CMR 7.05(4)—limiting the ash content of fossil fuels to 9% dry weight (interpreted by the State as measured on a cargo received basis) and;

310 CMR 7.06(1)—limiting visible emissions to 20% opacity, expect up to 40% for no more than 6 minutes in any hours.

On July 31, 1981, EPA proposed (46 FR 39168) to issue a DCO to HWPC, exempting the Mt. Tom plant until February, 1984, from the above particulate emission and visible emission regulations, but not from the ash content regulation. EPA's proposal also contained interim pollution control requirements and emission limitations, as well as emissions and ambient monitoring and reporting requirements. These requirements, as well as EPA's findings on Mt. Tom's eligibility for a DCO, are explained in detail in EPA's proposed rulemaking notice and will not be repeated here.

The comment period on EPA's proposal ran from July 31 to September 4, 1981. A public hearing was held in Holyoke, Massachusetts on August 25, 1981. Ten persons testified at the public hearing, and four persons submitted written comments during the comment period. Of these fourteen commenters, four opposed the proposed DCO, three favored the proposed DCO, and seven favored the DCO but also expressed environmental concerns. As previously stated, EPA's responses to all the comments submitted are contained in several memoranda which are available for public inspection. Only those comments which have resulted in the two principal changes from EPA's proposal will be discussed in today's notice.

1. Ash Limitation—HWPC originally requested an exemption from the state ash regulation for the duration of the DCO period. EPA's proposal did not exempt Mt. Tom from meeting the state ash regulation because, in EPA's judgement, HWPC failed to show in its DCO application that it could not obtain coal that met the 9% ash (dry basis) limitation. At the public hearing, the Massachusetts Department of Environmental Quality Engineering suggested a 10% ash limitation. A second commenter testified that the only basis for an EPA waiver of the existing state ash regulation would be written documentation from HWPC of lack of supply of conforming coal. HWPC requested a 10% ash (as received) limitation, but did not provide any supporting documentation for its request. A 10% ash (as received) coal equates to approximately a 10½%–11% ash (dry basis) coal due to the difference in moisture contents. Subsequent to the hearing, one commenter wrote a letter supporting the 9% ash limitation. Also, HWPC submitted written documentation in support of its request for a 10% (as received) ash limit. Included in HWPC's support was a summary of contacts with fuel suppliers. HWPC sent requests for proposal to 120 suppliers asking for coal to meet a 10% ash (as received) specification. HWPC received responses from 25 suppliers, only 6 of which would guarantee to meet the 10% ash (as received) limit as well as other important specifications.

After publication of EPA's proposed DCO, which did not grant an exemption from the state's 9% ash (dry basis) regulation, HWPC recontacted the 6 suppliers to determine if any would guarantee delivery of 9% ash (dry basis) coal in addition to meeting all other necessary specifications. It should be noted that HWPC was unwilling to sign a 2 year contract with any supplier because it had not tested the coal in its Mt. Tom boiler. Furthermore, HWPC could not guarantee regular receipt of coal shipments during the winter of 1981–1982 because the thawing device for its coal unloading equipment is in disrepair. Primarily for these reasons, no supplier would guarantee 9% ash (dry basis) coal. Although EPA believes that HWPC's delayed contact with suppliers for the 9% ash (dry basis) coal resulted in predictable failure to secure a supply, EPA is convinced that a supply of 9% ash (dry basis) coal is unavailable to HWPC for the 1981–1982 winter season. However, HWPC can continue to contact suppliers about a 2 year contract for 9% ash (dry basis) coal to commence after the 1981–1982 winter. By that time, the weather will be warm enough to unload coal without the thawing devices, enough time will be available to install new thawing devices before the next winter, and enough time will have lapsed to allow HWPC to test potential conforming coal supplies in the Mt. Tom boiler.

Therefore, EPA is today permitting noncompliance with Massachusetts regulation 310 CMR 7.05(4) limiting ash content of coal to 9% (dry basis) for a period of 8 months from the date of initial coal burning at Mt. Tom. During this 8 month period, a 10% (as received) ash limitation will apply. In addition, HWPC must report on a monthly basis the results of its efforts to obtain conforming coal. HWPC may not stockpile nonconforming coal for use after the end of the 8 month period. During the 8 month period, EPA will review the results of HWPC's efforts to secure conforming coal. If EPA determines a further exemption is warranted, EPA will amend this DCO under its rulemaking procedures.

2. Ambient Monitoring—EPA's proposal required sulfur dioxide (SO_2) and/or total suspended particulate (TSP) ambient monitors at eight locations around the Mt. Tom plant. These eight locations were chosen based on consideration of high population exposure, as well as high plant impacts predicted by dispersion modeling.

Eight persons commented on EPA's ambient monitoring proposal. One commenter supported EPA's proposal, five commenters recommended an expanded monitoring network, one commenter recommended an expanded network that balanced other environmental concerns, and one commenter recommended a smaller monitoring network.

After reviewing the comments, EPA performed detailed site inspections of the eight proposed monitoring locations. As a result of these inspections, EPA is now requiring the following three changes:

(a) Mt. Tom ski area, Holyoke (called Smith's Ferry Site in EPA's proposal)—EPA's proposal required both SO_2 and TSP monitors. EPA is now requiring only SO_2 monitoring because the inspection revealed the site is near a gravel parking lot which would unduly influence future TSP measurements.

(b) Northampton area—EPA's proposal required both SO_2 and TSP monitors. EPA is now requiring only a TSP monitor. For purposes of data comparison, EPA prefers to retain the existing TSP monitor in Northampton. However, it is difficult to locate an SO_2 monitor at this site. Furthermore, no violations of SO_2 standards were predicted at this population-oriented site.

(c) Mt. Holyoke Range (proposed new site)—EPA's proposal required both SO_2 and TSP monitors. EPA is now requiring only an SO_2 monitor. This site is located in a state park; EPA is convinced that additional land clearing and noise associated with the siting and operation of a TSP monitor will have a significantly greater adverse impact on Mt. Holyoke than requiring an SO_2 monitor alone. Furthermore, EPA is confident that TSP levels can be

adequately estimated from the SO_2 data to insure compliance with the primary TSP standards.

Following the close of the public comment period, EPA received objections from a citizen's advisory group concerning siting of the monitors at the Summit House and Mt. Holyoke Range locations, both of which are in a state park. The group, which advises the state on management of the park, was mainly concerned about the aesthetic impact of a new monitor and powerline in a forested area near a hiking trail. EPA is presently working with concerned citizens, HWPC, and the State to reach agreement on the location and number of monitors to be placed on these two sites in the state park, and on various means to minimize the adverse impacts of these monitors. Except for the elimination of the TSP monitor at the Mt. Holyoke Range site, EPA is not by today's Order reversing its proposed requirements to monitor at both park locations. However, the DCO allows EPA the flexibility to change the location and number of ambient monitors to reflect the results of continuing discussions with the above parties.

Therefore, after considering all comments received, the DCO request by the Holyoke Water Power Company, EPA's findings, and the written concurrence from the Governor of the Commonwealth of Massachusetts, this order is hereby issued. In addition, this Order is being made effective immediately.

(42 U.S.C. 7413(d))

Dated: November 17, 1981.

Anne M. Gorsuch,

Administrator, Environmental Protection Agency.

Before the United States Environmental Protection Agency Region I, John F. Kennedy Federal Building, Boston, MA 02203

Statutory Authority

This Order is issued under Sections 113(d)(5) and 114 of the Clean Air Act (the Act), as amended, 42 U.S.C. 7413(d)(5) and 7414. This Order contains a compliance schedule, interim requirements, monitoring and reporting requirements and other requirements which satisfy the terms of these Sections of the Act. Public notice has been provided under Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1), and a copy of this Order has been provided to the Governor of the Commonwealth of Massachusetts to seek his concurrence.

In consideration of the foregoing, 40 CFR Part 55 is amended as follows:

PART 55—ENERGY RELATED AUTHORITY

1. By adding § 55.471 to read as follows:

Subpart W—Massachusetts

§ 55.471 Federal administrative orders issued under Section 113(d)(5) of the Act.

Findings

The Administrator of EPA (Administrator) makes the following findings:

(1) The Holyoke Water Power Company (HWPC) owns and operates the Mt. Tom Generating Station (Mt. Tom) located in Holyoke, Massachusetts.

(2) Mt. Tom is a major stationary source, having the potential to emit more than 100 tons per year of particulate and sulfur dioxide while using pollution control equipment.

(3) Currently, the single unit at Mt. Tom Burns residual oil.

(4) On June 30, 1977, the Federal Energy Administration issued a prohibition order under the Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.* (1974), which prohibited Mt. Tom from burning oil. Currently, the U.S. Department of Energy (DOE) is preparing an Environmental Impact Statement (EIS) which is required prior to issuance of a Notice of Effectiveness of the prohibition order.

(5) An implementation plan to regulate air pollution in Massachusetts has been approved by the Administrator of EPA under Section 110 of the Act, 42 U.S.C. 7410.

(6) 310 CMR 7.02(8) is part of the applicable State Implementation Plan (SIP) within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in pertinent part as follows:

No person owning, leasing, or controlling the operation of any fossil fuel utilization facility shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following tables (0.12 lbs. of particulate per million Btu heat input).

(7) 310 CMR 7.05(4) is part of the applicable SIP within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in pertinent part as follows:

No person shall cause, suffer, allow, or permit the burning in the district (Pioneer Valley Air Pollution Control) of any fossil fuel containing an ash content in excess of nine percent (9%) by dry weight.

(8) 310 CMR 7.06(1) is part of the applicable SIP within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in pertinent part as follows:

(1) From Stationary Sources Other than Incinerators

(a) No person shall cause, suffer, allow, or permit the emission of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the Chart (20%) for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time during the said six minutes shall the shade, density, or appearance be equal to or greater than No. 2 of the Chart. (40%).

(9) EPA has determined that Mt. Tom will be unable to meet the requirements of 310 CMR 7.02(8), 7.05(4) and 7.06(1) if the unit converts to coal burning.

(10) Mt. Tom is located in the Hartford-New Haven-Springfield Interstate Air Quality Control Region where the violations of the annual primary National Ambient Air Quality Standard (NAAQS) for total suspended particulates (TSP) were recorded during calendar years 1977, 1978, and 1979. After public notice and a public hearing, EPA has determined that HWPC has made the necessary showing under section 113(d)(5)(D) of the Act, 42 U.S.C. 7413(d)(5([D), that particulate emissions from coal burning will not significantly cause or contribute to primary NAAQS violations.

(11) The Administrator has determined that the emission limits, requirements respecting pollution characteristics of coal and other enforceable measures contained in the following Order are sufficient to assure that the burning of coal at Mt. Tom will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any primary NAAQS for such pollutant.

(12) The Administrator also has determined that the compliance schedule in the following order requires compliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1) as expeditiously as practicable.

(13) Furthermore, the Administrator has determined that the Interim Requirements of the following Order require the best practicable systems of emission reduction to protect the public health and minimize noncompliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1).

I. SIP Limitation

Under this Order, the Mt. Tom generating unit owned by Holyoke Water Power Company (HWPC) shall comply with the interim emissions limits, compliance schedules, and other enforceable requirements set forth in this Order. The emission limits contained in this Order are authorized only until HWPC can install the necessary pollution control equipment to achieve compliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1) of the Massachusetts SIP while burning coal at Mt. Tom. The Order contains a compliance schedule which sets a final compliance date by which HWPC's Mt. Tom generating unit must achieve compliance with all requirements of the SIP.

II. Interim Requirements

EPA has determined that the following interim requirements ensure that burning coal at Mt. Tom will not cause or contribute to primary violations of the NAAQS for TSP:

A. (1) Prior to burning coal at Mt. Tom, HWPC shall refurbish the existing dust collector to its original design

specifications and install four new transformer-rectifier sets, as specified in HWPC's May 21, 1981 submittal to EPA.

(2) Not later than 15 days before initial burning of coal, HWPC shall notify EPA of the expected date that the dust collectors shall be refurbished for the purpose of EPA's conducting an inspection.

B. (1) Prior to initial burning of coal at Mt. Tom, HWPC shall install a flue gas conditioning system to enhance the collection efficiency of its electrostatic precipitator.

(2) The flue gas conditioning system shall be fully operational prior to emission testing on the source as required in II(E)(2) of this Order.

C. Not later than 7 days before initial burning of coal at Mt. Tom, HWPC shall submit to EPA written notice of the date it intends to start burning coal in the unit.

D. (1) Notwithstanding the requirements of II(D)(2) of this Order, HWPC shall burn coal at Mt. Tom with an ash content not in excess of 10% by weight (as received basis) for each shipment received.

(2) Within 240 days after initial burning of coal at Mt. Tom under this Order, HWPC shall burn coal at Mt. Tom with an ash content not in excess of 9% by weight (dry basis) for each shipment received.

(3) Coal shall be sampled for ash content according to the requirments of IV(B)(1) of this Order.

E. (1) Upon initial burning of coal at Mt. Tom, HWPC shall not emit particulate matter at a rate in excess of 0.480 pounds per million Btu gross heat input.

(2) HWPC shall conduct a particulate emission test on the unit within 45 days of initial burning of coal, to demonstrate compliance with this emission limit.

F. (1) Within 30 days after initial coal burning at Mt. Tom, HWPC shall submit to EPA a preliminary plan to optimize particulate emission reduction from operating the flue gas conditioning system.

(2) In addition, HWPC shall submit to EPA monthly status reports on the implementation of this plan.

G. (1) Within 120 days after initial coal burning, HWPC shall submit to EPA a final plan to optimize particulate emission reduction from operating the flue gas conditioning system. Upon approval by EPA, this final plan shall become enforceable under this Order.

(2) Within 150 days after initial burning of coal, HWPC shall conduct a particulate test on the unit in accordance with IV(A)(3) of this Order to demonstrate optimization of the flue gas conditioning system.

H. (1) Within 240 days after initial burning of coal at Mt. Tom under this Order, particulate emissions from the unit shall not exceed 0.350 pounds per million Btu gross heat input.

(2) HWPC shall conduct a particulate emission test on the unit within 240 days after initial burning of coal at Mt. Tom to demonstrate compliance with this emission limit.

I. Within 30 days after completing each set of particulate emission tests required by II(E) and (H) above, HWPC shall submit to EPA a report which correlates visible emissions as determined by EPA Method 9 (40 CFR Part 60, Appendix A) as a function of particulate emissions from coal burning.

(1) Each report shall propose an enforceable visible emissions opacity limit for the unit.

(2) EPA shall set an opacity limit for enforcement under this Order within 30 days of receipt of each report. EPA may require HWPC to submit additional visible emissions data under IV(A)(5) of this Order, and may use the additional data to revise opacity limits applicable to coal burning under this Order.

(3) Each report also shall propose an opacity monitor reading which correlates with particulate emissions from coal burning.

(4) Within 30 days of receipt of each report, EPA shall set an opacity monitor reading which will be used as an indicator of continuous compliance with the emission limits of this Order.

J. Within 30 days of the effective date of this Order, HWPC shall submit for approval by EPA a detailed program for minimizing fugitive particulate emissions from coal and coal ash handling.

(1) This program shall include as a minimum, HWPC's commitment to install a telescoping dust chute at the discharge point of the coal pile loading conveyor prior to initial coal burning.

(2) This program, including an implementation schedule, shall become a fully enforceable term of the Order.

K. (1) Within 30 days of the effective date of this Order, HWPC shall submit to EPA a written plan detailing the specific activities it plans to conduct to meet the coal ash content requirement specified in II(D)(2) of this Order. The plan must also demonstrate that HWPC will not stockpile nonconforming coal for use after 240 days from the date of initial coal burning at Mt. Tom. Upon approval by EPA, this plan shall become enforceable under this Order.

(2) In addition, HWPC shall submit to EPA monthly status reports within 15 days of the end of each month on the implementation and results of this plan.

III. Compliance Schedule

A. HWPC shall comply as expeditiously as practicable with the requirements of 310 CMR 7.02(8) and 7.06(1) or any superceding Massachusetts regulations as approved by EPA. In no event, however, shall compliance be achieved later than the dates specified in the following compliance schedule:

(1) Not later than December 31, 1981, HWPC shall enter into contracts for the design, fabrication, and installation of particulate emission controls or other equipment which is necessary for the unit to achieve final compliance with 310 CMR 7.02(8) and 7.06(1) or any superceding Massachusetts regulations as approved by EPA prior to this date.

(2) Not later than January 31, 1983, HWPC shall initiate on-site construction for installation of the continuous particulate emission control systems.

(3) Not later than December 31, 1983, HWPC shall complete the installation of the continuous particulate emission control systems.

(4) Not later than February 15, 1984, or within 45 days of completing installation of the continuous particulate emission control systems, HWPC shall perform particulate emission tests to demonstrate compliance with 310 CMR 7.02(8) and 7.06(1) or such superceding Massachusetts regulations as approved by EPA.

B. HWPC shall submit to EPA, no later than 15 days after each calendar quarter, calendar quarterly reports which outline its progress in meeting all the compliance milestones listed above. The first such report is due April 15, 1982.

C. In the event HWPC is unable to comply with any of the schedule increments established in III(A) above, and such failure is due to an Act of God, war, strike, or other such causes beyond its control, HWPC may petition EPA to extend the time for compliance with such schedule increment and all subsequent schedule increments by a period equal to the delay caused by such circumstances. HWPC shall bear the burden of proving that a delay is caused by circumstances clearly beyond its control. Any delay that is caused by such circumstances shall not be deemed a violation of this Order. In no event, however, shall final compliance be achieved later than December 31, 1985.

IV. Monitoring and Reporting Requirements

A. Emissions Monitoring and Reporting Requirements

1. All particulate emission testing shall be conducted in accordance with Reference Method 5, 40 CFR Part 60, Appendix A, under operating conditions approved by EPA and in the presence of EPA personnel or EPA representatives.

(a) HWPC shall provide safe access to a safe sampling platform on the unit to be tested.

(b) For the purposes of this Order, a particulate emission test shall consist of four Method 5 sampling runs. One of the four runs shall be conducted during the normal boiler sootblowing cycle, and three runs shall be conducted without sootblowing.

(c) The average emission rate for a particulate emission test shall consist of the arithmetic average of the three non-sootblow runs prorated in a manner specified by EPA to account for the change in emission encountered during the sootblow run.

2. For any emission or performance specification testing under this Order:

(a) HWPC shall submit a pretest report to EPA at least 30 days before the proposed test date for the unit.

(b) No fewer than 5 days before HWPC conducts any such test, EPA shall meet with appropriate HWPC personnel and any representatives of the contractor responsible for the performance of the tests to discuss and finalize the testing protocol.

(c) HWPC shall submit a written emission test report to EPA within 30 days of completing any EPA required emission testing.

(d) Pretest reports and emission test reports shall contain information as required by EPA and shall be presented in a format specified by EPA.

3. Within 150 days of initial burning of coal at Mt. Tom, HWPC shall perform emission tests on the unit as equipped with flue gas conditioning as follows:

(a) Two sets of tests shall be performed on the unit; one set while the flue gas conditioning system is operating, and one set while it is not operating.

(b) Each set of tests shall include:

(i) One particulate emission test of four runs conducted in accordance with EPA Method 5, 40 CFR Part 60, Appendix A.

(ii) At least 8 acid sulfate measurements in accordance with a method specified by EPA.

(iii) At least 8 sulfur dioxide measurements using EPA Method 6, 40 CFR Part 60, Appendix A.

(c) All acid sulfate and sulfur dioxide measurements shall be made during the approximate duration of the particulate testing.

(d) Each acid sulfate measurement shall be performed simultaneously with a sulfur dioxide measurement.

(e) The same type of coal shall be burned during both sets of tests.

(f) The boiler load, sootblowing operations and the amount of excess air shall be the same for both sets of tests.

(g) Both sets of tests shall be made while the unit and its electrostatic precipitator are operating under normal operating conditions.

(h) For any set of tests performed with flue gas conditioning, the flue gas conditioning system shall be operated in a manner specified by EPA.

(i) The tests with conditioning agents shall be preceded by at least 10 days of operation with conditioning agents to allow the precipitator to stabilize. Similarly, the tests without conditioning agents shall be preceded by at least 10 days of precipitator operation without conditioning agents.

(j) Each set of tests also shall be subject to the requirements of IV(A)(2) of this Order.

(k) If the approximate composition or usage rate of the conditioning agent changes at any time during the life of this Order, HWPC shall notify EPA in writing within 15 days of the change. If such change occurs after HWPC has performed the testing detailed above, EPA may require additional tests. If EPA decides to require such additional tests, HWPC shall be notified in writing. HWPC shall perform the additional tests within 30 days of receipt of the written notice.

4. HWPC shall install and operate continuous opacity monitoring equipment before burning coal in the unit.

(a) HWPC shall demonstrate that its opacity monitors comply with performance specifications within 30 days after initial burning of coal at Mt. Tom. HWPC shall comply with the provisions of 40 CFR Part 51, Appendix P, and the performance specification test requirements cross-referenced under 40 CFR Part 60, Appendix B. If two or more opacity monitors are used to report opacity from the boiler, HWPC shall submit to EPA for approval, an acceptable method for correlating each monitor to the total opacity at the stack outlet. HWPC shall notify EPA 10 days before removing any monitor from its location. This notification also shall include data which demonstrates that the new location for the monitor or its replacement meets the requirements of 40 CFR Part 60, Appendix B. Additionally, the monitor or its replacement shall be completely recertified according to 40 CFR Part 60, Appendix B before it is reinstalled. Data demonstrating recertification shall be provided to EPA upon request.

(b) Not later than 30 days prior to initial start-up of the continuous opacity monitoring equipment, HWPC shall submit to EPA an approvable quality assurance program for the monitoring system.

(c) HWPC shall report to EPA on a monthly basis in a format approved by EPA, all hourly average opacity readings for each opacity monitor which exceed the limits set by EPA under II (1) of this Order. These summary reports shall be submitted to EPA within 15 days of the end of each month; records of all hourly average opacity readings shall be retained at Mt. Tom for inspection for the duration of this Order. An explanation, if known, shall accompany each opacity exceedance.

B. Coal Monitoring and Reporting Requirements

Within 30 days of the effective date of this Order, HWPC shall submit an approvable fuel monitoring plan to EPA. As a minimum, such plan shall include a commitment on the part of HWPC to do the following:

1. HWPC shall perform proximate analyses of all coal cargoes off-loaded at Mt. Tom.

(a) ASTM D 3172 shall be used for the performance of the proximate analyses.

(b) ASTM D 2234 sampling with systematic spacing shall be used for sample increment collection.

2. HWPC shall perform daily coal sampling and analyses for sulfur content, ash content, and gross calorific value for coal burned under this Order.

(a) ASTM D 2234 sampling with systematic spacing shall be used for sample increment collection.

(b) Table 2 of paragraph 7.1.5.2 of ASTM D 2234 shall be used to determine the minimum number of increments and the minimum weight of each increment. Such increments from all conveyors are to be composited for analysis on a daily basis.

(c) ASTM D 2103 shall be used for sample preparation.

(d) ASTM D 3177 shall be used for sulfur analysis.

(e) ASTM D 3174 shall be used for ash analysis.

(f) ASTM D 3173 shall be used for moisture analysis.

(g) ASTM D 3180 shall be used for calculating analyses on either a dry or as received basis.

(h) ASTM D 2015 or ASTM D 3286 shall be used for gross calorific value determinations.

3. HWPC shall participate in the EPA coal analysis methods audit program conducted by the Quality Assurance Division, Environmental Monitoring Systems Laboratory in Research Triangle Park, North Carolina. Coal audit samples shall be analyzed according to ASTM procedures for percent sulfur, moisture, ash content and gross calorific value and will be provided by EPA on a periodic basis.

4. Monthly reports containing coal cargo shipment sizes, coal cargo analyses, and daily coal analyses shall be submitted to EPA within 15 days of the close of each month in a format approved by EPA.

(a) Such reports also shall contain 30-day "rolling average" sulfur content values for the coal burned calculated for each day of the month.

(b) The results of any audit coal sample analyses performed during that month also shall be included.

(c) All coal analysis data will be presented on a dry basis.

5. HWPC shall submit to EPA on a monthly basis hourly average net megawatts generated for the unit. Monthly data shall be reported within 15 days of the end of each month in a format approved by EPA.

6. HWPC shall perform any additional testing required by EPA within 30 days of receipt of written notification of such requirement. Among other things, additional testing may be required to quantify changes in emissions due to such factors as changes in coal characteristics, or changes in boiler or precipitator operation.

Additional tests also may be required to quantify suspected changes in emissions indicated by frequent opacity exceedences. Any proposal made by HWPC to limit total station emissions by derating the generating unit may result in additional testing requirements for the unit at any proposed generation levels.

7. HWPC shall maintain a logbook available for inspection by EPA containing the following data for the electrostatic precipitator:

(a) HWPC shall log secondary voltage, secondary current, and spark rate every 4 hours while the unit is burning coal.

(b) HWPC shall log voltage current relationships across the transformer-rectifier set's operating range every 15 days for the first 60 days after initial burning of coal in the unit. Thereafter, the data shall be logged every 30 days for the duration of this Order.

C. Ambient Monitoring and Reporting Requirements

1. (a) Within 60 days of the effective date of this Order but in no case later than the start of coal burning and subject to the provisions of IV(C)(5) of this Order, HWPC shall install and operate a network of ambient monitors to measure sulfur dioxide (SO_2) concentration on a continuous basis, and TSP concentration on a frequency as specified in IV(C)(2) below.

(b) As a minimum, HWPC shall place monitors for the following pollutants near each of the locations specified below:

(i) Summit House, Skinner State Park bordering Hadley and South Hadley; TSP and SO_2.

(ii) Mt. Tom Range, approximately 0.8 km southwest of Summit House approximately 750 feet above mean sea level, bordering Hadley and South Hadley; SO_2. TSP will be required only if the SO_2 levels exeed the secondary NAAQS.

(iii) Northampton area, Northampton; TSP. SO_2 will be required only if the TSP levels exceed the secondary NAAQS.

(iv) Pine Street, South Hadley; TSP and SO_2.

(v) Mt. Tom ski area, Holyoke; SO_2.

(vi) Goat Peak, Mt. Tom Range, Holyoke; TSP and SO_2.

(vii) Mt. Tom coal pile (to measure fugitive impacts), Holyoke; TSP.

(viii) Mt. Tom stackbase, Holyoke; SO_2.

(c) The burning of coal at Mt. Tom under this Order constitutes acceptance by HWPC that ambient monitoring data collected on its property is representative of ambient air quality levels in the surrounding area. EPA may use this data for enforcement or any other purpose as such under the Act.

2. The sampling frequency at the Northampton and Pine Street TSP sites shall be once every three days. The sampling frequency at all the remaining TSP sites shall be daily; however, the sampling frequency at a TSP monitoring site may be reduced to once every three days if the following conditions are met at such site during any continuous 365 days period after coal has been burned at Mt. Tom:

(a) Every 24-hour TSP concentration measured at the site must be less than 200 micrograms per cubic meter, and;

(b) The annual geometric mean of TSP measured at the site must be less than 60 micrograms per cubic meter.

3. All ambient monitoring locations and equipment installations must be approved by EPA prior to operation and must meet 40 CFR Part 58, Appendix B (Quality Assurance), Appendix C (Ambient Air Quality Monitoring Methodology), and Appendix E (Probe Siting Criteria).

(a) All SO_2 analyzers are to be operated on the 0.5 ppm range unless ambient air quality levels exceed this concentration. If this case occurs, then any such instrument must be operated on the appropriate higher range.

(b) Within 30 days of the effective date of this Order, HWPC shall submit in writing to EPA an approvable quality control program.

(c) EPA will accept performance audits by the Massachusetts Department of Environmental Quality Engineering (DEQE) to satisfy the requirements for the quarterly accuracy audit (40 CFR Part 58, Appendix B, Section 3), but it will be HWPC's responsibility to provide independent performance audits for any calendar quarter not audited by DEQE.

4. Within 60 days of initial burning of coal, HWPC shall complete construction of two 10 meter meteorological towers and one 100 meter tower at Summit House, Goat Peak, and near Mt. Tom's stack, respectively, for the purpose of operating continuous monitoring instruments to measure wind speed and direction.

(a) The exact location of these towers shall be selected by HWPC and shall be approved by EPA in writing before the towers are constructed.

(b) All meteorological instrumentation shall comply with EPA requirements as specified in EPA Guideline 450/4–80–012.

(c) All meteorological monitoring procedures must be submitted to EPA for approval at least 30 days before they are implemented.

5. HWPC shall obtain all the necessary permits, easements or permissions necessary to locate the monitors and meteorological towers required by IV(C) (1) and (4) of this Order. EPA may grant time extensions for monitor siting, select alternative sites, or eliminate sites altogether. However, HWPC bears the burden of establishing that all reasonable efforts have been made to locate the monitors and towers at the sites specified in this Order and that a change in the sites is necessary.

6. HWPC shall receive permission in writing from EPA prior to conducting any further analysis of the TSP filters. HWPC must keep all TSP filters in a suitable condition for further analysis for a period of 12 months after termination of this Order. HWPC must supply any of these filters to EPA upon request for further analysis. If the Federal Reference method for total suspended particulates is modified or replaced during the period of this order, EPA reserves the right to require HWPC to modify or replace any or all existing particulate monitors.

7. All monitoring and meteorological data shall be submitted to DEQE within 30 days of the close of each month in machine readable SAROAD format.

(a) The data reported to DEQE will be for individual hourly observations of SO_2, wind speed, and direction, as well as daily averages for TSP.

(b) HWPC shall insure that EPA receives the above information within 90 days of the end of each calendar quarter.

(c) HWPC shall notify EPA of any exceedence to any Primary National Ambient Air Quality Standard within 48 hours of receiving such data.

(d) Within 30 days of the close of each month, HWPC shall submit to both EPA and the DEQE, Springfield Regional Office, one paper copy of all monitoring and meteorological data. This data will be maintained for public inspection at the EPA Regional Office, Boston, and

the DEQE Regional Office, Springfield, during normal working hours.

(e) EPA may grant time extensions to the data reporting requirements for this section, but HWPC shall bear the burden of establishing that such extensions are necessary.

8. Within 30 days of the occurrence of any violation of the primary National Primary Ambient Air Quality Standard for total suspended particulates, HWPC shall submit to EPA, all relevant data under Section 113(d)(5)(D) (i) through (iii) of the Act.

V. General Requirements

A. This Order shall not be effective during any interval after EPA finds and notifies HWPC that (1) a National Primary Ambient Air Quality Standard for total suspended particulates is being exceeded in the Hartford-New Haven-Springfield Interstate AQCR and (2) HWPC has failed to prove that the requirements of Sections 113(d)(5)(D) (i) through (iii) of the Act have been satisfied. During any such intervals, HWPC shall comply with 310 CMR 7.02(8), 7.05(4), and 7.06(1) or any superseding Massachusetts regulations as approved by EPA. If HWPC violates these regulations, it shall be subject to enforcement action under Section 113 of the Act.

B. Nothing herein shall affect the responsibility of HWPC to comply with any other applicable local, state or federal regulations.

C. HWPC shall submit a copy of all correspondence and reports required under this Order to the Director, Air and Waste Management Division, EPA, Region I, JFK Federal Building, Boston, MA 02203.

HWPC may assert a business confidentiality claim covering part or all of the information requested by this Order in the manner described by 40 CFR Part 2, Section 203(b). Information covered by such a claim will be disclosed by EPA only as set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to HWPC. Certain categories of information are not properly the subject of such a claim.

For example, the Act provides that emission data shall in all cases be made available to the public. See 42 U.S.C. 7414(c).

D. HWPC is hereby notified that its failure to achieve final compliance at Mt. Tom with 310 CMR 7.02(8) and 7.06(1) by the final compliance date specified in III(A)(4) of this Order may result in an assessment of a noncompliance penalty under Section 120 of the Act, 42 U.S.C. 7240. This penalty may be imposed at an earlier date, as provided under Section 113(d) and Section 120 of the Act, in the event that this Order is terminated or violated as provided in V (E) and (F) below. In either event, HWPC will be formally notified of its noncompliance, under Section 120(b)(3) of the Act or any regulations promulgated thereunder.

E. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines, on the record, after notice and opportunity for hearing, that the inability of HWPC to comply with 310 CMR 7.02(8) and 7.06 as approved by EPA, no longer exists with respect to its Mt. Tom generating unit. Additionally, if HWPC demonstrates compliance with 310 CMR 7.02(8) and 7.06 prior to the final compliance date specified in III(A)(4) of this Order, then this Order shall be terminated at that earlier date.

F. Violation of any requirement of this Order shall result in one or more of the following actions:

1. Enforcement of such requirement under Section 113 (a), (b), or (c) of the Act, 42 U.S.C. 7413 (a), (b), or (c);

2. Revocation of this Order, after notice and opportunity for a public hearing;

3. Notification of noncompliance and assessment of a noncompliance penalty under Section 120 of the Act, 42 U.S.C. 7420.

G. The information requests contained in this DCO are not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

H. This order is effective November 24, 1981 and after having received concurrence from the Governor of the Commonwealth of Massachusetts.

Dated: November 17, 1981.

Anne M. Gorsuch,

Administrator, Environmental Protection Agency.

Delayed Compliance Order—Mt. Tom Generating Station Waiver of Rights To Challenge Order

Holyoke Water Power Company (the "Company"), by the duly authorized undersigned, hereby consents to the findings made and to the terms of this Order and waives any and all rights under provision of law to challenge this Order; however, the Company expressly reserves the right to assert any defense or to seek such other relief (other than an appeal from the issuance of this Order and the findings contained therein) as may be available to the Company in any enforcement action or other action taken pursuant to this Order or otherwise.

Dated: October 27, 1981.

Walter F. Torrance, Jr.,

Senior Vice President.

[FR Doc. 81-33685 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 60

[A-7-FRL 1957-2]

Adjustment of Opacity Standard for Fossil Fuel Fired Steam Generator

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 18, 1981, there was published in the **Federal Register** (46 FR 41817) a notice of proposed rulemaking setting forth a proposed EPA adjustment of the opacity standard for Omaha Public District (OPPD), Nebraska City Power Station, Nebraska City, Nebraska. The proposal was based on a demonstration by OPPD of the conditions that entitle it to such an adjustment under 40 CFR 60.11(e). Interested persons were given thirty days in which to submit comments on the proposed rulemaking.

One written comment was received after the close of the comment period from OPPD pointing out in the proposal that the fourth paragraph under Supplementary Information referred to sixteen performance tests conducted from February 25, 1981 to April 16, 1981, as the basis for the EPA determination. This was incomplete information. The performance tests were conducted on January 20, 21, 22, 1981. In addition OPPD submitted data on sixteen opacity/mass correlation tests conducted from February 25, 1981, to April 16, 1981. All of this data was the basis for the EPA determination. There were three requests for copies of the background data. All test data on all tests was provided the requesters.

Since the omission was of additional testing which in fact enhances the EPA determination, and there were no comments other than from the source itself, there appears to be nothing of a substantive nature which would require the delay of repromulgation. The proposed adjustment is approved without change and is set forth below.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: Anthony P. Wayne, telephone 816-374-7130, or Henry F. Rompage, telephone 816-374-7152, Enforcement Division, EPA, Region VII, 324 E. 11th Street, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION: 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 a slight variance in opacity as provided for in 40 CFR 60.11(e) and imposes no additional substantive requirements which are not currently applicable under applicable NSPS requirements. 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 hereby certify that this rule as promulgated will not have a significant impact on a substantial number of small entities. The reason for this finding is that this action only affects one entity.

Dated: November 19, 1981.

Anne M. Gorsuch,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

In consideration of the foregoing, Part 60 of 40 CFR Chapter I is amended as follows:

Subpart D—Standards of Performance for Fossil Fuel-Fired Generators

1. Section 60.42 is amended by adding paragraph (b)(3) as follows:

§ 60.42 [Amended]

* * * * *

(b) * * *

(3) Omaha Public Power District shall not cause to be discharged into the atmosphere from its Nebraska City Power Station in Nebraska City, Nebraska, any gases which exhibit greater than 30% opacity, except that a maximum of 37% opacity shall be permitted for not more than six minutes in any hour.

2. Section 60.45(g)(1) is amended by adding paragraph (iii) as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) * * *

(1) * * *

(iii) For sources subject to the opacity standard of Section 60.42(b)(3), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 30 percent opacity, except that one six-minute average per hour of up to 37 percent opacity need not be reported.

(Sec. 111, 301(a), Clean Air Act as amended (42 USC 7411, 7601))

[FR Doc. 81-33912 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PP OF2303/R376; PH-FRL-1992-6]

2-(M-Chlorophenoxy) Propionic Acid; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the plant growth regulator 2-(*m*-chlorophenoxy) propionic acid in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of the plant growth regulator in or on the commodities was requested by the Union Carbide Co.

EFFECTIVE DATE: Effective on November 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of April 7, 1980 (45 FR 23511) which announced that the Union Carbide Co., PO Box 12014, Research Triangle Par, NC 27709, submitted a pesticide petition (PP OF2303) proposing that 40 CFR 180.325 be amended by the establishment of tolerances for the residues of the plant growth regulator 2-(*m*-chlorophenoxy) propionic acid in or on the raw agricultural commodities pineapple at 0.3 part per million (ppm); pineapple forage and fodder at 0.2 ppm; kidneys of cattle, hogs, horses, goats, and sheep at 0.5 ppm; and meat (except kidneys), fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted included an oral LD_{50} (mouse) with an LD_{50} of 1,623 milligrams (mg)/kilogram (kg) (male) and 1,567 mg/kg (female); dermal LD_{50} (rabbit) with an LD_{50} greater than 2,000 mg/kg; inhalation LC_{50} (rat) with an LC_{50} greater than 9.64 mg/liter (1); two 90-day feeding studies (dog) with no-observable effect-levels (NOEL) for both CPA-acid and CPA-amide of 500 ppm; a 90-day feeding study (rat) with a NOEL for CPA-acid of 500 ppm; a teratology study (rat) with NOEL of 400 mg/kg (highest dose); an oncogenicity study (mouse) not carcinogenic at 6,000 ppm (highest dose); dominant lethal study (rat) negative at 400 mg/kg; a 3-generation reproduction study (rat) with a NOEL of 2,000 ppm; an E. coli-DNA polymerase I deficient assay, negative; Ames microsome plate test (Salmonella), negative; micronucleus test (mouse)-negative; mitotic crossing over assay (yeast)-negative; reverse mutation assay (yeast)-negative; and mitotic gene conversion assay (yeast)-negative.

Data desirable, but currently lacking, are a dog feeding study for a minimum duration of 6 months, and the determination of a systemic NOEL from the 2-year chronic feeding study (rat). The company has been notified of the deficiencies, and has agreed to provide the above data and to remove the use from the label, should the results of the above studies exceed the risk criteria from chronic toxicity as stated in 40 CFR 162.11 of the regulations.

Tolerances have previously been established on peaches and nectarines at 0.1 ppm. The theoretical maximum residue contribution (TMRC) from the current tolerances is 0.0014 mg/day (1.5 kg) or 0.37 percent of the provisional allowable daily intake (PADI). The proposed tolerances for this herbicide will contribute 0.01195 mg/day (1.5 kg) to the TMRC for a total of 0.0133 mg/day (1.5 kg), and will utilize 3.56 percent of the PADI. The PADI is based on a NOEL of 500 ppm (90-day dog) with a 2,000-fold safety factor.

There are no regulatory actions pending against the plant growth regulator and no Rebuttable Presumption Against Registration (RPAR) criteria have been exceeded. The significant residue in pineapples and animals is 2-(*m*-chlorophenoxy) propionic acid. An adequate analytical method (gas chromatography with microcoulometric detector) is available for enforcement purposes. Secondary residues of 2-(m-chlorophenoxy) propionic acid and/or its metabolites which may occur in the meat, fat and meat byproducts of livestock will be covered by the proposed tolerances (§ 180.6(a)(1)). There is no expectation of secondary residues in milk and eggs (§ 180.6(a)(3)).

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

Any person adversely affected by this regulation may, on or before December 24, 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 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 24, 1981.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 364(a)(e)))

Dated: November 13, 1981.

Edwin L. Johnson,

Director, Office of Pesticides Programs.

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

Therefore, 40 CFR 180.325 is amended by alphabetically arranging the commodities in a columnar listing and inserting the commodities pineapple, pineapple forage and fodder; kidneys of cattle, hogs, horses, goats, and sheep; and meat (except kidneys), fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep) to read as follows:

§ 180.325 2-(m-chlorophenoxy)propionic acid; tolerances for residues.

* * * * *

Commodity	Part(s) per million (ppm)
Kidneys, cattle	0.5
Kidneys, goats	0.5
Kidneys, hogs	0.5
Kidneys, horses	0.5
Kidneys, sheep	0.5
Meat (except kidneys), fat, mbyp, cattle	0.05
Meat (except kidneys), fat, mbyp, goats	0.05
Meat (except kidneys), fat, mbyp, hogs	0.05
Meat (except kidneys), fat, mbyp, horses	0.05
Meat (except kidneys), fat, mbyp, poultry	0.05
Meat (except kidneys), fat, mbyp, sheep	0.05
Nectarines	0.1(N)
Pineapple	0.3
Pineapple, fodder	0.2
Pineapple, forage	0.2
Peaches	0.1(N)

[FR Doc. 81-33917 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules of Practice Before Board of Contract Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking action revises and updates the rules of practice and procedure applicable to the processing of administrative appeals before the Interior Board of Contract Appeals (IBCA), located at 4015 Wilson Boulevard, Arlington, Virginia 22203. This rule conforms with the requirements of the Contract Disputes Act of 1978 (the Act), as implemented by guidelines published pursuant to the Act by the Office of Federal Procurement Policy (OFPP). The purpose of the guidelines was to have substantially uniform rules of practice in effect with respect to appeals before all the Boards of Contract Appeals in the Federal Government. The following IBCA rules of practice are divided into four groups: (1) General Rules and Guidelines, including applicability and jurisdiction; (2) Prehearing Procedure Rules; (3) Hearing Procedure Rules; and (4) Posthearing Procedure Rules. Appendix I thereof sets forth a suggested form of Notice of Appeal. This rulemaking action basically converts the interim status of IBCA's rules of practice, in operation since the passage of the Act, to a permanent status, with minor language changes, by publication in the Code of Federal Regulations. Publication in the CFR will afford lawyers and members of the public engaged in contract disputes litigation ready access to the official procedural requirements of the Board.

EFFECTIVE DATE: This rule is effective as of December 24, 1981.

FOR FURTHER INFORMATION CONTACT: David Doane, Administrative Judge, Interior Board of Contract Appeals or William F. McGraw, Chief Administrative Judge, Interior Board of Contract Appeals, telephone (703) 557-1450.

SUPPLEMENTARY INFORMATION:

Primary Author: The primary author of this rule is David Doane, Administrative Judge, Interior Board of Contract Appeals, telephone (703) 557-1450.

Waiver: It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rulemaking process. However, since the changes being made under this rulemaking action involve procedural rules only, public participation in the rulemaking process is waived in this instance in accordance with 5 U.S.C. 553.

Impact: The Director, Office of Management and Budget has exempted agency procurement regulations from the requirements of Executive Order 12291, pursuant to a memorandum dated April 8, 1981. The revisions being made by this rule are part of agency procurement regulations and are thus deemed to come within such exemption. The Department of the Interior certifies that this rule will not have significant economic effect on a substantial number of small entities.

Accordingly, 43 CFR, Subtitle A, Part 4, Subpart C, is revised to read as set forth below, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and the Contract Disputes Act of 1978 (Pub. L. 95-563, November 1, 1978, (41 U.S.C. 601-613)).

Dated: October 30, 1981.

Donald Paul Hodel,

Acting Secretary of the Interior.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURE

* * * * *

Subpart C—Special Rules of Practice Before the Interior Board of Contract Appeals

Sec.

4.100 General rules and guidelines.

Prehearing Procedure Rules

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4.105 Dismissal for lack of jurisdiction.
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4.114 Settling of the record.
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Hearing Procedure Rules

4.118 Hearings—where and when held.
4.119 Notice of hearings.
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4.124 Submission of briefs.

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4.126 Motions for reconsideration.
4.127 Dismissals.
4.128 Remands from courts.

Appendix I—Suggested Form of Notice of Appeal

Authority: 5 U.S.C. 301 and the Contract Disputes Act of 1978 (Pub. L. 95-563, Nov. 1, 1978, (41 U.S.C. 601-613)).

* * * * *

Subpart C—Special Rules of Practice Before the Interior Board of Contract Appeals

§ 4.100 General rules and guidelines.

(a) *Effective date and applicability.*—(1) *Effective date and general applicability.* These rules shall be in effect on and after March 1, 1979, and except as qualified by the provisions of paragraphs (2) and (3) of this section, shall apply to all appeals brought before the Interior Board of Contract Appeals.

(2) *Special applicability.* The rule set forth in § 4.102(a) provides for alternative applicability, depending upon whether the appeal involved is subject to the Contract Disputes Act of 1978, Pub. L. 95-563 (41 U.S.C. 601-613). The rules set forth in §§ 4.102 (c), (d), and (e), 4.113, and 4.120 shall apply exclusively to appeals which are subject to the Contract Disputes Act of 1978.

(3) *When an appeal is subject to the Contract Disputes Act of 1978.* An appeal shall be subject to the Contract Disputes Act of 1978 if it involves a contract entered into on or after March 1, 1979; or, at the election of the appellant, if the appeal involves a contract entered into before March 1, 1979, and the contracting officer's decision from which the appeal is taken is dated March 1, 1979, or thereafter.

(b) *Jurisdiction for considering appeals.* The Interior Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers relating to contracts made by (i) the Department of the Interior or (ii) any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has duly designated the Board to decide the appeal.

(c) *Location and organization of the Board.* (1) The Board's address is 4015 Wilson Boulevard, Arlington, Virginia 22203. Its telephone number is (703) 557-1450.

(2) The Board consists of a Chairman, Vice Chairman, and other members all of whom are attorneys at law duly licensed by a State, Commonwealth, Territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least two members who decide the cases. However, in cases of disagreement, or unusual circumstances, a panel of three members will be assigned to decide by a majority vote. Board members are designated Administrative Judges.

(d) *Time extensions and computations.* (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(e) *General guidelines.*—(1) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings, and other communications shall be filed with the Board at the address indicated herein. Communications to the Board shall be addressed to Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(2) *Representation of parties.* Whenever in these rules reference is made to contractor, appellant, contracting officer, respondent, or parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearances have been filed with the Board. In those cases where an executive agency, other than the Department of the Interior, has designated the Board to adjudicate its contract appeals, the term, "Department Counsel," shall mean Government Counsel assigned to represent such agency.

(3) *Interpretation of these rules.* These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) *Decisions on questions of law.* When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board will, nevertheless, consider and decide all questions of law necessary for the complete adjudication of the issues.

(f) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(g) *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

Prehearing Procedure Rules

§ 4.101 Who may appeal.

Any contractor may appeal to the Board from decisions of contracting officers of any bureau or office of the Department of the Interior, or of any other agency with respect to which the Board exercises contract appeals jurisdiction, on disputed questions under contract provisions requiring the determination of such appeals by the head of the agency or his duly authorized representative or Board.

§ 4.102 Appeals—how taken.

(a) *Notice of appeal.* Notice of an appeal must be in writing (a suggested form of notice appears as Appendix I herein following § 4.128). The original, together with two copies, may be filed with the Board or the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within 90 days from the date of receipt of the contracting officer's decision, if the appeal is subject to the Contract Disputes Act of 1978; otherwise, within the time specified therefor in the contract.

(b) *Contents of notice of appeal.* A notice of appeal should indicate that an appeal is thereby intended, and should

identify the contract (by number), the Department's bureau or office involved in the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an authorized officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 4.107 may be filed with the notice of appeal, or the contractor may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Failure of CO to issue decision on claims of $50,000 or less.* Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not complied, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision. (*See* § 4.100(a)(2).)

(d) *Failure of CO to issue decision on claims in excess of $50,000.* Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision. (*See* § 4.100(a)(2).)

(e) *Optional stay of proceeding.* Upon docketing of appeals filed pursuant to paragraphs (c) or (d) of this section, the Board may at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board. (*See* § 4.100(a)(2).)

§ 4.103 Forwarding and docketing of appeals.

(a) *Forwarding of appeal.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or the date of receipt, if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the Board by certified mail. He shall also promptly notify the Department's Office of the Solicitor, in accordance with instructions of the Solicitor, that the appeal has been received in order that a Department counsel may be appointed.

(b) *Docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing of the fact of docketing, together with a copy of these rules, shall be mailed promptly by certified mail to the appellant. Also, a copy of such notice, together with a copy of the notice of appeal if not originally filed with the contracting officer, shall be mailed promptly by certified mail to the contacting officer. Such notice shall acknowledge receipt of the appeal and advise appellant of the appeal number assigned to the appeal.

§ 4.104 Preparation, organization, transmittal, and status of appeal file.

(a) *Preparation and transmittal of appeal file.* Following receipt of a notice of appeal, or advice that an appeal has been docketed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Board the appeal file which shall consist of copies of all documents pertinent to the appeal. Within the same time period the contracting officer shall also prepare and transmit a copy of the appeal file to the Department counsel and a copy to the appellant or appellant's counsel. (However, the obligations of this subparagraph are subject to the provisions of paragraph (e) of this section.)

(b) *Composition of appeal file.* The appeal file shall include the following:

(1) The findings of fact and decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract, and pertinent plans, drawings, specifications, amendments, and change orders;

(3) All correspondence between the parties pertinent to the appeal; and

(4) Such additional information as may be considered pertinent and material.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to indentify the contents of the file, and bound. Any single document consisting of three or more pages shall be numbered sequentially for convenient reference at the hearing and in the preparation of briefs.

(d) *Opportunity for appellant to supplement appeal file.* The appellant shall be afforded the opportunity of supplementing the appeal file with such documentation as may be deemed pertinent to the appeal. The appellant shall be obligated, however, to furnish to Department counsel a copy of any document by which the appeal file is supplemented.

(e) *Burdensome documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file if a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing the same.

§ 4.105 Dismissal for lack of jurisdiction.

Any motion challenging the jurisdiction of the Board shall be filed promptly. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board has authority to raise at any time and on its own motion the issue of its jurisdiction to conduct a proceeding and may afford the parties an opportunity to be heard thereon.

§ 4.106 Representation and appearances.

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one if its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Department or Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney.

§ 4.107 Pleadings.

(a) *Complaint.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise, and direct statements of each claim, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Letter size paper should be used for the complaint and for all other

papers filed with the Board. Where the appeal arises out of a contract made with the Department of the Interior, a copy of the complaint shall be served by appellant upon the Department counsel if known, otherwise, upon the Solicitor, U.S. Department of the Interior, C Street, between 18th and 19th Streets, NW., Washington, DC 20240. Where the appeal arises out of a contract made with an agency other than the Department of the Interior, a copy of the complaint shall be served by appellant upon the General Counsel for that agency. All such service shall be made in accordance with § 4.117. Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth a complaint and the Department counsel will be so notified.

(b) *Answer.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims, as appropriate. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.117. Should the answer not be received within 30 days, the Board, may, in its discretion enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 4.108 Amendments of pleadings or record.

(a) The Board may, in its discretion, upon its own initiative or upon application by a party, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such circumstances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that is is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 4.109 Hearing—Election.

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

§ 4.110 Prehearing briefs.

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 4.109. In the absence of a Board requirement therefore, either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

§ 4.111 Prehearing or presubmission conference.

Whether the case is to be submitted without a hearing, or heard pursuant to §§ 4.118 through 4.123, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or hearing officer of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or the hearing officer. This writing shall thereafter constitute part of the record.

§ 4.112 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to § 4.114. Such waiver shall not affect the other party's rights under § 4.109. In the event of such election (see the time limitations for election in § 4.109), the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

§ 4.113 Optional small claims (expedited) and accelerated procedures. [*See* § 4.100(a)(2).]

(a) *The procedures set forth in this rule are available solely at the election of the appellant.*

(b) *Elections to utilize small claims (expedited) and accelerated procedure.* (1) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring a decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(2) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

(3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in the

notice of appeal or by other written notice at any time thereafter.

(4) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(c) *The SMALL CLAIMS (EXPEDITED) procedure.* (1) This procedure shall apply only to appeals where the amount in dispute is $10,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.

(2) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply (i) within 10 days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (ii) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under § 4.118. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under § 4.112 without a hearing.

(3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of elections of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(4) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 4.126.

(5) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(d) *The ACCELERATED procedure.* (1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has made the requisite election.

(2) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessaray to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for the preparation of the decision.

(3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral agruments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 4.126.

(e) *Motions for reconsideration in cases arising under § 4.113.* Motions for reconsideration of cases decided aunder either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time period prescribed by this § 4.113 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

§ 4.114 Settling of the record.

(a) A case submitted on the record pursuant to § 4.112 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted. At any time prior to the date that a case is ready for decision, either party, upon notice to the other, may supplement the record with documents and exhibits deemed relevant and material by the Board. The Board upon its own initiative may call upon either party, with appropriate notice to the other, for evidence deemed by it to be relevant and material. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. Either party at any stage of the proceeding, on notice to the other party, may object to the relevancy or materiality of documents in the record or offered into the record.

(b) The Board record shall consist of the appeal file described in § 4.104(b) and any additional material, pleadings, prehearing briefs, record of prehearing, or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhibits, and posthearing briefs, as may thereafter be developed pursuant to these rules. In deciding appeals the Board, in addition to considering the Board record, may take official notice of facts within general knowledge.

(c) This record will at all times be available for inspection by the parties at an appropriate time and place. In the

interest of convenience, prior arrangements for inspection of the file should be made with the Recorder of the Board. Copies of material in the record may be furnished to appellant as provided in Part 2 of this subtitle.

§ 4.115 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for such an order shall specify whether the purpose of the depositon is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be, as mutually agreed by the parties, or, failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the depositions may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may in its discretion receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 4.116 Interrogatories to parties; inspection of documents; admission of facts.

Under appropriate circumstances, but not as a matter of course, the Board will entertain applications for permission to serve written interrogatories upon the opposing party, applications for an order to produce and permit the inspection of designated documents, and applications for permission to serve upon the opposing party a request for the admission of specified facts. Such applications shall be reviewed and approved only to the extent and upon such terms as the Board in its discretion considers to be consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay, and essential to the proper pursuit of that objective in the particular case.

§ 4.117 Service of papers.

A copy of all pleadings, briefs, motions, letters, or other papers filed with the Board, shall be served upon the other party at the time of filing. Service of papers may be made personally or by mailing in a sealed envelope addressed to the other party. Any paper filed with the Board shall show on its face, or in the letter transmitting the same, that a copy thereof has been served upon the other party. When the other party is represented by counsel, such service shall be made upon him, and service upon counsel shall be deemed to be service upon the party he represents.

Hearing Procedure Rules

§ 4.118 Hearings—where and when held.

Hearings may be held in Arlington, Virginia, or upon timely request and for good cause shown, the Board may in its discretion set the hearing on an appeal at a location other than Arlington, Virginia. Hearins will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. However, where it is apparent that no issue of fact is presented in an appeal proceeding, the Board may deny a request for hearing. On request or motion by either party and for good cause shown, the Board may in its discretion adjust the date of a hearing.

§ 4.119 Notice of hearings.

The parties shall be given at least 15 days' notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and prompt determination of appeals. Receipt of a notice of hearing shall be promptly acknowledged by the parties. A party failing to acknowledge a notice of hearing shall be deemed to have consented to the indicated time and place of hearing.

§ 4.120 Subpoenas. (*See* § 4.100(a)(2).)

(a) *General.* Upon written request of either party filed with the docket clerk or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) *Testimony at a deposition*—the deposing of a witness, in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing*—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers*—in addition to paragraphs (a) (1) and (2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Request to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Forms—issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified

books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for 1 day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 4.121 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 4.112. The Board shall advise the absent party of the content of the proceedings had and that he has 5 days from the receipt of such notice within which to show cause why the appeal should not be decided on the record made.

§ 4.122 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate in the circumstances. Appellant and respondent may offer at a hearing on the merits of such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or hearing officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or hearing officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 4.123 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or hearing officer shall otherwise order.

§ 4.124 Submission of briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Board member or hearing officer at the conclusion of the hearing.

Posthearing Procedure Rules

§ 4.125 Decisions.

Decisions of the Board will be made upon the record, as described in § 4.114(b). Copies thereof will be forwarded simultaneously to both parties by certified mail.

§ 4.126 Motions for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon in support of the motion, and shall be filed within 30 days from the date of the receipt of a copy of the Board's decision by the party filing the motion. Reconsideration of a decision, which may include a hearing or rehearing, may be granted if, in the judgment of the Board, sufficient reason therefor appears.

§ 4.127 Dismissals.

(a) *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with the disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the board may, in its discretion, dismiss such an appeal from the docket without prejudice to its reinstatement when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to have been made with prejudice.

(b) *Dismissal for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

§ 4.128 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties, shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and issue the appropriate special orders.

Appendix I—Suggested Form of Notice of Appeal

Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, VA 22203

(Date) _____
(Name of Contractor) _____
(Address) _____
Contract No. _____
(Invitation No.) _____
Specifications No. _____
(Name and Location of Project) _____
(Name of Bureau or Office) _____

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____, by:
(Name of Contracting Officer) _____

The decision or findings of fact is erroneous because: (State specific facts and

circumstances and the contractual provisions involved.)

(Signature) _____

(Title) _____

[FR Doc. 81-33936 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6168]

List of Communities Eligible for Sale of Insurance under National Flood Insurance Program; Indiana, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP) and eligible for second layer insurance coverage. These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the regular program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Acting Director, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, D.C. 20472

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Indiana:				
Adams	Berne, city of	180485	811009, emergency; 811009, regular	0
Porter	Hebron, town of	180387	760318, emergency; 811009, regular	750321
California: Monterey	King City, city of	060199	700904, emergency; 811015, regular	741227
Connecticut:				
Litchfield	Bantam, borough of	090043	750725, emergency; 811015, regular	740913
Tolland	Hebron, town of	090162	751017, emergency; 811015, regular	741129
Illinois:				
Du Page	Burr Ridge, village of	170071	750224, emergency; 811015, regular	740315
Ogle	Oregon, city of	170530	750430, emergency; 811015, regular	731123
Adams	Quincy, city of	170003	740325, emergency; 811015, regular	740524
Indiana:				
Marshall	Bremen, town of	180163	750722, emergency; 811015, regular	731123
Wayne	Cambridge City, town of	180281	750428, emergency; 811015, regular	760611
Vanderburgh	Evansville, city of	180257	710625, emergency; 811015, regular	740614
Wayne	Hagerstown, town of	180284	750129, emergency; 811015, regular	750412
Lake	Merrillville, town of	180138	730216, emergency; 811015, regular	740719
Wayne	Milton, town of	180285	750520, emergency; 811015, regular	761008
Kansas:				
Sedgwick	Derby, city of	200323	750117, emergency; 811015, regular	740628
Riley	Ogden, city of	200301	750626, emergency; 811015, regular	740607
Kentucky: Harrison	Cynthiana, city of	210107	750226, emergency; 811015, regular	740607
Louisiana: Livingston Parish	Denham Springs, city of	220116	750625, emergency; 811015, regular	740315
Massachusetts: Worcester	Southborough, town of	250333	750811, emergency; 811015, regular	740802
Maryland:				
Cecil	Chesapeake City, town of	240099	741205, emergency; 811015, regular	740913
Dorchester	Dorchester County ¹	240026	740123, emergency; 811015, regular	750110
Cecil	North East, town of	240023	750724, emergency; 811015, regular	750207
Maine: Cumberland	Gorham, town of	230047	750326, emergency; 811015, regular	741115
Missouri: Butler	Qulin, city of	290048	750910, emergency; 811015, regular	741220
New Jersey:				
Camden	Gibbsboro, borough of	340545	750723, emergency; 811015, regular	750404
Bergen	Haworth, borough of	340042	750331, emergency; 811015, regular	740201

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Do	River Vale, township of	340069	720107, emergency; 811015, regular	730420
New York:				
Chenango	Afton, town of	361084	751226, emergency; 811015, regular	750117
Do	Afton, village of	360979	750313, emergency; 811015, regular	740607
Orleans	Barre, town of	361253	750429, emergency; 811015, regular	741025
Rockland	Grand View-on-Hudson, village of	360680	750707, emergency; 811015, regular	741018
Oswego	Mexico, town of	360654	760630, emergency; 811015, regular	741115
Do	Mexico, village of	361460	750730, emergency; 811015, regular	741220
Do	Sandy Creek, town of	360661	750818, emergency; 811015, regular	740524
Ohio:				
Montgomery	Brookville, village of	390407	750627, emergency; 811015, regular	740215
Do	Moraine, city of	390414	750905, emergency; 811015, regular	740301
Do	West Carrollton, city of	390419	750702, emergency; 811015, regular	751107
Pennsylvania:				
York	Chanceford, township of	422217	760113, emergency; 811015, regular	750117
Lycoming	Hughesville, borough of	420641	740121, emergency; 811015, regular	740123
Lancaster	Mount Joy, borough of	420561	740522, emergency; 811015, regular	740109
York	North Codorus, township of	422227	750806, emergency; 811015, regular	750207
Do	Penn, township of	421025	740116, emergency; 811015, regular	740517
Westmoreland	Penn, township of	422183	750207, emergency; 811015, regular	770729
Chester	Willistown, township of	422282	741017, emergency; 811015, regular	741227
Texas:				
McCulloch	Brady, city of	480455	750424, emergency; 811015, regular	740628
Cooke	Gainesville, city of	480154	741213, emergency; 811015, regular	740215
Vermont: Windsor	Cavendish, town of	500145	740806, emergency; 811015, regular	740208
Wisconsin:				
Sheboygan	Cascade, village of	550425	760120, emergency; 811015, regular	740503
Dunn	Dunn County [1]	550118	710326, emergency; 811015, regular	750103
Ozaukee	Port Washington, city of	550316	750630, emergency; 811015, regular	740531
Virginia: Page	Shenandoah, town of	510248	750708, emergency; 811016, regular	741101
South Carolina: Cherokee	Cherokee County	450045	811021, emergency; 811021, regular	760609
Maryland: Frederick	Middletown, town of	240162	781221, emergency; 811023, regular	770114
Virginia: Shenandoah	New Market, town of	510227	750811, emergency; 811023, regular	750131
Pennsylvania: Wayne	Waymart, borough of	420868	750723, emergency; 811030, regular	740726
Virginia: Lee	Jonesville, town of	510086	750702, emergency; 811030, regular	740614
West Virginia: Fayette	Ansted, town of	540027	750610, emergency; 811030, regular	750214

[1] Unincorporated areas.

Total is: 57.
Key for reading 5th and 6th columns.
First two digits designate the year, middle two digits designate the month, and the last two digits designate the day.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 5, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33667 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6186]

List of Communities Eligible for Sale of Insurance Under National Flood Insurance Program; Oregon, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the national Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Acting Director, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard area identified
Oregon: Baker	Halfway, city of	410004A	Oct. 16, 1981, emergency	Sept. 24, 1975 and Nov. 22, 1975.
Pennsylvania: Indiana	Banks, township of	422435	...do	Jan. 1, 1975.
Michigan: St. Clair	Wales, township of	260508	Oct. 19, 1981, emergency	
Kansas: Wyandotte	Kansas City, city of	200363A	Dec. 10, 1974, emergency, Aug. 3, 1981, regular, Aug. 3, 1981, suspended, Oct. 20, 1981, reinstated.	Nov. 1, 1974.
Pennsylvania: Lehigh	North Whitehall, township of	421613B	July 26, 1974, emergency, Sept. 30, 1981, regular, Sept. 30, 1981, suspended, Oct. 20, 1981, reinstated.	Oct. 18, 1974 and May 28, 1976.
Mississippi: Hinds	Edwards, town of	280330 New	Oct. 21, 1981, emergency	
North Carolina: Perquimans	Unincorporated areas	370315	...do	July 28, 1978.
South Carolina: Cherokee	...do	450045B	Oct. 21, 1981, emergency, Oct. 21, 1981, regular.	June 9, 1978.
Pennsylvania: Adams	Hamilton, township of	420002B	Feb. 9, 1973, emergency, Aug. 3, 1981, regular, Aug. 3, 1981, suspended, Oct. 21, 1981, reinstated.	July 20, 1973 and June 25, 1976.
New Jersey: Hunterdon	High Bridge, borough of	340508B	Nov. 18, 1974, emergency, Sept. 30, 1981, regular, Sept. 30, 1981, suspended, Oct. 23, 1981, reinstated.	June 21, 1974 and May 28, 1976
Pennsylvania: Somerset	Greenville, township of	422512	Oct. 27, 1981, emergency	Apr. 4, 1975.
Do.	Summit, township of	422056	...do	
Illinois: Lake	Park City, city of	170366B	Nov. 12, 1975, emergency, Oct. 15, 1981, regular, Oct. 15, 1981, suspended, Oct. 29, 1981, reinstated.	Mar. 1, 1974 and Apr. 9, 1976.
Minnesota: Crow Wing	Brainerd, city of	270093B	Feb. 1, 1974, emergency, Sept. 2, 1981, regular, Sept. 2, 1981, suspended, Oct. 29, 1981, reinstated.	June 21, 1974 and May 7, 1976.
Pennsylvania: Potter	Portage, township of	421985	Oct. 30, 1981, emergency	Dec. 13, 1974.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 3, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33800 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6205]

Suspension of Community Eligibility Under National Flood Insurance Program; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended effective the dates listed within this rule because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Acting Director, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to

which a year has elapsed since identification of the community as having flood prone areas, as shown on the Federal Emergency Management Agency's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard area
Alabama:					
Etowah	Attalla, city of	010079B	July 1, 1975, emergency, Dec. 1, 1971, regular, Dec. 1, 1981, suspended.	Dec. 28, 1973 and Dec. 26, 1975.	Dec. 1, 1981.
Do	Glencoe, city of	010081C	May 13, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	May 17, 1974 and Dec. 19, 1975.	Do.
Baldwin	Bay Minette, city of	010004A	Apr. 23, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Oct. 24, 1975	Do.
Do	Loxley, town of	010009B	Apr. 24, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	June 28, 1974 and Dec. 19, 1975.	Do.
Do	Robertsdale, city of	010222B	Aug. 28, 1978, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 28, 1977	Do.
Connecticut:					
Windham	Ashford, town of	090165C	Nov. 21, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Nov. 8, 1974, Nov. 19, 1976 and May 30, 1978.	Do.
New London	Franklin, town of	090154B	July 23, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Nov. 1, 1974 and Nov. 26, 1976.	Do.
Florida: Orange	Unincorporated areas	120179B	July 29, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 30, 1976 and Apr. 15, 1977.	Do.
Illinois:					
Winnebago	Pecatonica, village of	170797B	July 14, 1978, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Apr. 5, 1974 and Apr. 2, 1976	Do.
St. Clair	Swansea, village of	170637B	Jan. 13, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Apr. 5, 1974 and June 4, 1976	Do.
Lake	Wauconda, village of	170396B	Jan. 13, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Apr. 5, 1974 and Mar. 19, 1976.	Do.
Kane	West Dundee, village of	170335B	June 25, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1991, suspended.	Apr. 5, 1974 and Mar. 19, 1976.	Do.
Indiana: Vigo	Terre Haute, city of	180264B	Jan. 23, 1974, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 9, 1974 and June 11, 1976.	Do.
Kansas: Shawnee	Topeka, city of	205187C	Oct. 23, 1971, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 23, 1971, July 1, 1974, Oct. 10, 1975 and Dec. 16, 1977.	Do.
Massachusetts: Worcester,	Warren, town of	250342B	July 23, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	May 17, 1974 and Aug. 27, 1976.	Do.
Michigan:					
Wayne	Flat Rock, city of	260224B	Aug. 15, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	May 17, 1974 and June 18, 1976.	Do.
Oakland	Franklin, village of	260325A	Mar. 7, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Apr. 11, 1975	Do.
Minnesota: Pine	Pine City, city of	270348B	Mar. 26, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 9, 1974 and June 18, 1976.	Do.
Missouri: Boone	Columbia, city of	290036B	Aug. 27, 1971, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Aug. 28, 1971, July 1, 1974 and Jan. 16, 1976.	Do.
New Jersey:					
Hunterdon	Bloomsburg, borough of	340231B	June 24, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	June 14, 1974 and Aug. 6, 1976.	Do.
Camden	Woodlynne, borough of	340149B	June 24, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	June 28, 1974 and Apr. 16, 1976.	Do.
New York:					
Orange	Monroe, town of	360621B	Mar. 5, 1975 emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	June 28, 1974 and Aug. 6, 1976.	Do.
Cayuga	Union Springs, village of	360129C	Aug. 18, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Apr. 11, 1975, Oct. 17, 1975 and Feb. 13, 1976.	Do.
North Carolina:					
Alamance	Unincorporated areas	370001B	Jan. 16, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 3, 1975 and Dec. 23, 1977.	Do.
Stanly	Albemarle, city of	370146B	Mar. 19, 1974, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 28, 1973, Apr. 23, 1976 and June 3, 1977.	Do.
Lincoln	Unincorporated areas	370146B	Jan. 27, 1976, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 27, 1974 and May 26, 1978.	Do.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard area
Stanly	do	370361A	July 12, 1979, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	June 9, 1979	Do.
Oregon: Yamhill	Amity, city of	410250A	May 20, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	July 30, 1976	Do.
Pennsylvania: York	Manchester, township of	420931B	Jan. 26, 1973, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Feb. 1, 1974 and June 17, 1977.	Do.
Lackawanna	Moscow, borough of	420534B	Dec. 10, 1974, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 16, 1974 and May 14, 1976.	Do.
Adams	Mt. Pleasant, township of	421258A	July 2, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Feb. 7, 1975	Do.
Do	Oxford, township of	420003B	June 6, 1973, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 28, 1973 and Dec. 3, 1976.	Do.
Lebannon	Swatara, township of	420582B	Aug. 9, 1973, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Feb. 1, 1974 and Aug. 19, 1977.	Do.
South Carolina: Florence.	Florence, city of	450078B	Apr. 17, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	May 31, 1974, Oct. 31, 1975 and Oct. 6, 1978.	Do.
South Dakota: Pennington	Unincorporated areas	460064B	May 28, 1974, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 27, 1974 and Mar. 7, 1978.	Do.
Lawrence	Spearfish, city of	460046B	Oct. 30, 1974, emergency, Dec. 1, 1981, regular, Dec. 2, 1981, suspended.	Mar. 29, 1974 and Sept. 2, 1981.	Do.
Virginia: Prince William.	Unincorporaffed areas	510119B	Dec. 15, 1972, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Jan. 10, 1976 and Dec. 17, 1976.	Do.
Washington: Island	Unincorporated areas of	530312B	Mar. 27, 1975, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Oct. 25, 1977	Do.
Wisconsin: Columbus	Columbus, city of	550058B	Oct. 7, 1974, emergency, Dec. 1, 1981, regular, Dec. 1, 1981, suspended.	Dec. 17, 1973 and June 25, 1976.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 12, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33868 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 6189]

List of Communities With Special Hazard Areas Under National Flood Insurance Program; North Dakota, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or December 23, 1981, whichever is later.

FOR FURTHER INFORMATION CONTACT: Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin December 23, 1981 or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin December 23, 1981 or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 or Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information or

regarding the completed stages of engineering tasks in delineating the special flood hazard areas of the specified community. This rule imposes no new requirements or regulations on participating communities.

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

BILLING CODE 6718-03-M

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

EFFECTIVE DATE December 1, 1981

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
ND	380256	Township of Barnes Cass County	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Douglas Seiler Barnes Township Supervisor Rural Route 4, Box 52 Fargo, ND 58102 701-237-6906
													Effective Date		December 4, 1981
IL	170267	Hancock County Unincorporated Areas	0001B thru 0014B	I	FL	B	1	3	1	1/24/75 2/20/76	N/A	10	N/A	N/A	Bob Mapes, Chairman County Board of Supervisors County Clerks' Office P.O. Box 39 Carthage, IL 62321
WV	540007	Boone County Unincorporated Areas	0001A thru 0010A	I	FL	B	1	3	1	4/18/75	N/A	9 10 16	N/A	N/A	James R. Goodman, President County Commissioners Boone County Courthouse 200 State Street Madison, WV 25130 304-369-3925
PA	420843	Borough of Warren Warren County	0001B	I	FL	B	1	3	1	5/31/74 6/4/76	N/A	9 10 16	N/A	N/A	Jerry Ofson, Chairman Borough Council Municipal Building 318 West 3rd Street Warren, PA 16363 814-723-6300
													Effective Date:		December 8, 1981
ND	380281	Township of Joliette Pembina County	0001A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Ralph E. Juhl Joliette TWP Supervisor Bowesmont, ND 58217 701 454-6278

EFFECTIVE DATE December 9, 1981

STATE	IDENT NUMBER	COMMUNITY NAME & COUNTY NAME	PANELS PRINTED (# AND SUFFIX)	INLAND/ COASTAL	HAZARD	60.3 CODE	PROGRAM STATUS	STATUS OF FHBM	STATUS OF FIRM	PREVIOUS MAP DATES FHBM	PREVIOUS MAP DATES FIRM	REVISION CODE(S)	RESCISSION	FLOODWAYS PANELS PRINTED	LOCATION OF MAP REPOSITORY
ND	380262	Township of Mapleton Cass County	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Raymond Utke Mapleton Township ASSESSOR Route 1 Mapleton, ND 58059 701 282-3844
ND	380261	Township of Raymond Williams County	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Harry Johnson Raymond TWP Supervisor Box 61 Harwood, ND 58042 701 282-4015
EFFECTIVE DATE: December 11, 1981															
PA	421159	Township of Shamokin Northumberland Co.	0001B 0002B	I	FL	B	1	3	1	9/20/74 5/21/76	N/A	9 10 16	N/A	N/A	Robert Ammerman, Chairman Township Supervisor Shamokin TWP Building RD #1 Paxinos, PA 17860 717 672-2265
WV	540224	Ritchie County Unincorporated Areas	0001A thru 0006A	I	FL	B	1	3	1	4/25/75	N/A	9 10 16	N/A	N/A	Ray Cottrill President Co. Commissioners Ritchie Co. Courthouse Harrisville, WV 26362 304 643-2164
WV	540191	Tucker County Unincorporated Areas	0001A thru 0006A	I	FL	B	1	3	1	12/13/74	N/A	9 10 16	N/A	N/A	James Propst President Co. Commissioners Tucker County Courthouse Parsons, WV 26287 304 478-2414
NY	360389	Village of Nunda Livingston County	0001B	I	FL	B	1	3	1	5/24/74 4/23/76	N/A	8 9 10	N/A	N/A	Ivan J. McColl, Mayor P. O. Box 537 Nunda, NY 14517

EFFECTIVE DATE December 11, 1981

1 STATE	2 IDENT NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
NY	361287	Town of Nunda Livingston County	0005B 0010A	I	FL	B	I	3	1	1/31/75 8/14/81	N/A	8 9	N/A	N/A	Everett P. Mann, Supervisor East Street Nunda, NY 14517
NY	360873	Town of Hague - Warren County	0025D	I	FL	B	I	3	1	11/5/76 3/10/78 12/21/79	N/A	9	N/A	N/A	William F. Davison, Director Lake Champlain/Lake George Regional Planning Board Lake George Institute Lake George, NY 12845
TX	481244	Stephens County Unincorporated Areas	0025A 0050A 0075A 0100A 0125A 0150A 0175A 0200A 0225A 0250A 0275A 0300A	I	FL	B	I	2	1	N/A	N/A	N/A	N/A	N/A	Judge Miller Tuttle Stephens County Stephens Co. Courthouse Breckenridge, TX 76024
Effective Date: December 15, 1981															
ND	380260	Berlin Township Cass County	0001A	I	FL	B	I	2	1	N/A	N/A	N/A	N/A	N/A	P. O. Payne Berlin Township Assessor Argusville, ND 58005 701 484-5775
ND	380276	Drayton Township of Pembina County	0001A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Ray Knoff Drayton Township Supervisor Box 367 Drayton, ND 58225 701 454-3849
ND	380283	Lincoln Township Pembina County	0001A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Phillip Raney Lincoln TWP Supervisor Rural Route 3 Drayton, ND 58225 701 454-6340

EFFECTIVE DATE December 18, 1981

STATE	IDENT. NUMBER	COMMUNITY NAME & COUNTY NAME	PANELS PRINTED (# AND SUFFIX)	INLAND/ COASTAL	HAZARD	60.3 CODE	PROGRAM STATUS	STATUS OF FHBM	STATUS OF FIRM	PREVIOUS MAP DATES FHBM	PREVIOUS MAP DATES FIRM	REVISION CODE(S)	RESCISSION	FLOODWAYS PANELS PRINTED	LOCATION OF MAP REPOSITORY
WV	540053	Harrison County Unincorporated Areas	0001A thru 0006A	I	FL	B	1	3	1	7/11/75	N/A	9 10 16	N/A	N/A	Ruby Keister President Co. Commissioner Harrison County Courthouse 301 West Main Street Clarksburg, WV 26301 304 624-7431
													Effective Date: December 25, 1981		
OH	390879	Village of Rio Grande Gallia County	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Marlin Wedemeyer, Mayor Village Hall Box 343 Rio Grande, OH 45674 614 245-5822

COMMUNITY MAP ACTIONS

(Codes: Where no entry is necessary use N/A)

Column Code:

1. Two letter state designator.

2. FIA Community 6-digit identity number.

3. Community name
County(ies) name

4. Four digit number and suffix of each FIRM or FHBM panel printed.

5. INL/COAST
I=INLAND
O=COASTAL

6. HAZARD
FL=FLOOD
MS=MUDSLIDE
ER=EROSION
NF=NON FLOOD PRONE
MF=MINIMALLY FLOOD PRONE

7. 60.3 CODE
A=Special Hazard not defined, no elevation data (No FHBM)
B=Special Hazard Designated, no elevation data (FHBM)
C=FIRM, No Floodway or Coastal High Hazard
*D=FIRM, Regulatory Floodway Designated
*E=FIRM, Coastal High Hazard
*Dual entry is available.

8. PROGRAM STATUS
1=EMERGENCY
2=REGULAR
3=NOT PARTICIPATING, NO MAP
4=NOT PARTICIPATING, WITH MAP
5=WITHDREW
6=SUSPENDED

9. FHBM STATUS
1=NEVER MAPPED
2=ORIGINAL
3=REVISED
4=RESCINDED
5=SUPERCEDED BY FIRM

9. FIRM STATUS
1=NEVER MAPPED
2=ORIGINAL
3=REVISED
4=RESCINDED
5=ALL ZONE C-NO PUBLISHED FIRM
6=ALL ZONE A AND C-NO ELEVATIONS DETERMINED

10. DATES OF ALL PREVIOUS MAPS

11. REVISION CODES
1. 1916 BFE (Base Flood Elevation) Decrease
2. 1916 BFE Increase
3. 1916 SFHA (Special Flood Hazard Area) Change
4. Change of Zone Designation; revised FIRM
5. Curvilinear
6. 1914 Incorporation
7. 1914 Discorporation
8. 1914 Annexation
9. SFHA Reduction
10. Non-1916 SFHA Increase Without Numbered Zones
11. Non-1916 SHFA Increase with Numbered Zones
12. Drafting Correction; Printing Errors
13. Suffix Change ONLY
14. Change to Uniform Zone Designations (7/1/74)
15. Revisions Withdrawn
16. Refunds Possible
17. Letter of Map Amendment (1916)
18. Letter of Map Amendment (1916 without Federal Register publication)
19. Federal Register Omission
20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
21. Miscellaneous

13. List of Numbered Floodway Panels Printed

14. Address of Community Map Repository

BILLING CODE 6718-03-C

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 5, 1981.

Lee Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33661 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; New Hampshire, et al.

AGENCY: FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected location in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Chappell, National Flood Insurance Program, (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Agency has resolved the appeals presented by the community.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (final) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Hampshire	Town of Lancaster, Coos County (Docket No. FEMA-5787).	Connecticut River	Downstream Corporate Limits	*848
			Upstream of South Lancaster Covered Bridge	*850
			Upstream of U.S. Route 2	*852
			Upstream Corporate Limits	*854
		Israel River	Confluence with Connecticut River	*852
			Downstream of Main Street	*859
			Upstream of Main Street	*867
			Downstream of Mechanic Street	*879
			Upstream of Mechanic Street	*885
			Upstream of Boston & Maine Railroad	*922
			Confluence of Otter Brook	*924
		Otter Brook	Confluence with Israel River	*924
			Upstream of North Road	*933
			Upstream of Garland Road	*964
			Confluence of Burnside and Caleb Brooks	*972
		Burnside Brook	Confluence with Caleb Brook	*972
			Upstream of Grange Road	*976
			Confluence of Whipple Brook	*985
		Whipple Brook	Confluence with Burnside Brook	*985
			2,000 feet upstream of confluence with Burnside Brook.	*998
			4,000 feet upstream of confluence with Burnside Brook.	*1,009
			6,000 feet upstream of confluence with Burnside Brook.	*1,021
		Caleb Brook	Confluence with Otter Brook	*972
			2,000 feet upstream of confluence with Otter Brook	*983
			Upstream of most downstream crossing of Grange Road.	*1,006
			2,000 feet upstream of most downstream crossing of Pleasant Valley Road.	*1,029
			Upstream of middle crossing of Pleasant Valley Road	*1,052
			2,000 feet upstream of middle crossing of Pleasant Valley Road.	*1,076
			4,000 feet upstream of middle crossing of Pleasant Valley Road.	*1,111
			6,000 feet upstream of middle crossing of Pleasant Valley Road.	*1,146
			Upstream of McGary Road	*1,180

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of most upstream crossing of Pleasant Valley Road.	*1,240
		Redman Brook	Confluence with Caleb Brook	*1,060
			1,000 feet upstream of confluence with Caleb Brook	*1,074
			2,000 feet upstream of confluence with Caleb Brook	*1,098
			3,090 feet upstream of confluence with Caleb Brook	*1,130
			Downstream of Pleasant Valley Road	*1,145
			Upstream of Pleasant Valley Road	*1,163
		Indian Brook	Confluence with Connecticut River	*853
			U.S. Route 3	*853
			Upstream of downstream crossing of Boston and Maine Railroad.	*858
			Summer Street	*858
			Upstream of upstream crossing of Boston and Maine Railroad.	*859
			4,400 feet upstream of upstream crossing of Boston and Maine Railroad.	*931
Maps available for inspection at the Town Offices in Lancaster, New Hampshire.				
New York	Town of Cato, Cayuga County (Docket No. FEMA-6109).	Cross Lake[2]	Entire Shoreline within Community	*382
		Seneca River	Confluence with Cross Lake	*382
			Confluence with Muskrat Creek	*383
			Upstream corporate limits	*384
Maps available for inspection at the residence of the Town Clerk, Marilyn Cole, 13071 Bonta Bridge, Cato, New York.				
Rhode Island	City of Pawtuckett, Providence County (Docket No. FEMA-6109).	Ten Mile River	Downstream Corporate Limits	*52
			Upstream side of Armistice Boulevard	*59
			Corporate limits downstream of Central Avenue	*64
			Upstream corporate limits	*68
		Moshassuck River	Downstream corporate limits	*34
			Upstream side Interstate 95	*37
			Upstream side of Mineral Spring Avenue	*45
			Upstream corporate limits	*52
		Blackstone River	Main Street Dam upstream side	*32
			Upstream Central Avenue	*39
			Upstream Pantex Dam	*45
			Upstream corporate limits	*48
		Seekonk River	Entire shoreline downstream of Main Street Dam	*16
Maps available for inspection at the City Engineer's Office, City Hall, Pawtucket, Rhode Island.				
Texas	City of Grand Prairie, Dallas and Tarrant Counties (FEMA-6079).	West Fork of Trinity River	Just upstream of Gifford Hill Railroad Spur	*432
			Just upstream of Meyers Road	*436
			Just upstream of Belt Line Road	*442
			Approximately 500 feet upstream of N.W. 19th Street	*454
			Just downstream of State Highway 360	*461
		Bear Creek	Just downstream of Shady Grove Road	*455
			Just downstream of Rock Island Road	*462
		Dry Creek	Just upstream of Shady Grove Road	*460
			Approximately 200 feet downstream of Thousand Oaks Boulevard.	*466
			Just downstream of Rock Island Road	*473
		Johnson Creek	Approximately 500 feet upstream of Carrier Parkway	*458
			Just upstream of Duncan-Perry Road	*471
			Approximately 100 feet upstream of Avenue J East	*507
		Stream 8B1	Just upstream of Carrier Parkway	*454
			Just downstream of Egyptian Way	*469
			Just downstream of Interstate Highway 30 (Dallas-Ft. Worth Turnpike).	*488
		Stream 8A4	Just upstream of W. Tarrant Road	*454
			Just downstream of Carrier Parkway	*466
		Mountain Creek	Just donwstream of Interstate Highway 30 (Dallas-Ft. Worth Turnpike).	*431
			Just upstream of Texas and Pacific Railroad	*433
			Just upstream of U.S. Highway 80	*435
		Cottonwood Creek	Just downstream of S.E. 8th Street	*470
			Approximately 200 feet downstream of S.W. 3rd Street	*480
			Just upstream of West Freeway-Robinson Road	*494
			Just downstream of Great Southwest Parkway	*528
		South Fork of Cottonwood Creek	Approximately 200 feet upstream of Carrier Parkway	*490
			Just downstream of West Freeway	*508
			Approximately 200 feet downstream of State Highway 303.	*537
		Stream 8D6	Just downstream of State Highway 303	*520
			Just upstream of State Highway 303	*526
		Stream 8D1	Approximately 400 feet downstream of Marshall Drive	*474
			Just downstream of Marshall Drive	*479
		Fish Creek	Approximately 200 feet upstream of Old Matthews Road.	*514
			Just upstream of Great Southwest Parkway	*535
			Just downstream of Northbound State Highway 360	*566
		Kirby Creek	Just upstream of New Bridge at County Club Park	*481
			Just downstream of Corn Valley Road	*491
			Just upstream of Belt Line Road	*527

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stream 8C5	Just upstream of Corn Valley Road	*516
			Just upstream of Shady Trail	*526
		Stream 8C6	Just upstream of small dam	*490
			Approximately 100 feet downstream of Camp Wisdom Road.	*493

Maps available for inspection at City Hall, 317 West College Street, Grand Prairie, Texas 75050.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 30, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33753 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Wisconsin

AGENCY: FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individual to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Agency has resolved the appeals presented by the community.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(C) Rice Lake Barron County (Docket No. FEMA-5966)	Red Cedar	Southernmost corporate limits	*1,106
			At confluence of Unnamed Tributary to Red Cedar River.	*1,112
			Just downstream of Allen Street	*1,115
			Just downstream of dam	*1,118
		Unnamed tributary to Red Cedar River.	Just downstream of Wisconsin Avenue	*1,114
			About 0.21 mile upstream of Wisconsin Avenue	*1,120
		Rice Lake	Shoreline	*1,125

Maps available for inspection at the Office of the Building Inspector, City Hall, 11 East Marshall Street, Rice Lake, Wisconsin.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 26, 1981.

Lee Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33754 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 46, No. 226
Tuesday, November 24, 1981

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

Proposed Rescission of REA Bulletin 81-7:381-11

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend Appendix A—REA Bulletins to provide for the rescission of REA Bulletin 81-7:381-11, "Changes or Corrections in Line Construction," which has become obsolete. The primary purpose of REA Bulletin 81-7:381-11 is to provide REA Form 216, "Construction Change Order." Since REA Form 216 was rescinded in an effort to eliminate unnecessary REA forms, REA Bulletin 81-7:381-11 is considered to be unnecessary.

DATE: Public comments must be received by REA no later than January 25, 1982.

ADDRESS: Submit written comments to the Director, Engineering Standards Division, Rural Electrification Administration, Room 1270, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin N. Limberger, telephone (202) 447-7040. A Draft Impact Analysis has been prepared and is available from the Director, Engineering Standards Division, at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins to provide for the rescission of REA Bulletin 81-7:381-11, "Changes or Corrections in Line Construction." Since no significant effect on the economy will occur, since no significant increase in cost for consumers, subscribers, industries or Government will result, and since no significant impact on economic conditions will be caused, this action has been determined to be "not major."

The Regulatory Flexibility Act (Pub. L. 96-354) is not applicable to this action; therefore, a Regulatory Flexibility Analysis will not be prepared.

This proposed action is intended to eliminate an unnecessary bulletin, thereby saving the Government the cost of periodic revisions.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees, 10.851—Rural Telephone Loans and Loan Guarantees and 10.852—Rural Telephone Bank Loans.

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

Dated: November 18, 1981.

Harold V. Hunter,

Administrator.

[FR Doc. 81-33872 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Standards for the Reduction of Risk From Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is considering three alternatives for amending its regulations to require improvements in the design and operation of light-water-cooled nuclear power plants to reduce the likelihood of failure of the reactor protection system to shut down the reactor (scram) following anticipated transients and to mitigate the consequences of anticipated transients without scram (ATWS) events. This will reduce the overall risk of nuclear power plant operation. The consequences of this regulation will be to require electric utilities to install certain equipment in nuclear power plants and, possibly, to implement a reliability assurance program.

DATES: Comment period expires April 23, 1982. Comments received after April 23, 1982, will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments should be submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. All comments received and all referenced and other NRC documents relevant to the ATWS issue will be available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies of referenced NRC reports may be purchased from the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: David W. Pyatt, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 443-5960.

SUPPLEMENTARY INFORMATION: Concern regarding protection against anticipated transients without scram (ATWS) events has long been a subject of extensive and continuing study by the NRC staff. The significance of ATWS for reactor safety is that some ATWS events could result in melting of the reactor fuel and the release of a large amount of radioactive fission products.

The principal benchmark for deciding whether and to what extent nuclear power plants should be modified because of ATWS-related safety concerns is set forth in subsection 161i(3) of the Atomic Energy Act. That section grants to the Commission the authority to "prescribe such regulations or orders as it may deem necessary * * * in order to protect health and to minimize danger to life or property." Throughout the history of regulating nuclear reactors, the dual concept of preventing accidents and mitigating their consequences should they occur, i.e., defense in depth, has been used to achieve this ojective. Thus, conservative design, construction, testing, maintenance and operation of plants are required so that accidents will not happen (i.e., have a low probability of occurrence). Then, to provide defense in depth, the capability to mitigate their consequences is required for accidents that are postulated to occur even though

the design is required to include measures to prevent them.

ATWS accidents are a cause for concern because a mismatch can develop between the power generated in the reactor and the power dissipated in controlled ways if the scram system fails to shut down the reactor following a fault in the normal heat dissipation functions (transient events). The power mismatch can threaten the integrity of the barriers that confine the fission products. A core meltdown accident, in some cases accompanied by a failure of containment and a very large release of radioactivity, is a possible outcome of some ATWS accident sequences. Thus, the consequences of some postulated ATWS accidents are unacceptable.

There have been roughly one thousand reactor years of experience accumulated in foreign and domestic commercial light-water-cooled reactors without an ATWS accident. This experience suggests that the frequency of ATWS accidents is less than or of the order of once in a thousand reactor years. There have been several precursor events, i.e., faults detected that could have given rise to ATWS events. This suggests that the frequency of ATWS accidents, though less than once in a thousand reactor years, may not be very much less. Such frequencies are too high for accidents of the severity described above. Thus the NRC has determined that reductions must be made in the frequency, severity, or both the frequency and severity of ATWS accidents.

The Nuclear Regulatory Commission has under consideration three proposed alternative rules, each intended to reduce the risk posed by ATWS accidents. Two of these originated within the NRC, and are described below. The third is set out in a petition for rulemaking filed by twenty utilities ("Electric Utilities Petition," PRM 50–29, 45 FR 73080, November 4, 1980 and the supplement to the petition published on February 3, 1981, 46 FR 10501). The utilities' petition will not be reproduced here; however, the current period for the utility petition is hereby reopened to run concurrently with that of the two NRC proposed rules for the purpose of comparing and contrasting the utility petition with the two proposed rules published herein. Both of the NRC-proposed rules mandate improvements in ATWS prevention and mitigation. They differ in scope, approach, and criteria.

The first NRC-proposed rule is known as the staff rule and is a direct outgrowth of NUREG–0460, "Anticipated Transients Without Scram for Light Water Reactors," Volumes 1–4. It was submitted to the Commission for consideration in an early version in SECY 80–409, September 4, 1980, and in final form in SECY 80–409C, November 7, 1980. The second NRC-proposed rule is a recent proposal by former NRC Chairman Joseph M. Hendrie.[1] Dr. Hendrie's aim in starting afresh was to try an approach that would make licensees look carefully at their plants for ATWS-related vulnerabilities and then fix these vulnerable areas, employing systems analysis or reliability techniques.

The Commission believes that the likelihood of severe consequences arising from an ATWS event during the two to four year period required to implement a rule is acceptably small. This judgment is based on (a) the favorable experience with the operating reactors, (b) the limited number of operating nuclear power reactors, (c) the inherent capability of some of the operating PWRs to partially or fully mitigate the consequences of ATWs events, (d) the partial capability of the recirculation pump trip feature to mitigate ATWS events that has been implemented on all BWRs of high power level, and (e) the interim steps taken to develop procedures and train operators to further reduce the risk from some ATWS events. On the basis of these considerations, the Commission believes that there is reasonable assurance of safety for continued operation until implementation of a rule is complete. The implementation schedule contained in this rule balances the need for careful analysis and plant modifications with the desire to carry out the objectives of the rule as soon as possible.

Paperwork Reduction Act

A request for clearance of any application and reporting requirements of the alternative finally selected will be submitted to the Office of Management and Budget under the Paperwork Reduction Act (Pub. L. 96–511). At the time, the SF–83 "Request for Clearance," Supporting Statement, and related documentation submitted to OMB will be available for inspection and copying for a fee in the NRC Public Document Room at 1717 H Street NW., Washington, D.C.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that neither of these alternative proposed rules will, if promulgated, have a significant economic impact on a substantial number of small entities. The alternative proposed rules affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 21. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

First NRC-Proposed Rule (the Staff Rule)

The review and evaluation by the NRC staff of the information that has been developed over the past ten years on ATWS events and of the manner in which they should be considered in the design and safety evaluation of nuclear power plants is contained in the report "Anticipated Transients Without Scram for Light Water Reactors," NUREG–0460, Volumes 1 through 4. There are two primary factors in the staff's evaluation. The first is the degree of assurance that ATWS events can be prevented, which depends on the reliability of current reactor protection systems. The second is the capability of existing reactor designs to mitigate the consequences of ATWS events.

The reliability of current reactor protection systems has been estimated based on the operating experience to date and reliability analyses. However, the very high level of reliability required is difficult to demonstrate with confidence because it depends on accurately determining the rate of common cause failures. Common cause failures involve failures of multiple components resulting from a single cause or event. Reactor protection systems are carefully reviewed to identify and eliminate all but the most unlikely common cause failures. However, one connon cause failure in the reactor trip portion of the protection system of a commercial nuclear power reactor has occurred during approximately 1000 reactor-years of operating experience. The failure was detected during normal surveillance and corrected before any event requiring a reactor scram occurred. There has also been one partial failure to scram in a commercial power reactor, which occurred at low power and resulted in no core damage or radiation release.

Common cause failures have also occurred in other systems in nuclear

[1] See the memorandum of Chairman Joseph M. Hendrie to Commissioners Gilinsky, Bradford, and Ahearne, "ATWS," dated June 9, 1981. A copy is available for inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

power plants and other potential common cause failures in reactor protection systems have been identified. Because of the low rate of occurrence of common cause failures, operating experience is not, and cannot be, sufficient to conclusively determine on a statistical basis whether reactor protection systems are reliable enough to make the probability of unacceptable consequences from ATWS events acceptably small. The prediction of common cause failures is as much art as it is science. System reliability analyses that attempt to predict the nature and frequency of common cause failures suffer from problems of completeness and accuracy, particularly when the desired failure rate is extremely small. While quantitative estimates of protection system reliability provide important information, the conclusion as to the adequacy of protection system reliability must be based on engineering judgment. The NRC has concluded that the reliability of current reactor protection systems has not been demonstrated to be adequate and most likely is not adequate.

The probability of severe consequences resulting from ATWS events is also affected by the capability of nuclear power plants to mitigate ATWS events. This capability varies depending on the design of the reactor system and the status of systems and the values of system process variables at the time the event occurs. The capability of a plant to mitigate ATWS events can be assessed by analysis. However, uncertainties in the design characteristics of the reactor, the probability of failure of the mitigating systems and the probability that the values of system process variables will be different from those assumed in the analysis all combine to produce uncertainty in the results. Therefore, the difficulty of demonstrating a capability to adequately mitigate ATWS events is similar to the difficulty of demonstrating that ATWS events can be prevented. Based on analyses performed to date, however, it is clear that, in most cases, present reactor designs have inadequate capability to mitigate the consequences of many postulated ATWS events should they occur.

Having concluded that improvements are needed to reduce the probability of severe consequences from ATWS events, the staff developed four alternatives, three of which would reduce this probability by increasing increments and would require increasing amounts of modifications. The alternatives were first described in Volume 3 of NUREG–0460 and again in slightly revised form in Volume 4. The intent of the proposed rule is to adopt a combination of the alternatives recommended in Volume 4 (except for one change for reactors designed by Westinghouse and licensed to operate before 1984). The proposed rule would implement the requirements in a different manner from that described in Volume 4 of NUREG–0460. The form of the requirements in the proposed rule is also different from that recommended in NUREG–0460 in that the proposed rule specifies acceptance criteria for ATWS mitigating systems while the required mitigating systems are specified in Volume 4.

Alternative 1 is to make no modifications at all. As discussed, the NRC has concluded that the reliability of current reactor protection systems is insufficient with respect to ATWS and that the probability of ATWS events is sufficiently great to warrant improvements. Therefore, this alternative is not represented in the proposed rule.

Alternative 2, as modified in the proposed rule, would increase the reliability of the reactor trip portion of reactor protection systems and improve the capability of existing systems to mitigate some ATWS events. Reliability of the reactor trip systems would be increased by the addition of supplementary protection systems that would be independent and diverse from the reactor trip portion of the current reactor protection systems. Diversity would be achieved by the use of components from different manufacturers, by the use of components having different principles of operation or power sources, and by the use of components in different operating modes (normally energized vs. normally deenergized). This alternative would not provide increased reliability of the reactivity control portion of the protection system, i.e., the control rods and control rod drives. However, in the case of reactors designed by General Electric it was proposed to increase the reliability of a portion of the control rod drive system, i.e., the control rod drive scram discharge volume. The capability to mitigate ATWS events would be improved by providing actuation circuitry that is separate from the reactor protection system for some existing systems such as primary system relief valves, turbine trip, and auxiliary feedwater in PWRs and the recirculation pump trip in BWRs. This alternative is very similar to the proposed rule offered by the utility group.

The staff proposed in Volume 4 of NUREG–0460 to implement only Alternative 2 for the ten older plants that began operation before late 1969. Because of their unique characteristics, the staff believed that more extensive modifications would not be appropriate for these plants. The proposed rule does not explicitly address these plants (except in the implementation schedule), but the intent is to consider any exemptions from the acceptance criteria of the proposed rule for these older plants based on analyses by the licensees and evaluations similar to those conducted under the Commission's systematic evaluation program (SECY–77–561 October 1977) in context with the overall safety of these facilities.

Alternative 3, as modified in the proposed rule, would increase the reliability of the reactor trip portion of the reactor protection system for some plants and provide for the mitigation of most ATWS events. The reliability of the protection system would be increased in the same manner as in Alternative 2. However, this increased reliability of the reactor protection system would not be required in plants that have a greater capability to mitigate ATWS events. The mitigation of most ATWS events in PWRs was expected to be accomplished as in Alternative 2, except that means would be required to isolate the containment early in an ATWS event upon detection of radiation released from failed fuel. The mitigation capability of BWRs was expected to be increased by providing automatic initiation of the Standby Liquid Control System and increase its flow capacity. Considering the state of design and construction, and a balancing of public safety benefits against economic cost the Commission proposes in this first rule that plants receiving an operating license before 1984 should be required to implement Alternative 3 as modified in the proposed rule.

Alternative 4, as modified in the proposed rule, would increase the reliability of the reactor trip portion of the reactor protection system of all plants and provide for the mitigation of almost all ATWS events. The reliability of the protection systems would be increased in the same manner as in Alternative 2. The mitigation of virtually all ATWS events was expected to be substantially increased by additional pressure relief capacity in the reactor coolant system. The mitigation capability of BWRs was expected to be increased by the addition of high capacity neutron poison injection systems. In balancing public safety benefits against economic cost, the Commission proposes in this first rule

that these extensive design changes could only be practically incorporated in plants not near completion and not to be licensed before 1984.

The proposed requirements in Volume 4 of NUREG–0460 were in the form of specific design changes. The proposed rule also specifies the design changes required to improve the reliability of the protection system and the response for containment isolation, but the changes in mitigation capability are required through the specification of acceptance criteria, criteria for evaluation models, and mitigating system design criteria. The specification of criteria requires licensees and applicants to demonstrate that the designs of their plants are in compliance and thus provides more assurance that the safety objective is being attained. This form also allows the designer more flexibility in design and a greater potential for minimizing costs.

Although the ultimate safety objective is to limit the release of radioactivity to the environment, the acceptance criteria in the proposed rule are directed toward ensuring the integrity of the reactor coolant system and the reactor core following ATWS events. The staff recognizes that failure to satisfy these acceptance criteria does not necessarily result in severe radiological consequences and has considered the additional safety margin in developing the proposed rule. In formulating the proposed rule, the Commission has considered the need to compare for each plant the offsite doses that might result from ATWS events with 10 CFR Part 100 guidelines. Based on conservative generic calculations performed by the staff, there is reasonable assurance that calculated offsite doses from ATWS will be within the Part 100 dose guidelines if the acceptance criteria of the proposed rule are met. Accordingly, the Commission has decided that applicants and licensees will not be required to calculate the potential offsite radiological doses resulting from an ATWS event under § 100.11. If only these guidelines for calculated offsite doses were specified, the flexibility for the designer would be increased, but the attainment of the safety objective would be more difficult to demonstrate. If systems designs were specified, the flexibility of the designer would be reduced, and the demonstration that the safety objective had been attained would be generic rather than for specified plants. Prior attempts at such a generic demonstration have been unsuccessful, as discussed above.

The level of safety, that is, whether most or virtually all ATWS events can be mitigated, is specified through the criteria for acceptable evaluation models. Since the parameters in the evaluation model are uncertain to some degree and some may vary over the lifetime of the plant, the level of safety is determined to a large extent by the degree of conservatism in the parameters used in the evaluation models, which affect the conservatism of the calculated consequences of postulated ATWS events. The proposed rule specifies that realistic values of parameters may be used when the value is known with reasonable accuracy, but that parameters with large uncertainties must be conservatively treated. The intent is to obtain realistic analyses of the course of ATWS events, yet predict the consequences conservatively. In order to ensure that the consequences of most ATWS events will be within the acceptance criteria, the proposed rule specifies that the value used for parameters that vary over the lifetime of the plant (the most significant of these in the moderator temperature coefficient) must be a value that is not exceeded over most or virtually all of the plant lifetime. In the case of the moderator temperature coefficient, the value used in the evaluation model that was less negative than the value expected to be experienced during 90 or 99 percent of the design lifetime of the plant would ensure that the consequences of most or virtually all ATWS events would not violate the acceptance criteria.

Although improvements in the capability to mitigate ATWS events provide a significant increase in the level of safety, there is some uncertainty associated with this conclusion. This uncertainty derives from the uncertainty in the reliability of mitigating systems and in the evaluation models used to define them. Because of this uncertainty the staff believes that improvements in reactor protection system reliability should also be required. These modifications to present reactor protection systems, as with any modifications to a nuclear plant, have the potential for introducing unrecognized failure modes that could result in a decrease in the level of safety. A careful design process in conjunction with the quality assurance, verification, and test programs is necessary to ensure that this will not occur. However, the implementation of these improvements in reliability in some plants is to be accomplished within two years, and such a short design and installation schedule might compromise the design program. In plants such as those designed by Westinghouse, which have a capability to mitigate nearly all ATWS events and where the level of safety is already high, the Advisory Committee on Reactor Safeguards (ACRS) recommended omitting the requirement for improvements in the protection system reliability. Thus, the proposed rule allows the protection system improvements to be omitted if more conservative values of the parameters, such as moderator temperature coefficient are used in the evaluation models and the capability to comply with the acceptance criteria is demonstrated. In plants licensed after January 1, 1984 or later the time available to design and install the modifications to the protection system is sufficient to ensure that the design process would not be compromised and improvements in the protection systems of all of these plants is required by the proposed rule.

One plant modification that would be required by the proposed rule is already being implemented on boiling water reactors. In an order dated February 21, 1980, licensees of BWR plants were directed not to operate after December 31, 1980, without a recirculation pump trip installed. Licensees have also been directed (IE Bulletin No. 80–17 dated July 3, 1980, and NUREG–0737, "Clarification of TMI Action Plan Requirements") to ensure that operating procedures and operator training address the actions to be taken in the plants as now designed if an ATWS did occur. These requirements are prudent measures that will reduce the risks from ATWS events during the interim period before the plant modifications determined by the Commission to be necessary can be installed.

In particular cases, additional requirements or earlier implementation may be appropriate. For example, candidates would be those existing nuclear power plants that are considered to be at high risk sites owing to a combination of population density, meteorological conditions and other factors.

The proposed rule would provide for implementation of the requirements in stages in order to gain the greatest increase in safety in the shortest time and at the least cost. The modifications to improve the reliability of the protection system and the mitigating system actuation circuitry would be required within two years of the effective date of the rule. In order to accomplish this, descriptions of the modifications are to be submitted for review by the NRC within one year of the effective date of the rule.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy

Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 182, 183, 68 Stat. 936, 937, 948, 953, 954, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939, 42 U.S.C. 2252). Sections 50.80–50.81 also issued under Sec. 184, 68 Stat. 954, as amended, Secs. 50.100–50.102 issued under sec. 186, 68 Stat. 955; (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended; (42 U.S.C. 2273), § 50.54(i) issued under sec. 161i, 68 Stat. 949; (42 U.S.C. 2201(i)), and §§ 50.70–50.71 and § 50.78 issued under sec. 161o, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)) and the Laws referred to in Appendices.

2. A new § 50.60 is added to read as follows:

§ 50.60 Acceptance criteria for protection against anticipated transient without scram events for light-water-cooled nuclear power plants.

(a) *Definitions.* (1) "Anticipated Transient Without Scram" (ATWS) means an anticipated operational occurrence as defined in Appendix A of this part followed by the failure of the reactor protection system specified in General Design Criterion 20 of Appendix A of this part.

(2) "ATWS evaluation model" means the calculational framework for evaluating the behavior of the nuclear power plant during a postulated ATWS event.

(3) "ATWS mitigating systems" means those systems including associated controls, instruments, power supplies and other systems assumed to function when evaluating the behavior of the nuclear power plant following an ATWS event.

(b)(1) *Acceptance Criteria.* Each light-water-cooled nuclear power plant must be designed, constructed, and operated so that the consequences of postulated anticipated transient without scram (ATWS) events calculated in accordance with an ATWS evaluation model approved pursuant to paragraph (b)(4) of this section conform to the following criteria:

(i) *Primary system pressure.* The calculated reactor coolant system (RCS) pressure and temperature resulting from postulated ATWS events must be limited so that either (A) the calculated maximum primary stress anywhere in the RCS pressure boundry does not exceed that permitted by the "Level C Service Limit" as defined in Article NB-3000 of Section III of the ASME Boiler and Pressure Vessel Code [1] and the calculated deformation of RCS components is limited so that the operability of components necessary to safely bring the reactor to and maintain it at a cold shutdown condition is not impaired, or (B) the integrity or operability of RCS components must be demonstrated based on conservative assessments of tests conducted to determine the integrity or operability of components under the conditions accompanying postulated ATWS events and based on the likely condition of the components over their design life.

(ii) *Fuel integrity.* The calculated damage to the reactor core as a consequence of postulated ATWS events, including oscillations of power and flow, must be limited to ensure that the core geometry is not distorted to an extent that would impair core cooling or safe shutdown.

(iii) *Radioactivity release.* The calculated release of radioactivity from the fuel rods to the reactor coolant system during postulated ATWS events must not exceed one percent of the radioactivity within the fuel rods of a pressurized water reactor or ten percent of the radioactivity within the fuel rods of a boiling water reactor.

(iv) *Containment.* The calculated containment pressure, temperature, and humidity resulting from postulated ATWS events must not exceed the design values of the containment structure and components or the contained mitigating systems, equipment and components. For boiling water reactor pressure suppression containments, the relief or safety valve discharge line flow rates and suppression pool water temperatures must be limited so that steam quenching instability will not result in destructive vibrations.

(v) *Long-term shutdown and cooling.* The reactor design must permit the reactor to be safely brought to and maintained at a cold shutdown condition following postulated ATWS events without insertion of control rods.

(2) *Evaluation Model Criteria.* (i) ATWS evaluation models must, with reasonable accuracy or acknowledged conservatism, represent the actual characteristics of the facility modeled and each significant physical phenomenon that would occur in the reactor and related systems during the course of the modeled event. Evaluation models must represent the effect of the failures in mitigating systems that are a direct consequence of the ATWS event being modeled. For facilities issued operating licenses on or after January 1, 1984, and not standardized to a facility at the same site that was issued an operating license before January 1, 1984, evaluation models must also represent the effect of the likely random single failures of active components in mitigating systems.

(ii) The value of parameters that vary over the lifetime of the facility or represent the characteristics of mitigating systems that are permitted by procedure to be inoperable for any period during operation must be selected so that values that would result in violation of the acceptance criteria would not be expected to occur during

(A) Most of the design lifetime of facilities issued operating licenses before January 1, 1984 or of facilities standardized to a facility at the same site that was issued an operating license before January 1, 1984.

(B) Almost all of the design lifetime of facilities issued operating licenses on or after January 1, 1984, except facilities standardized to a facility at the same site that was issued an operating license before January 1, 1984.

(3) *Mitigating System Criteria.* ATWS mitigating systems must be independent, separate and diverse from the reactor protection system. ATWS mitigating systems must be designed, qualified, monitored and periodically tested to ensure continuing functional capability under the conditions accompanying postulated ATWS events, including natural phenomena such as earthquakes, storms, tornadoes, hurricanes, and floods expected to occur during the design life of the plant. ATWS mitigating systems must be automatically initiating when the conditions monitored reach predetermined levels and continue to perform their function without operator action unless it can be demonstrated that an operator would have adequate information and would reasonably be expected within the time available to take the proper corrective action.

(4) *Evaluation models.* Each applicant or licensee shall submit evaluation models as defined in paragraph (b)(2) of this section, together with the description and results of the analyses and test necessary to verify the validity of the assumptions made in preparing such evaluation models to the Nuclear Regulatory Commission for approval by (within six months of the effective date of the rule) or prior to issuance of an operating license, whichever is later.

[1] See § 50.55a for approval of this incorporation by reference.

(5) *Plans for compliance.* Each applicant or licensee shall submit a description of all measures to be taken to ensure compliance with the criteria set forth in paragraph (b)(1), (b)(2) and (b)(3) of this section together with such proposed changes in technical specifications and license amendments as may be necessary to ensure compliance with these criteria to the Nuclear Regulatory Commission as follows:

(i) For all light-water-cooled nuclear power plants for which operating licenses have been issued on or before August 22, 1969, no later than (eighteen months after the effective date of the rule).

(ii) For all light-water-cooled nuclear power plants for which operating licenses have been issued after August 22, 1969, no later than (one year after the effective date of the rule) or prior to issuance of an operating license, whichever is later.

(6) *Implementation.* Each applicant or licensee shall implement those measures necessary to ensure compliance with the criteria set forth in paragraph (b)(1) of this section on the following schedule:

(i) For all light-water nuclear reactor power plants for which operating licenses have been issued on or before August 22, 1969, by dates agreed upon with the NRC. These dates must be submitted for approval not later than (three years after the effective date of the rule).

(ii) For all light-water-cooled nuclear reactor power plants for which operating licenses have been or may be issued after August 22, 1969, but before (three years after effective date of the rule), all modifications shall be completed prior to startup following the first refueling that begins (three years after effective date of the rule).

(iii) For all light-water-cooled nuclear reactor power plants licensed on or after (three years after effective date of the rule), all modifications shall be completed prior to issuance of an operating license.

(c) *Additional requirements*—(1) *Actuation:* In addition to those requirements set forth in paragraph (b) of this section, each light-water-cooled nuclear power plant except as provided in paragraph (c)(2) of this section, must be provided with:

(i) Actuation circuitry for ATWS mitigating systems that is independent and diverse from the reactor protection system;

(ii) Prompt automatic containment isolation initiated by a significant source of radiation in the containment resulting from failure of the fuel rods following postulated ATWS events;

(iii) Those modifications necessary to reduce the common mode failure potential of the control rod scram discharge volume in plants designed by the General Electric Company including diverse scram discharge volume level sensing devices; and

(iv) Those modifications necessary to provide a supplementary reactor trip system that is diverse from the reactor trip portion of the current reactor protection system.

(2) *Exemption.* Pressurized light-water-cooled nuclear power plants issued operating licenses before January 1, 1984 or standardized to a facility at the same site that was issued an operating license before January 1, 1984 need not comply with the requirements of paragraph (c)(1)(iv) if the facility conforms to the requirements of paragraph (b) of this section except that the fraction of the design lifetime used to determine the value of parameters must be greater than that specified in paragraph (b)(2)(i) of this section.

(3) *Submittal.* A description of the measures together with such proposed changes in technical specifications or license amendments as may be necessary to ensure compliance with the criteria set forth in paragraph (c)(1) of this section must be submitted to the Nuclear Regulatory Commission no later than (nine months after the effective date of the rule) or prior to issuance of an operating license, whichever is later.

(4) *Implementation.* Those measures required under paragraphs (c)(1) of this section must be completed:

(i) For all light-water cooled nuclear reactor power plants for which operating licenses have been or may be issued after August 22, 1969 but before (two years after effective date of the rule), all modifications shall be completed prior to startup following the first refueling that begins (two years after effective date of the rule).

(ii) For all light-water cooled nuclear reactor power plants licensed on or after (two years after effective date of the rule), all modifications shall be completed prior to issuance of an operating license.

(d) *Dose calculations.* Applicants or licensees are not required to calculate the potential offsite radiological doses resulting from an anticipated transient without scram event under § 100.11 of this chapter.

Second NRC-Proposed Rule (the Hendrie Rule)

The essence of the second NRC-proposed rule is that power reactor licensees would be required to implement a reliability assurance program to seek out and rectify reliability deficiences in those functions and systems that prevent or mitigate ATWS accidents. To cover the possibility that the reliability assurance programs might fail to correct an obscure reliability defect, some additional requirements for ATWS mitigation would be selectively mandated. These improvements in ATWS tolerance of reactor plants have been chosen to afford an opportunity to learn from experience without incurring a substantial likelihood of an unacceptable radiological release.

The NRC is exploring the possibility that the regulation of reactor safety may evolve toward regulating the process by which licensees ensure public heath and safety and away from licensing the details of plant design and operation. Programs like the reliability assurance program in this proposed rule offer promise of growing into a formal, auditable way the NRC can determine that licensees are doing a satisfactory job of ensuring public health and safety. A number of diverse regulatory initiatives are supportive of this tread. Among them are the requirements on licensee staffing and organization, the proposal that licensees employ probabilistic risk assessment methods as design and operations management tools, and the pilot studies of independent design reviews.[2]

The necessity for and content of the proposed rule is based on (1) operating experience to date with power reactor scram systems, (2) system reliability analysis, (3) the qualitative findings of reactor risk assessment, and (4) ATWS accident analysis.

There has been one partial failure of the scram system in a commercial power reactor. It occurred at Browns Ferry Unit 3 on June 28, 1980. Although the particular scram system failure mode that caused the event is very unlikely to cause a severe radiological release accident, the event and the reviews resulting from it revealed a number of reliability deficiencies in the BWR scram systems. These are now being rectified by the industry subject to the review and approval of the NRC staff. One objective of the proposed reliability assurance program is to institutionalize within the licensed industry the thorough evaluation and implementation

[2] See, for example, "NRC Action Plan Developed As A Result of the TMI-2 Action Plan" NUREG-0660, "Policy on Proceeding With Pending Construction Permit and Manufacturing License Applications," SECY-81-20D, and "Use of Independent Design Reviews (IDRs) in the Regulatory Process," SECY-81-161. Copies of these references are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

of the lessons of experience with functions important to ATWS prevention or mitigation.

Reliability deficiencies in safety systems differ substantially in the kind and frequency of opportunities to detect and repair them. Some faults are self-announcing and thus elicit prompt repair. Others show up in each surveillance test. Some faults may not be revealed by routine surveillance tests. For instance, the reliability defect responsible for the partial scram failure at Browns Ferry could not have been detected in routine surveillance tests of the scram system.

System reliability calculations by the Electric Power Research Institute and others have shown that component failures of reactor scram systems that are detected and corrected in each surveillance test are very unlikely to cause ATWS events. Other system failure modes can only be detected in some but not all surveillance tests. Still others show up only in some or all genuine demands upon the system. Some reliability defects cannot be detected even in genuine system demands unless triggered by other failures. Examples of the latter category are the hydraulic design deficiencies in the BWR scram discharge system revealed by the incident at Browns Ferry. Such blind spots in the experience base for safety systems can conceal serious flaws in reliability. Thus a second objective of the reliability assurance program is to conduct a thorough analysis of the startup test program, the surveillance test program, and the record of system functional experience to identify and—where feasible—close loopholes through which design deficiencies, construction deficiencies, vulnerability to test or maintenance error, or component failures might escape detection and thus correction for considerable periods of time.

Studies initiated in response to the Browns Ferry partial scram failure indicated that two auxiliary systems [3] that serve the scram sytem as well as other systems, could have caused partial or complete scram failures. This discovery is suggestive of a class of common cause failures that might compromise the safety of a reactor. Failures in auxiliary systems might cause the initiating transient as well as degrade the reliability of the scram system, or they might contribute to the scram failure and also could compromise the availability of one of the systems required to mitigate an ATWS event, or both.

Thus, a third objective of the reliability assurance program is to search out and evaluate the potential common cause failures that might contribute to failure in two or more systems whose reliability is important to ATWS accident sequences. This search should embrace not only auxiliary systems but also human factors via test, maintenance, and operations; technical specifications dealing with equipment availability; and environmental conditions in the plant.

A fourth objective of the reliability assurance program is to search out and evaluate the susceptibility of the redundant divisions of each safety system important to ATWS prevention or mitigation to common cause failure. Concern with common cause failure modes of the scram system has been central to the history of the ATWS controversy.

A common cause failure of an electrical nature has already occurred in a reactor scram system in a commercial nuclear power plant (Kahl reactor) that could have resulted in its failure to operate on demand. That failure was detected during normal surveillance and rectified. A similar common cause failure was detected and corrected in the startup testing of the Monticello reactor. Estimates of the upper limits of the frequency of ATWS events for the commercial power reactor industry are of the order of 10^{-3} per reactor year. The NRC staff has concluded that operating experience is not sufficient to determine conclusively on a statistical basis whether reactor scram systems are reliable enough to make the probability of unacceptable consequences from ATWS events sufficiently small.

The improvements emanating from the proposed reliability assurance program will make ATWS accidents less likely and the systems that mitigate ATWS events more reliable. Nevertheless, it is necessary to ensure that mitigating systems will render the outcome of most ATWS events acceptable. The principle of defense in depth calls for reactor plants to be designed and operated in such a way that a rare ATWS accident can be tolerated.

The requirements for ATWS tolerance in light-water cooled commercial power reactors are intended to afford an opportunity to learn from experience without placing the public health and safety in jeopardy. The first occurrence of an ATWS precursor due to any particular failure mode will result in studies like those now being made in response to the Browns Ferry incident. These can be counted on to make a recurrence of that failure mode much less likely in the future.

Calculations of the expected consequences of very severe reactor accidents have been made in the *Reactor Safety Study* (WASH–1400)[4] and other studies. The results indicate that the accidents that could realistically be expected to result in lethal radiation doses outside the plant site are those denoted as release category 1, 2 or 3 accidents in the notation of WASH–1400. These are also the accidents that are expected to cause substantial offsite property damage.

Studies of ATWS accidents in pressurized water reactors (PWRs) suggest that only a small percentage of reactor scrams are limiting transients. That is, only a small fraction of the opportunities for ATWS accidents occur under circumstances that most severely challenge the ATWS tolerance of the plant. In addition, the qualitative findings of PWR risk assessment studies suggest that even the most limiting classes of ATWS accidents in PWRs are unlikely to produce a release category 1, 2 or 3 radiological outcome.

In boiling water reactors (BWRs) a substantial fraction of scrams take place under circumstances that can lead to a limiting transient. BWRs are least forgiving of those ATWs events in which the reactor is isolated. Even if reactor isolation does not cause the transient in the first place, the effects of a failure to scram are likely to trigger reactor isolation. Furthermore, BWR risk assessment studies suggest that ATWS accidents may give rise to release category 1, 2 or 3 (as described in WASH–1400) outcomes.

These arguments suggest that PWRs may already achieve the minimum ATWS tolerance necessary to supplement the reliability assurance program, whereas improvements should be mandated for BWRs to strengthen their provisions for ATWS mitigation. However, a more careful analysis of ATWS-tolerance is required in the proposed rule to provide the basis for and form of actions to be taken by licensees.

In PWRs, the limiting transient with respect to ATWS is a complete interruption in the delivery of feedwater to the steam generators at full power. Should the scram fail to shut the reactor

[3] The auxiliary systems of note are the vent system serving the scram discharge volumes, and the compressed air system serving the air-operated scram valves.

[4] Microfiche copies are available for purchase from the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

down, the continued power generation and the declining heat removal, as the secondary coolant boils away, causes a surge in pressure of the reactor coolant. The severity of this pressure excursion is a sensitive function of the moderator temperature coefficient, the capacity of the relief valves attached to the reactor coolant system, and the speed with which the auxiliary feedwater system starts. The pressure surge will subside as the power decreases due to the increasing moderator temperature. Subsequent reactor coolant replenishment and reactivity control is provided by the high pressure injection (HPI) system, which pumps cooling water containing a reactivity poison into the reactor coolant system.

The most severe test of the ATWS tolerance of a PWR lies in its survival of the pressure excursion and in the successful start of the auxiliary feedwater and high pressure injection systems. The possible outcomes of the pressure excursion are (1) the reactor coolant system and interfacing equipment are undamaged, (2) the reactor coolant system remains intact but instruments on the pressure boundary fail or the valves for the HPI system are damaged, (3) the reactor coolant system is ruptured producing a loss-of-coolant accident (LOCA) to containment, (4) steam generator tubes rupture causing a primary-to-secondary LOCA or a LOCA to other interfacing systems, or (5) combinations of (2), (3) or (4). The first outcome is clearly preferred. The second outcome makes it clear that care must be taken to ensure that the operators have sufficient information about the status of the reactor to manage the recovery. Should the HPI pressure boundary valves all seize in the closed alignment, the core will melt. This is one of several paths from ATWS to a contained core melt accident. A LOCA to containment is likely to be mitigated by the Emergency Core Cooling System (ECCS) even though the initial pressure conditions are outside the design envelope for ECCS analysis. Thus no core melt is expected (although a contained core melt is a remote possibility), and a core melt with missile damage to containment is a still more remote possibility. Steam generator tube rupture can provide a leakage path to the outside atmosphere that bypasses containment. However, ECCS is likely to be successful, so the core would not melt. All but one steam generator can very probably be isolated, thus terminating a minor release.

The severe release category 1, 2, or 3 events occur only for a core melt and a gross above-ground failure of containment. This is not among the more probable outcomes of even the most severe and damaging pressure excursions associated with ATWS in PWRs.

Analysis of ATWS transients by the NRC staff and the reactor suppliers suggest that Westinghouse reactors have sufficient relief capacity so that pressure excursions expected of limiting ATWS transients will not be damaging, provided that the auxiliary feedwater system starts promptly. Combustion Engineering and Babcock and Wilcox reactors may be subject to severe pressure excursions even with prompt start of the auxiliary feedwater system, should the ATWS accident take place when the moderator temperature coefficient is unfavorable. The NRC staff has argued in NUREG–0460 that these plants should install additional relief capacity to improve their ATWS tolerance. The industry has argued that such modifications are very expensive, will produce substantial occupational exposures to radiation to those installing them, and are unnecessary because the plants already have sufficient tolerance of the pressure excursion, according to their analyses in proprietary reports.

The NRC, in reassessing its position, has concluded that the minimum ATWS tolerance necessary to complement the reliability assurance program does not dictate additional pressure relief capacity in CE and B&W plants in light of the several mitigating factors noted above. However, there are a number of other safety-related incentives to alter the provisions for reactor coolant pressure reduction or relief in PWRs. These include deliberate depressurization to enable low-pressure safety injection in small LOCAs and feedwater transients with scram, to avoid the melt-through of reactor vessels while at elevated pressure, and to enable the ECCS accumulators to extend the point of no return for the restoration of AC power in station blackout accidents. The NRC expects to take up the case for and against altered pressure relief provisions for PWR reactor coolant systems in the forthcoming rulemakings on severe accidents.

The required ATWS tolerance of PWRs rests: (1) upon the prompt start of the auxiliary feedwater system, (2) the availability of instruments necessary for the operators to diagnose the ATWS accident sequence and successfully maneuver the plant to minimize the release of radiation, (3) the training of operators, (4) the availability of the high pressure injection system, and (5) the integrity of reactor coolant pressure boundary valves through which a LOCA would bypass containment and could not be isolated.

In some PWRs, the very rapid autostart of the auxiliary feedwater system following a feedwater transient can overcool the reactor if the scram is successful. In such plants, the rapid start logic may be interlocked to take place only if the scram fails. However, such interlocks must not degrade the reliability of the auxiliary feedwater system for the more frequent loss-of-feedwater transients in which the scram is successful and in which a delayed autostart of auxiliary feedwater is appropriate. The identification of the required instrumentation and the training of operators may be made a part of the reliability assurance program, and the verification that the instruments and the critical pressure boundary valves on the reactor coolant system have the required tolerance for the limiting pressure excursions would be part of the ATWS tolerance requirements.

The moderator temperature coefficient, which strongly influences the severity of the reactor coolant pressure excursion for limiting ATWS transients, is at its least favorable value during the early months of operation with the first fuel load. The early months of plant operation are also characterized by a higher-than-average frequency of transients and safety system failures as the plant is shaken down and the plant personnel gain experience with the equipment. Therefore, much of the risk associated with ATWS accidents is expected to be concentrated in the first months of plant operation. One mitigating factor is the less-than-equilibrium inventory of fission products accumulated in the fuel at this time. Nevertheless, PWR reactor licensees would be required to propose and implement particularly stringent limiting conditions of operation in the technical specifications to constrain operation when combinations of the unavailability of mitigating or preventive equipment, the prevailing moderator temperature coefficient, and the power level encroach upon the tolerance of the plant for the pressure excursions to be expected of limiting ATWS transients.

In large, modern boiling water reactors, a transient with failure to scram from full power is very likely to cause, or may follow, the isolation of the reactor, notably a trip of the main steam isolation valves. If the reactor coolant recirculation pumps continue to run, the power level will remain high and a

severe pressure excursion will take place. Even if the reactor coolant system survives the pressure surge, the very high steam flow will rapidly heat the suppression pool and pressurize the containment. In addition, the high-pressure coolant injection (HPCI) may not suffice to cool the core; overheating and core damage may follow. Ultimately the containment is expected to rupture due to overpressure while the core sustains damage. Continued core coolant replenishment is questionable after containment rupture. A large radiological release is a plausible outcome. A necessary mitigating feature is thus a prompt automatic trip of the recirculation pumps to avoid the pressure excursion and diminish the power and the consequent steam flow to the suppression pool. Given a trip of the recirculation pumps, the reactor power will stabilize at roughly 30% power until the reactor coolant boils down and steam bubbles (void formation) in the core throttle the chain reaction. Thereafter, a static or oscillatory equilibrium will be maintained in which the reactor sustains the average power necessary to boil off however, much reactor coolant is delivered, up to about 30% power. Analysis shows that HPCI or main feedwater can adequately cool the core to avoid extensive core damage. However, the power delivered to the suppression pool will be greater than the pool cooling system can dissipate. Therefore, containment overpressure failure remains a distinct possibility unless the reactor is shut down, either by control rod insertion or by liquid reactivity poison injection. Well before the containment is significantly pressurized, the suppression pool will approach saturation, and the steam condensation will become unstable. Chugging steam condensation may threaten containment intergrity or pressure suppression and thus shorten the time available to shut down the reactor without unacceptable consequences. In limiting transients, the failure of the main feedwater system may be the initiator of, or companion of the initiating event. The HPCI is a single-train system. The fault or human error that precipitates the initial transient might also disable the HPCI. In addition, system reliability analyses have indicated that HPCI may fail or be unavailable in as many as from 1% to 10% of the cases in which a demand is made of the system. This may be insufficient reliability for the mitigation of a potentially serious accident having a frequency of occurrence that might be as high as once in a thousand reactor years. A second diverse system, the Reactor Core Isolation Cooling system (RCIC) should be expected to autostart and run, delivering coolant to the reactor. The flow rate delivered by the RCIC is lower than that of the HPCI. If the RCIC is the sole operative means of replenishing reactor coolant, the adequacy of core cooling, rather than the heat deposited in the suppression pool, is likely to be the factor limiting the time allowed to shut down the reactor without unacceptable consequences. The RCIC can successfully cool the reactor once it is shut down, and it can slow the boiloff of reactor coolant in the reactor.

The NRC has concluded that the liquid reactivity poison injection system in large, modern BWRs must have a start time and poison injection rate such that either of two redundant trains of high-pressure reactor coolant replenishment systems, either of which may be expected to be available under ATWS conditions, can successfully mitigate ATWS transients. The two trains may be the HPCI and RCIC.

The criteria of successful mitigation are: (1) The containment temperature and pressure must remain within the design envelope, (2) the core must retain coolable geometry, and (3) neither prompt fatalities nor serious offsite property damage are predicted by analyses whose conservatism is compatible with that employed in WASH-1400.[5]

Concern has been expressed that the RCIC, though capable of meeting these success criteria, does not prevent the automatic depressurization of the reactor coolant system. Operator action is necessary in less than ten minuted to override the automatic depressurization or to throttle low pressure ECCS should the depressurization occur. The NRC staff does not wish to force an alteration of the logic governing the automatic depresurization system (ADS) which might compromise the reliability of the ADS in non-ATWS events. Options to resolve these competing concerns will be evaluated by the NRC staff during the comment period. We are interested in receiving comments on the potential effects of the three proposed rules on this subsystem (high-pressure makeup) of the BWR design.

Several factors complicate the analysis of the ATWS-tolerance of BWR plants. The delivery of main feedwater, which may be available in some ATWS accident sequences, may dilute liquid poison and increase the power level in ATWS events, thus threatening successful mitigation. In some sequence variants, operators might be tempted to depressurize the reactor to enable low pressure reactor coolant injection but, in so doing, disable turbine-driven coolant injection systems or otherwise compromise possible avenues of successful ATWS mitigation. The reliability assurance program must entail a thorough investigation of such ATWS accident sequences, of the instrument indications available, and of the possible range of operator actions. Operator training should familiarize operators with the optium strategies and alert them to serious errors that could occur in dealing with ATWS accidents.

BWR reactor operators may be subject to a strong disincentive to actuate the Standby Liquid Control (SLC) system because of the costly nature of spurious SLC actuations. They may also be inclined to override an autostart of the SLC if they doubt that an ATWS indication is genuine or the failure of the scram system is irreparable. The NRC recognizeas the ligitimacy of the concern with the cost of spurious SLC actuation

To deal with these conflicting concerns, the NRC proposes to require the automatic start of the SLC system under circumstances diagnosed to be ATWS sequences. Licensees are free to employ reliability engineering methods to minimize the likelihood of spurious actuations under non-ATWS circumstances provided these provisions do not compromise the reliability of the essential SLC safety function in genuine ATWS sequences.

In light of the analysis and operator training associated with the reliability assurance program, it is not deemed necessary to preclude provisions for manually overriding the autostart of the SLC. As part of the reliability assurance program, a thorough analysis is to be made of the circumstances in which an operator might be tempted to override a genuinely needed SLC actuation. Consideration should be given to improved instrumentation if the correct diagnosis of such sequences is ambiguous. Operators must be trained to give first priority to safety rather than to the availability of the plant for power generation. The anticipation that repeated manual scrams or quick fixes in the control cabinets may succeed in inserting the control rods would be an unacceptable justification for overriding SLC actuation.

In conjunction with this form of the rule, the NRC does not deem it necessary that the SLC meet the single-failure criterion as well as the indicated

[5] Microfiche copies are available for purchase from the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

success criteria. In the very unlikely event of an ATWS event and a failure of automatic and manual starts of the SLC system, a fallback strategy is available through manual rod insertion and intervention in the reactor protection system control cabinets. Nevertheless, the SLC must not depend upon a single division of an auxiliary system the failure of which would also compromise the reliability of the scram system or of the recirculation pump trip or precipitate the initiating transient.

BWRs must also operate under specified Limiting Conditions of Operation that constrain power generation under circumstances in which equipment unavailability compromises the reliability of systems important to ATWS prevention or mitigation.

The older lower-power-level reactors may differ significantly in the levels of ATWS-tolerance provided. These plants would be required to submit analyses of their ATWS-tolerance for review by the NRC staff.

The dual approach of ATWS tolerance and the reliability assurance program provides defense in depth. Each allows the other to be implemented without highly conservative margins. The margin provided by ATWS-tolerance allows realistic cost-benefit considerations to govern the selection and schedule of implementation for fixes suggested by the reliability assurance program.

The very costly accident at Three Mile Island has demonstrated that the protection of a licensee's investment in a reactor plant provides a powerful economic incentive to search out and correct reliability defects in the functions that protect a reactor core from damage. These economic considerations, together with a realistic evaluation of offsite risks affecting public health and safety, are sufficient to determine the scope and schedule of the more expensive or intrusive alterations in plant operation or design emerging from the reliability assurance program.

The reliability assurance program is not to be a paper study to demonstrate to the NRC staff that the plant is already safe enough. The role of probabilistic evaluations is secondary to the qualitative search for and evaluation of specific types of reliability defects. The reliability assurance program is not intended primarily to assist NRC staff review. Rather, it is to be integrated into the conduct of plant management, personnel training, and the conduct of operations. It is intended to strengthen the responsibility for safe design and operation of the plant resting with the licensee and to relieve the NRC staff of much of the detailed involvement in experience review and the selection of procedural or hardware backfits in the context of ATWS risks. For this reason, the proposed rule emphasizes criteria for the sound implementation of the reliability assurance program and limits the staff review to these criteria, together with the conventional review and approval of the license amendments associated with changes in design or operation.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 182, 183, 68 Stat. 936, 937, 948, 953, 954, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C., 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939, 42 U.S.C. 2152. Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended; (42 U.S.C. 2234). Secs. 50.100–50.102 issued under sec. 186, 68 Stat. 955; (42 U.S.C. 2236). For purposes of sec. 223, 68 Stat. 958, as amended; (42 U.S.C. 2273). § 50.54(i) issued under sec. 161i, 68 Stat. 949; (42 U.S.C. 2201(i)), and §§ 50.70–50.71 and § 50.78 issued under sec. 161o, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)) and the Laws referred to in Appendices.

2. A new § 50.60 is added to read as follows:

§ 50.60 Standards for the reduction of risk from Anticipated Transients Without Scram (ATWS) events for light-water-cooled nuclear power plants.

Each light-water-cooled commercial power reactor licensee shall establish and maintain a reliability assurance program for functions associated with the prevention and mitigation of Anticipated Transients Without Scram (ATWS) employing state-of-the-art methods and procedures to identify vulnerabilities to failure. Each licensee is responsible for the implementation of cost-effective improvements to reduce ATWS risk. Defense in depth must be maintained by operating commercial power reactors only in modes that afford an opportunity to learn from experience with ATWS events without severe radioactivity releases. Specific acceptance criteria are delineated below.

(a) *Initial reliability assurance program.* The initial reliability assurance program must include an analysis and classification of the principal determinants of the radiological severity of each class of ATWS accident sequences in terms of the initial plant conditions, the type of initiating transient, the failure mode of the reactor protection system, and the state of operability or inoperability of other active systems affecting the outcome. This analysis must be employed in each of the following elements of the reliability assurance program:

(1) Training of licensed reactor operators in the diagnosis and prognosis of the several ATWS accident sequences. Operators must be trained to make productive use of their time during ATWS accidents to effect mitigation. Consideration must be given to improving instrumentation, displays, and emergency procedures to minimize the likelihood that misdiagnosis or delayed diagnosis of ATWS sequences may substantially increase the radiological severity of the outcome.

(2) An analysis of hypothetical errors in or erroneous departures from proper test and maintenance procedures for systems whose reliability is important to ATWS prevention or mitigation. Consideration must be given to improved designs, test equipment, procedures, and personnel training to minimize the likelihood that the reliability of these systems will be compromised by errors in test and maintenance.

(3) An analysis of the blindspots in the experience base with systems important to ATWS prevention or mitigation through which reliability defects might escape detection for considerable periods of time. Hypothetical reliability deficiencies must be classified by (i) kind (design deficiency, construction deficiency, vulnerability to test or maintenance error, active or passive failure), (ii) affected components or subsystems, (iii) severity of the reliability of deficiency, and (iv) the frequency and kind of opportunity to detect the deficiency. A test program covering startup or one-time-only tests, tests associated with periodic plant overhauls, and inservice surveillance tests must be developed and implemented so that the mean time to detect the deficiencies is reduced to the extent reasonably achievable.

(4) An analysis of the susceptibility of the plant to common cause failures of two kinds: those in which a single root cause degrades the reliability of redundant divisions of a safety system

important to ATWS prevention or mitigation, and those in which a single root cause degrades the reliability of two or more systems whose concurrent failure contributes to a severe ATWS accident sequence. The kinds of root causes to be considered are those listed in paragraph (a)(3)(i) of this section. Consideration must be given to improved design or operation to reduce vulnerability to common cause failures.

(b) *Continuing reliability assurance program.* Each commercial power reactor licensee shall maintain a continuing reliability assurance program for functions important to ATWS prevention and mitigation that includes the following:

(1) Configuration control for designs, procedures, and technical specifications to assure consistency with the initial reliability assurance analyses.

(2) Procedures for updating affected portions of the initial reliability assurance analysis for, and prior to, departures from the controlled design, procedures, or technical specifications. Applications for license amendments to implement these changes must include a brief analysis of the impact of the change on the reliability of systems important to ATWS risk.

(3) An experience feedback system to review operational and test data on relevant systems in the licensed plant and the relevant experience at plants having a similar system design. Each operational occurrence must be reviewed for clues to oversight or errors in the reliability assurance analyses. The initial reliability assurance analyses and cost-benefit analyses based thereon are to be updated when the experience feedback system reveals oversights or limitations in these studies.

(c) *Design and operation for ATWS tolerance.* (1) Boiling water reactor licensees receiving an operating license after August 22, 1969, shall:

(i) Provide equipment to trip automatically the reactor coolant recirculation pumps under conditions indicative of an ATWS event,

(ii) Provide equipment to automatically deliver liquid reactivity poison so that either of two independent reactor coolant replenishmenf system trains expected to be available during ATWS events can successfully bring the reactor to stable hot shutdown. The poison injection system must not depend for its function on a single division of an auxiliary system whose failure could precipitate the transient, degrade the reliability of the scram system, or defeat the recirculation pump trip, and

(iii) Provide a reliable scram discharge volume system.

(2) Pressurized water reactor licensees receiving an operating license after August 22, 1969, shall:

(i) Provide for the prompt, automatic start of the auxiliary feedwater system under circumstances indicative of a transient entailing loss of main feedwater and a failure to scram,

(ii) Ensure that the instruments necessary for the diagnosis of and recovery from ATWS accident sequences will not be disabled by the effects of such accidents, and

(iii) Ensure that those reactor coolant system pressure boundary valves through which high-pressure injection can reach the reactor remain functional after limiting ATWS transients and those valves whose integrity is essential to the avoidance of unisolatable, uncontained loss of coolant accidents retain their integrity throughout limiting ATWS transients.

(3) Commercial light-water-cooled power reactor licensees not covered in paragraphs (c)(1) or (c)(2) of this section shall submit an analysis of the ATWS tolerance of their plants.

(4) Each commercial power reactor licensee shall prepare, submit for review and approval, and implement Limiting Conditions of Operation that proscribe operation in, and mandate expeditious retreat from, operation under conditions that compromise the ATWS tolerance of the plant. Limiting Conditions of Operation should also minimize operation under conditions in which the ATWS tolerance of the plant would be severely tested by a limiting ATWS event. Consideration of the prevailing plant parameters as well as equipment operability is appropriate in the Limiting Conditions of Operation.

(5) For the purposes of this pargraph, the ATWS tolerance of a plant is inadequate if any of the more limiting transients, followed by a total failure of the scram system, result in any one of the following:

(i) Containment pressure or temperature above the design values,

(ii) Loss of coolable geometry in the core, or

(iii) Releases of radioactive material that may realistically cause any offsite prompt fatalities or serious offsite property damage.

(6) Applicants or licensees are not required to calculate the potential offsite radiological doses resulting from an ATWS event under § 100.11 of this chapter.

(d) *Schedule of implementation and reporting requirements.* (1) Plans for the implementation of the reliability assurance program called for in paragraphs (a) and (b) of this section must be filed with the NRC for review and approval. Holders of operating licenses, applicants for operating licenses, and those expecting to file an application for an operating license within one year of [the effective date of the rule] shall file the reliability assurance program plan at a time to be agreed upon by the NRC staff. The time afforded for plan development will be not less than one year [from the effective date of the rule]. Those holders of construction permits who file an application for an operating license on or after [one year from the effective date of the rule] shall file the reliability assurance program plan at the time of operating license application. The plans must identify (i) the ways the reliability assurance program will be integrated into the engineering and operations management of the plant, (ii) the reporting and approval requirements internal to the licensee's organization, (iii) the plans for information evaluation and exchange among licensees as part of the experience feedback function, (iv) the criteria for reporting to the NRC, (v) the criteria for the adoption and scheduling of alterations to plant design or operation emerging from the reliability assurance program, and (vi) the date at which the initial reliability assurance studies can be completed. A brief summary of findings and plans for the resolution of reliability deficiencies must be filed with the NRC upon completion of the initial reliability assurance studies. Subsequent discoveries of reliability deficiencies in the plant must be reported in accord with prevailing practices for reporting licensee events. The reliability assurance program will be subject to audit by the NRC. It is not expected that the NRC will engage in routine review and approval of the program unless a pattern suggestive of noncompliance is observed.

(2) Applicants for or holders of operating licenses subject to paragraph (c)(1) or (c)(2) of this section shall file with the NRC plans for the implementation of the requirements of paragraph (c) of this section [within one year of the effective date of the rule] or upon license application, whichever is later. The full implementation of the requirements of paragraphs (c)(1), (c)(2), and (c)(4) of this section must be completed:

(i) For all light-water cooled nuclear reactor power plants for which operating licenses have been or may be issued after August 22, 1969, but before [three years after effective date of the rule], all modifications shall be completed prior to startup following the

first refueling that begins (three years after effective date of the rule).

(ii) For all light-water cooled nuclear reactor power plants licensed on or after (three years after effective date of the rule), all modifications shall be completed prior to issuance of an operating license.

(3) Holders of operating licenses subject to paragraph (c)(3) of this section shall file with the NRC plans for the accomplishment of the ATWS tolerance assessment called for in paragraph (c) of this section [within one year of the effective date of the rule]. Such licensees shall file the results of these studies, together with proposed changes, if any, in design, procedures, and technical specifications to assure ATWS-tolerance, and a proposed implementation schedule shall be filed with the NRC for review and approval [within three years of the effective date of the rule.]

Dated at Washington, D.C., this 19th day of November, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-33942 Filed 11-23-81; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Docket No. R-0372]

Proposal To Revise Criteria for Initial and Continued Inclusion on the List of OTC Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed amendments.

SUMMARY: The Board proposes to amend the requirements set forth in Regulations G, T and U for inclusion and continued inclusion on the List of OTC Margin Stocks ("OTC List"). Brokers and dealers may not extend credit on stocks which are traded over-the-counter unless such stocks appear on the OTC List. Loans by banks and other lenders that are used to purchase stocks that appear on the OTC List are subject to the Board's margin requirements.

The proposed amendments would modify three areas in the existing rules for initial and continued OTC List eligibility. First, they would permit equity securities of foreign issuers and American Depository Receipts ("ADRs") to be considered for OTC List inclusion. Second, the proposals would replace certain criteria which must currently be met in the alternative and replace them with mandatory requirements. Finally, existing financial criteria would be relaxed to more closely resemble requirements established by major exchanges.

DATE: Comments should be received by January 29, 1982.

ADDRESS: Comments, which should refer to Docket No. R-0372, may be mailed to the Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information [12 CFR 261.6(a)].

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director, Laura Homer, Securities Credit Officer, or Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation (202-452-2781).

SUPPLEMENTARY INFORMATION: In July 1969, the Board adopted criteria for including stocks on the OTC List. In discussions leading to the selection of such criteria, the Board indicated generally that (a) stocks to be included on the List should have market characteristics similar to exchange-listed securities, (b) manipulation by issuers to be included or excluded from the OTC List should be made as difficult as possible, and (c) fluctuations in the number of stocks on the List should be minimized.

The changes now proposed in the OTC List criteria are the result of a review of the OTC margin stock listing and continued listing requirements in light of recent developments in the securities markets in general, the OTC Market in particular, and staff experience with administering the requirements. It is believed that revising the criteria is especially appropriate at this time because of a recent decision to revise the List three times a year commencing in 1982, rather than twice a year as is the current practice. This has been a frequent recommendation of the securities industry. The following is a discussion of the specific proposals to amend OTC List criteria.

A. Deleting Requirement That Issuer be Organized Under the Laws of the United States or a State

As early as 1964, when the SEC first recommended a broadening of the Federal Reserve's margin authority to encompass over-the-counter stocks, the Board indicated that securities, to be eligible for credit at a broker, should meet the prerequisites of (1) market depth, (2) a reliable system of quotations, and (3) sufficient issuer disclosures. The National Association of Securities Dealers Automated Quotation System ("NASDAQ"), now in operation for ten years, has greatly improved the efficiency of the OTC market and has addressed the first two concerns of the Board. The SEC, over the past few years, has improved and strengthened its disclosure rules, so that financial information on foreign as well as domestic issues is available to the public in a comprehensive and timely fashion. In addition, the National Association of Securities Dealers ("NASD") requires that its domestic and foreign issuers file financial data with it as a prerequisite for trading on NASDAQ.

None of the approximately one-hundred eighty (180) foreign stocks currently in the NASDAQ system can be placed on the OTC List, as they do not meet the existing criterion, which requires all OTC List candidates to be "organized under the laws of the United States or a State." A growing number of requests have been received from both investor groups and the general public to include foreign OTC stocks on the OTC List. When the Board first adopted its criteria for inclusion on the List, there was insufficient financial disclosure for foreign issues. This problem has now been remedied. Furthermore, foreign issues can and do list on national exchanges and are therefore automatically eligible for margin credit.

In this connection, the Board also proposes to allow American Depository Receipts ("ADRs") to be eligible for inclusion on the OTC List. ADRs are receipts issued against securities of foreign issuers deposited in an American depository, and are exempt from registration under Section 12 of the '34 Act. There are approximately sixty (60) ADRs currently in NASDAQ. The Board would allow ADRs to be considered for inclusion on the OTC List, provided the foreign securities against which the ADRs are issued are registered pursuant to Section 12 of the '34 Act, which imposes certain reporting requirements upon the foreign issuer. This approach is consistent with the policy currently employed by stock exchanges with respect to exchange listings [1] and with the Securities and Exchange Commission's current proposal to allow ADRs to be designated as national market system securities. [2]

[1] An exchange will list ADRs only if the underlying foreign security also is listed and, therefore, registered under Section 12.

[2] SEC Release No. 34-18131.

B. Deleting Alternative Criterion Requiring a $5 Million Market Value and Making Remaining Criteria Mandatory

The second proposal to change OTC List criteria involves the alternative requirements with respect to the size and character of the issue and issuer. At present, a stock can fail one of the three criteria of a $5.00 minimum price, $5 million capital and surplus (hereinafter capital), or $5 million in market value and still be placed on the OTC List. A study of price movements over the past six years indicates that the price criterion, as an alternative to capital, is too sensitive as an objective measurement for marginability. Each revision of the OTC List is influenced by the price trends of the survey period used and many stocks that meet the price criterion during a high price cycle fail during the subsequent low cycle. A staff study showed that 26% of the stock added to the recently revised OTC List were failing the criterion by the time the OTC List was published.

Although the capital criterion has never been amended, the growing number of stocks placed on the List without meeting the $5 million minimum capital requirement since the 1976 changes has been of concern. Currently, the List includes approximately one hundred companies reporting less than $5 million in capital (35% of the stocks added to the April 6, 1981 List reported less than $5 million). These companies are often highly speculative promotional companies with no actual production that are designated as "developmental companies" under SEC rules. Although the OTC List is not designed to be one of principally "quality-oriented" stocks, it would seem that the inclusion of such companies does not adequately enable the Board to meet its inherent responsibility of investor protection. Companies reporting low capital themselves have sometimes voiced concern that inclusion on the OTC List might result in an increase in speculative trading activity in their stock. The NASD has also recently adopted higher qualification standards for initial inclusion on NASDAQ. The standards, which were adjusted to reflect "ongoing economic realities," included raising the capital requirement from $500,000 to $1 million. At present, the New York Stock Exchange requires capital of $16 million and the American Stock Exchange requires capital of $4 million before a stock may be listed.

As indicated before, the third alternative criterion—an aggregate market value of $5 million—is also partially a price determinant criterion. This criterion is of limited value, since it only affects stocks worth between $5 and $10 per share. In other words, the criteria of $5 minimum price and one million publicly held shares would automatically provide a $5 million aggregate market value. During the past two years, only seven per cent of the stocks added to the List failed the aggregate market value test. Accordingly, it appears that retention of this test is not justified.

Deletion of the $5 million market value test would leave only two remaining alternative criteria: a $5 minimum price per share and capital of $5 million, both of which would be mandatory. This would lessen the effect of systemic fluctuations which have indirectly been affecting the size and composition of the list.

C. Reducing the Publicly Held Share Requirement From 500,000 to 400,000 Shares and the Capital Requirement From $5 Million to $4 Million

The Board has received complaints that in some respects the present OTC criteria are more stringent than some exchange listing requirements. In response to these complaints and in order to lessen the impact of the switch from alternative to mandatory requirements, the Board believes that some of the financial criteria can be reduced. These changes would bring the Board's OTC margin criteria more in line with those of the American Stock Exchange.

The Board, therefore, proposes that the publicly held shares requirement be reduced from 500,000 to 400,000 shares and that the capital requirement be reduced from $5 million to $4 million.

D. Continued Inclusion on the OTC List

The Board proposes that corresponding changes to the criteria for *continued* inclusion on the OTC List be made. The continued listing criteria, which are less stringent than the initial criteria, would contain mandatory requirements of an average minimum of $1 price and $1 million in capital, rather than $3 per share and $2.5 million as at present. These changes would promote stability of the List and would also lessen the impact of the switch from alternative to mandatory requirements.

If the proposals are adopted, the Board at this time would expect to apply the new criteria only to newly added stocks. Current OTC margin stocks would be "grandfathered" under the existing continued criteria for two years. If their capital position does not increase or they otherwise fail to meet the continued listing criteria at that time, they would be subject to deletion from the OTC List.

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g, 78w), the Board proposes to amend Regulations G, T and U (12 CFR Parts 207, 220 and 221 respectively) as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

Section 207.5 is amended by revising (d)(1), (d)(4), (d)(7), (d)(8), (d)(9), (e)(1), (e)(4), (e)(5), (e)(6), and (e)(7) as follows:

§ 207.5 Supplement.

* * * * *

(d) *Requirements for inclusion on list of OTC margin stocks.*

* * * * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR") of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) The issuer has been in existance for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(e) *Requirements for continued inclusion on list of OTC margin stocks.*

* * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR") of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public,

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(6) The minimum average bid price of such stocks, as determined by the Board, is at least $1 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

PART 220—CREDIT BY BROKERS AND DEALERS

Section 220.8 is amended by revising (h)(1), (h)(4), (h)(7), (h)(8), (h)(9), (i)(1), (i)(4), (i)(5), (i)(6), and (i)(7), as follows:

§ 220.8 Supplement.

* * * * *

(h) *Requirements for inclusion on list of OTC margin stocks* * * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR") of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) The issuer has been in existence for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(i) *Requirements for continued inclusion on list of OTC margin stocks*

* * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR") of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held benficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(6) The minimum average bid price of such stocks, as determined by the Board, is at least $1 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

Section 221.4 is amended by revising (d)(1), (d)(4), (d)(7), (d)(8), (d)(9), (e)(1), (e)(4), (e)(5), (e)(6), and (e)(7), as follows:

§ 221.4 Supplement.

* * * * *

(d) *Requirements for inclusion on list of OTC margin stocks.* * * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR") of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) The issuer has been in existence for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(e) *Requirements for continued inclusion on list of OTC margin stocks.*

* * *

(1) The stock is registered under section 12 of the Securities Exchange Act of 1934 ("the Act"), or is an American Depository Receipt ("ADR"), of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of a foreign issuer required to file reports under section 15(d) of the Act,

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public,

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(6) The minimum average bid price of such stocks, as determined by the Board, is at least $1 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

Initial Regulatory Flexibility Analysis

The Board requests comment on proposed amendments to the requirements for inclusion and continued listing on the List of OTC Margin Stocks. These requirements are designed to identify those stocks traded in the over-the-counter market which have the degree of national investor interest, depth and breadth of market, the availability of information respecting the stock and its issuer and the character and permanence of the issuer to meet the Board's statutory responsibilities.

Many of the proposed changes relax the listing criteria that OTC stocks must satisfy, both to qualify for inclusion on the OTC List and to remain on it. For example, foreign stocks would become eligible for inclusion, and many of the financial requirements of the OTC List would be altered to resemble more closely those of the American Stock Exchange. However, one significant proposed change working in the direction of tightening standards would eliminate the practice of using alternative criteria and thereby make the capital criterion mandatory.

Because the proposals involve a mixture of relaxing and tightening changes, it is not easy to judge the overall impact on small domestic entities—primarily those small-sized corporations whose stocks are traded in the over-the-counter market. While the proposed relaxations in specific criteria would make it easier for some firms to qualify for the List and remain on the List, the proposed elimination of alternative criteria will deny OTC margin eligibility to aother stocks. In particular, the proposal to make all criteria mandatory, including the proposed minimum net worth listing requirement, would deny initial access to the List to those firms with less than $4 million in capital, surplus, and undivided profits whose stocks are traded OTC. Had this criterion been in effect in recent years, a substantial number of stocks that were added to the List would be excluded.

Of course, exclusion from the OTC List does not necessarily preclude a stock from becoming marginable; the issuing firm can alternatively take steps to list that stock on a national exchange. Such listing automatically confers eligibility for margin credit to stock; however, such listing does involve additional cost to the company.

It should be noted that the NASD has recently announced changes to its NASDAQ National List listing requirements, some of which became effetive November 17, 1981. The changes will require some time for adjustment—by investors, traders, and issuers alike—and could change the characteristics of over-the-counter trading. Accordingly, the Board believes the use of the National List—which has been

suggested as an alternative to its own criteria—is premature at this time. As soon as experience is gained with the National List the Board will weigh its use in view of its statutory responsibilities.

By order of the Board of Governors of the Federal Reserve System, November 18, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-33922 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to add a new Part 190 to its regulations which would contain rules implementing the Bankruptcy Reform Act of 1978 ("Bankruptcy Act" or "Code") insofar as that Act pertains to the liquidation of certain commodity firms. As proposed, Part 190 would (1) define the scope of "customer property," "member property," and "specifically identifiable property" as these terms are used in the commodities subchapter of the liquidation chapter of the code; (2) establish the method by which the business of a commodity firm is to be conducted or liquidated after a bankruptcy petition is filed, including the payment of margin with respect to open commodity positions and the delivery of cash commodities; (3) prescribe how customer claims are to be calculated, including which accounts may be aggregated and which may not; and (4) set standards for the transfer of open commodity contracts and the cash, securities or other property margining such contracts. The proposed rules would also create certain disclosure and notice requirements to inform customers in advance of possibly unexpected or avoidable consequences of commodity firm insolvencies. These rules are proposed to facilitate the interpretation of the commodity-related provisions of the Bankruptcy Act and the informed fiscal planning of commodity firms by amplifying and clarifying, within the framework of that Act, the business effects of commodity liquidations on each participant in a commodity transaction. The rules are also intended to give substantial guidance to trustees appointed to handle commodity firm liquidations. As proposed, Part 190 would affect futures commission merchants, dealer option grantors, leverage transaction merchants, firms which trade foreign futures for United States customers, and clearing organizations. The proposal would also affect futures commission merchants which trade commodity options on domestic exchanges.

DATE: Comments must be submitted no later than February 22, 1982.

ADDRESS: Send comments to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Andrea M. Corcoran, Chief Counsel, Division of Trading and Markets or Daniel A. Driscoll, Chief Accountant, Division of Trading and Markets at the address listed above. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

Authority

The Commodity Exchange Act ("Act"), as amended by section 302 of the Bankruptcy Act, authorizes the Commission to provide by rule or regulation:

(1) That certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

(2) That certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

(3) The method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter;

(4) Any persons to which customer property and commodity contracts may be transferred under section 766 of title 11 of the United States Codes; and

(5) How the net equity of a customer is to be determined.[1]

This broad grant of rulemaking authority, together with the Commission's general power to regulate set forth in section 8a(5) of the Act,[2] permits the Commission to provide substantial guidance concerning the operation of a commodity broker during liquidation. By this delegation, Congress has recognized the complexity of the commodity business and the need for direction beyond the framework provided by the Bankruptcy Act to assure both equitable treatment to commodity customers and protection of the commodity markets in the event of a commodity broker bankruptcy. Great care has been taken to fashion proposed regulations, consistent with this authority, which would be commercially reasonable and which would provide some certainty as to the extent of the economic risk to customers and the industry that may attend the failure of individual firms.

The proposed rules would, in the main, implement subchapter IV of Chapter 7 of the Bankruptcy Act which applies only to commodity broker liquidations. A commodity broker is defined by that Act to be a futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant or commodities options dealer with respect to which there is a customer.[3]

The commodities subchapter is the first federal legislation to specifically address commodity broker bankruptcies. The twin objectives of this legislation are greater protection of commodity customer property than existed under prior law and protection for the first time of the markets from the reversal of certain transfers of money or other property. The customer protections are essentially: (1) Priority over all claims except claims "attributable to the administration of customer property;" (2) across-the-board application of pro rata distribution even to specifically identifiable property; and (3) some customer control over the disposition of customer property, in particular the disposition of open commodity contracts.[4] The market protections are: (1) Insulation of margin payments which are not received in bad faith from reversal by a trustee as preferential transfers or fraudulent conveyances; and (2) provision for the transfer of open commodity positions and the property margining and securing such positions, free of the bankruptcy distribution, pursuant to Commission rule or order.[5]

Purposes

The proposed regulations are intended to implement these customer and market protections and in this regard to achieve several specific purposes, including: (1) To promote equitable treatment of customers; (2) to enhance certainty as to the effects of a bankruptcy distribution;

[1] Section 19 of the Act, 7 U.S.C. 24 (Supp. III 1979). All citations to the United States Code are to Supp. III 1979 unless otherwise indicated.

[2] 7 U.S.C. 12a(5) (1976).

[3] 11 U.S.C. 101(5).

[4] *See* 11 U.S.C. 766(h); 11 U.S.C. 766(c), (d) and (b); and 11 U.S.C. 765, respectively.

[5] *See* 11 U.S.C. 764(c); and 11 U.S.C. 764(b), respectively.

(3) to limit the period during which the bankrupt estate is at risk from fluctuations in value of the commodity contracts and other property contained therein; (4) to permit certain transactions which may be effected between customers without the intervention of the debtor to take place outside the bankrupt estate; (5) to maximize recovery in kind; and (6) to provide an understandable and workable method for operating the estate pending liquidation.

Organization

Section 190.01 would contain the defined terms the Commission proposes to use in Part 190. Sections 190.02, 190.03, and 190.04 would deal generally with how to operate the estate of a commodity broker pending liquidation. In particular, these sections would instruct a trustee how to apply to the Commission for permission to transfer accounts in bulk to a solvent commodity broker, and if such transfer is not possible, which contracts may remain open for transfer pursuant to customer instructions and during what period such transfers can be made.

Sections 190.05 and 190.06 deal specifically with certain deliveries upon futures contracts and those transfers which, if made within five days after a bankruptcy filing, can be insulated by Commission rule or order from avoidance by a trustee. Section 190.07 is intended to instruct the trustee as to how to calculate net equity and allowed net equity. Specifically, it describes permissible setoffs, those capacities in which commodity accounts are held which must be treated as the same and those which must be treated as different, valuation of contracts not traded on exchanges, and treatment of accounts which remain open for transfer pursuant to customer instructions. The purposes of this section are to forestall inappropriate setoffs and valuation disputes, and to equalize the percentage of bankruptcy loss borne by public customers.

Section 190.08 concerns what is included in customer property, the allocation of property that is not segregated to different accounts and customer classes, and the procedure for return of specifically identifiable property and transfer of open positions before a final net equity determination. The allocation provisions are intended to prefer customers for which segregation is undertaken over non-public customers or customers holding accounts of a class for which segregation is not required. These provisions are further intended to provide fair mechanisms for the return of property prior to a determination of each customer's allowed claim. Section 190.09 delineates the scope of member property available for pro rata distribution to members in the event of a clearing organization bankruptcy. Section 190.10 contains several miscellaneous provisions, the most important of which would require certain disclosures to depositors of non-cash margin, would provide for service of certain court papers to the Commission and would make clear that persons holding forward contracts would not be treated as customers under these regulations.

Section-by-Section Analysis[6]

Definitions

Account classes. Under the Commission's proposal, the accounts held by a commodity broker would be divided into four types or classes: futures accounts, foreign futures accounts, leverage accounts and commodity options accounts, which correspond to the four estates a commodity broker may have based upon the different types of transactions it handles for customers.[7] To the extent that the trading of options on domestic exchanges is permitted, a separate account class for monies or property received in respect of such options should not be necessary. This is because section 4d(2) of the Act authorizes the Commission to adopt regulations which permit the commingling by a futures commission merchant ("FCM") of customer property deposited in connection with futures transactions and of other property received by such FCM which is "required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant."[8]

The reason for identifying classes of customer accounts is to permit the implementation of the principle of pro rata distribution so that the differing segregation requirements with respect to different classes of accounts benefit customer claimants based on the class of account for which they were imposed. With the exception of non-public customers who are treated separately by this proposal, each class of customer would participate before other classes of customers in the distribution of property segregated for the benefit of that class.

Allowed net equity. The terms "allowed net equity," "equity," "funded balance," and "net equity" are each defined by reference to the rules contained in § 190.07 for their calculation.

Business day. "Business day" is defined consistently with the definition of "business day" used for computing time periods under Rule 6(a) of the Federal Rules of Civil Procedure and Rule 906 of the Bankruptcy Rules of Procedure. This definition differs from that contained in § 1.3(b) of this Chapter which does not specify which holidays will be excluded from the computation of notice periods and which could therefore result in different notice periods in different jurisdictions.

Commodity Broker. "Commodity broker" would be defined to include those entities described by the Bankruptcy Code as commodity brokers, either as such entities are defined by these regulations or by the Code. The term would include both entities which are properly registered and those which would be required to register in any of the registration capacities which the Code covers. A firm which engages in more than one type of commodity business would be a commodity broker; similarly, a firm which conducts a real estate, securities, and commodity business would also be a commodity broker. As a commodity broker is defined by the Code and this Part in terms of its customers, a firm without customers would not be a commodity broker under this definition.[9]

Commodity options dealer. These rules would make clear that a dealer option grantor is included in the definition of a commodity options dealer.[10] (*See, e.g.*, proposed definition

[6] Portions of the rules which are self-explanatory are not discussed in this section-by-section analysis.

[7] As stated in the House Report on the Bankruptcy Act:

It is anticipated that a debtor with multifaceted characteristics will have separate estates for each different kind of customer. Thus, a debtor that is a leverage transaction merchant and a commodity options dealer would have separate estates for the leverage transaction customers and for the options customers, and a general estate for other creditors.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 390 (1977).

[8] 7 U.S.C. 6d(2). *See also* Regulations 1.20, 17 CFR 1.20 and 1.3(gg), 46 FR 54500, 54516 and 54518 (November 3, 1981).

[9] 11 U.S.C. 101(5) and § 190.01(f), respectively.

[10] Under the Bankruptcy Code, a commodity options dealer is defined as a "person that extends credit to, or that accepts cash, a security, or other property from a customer of such person for the purchase or sale of an interest in a commodity option." 11 U.S.C. 761(6). As such, the definition would include dealer option grantors. Although the Code defines dealers by reference to those options which are regulated under section 4c(b) of the Commodity Exchange Act, and does not refer specifically to section 4c(d) which permits dealer options, section 4c(b) is the general grant of authority to regulate option trading, and is specifically limited by the options ban on certain options (section 4c(c)) and the current statutory

Continued

of "dealer option"). Dealer option grantors are currently required to segregate money equal to the appreciated value of the physical commodity underlying options granted by them to assure, among other things, that if the commodity is not available for delivery, there will be a source of funds for rescission.[11] Segregation of the option premium and of any appreciation in value of a dealer option is also intended to provide protection against nonperformance of the option resulting from the financial failure of the grantor.[12] The premium paid for such an option and the accrued profits are regarded by the Commission's regulations as the property of the purchaser of the option until expiration of the option or, upon exercise, until fulfillment of all the rights which the option confers, just as the ownership of the initial margin on a futures contract remains the property of its depositor until settlement.[13]

If the dealer option grantor were not treated as a "commodity options dealer," and hence was not a "commodity broker" for purposes of the Bankruptcy Act, the funds or assets segregated on behalf of its customers would not be eligible for customer property treatment. The funds segregated to assure performance of those customers' options might thus be available to general creditors and would be shared with them in any bankruptcy proceeding. The sharing of such funds in bankruptcy would in large measure defeat the purpose of their segregation.

Court. The term "court" would be defined to mean the court with jurisdiction over the bankruptcy proceeding to which a commodity broker is subject. As so defined, "court" would not refer to a bankruptcy appellate panel or a federal district court to which a decision of any issue in such proceeding was appealed.

Customer claim of record. "Customer claim of record" would be defined to mean any claim which can be determined without reliance on evidence not contained in the debtor's records.

Customer class. The term "customer class" would recognize two customer types—public customers for which funds are required to be segregated and non-public customers for which funds are not required to be segregated by the Act and the regulations.[14] The reason for identifying customer classes is the same as that for describing account classes, that is, to assist in the equitable allocation of property necessary to implement the principle of pro rata distribution.

Debtor. "Debtor" would be defined by combining elements of the definition of "person" contained in the Commission's regulations (17 CFR 1.3(u)) with the Bankruptcy Act's definition of "debtor" (11 U.S.C. 101(12)).

Final net equity determination date. Allowed net equity would be determined on the final net equity determination date, which would be latest of the following three dates: the date by which customer claims must be filed to be considered by the trustee;[15] the date when all open positions have been transferred, liquidated or satisfied by delivery; or the date when the court has ruled with respect to all disputed claims. If no claims are disputed by creditors, the trustee or the court, the valuation of a customer's claim on the final net equity determination date should be the same as its valuation on the date all commodity contracts have been transferred, liquidated or satisfied by delivery. This is because, under the Bankruptcy Act, claims are deemed allowed if not disputed.[16]

Illegal Commodity Contract. The term "illegal commodity contract" is proposed to be defined to permit a different net equity calculation for certain currently illegal contracts from that for contracts which are legal under the Act.

In-the-money-amount. Consistent with the commonly used definition of an "in-the-money" option, "in-the-money-amount" would be defined as the gain in the value of the option, if any. In the case of a call option, the amount by which the prevailing market price for such commodity or future exceeds the strike price is the in-the-money amount. Similarly, the amount by which a put option is in-the-money is determined by reference to the strike price. Because a put option grants the right to sell the underlying commodity or option at a set price (the strike price), the in-the-money amount is the amount by which the strike price exceeds the prevailing market price of the underlying commodity or contract. It should be noted that options can be either in or out of the money when they are purchased. The strike price is proposed to be defined in Part 190 as a multiple of the exercise price per unit. That definition is consistent with the definition of strike price used in the minimum financial rules for FCMs.[17]

Joint account. Rule 4.20(a), 46 FR 34311 (July 1, 1981) ordinarily requires a commodity pool to be constituted as a distinct juridical entity. This rule would treat as a joint account any account held by a combination of persons and any account held by a pool which is not in compliance with the legal entity requirement.

Non-public customer. Under these proposed rules, a "non-public customer" would be any person or entity described in Commission rule 1.3(y), except those described in rule 1.3(y)(1)(i). This definition is not intended to prevent a trustee in bankruptcy from piercing the corporate veil in appropriate cases to find that an affiliate or a shareholder of the debtor is in fact the debtor, and that the trading accounts of such affiliate or shareholder should be treated as accounts of the debtor.[18]

Open commodity contract. In order for contracts to be treated as "open" by the trustee in bankruptcy, adequate evidence would be required that the position represented by a contract which is recorded in the debtor's books has been established in fact and

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exception from that ban (section 4c(d)), which permits dealer options. The two latter sections were added to section 4c by the Futures Trading Act of 1978 which was adopted by Congress only a few weeks prior to approval of the Bankruptcy Act. It is, therefore, understandable that the Bankrupty Act does not refer to the latter subsections of 4c. *See* Futures Trading Act of 1978, Pub. L. No. 95-405, § 3(3), 92 Stat. 865, 867-69 (1978). Of course, the term "commodity options dealer" would not include the customer grantor of an "exchange-traded" option.

[11] 17 CFR 32.12(a)(3). *See also* 43 FR 54220, 54223 (November 21, 1978).

[12] *Id.*

[13] 17 CFR 32.6.

[14] *See* Section 4d(2) of the Act, 7 U.S.C. 6d(2) (1976 & Supp. III 1979); 17 CFR 1.20-1.30, in conjunction with 17 CFR 1.3(k).

[15] The so-called bar date for filing proof of claims would ordinarily be set out in the notice required under section 342 of the Code. *See also* 11 U.S.C. 765(a)(1). The usual period for filing proofs of claims under the former bankruptcy law was six months after the first meeting of creditors. *See* Rule 302(e) of the Rules of Bankruptcy Procedure which may be revised by the Advisory Committee to the Federal Judicial Conference on Bankrupty Rules. These rules establish shorter time periods for making certain types of claims. *See* § 190.02 *infra.*

[16] 11 U.S.C. 502(a).

[17] Regulation 1.3(kk), 46 FR 54500, 54516 (November 3, 1981).

[18] Federal policies are not be be defeated by deference to state limitations on corporate liability or reliance on the impenetrability of the corporate form. Anderson v. Abbott, 321 U.S. 349 (1944). Disregard of the corporate entity may be based on facts indicating fraud, contravention of statute, contravention of contract, and equitable rights; may be made with respect to "internal" transactions between affiliates or between shareholders and not involving third persons, or in cases where there is an obvious inadequacy of capital coupled with substantial domination of the corporate entity. When such substantial ownership is combined with other factors supporting disregard of the corporate fiction, the courts may on the grounds of fundamental fairness and equity find that the corporation is the "alter ego" or "instrumentality" of its shareholder to fasten liability of the corporation on such shareholder. W. Fletcher, Cyclopedia of the Law of Private Corporations §§ 41.3 and 43, Vol. 1 (rev. perm. ed. 1974).

remains in existence. This definition would exclude trades which had been bucketed and therefore were never actually executed on an exchange.

Premium. "Premium" would be defined consistently with the definition contained in § 1.3(ii) of the Commission's regulations, 46 FR 54500, 54516 (November 3, 1981).

Primary liquidation date. The "primary liquidation date" is the date on which the "bankruptcy loss" with respect to each customer claim would be fixed, that is, the date on which each customer's pro rata share of the bankrupt estate available for distribution after the liquidation of all contracts not held open for later transfer is determined.

Principal contract. The term "principal contract" would be defined as any contract for which the seller establishes the market. This would include leverage and dealer options; it would not include those commodity options defined in § 1.3(hh) of the Commission's regulations, 46 FR 54500, 54516 (November 3, 1981).

Proprietary account. Under these proposed regulations, in contrast with rule 1.3(y), the term "proprietary account" would refer only to an account of the debtor itself.

Public customer. It is necessary to define public customers because the scope of the term "customer" as used in the Code is broader than that used to determine for whom funds must be segregated under the Act.[19]

Specifically Identifiable Property

Background

Although the term "specifically identifiable" is not defined by the Bankruptcy Act, property characterized as "specifically identifiable" is designated for special treatment. A customer may exercise a measure of control over the disposition of specifically identifiable property; property not no identified is placed within the full control of the bankruptcy trustee. For example, section 765(a) of the Bankruptcy Act provides that a customer may identify any specifically identifiable property on deposit with the debtor in the proof of claim required to be filed [20] and may instruct the trustee as to the customer's desired disposition of such property.[21] In its instruction, the customer of a bankrupt commodity broker may choose between: (a) The return of such property (if that is feasible);[22] (b) the transfer of such property; [23] or (c) its liquidation or reduction to cash.[24] In contrast, property that cannot be identified to a particular customer must be liquidated.[25] Therefore, by delimiting what may be treated as "specifically identifiable property", the Commission is designating that property over which the customer of a bankrupt commodity broker has special control.

"Specifically identifiable property" originated as a legal theory for insulating the property of securities customers from bankruptcy distribution upon the bankruptcy of a broker. The concept of "specifically identifiable property," however, has eroded over the years. The 1978 amendments to the Securities Investor Protection Act ("SIPA") divide securities subject to reclamation from property subject to pro rata distribution as follows: Customer-name securities which are not transferable by delivery are reclaimable.

All other customer property is subject to pro rata distribution. [26] The legislative history describes these amendments as "substantive changes in the concept of specifically identifiable property", and a reduction of its scope.[27] A corresponding change in the identification of reclaimable securities was made in rule 15c3–3 of the Securities and Exchange Commission and the reference to specifically identifiable property was deleted.[28]

Significantly, the term "specifically identifiable property" is also not found in subchapter III of Chapter 7, the securities section of the Bankruptcy Reform Act of 1978. Nonetheless, "specifically identifiable property," which appears to be a "retired" concept in the securities field is retained for certain purposes in connection with commodity broker liquidations under the Bankruptcy Act. The commodities provisions, however, do not give customers the right to reclaim "specifically identifiable property" with a residual pro rata distribution as was the procedure with respect to securities under the former Bankruptcy Act. Instead, the commodities provisions subject all customer property, whether or not specifically identifiable, to pro rata distribution,[29] although a customer able to identify its property retains the ability to control its disposition, subject to the practical exigencies of time. The customer is also given the choice, time permitting, of depositing cash equal to the difference between the value of such property and such customer's finally determined pro rata share of the debtor's estate to permit the transfer of open positions or the return of securities posted as margin.[30]

There are several reasons for the approach taken in the commodities provisions of the Bankruptcy Act which does not permit the reclamation of specifically identifiable property. First, margin is a tangible asset which is separate from the position (an intangible contractual commitment) which it secures, and is ordinarily required to support that position. The functions of margin are the same regardless of what type of property is deposited as margin. A system which would give a customer control over both the disposition of margin and of the position it supports would unnecessarily complicate the administration of the bankrupt estate. Therefore, at least to the extent the position cannot exist without margin, whether a customer has posted cash or has posted securities as margin should not make a difference in what is ultimately distributed to the customer.

Second, because positions are intangibles which exist only in the market, and are never fully paid except possibly in the delivery month, the concept of reclamation is inappropriate, as that concept was applicable only to fully paid tangible securities and in any event has been significantly contracted in recent years.

Third, it is usually the high-volume or preferred customer who is permitted to deposit securities rather than cash as margin. There is no reason to allow such a customer to enjoy a status superior to that of other customers in a liquidation proceeding.[31]

Definition

The Commission is therefore proposing a definition of "specifically identifiable property" which would be narrower in the case of property deposited as margin in accounts which contain open commodity contracts than

[19] *Compare* 11 U.S.C. 761(10) *with* 17 CFR 1.3(k).
[20] 11 U.S.C. 765(a)(1).
[21] 11 U.S.C. 765(a)(2).
[22] *See* 11 U.S.C. 766(c) and (d). Return of positions, of course, would not be feasible.
[23] 11 U.S.C. 766(c) and (d).
[24] 11 U.S.C. 766(e)(1).
[25] 11 U.S.C. 766(e)(3). The legislative history of the Bankruptcy Act indicates that accounts which are "proprietary accounts" must be liquidated. A "proprietary account" for purposes of that Act may in some circumstances be different from a proprietary account for purposes of the Commission's regulations. *See, e.g.*, S. Rep. No. 95–989, 95th Cong., 2d Sess. 107 (1978).
[26] 15 U.S.C. 78///(3), (4) and 78fff–2(c)(1)(B).
[27] S. Rep. No. 95–763, 95th Cong., 2d Sess. 11 (1978).
[28] *See* 17 CFR 240.15c3–3. *See also* SEC Release No. 15453 (January 2, 1979).
[29] This procedure is mandated by the Bankruptcy Reform Act. *See* 11 U.S.C. 766(c), (d) and (h).
[30] 11 U.S.C. 766(d).
[31] *See, e.g.*, H.R. Rep. No. 95–595, 95th Cong., 1st Sess. 393 (1977).

in the case of the open commodity contracts themselves or in the case of property held by the debtor for the purpose of making or taking delivery, or that of securities deposited as margin found in accounts which contain no open commodity contracts.

To permit the return of a broadly defined category of specifically identifiable margin would unduly complicate the administration of the bankrupt estate. This is because if such an approach were adopted, trustees would be required to hold open positions with fluctuating values secured by assets other than cash pending the receipt of instructions concerning disposition of those assets which were themselves subject to fluctuations in value. In those cases where it is uncertain to what extent the debtor has complied with the Commission's segregation rules, bulk transfers of positions may be dependent upon an accurate estimate of the money, securities or property available in the debtor's estate to margin transferred positions. The elimination of positions secured by property in lieu of cash as part of the necessary calculations in reaching such estimate may adversely affect the speed and number of transfers which could be effected. Protecting the customer's interest in the "specific property right" in the position itself therefore appears to the Commission to be superior to protection of his interest in the "specific property right" in the margin securing that position.

It is therefore proposed that in the case of non-cash margin, only so-called customer name securities and non-negotiable warehouse receipts or other documents of title would be treated as specifically identifiable.

Under this proposal, in most cases, securities and warehouse receipts or other documents of title accepted by commodity brokers to margin positions, would not be specifically identifiable. It is further proposed that certain obligations with a duration of less than 180 days (such as short-term U.S. Treasury Bills and commercial paper) be excluded from the definition of specifically identifiable property. This is because the likelihood of materially adverse effects to customers resulting from the liquidation of such securities pursuant to a bankruptcy are more remote than the possible incurrence of such consequences from the liquidation of securities with no maturity dates or which are obligations of longer duration. Interest penalties for early liquidation need not be of concern because a trustee should be able, if necessary, to hold such assets until their maturity.

In contrast, it is proposed that, to be specifically identifiable, open commodity contracts would only have to be recorded as attributable to a particular customer in the books and records of the debtor. The proposed definition of open contracts also assumes that in order for a contract to be treated as open, the trustee must be able to ascertain that the position represented by the contract has in fact been established. The proposed regulations would establish relatively stringent requirements for determining whether open positions can be controlled by customer instruction. These rules would require that contracts eligible for transfer must be identifiable from the debtor's records as bona fide hedging positions, (*See* § 190.02(f)(1)), because permitting such positions to be specifically identified based upon information not found in such records could result in conflicts as to what is transferable. The proposed designation of which open positions are specifically identifiable is thus consistent with the limitation upon which positions may be transferred pursuant to customer instruction. As a general matter, these requirements which make specific identification a precondition of transfers upon customer instruction would not be applied in determining which customer accounts could be moved in a bulk transfer which may be insulated from future avoidance under section 764(b) of the Bankruptcy Act. Section 764(b) permits those accounts transferred before the close of business on the fourth business day after bankruptcy to be protected from reversal by the trustee whether or not such accounts can be specifically identified to any one customer.[32] (*See* § 190.01(ll)(5).)

The Commission also proposes to define specifically identifiable property so that once property has been positioned with the debtor for delivery to or on behalf of a futures customer, that customer would be permitted to receive delivery or to see that delivery is made.[33] The Commission notes that at this point, one party to the contract has usually tendered performance, and performance is now owed by the other party. Moreover, a cash equivalent for the property delivered at the time of ultimate distribution of the bankrupt estate may come too late to enable the customer to secure a substitute physical commodity on the open market. In the case of a hedged customer, the interference caused by the disruption of delivery could be even greater than the failure to transfer the hedged position, for the timing of the receipt of the physical commodity may be a critical factor in production of a finished product or in settlement of a contract of sale. Therefore, the proposed definition would permit such property to be identified not only by reference to the debtor's books and records as in the case of open positions, but also solely by reference to the records of the customer. (§ 190.01(ll)(3).)

Finally, if securities are contained in a commodity account and the customer holds no open commodity contracts in the same capacity, in contrast to the case where such securities are margining open positions, these regulations would permit their return on customer request, provided that such securities are identified to that customer in the debtor's books and records. (§ 190.01(ll)(4)).

The proposed limitation of specifically identifiable property in § 190.01(ll) to those types of property actually enumerated therein is designed to eliminate uncertainty as to whether cash, cash equivalents, physical commodities held as margin and not for the purpose of tendering delivery, letters of credit or other property could be treated as "specifically identifiable." The exclusivity of the definition is intended to avoid judicial disagreement as to the status of letters of credit, free credit balances, cash and cash equivalents, and would nullify any expectation that physical property other than cash, even if labeled, should be regarded as specifically identifiable.[34]

Several regulations of the Commission indicate what types of records must be kept by commodity brokers which will render open commodity contracts and customer securities or property deposited in lieu of cash capable of specific identification.[35] If an FCM, clearinghouse, or other entity defined as a commodity broker by the Bankruptcy Act and regulated by the Commission under the Commodity Exchange Act properly keeps all of the records required by the Commission, the specific identification of property which may be treated as specifically identifiable hereunder should be a simple matter.

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[32] *See, e.g.*, 11 U.S.C. 765(a), 766 (c), (d).

[33] Where property to be delivered has not become a part of the debtor's estate, proposed § 190.05 would permit the cash portion of the transaction to occur outside the estate so that no question of specific identification need arise.

[34] *See, e.g.*, 17 CFR 240.15c3-3(j)(2) (1978), *modified* 17 CFR 240.15c3-3 (1979) (free credit balances); 11 U.S.C. 101(35)(B) (letter of credit); pleadings in *In the Matter of Chicago Discount Commodity Brokers, Inc.*, 80-B-14472 (Bank. Ct. N.D. Ill.) (1980) (physical property).

[35] *See, e.g.*, 17 CFR 1.36(a), 1.35(b), 1.35(e), 32.6(c), 32.7, 32.12(a)(4), (5) and (6).

Strike price. "Strike price," as has been explained above, would be defined as the set price at which the purchaser of the option may buy or sell the underlying commodity or commodity futures contract. Strike price would be defined as an aggregate, that is, as a price per unit multiplied by the total number of units underlying the option.

Operation of the Debtor's Estate

Proposed §§ 190.02 through 190.04 contain general directions to a trustee concerning the operation of the estate of a commodity broker in bankruptcy, including an enumeration of required notices, an outline of the prescribed treatment of customer accounts pending the receipt of customer instructions and thereafter, and guidance concerning margin requirements pending liquidation of all open contracts. In this connection, the Commission wishes to point out that the maximum period during which the trustee would be required to operate commodity accounts would be ten days following entry of the order of relief. It is expected that these provisions with respect to operation of the estate would affect all commodity broker bankruptcies. In contrast, §§ 190–05 and 190.06, which deal with deliveries and transfers which the Commission can protect from avoidance by a trustee, concern special procedures which may not be applicable in every case.

Operation Prior to the Primary Liquidation Date

As previously mentioned, the primary liquidation date is the date upon which all commodity contracts and property will have been liquidated except for certain commodity contracts which may be transferred, and certain specifically identifiable property which may be returned, pursuant to customer instruction. It is expected that the primary liquidation date will occur relatively early in the bankruptcy proceeding, indeed almost immediately following a determination as to whether a bulk transfer of commodity contracts can be made with the Commission's approval. The acceleration of the primary liquidation date is intended to minimize risk to the estate as a whole from the fluctuating value of the property it contains. If these proposed regulations are adopted, it would also be expected that the limited category of contracts which may be transferred or returned pursuant to customer instruction will be transferred or returned in a relatively short time following the primary liquidation date so as to minimize risk to the estate from the continuing operation and management of futures contracts by a trustee who may be inexperienced in commodity trading.

Notices. Under these proposed regulations, prior to the primary liquidation date, the following notices must be given:

(1) Notice to the Commission of the commencement of the bankruptcy proceeding.[36] (§ 190.02(a)(1)).

(2) Notice to the Commission as to whether any commodity contracts and property securing such contracts will be transferred within the four business days subsequent to bankruptcy when bulk transfers are permitted with Commission approval under section 764(b) of the Code. (§ 190.02(a)(2)).

(3) Notice to customers by publication that all specifically identifiable property will be liquidated if the trustee has not received instructions as to its disposition within four business days after publication. (§ 190.02(b)(1)).

(4) Direct notice to certain customers with commodity contracts which may be transferred upon instruction if a bulk transfer is not feasible that such contracts will be liquidated if timely transfer instructions are not received. (§ 190.02(b)(2)). Such notices would be directed to only those customers with accounts which are identified as bona fide hedging accounts in the records of the debtor. (§§ 190.02(f)(1), 190.04(e)(1)).[37]

(5) Direct notice to each customer of commencement of the bankruptcy proceeding which requests submission of a proof of customer claim.[38] The rule which the Commission is proposing in this respect would permit such a notice to be given separately from the other notices as, unlike such other notices, it must be sent to each individual customer of record. (§ 190.02(b)(4)).

In involuntary cases, the trustee, if one has been appointed, may elect to give the notices referred to in paragraphs (3) and (4) above, even prior to the adjudication of bankruptcy. (§ 190.02(b)(3)).

Time periods. The Commission believes that to wait for customer instructions for periods greater than those set forth in these proposed rules[39] would be impracticable in light of the ordinary risks of the commodity markets and the likelihood that these markets may be adversely affected once there has been time to digest the news of a commodity broker bankruptcy. If trustees are to be willing to accept commodity broker estates, the proposed regulations for managing such estates should be such that trustees are not put unnecessarily in a position of risk. For this reason, the Commission believes that in the commodity business where customers are familiar with the need to respond with respect to their accounts upon relatively short notice, the proposed time periods would be sufficient time for customers concerned with maintaining hedges or receiving the return of specifically identifiable property to communicate the same to the trustee.[40] Nonetheless, the Commission specifically invites comments on this issue. In this connection, these proposed regulations would also give the customer the opportunity to request at the time it executes a customer agreement that its bona fide hedge accounts be transferred or liquidated (§ 190.06(d)).

Any customer instructions received by a trustee would be required to be transferred with any contracts or property which are transferred pursuant to a bulk transfer and would be expected to be honored by the transferee unless cancelled. (§ 190.02(c)).

Proof of customer claim. The rules also propose the information which should be included in a proof of customer claim. (§ 190.02(d)). To the

[36] The Commission has been granted considerable authority to monitor commodity broker bankruptcy proceedings. Section 762(a) of the Bankruptcy Act (11 U.S.C. 762(a)) requires the court to provide notice of the entry of an order of relief and section 762(b) (11 U.S.C. 762(b)) permits the Commission to raise, to appear, and be heard on any issue. Although the courts are attempting to comply fully with these notice provisions, the Commission has found that the courts are not always certain whether or not a given firm is a commodity broker. In this connection, the Commission has determined to propose a regulation which would require commodity brokers to notify the Commission within 24 hours of the filing of a petition in bankruptcy, whether filed by such broker or filed against it, so that the Commission may better perform its monitoring responsibilities.

[37] It is expected that the group of customers for whom transfers would be made on instruction would be very limited, so that the logistics of promptly notifying them to provide instructions, and of the short time frame in which such instructions must be provided, will not be impracticable.

[38] *See* 11 U.S.C. 765(a)(1) and 342.

[39] In the case of specifically identifiable property other than commodity contracts, four business days after the second publication of notice (190.02(b)(1)); in the case of specifically identifiable open commodity contracts, five business days after entry of the order of relief (§ 190.02(b)(2)). The Commission does not believe that Rule 203 of the Bankruptcy Rules should be an obstacle because that rule relates to notices to creditors, not customers, and the failure to provide customer instructions should not affect the disposition or the amount of a customer's ultimate net equity claim. Moreover, the Commission has ample authority to limit the period during which the trustee is required to operate the bankrupt estate and to determine the conditions for disposition of such property. *See* 7 U.S.C. 24(a) (3) and (11) U.S. C. 766(c).

[40] *See also*, S. Rep. No. 95–989, 95th Cong., 2d Sess. 8 (1978) in regard to the adverse consequences of delay in making decisions concerning such property.

extent official forms currently exist, they are not particularly useful for documenting a customer claim in a commodity broker bankruptcy. Different information is necessary to process commodity customer claims from that required in the case of other types of bankruptcies. Therefore, in order for a proof of customer claim to be sufficient to identify the property claimed by commodity customers, to provide the basis for that claim and to provide the information necessary to calculate net equity, the Commission is proposing to enumerate the information which a proof of customer claim should elicit.[41]

The Transfer or Liquidate Decision. At the same time the above notices are being given, the trustee must determine whether there are any commodity contracts eligible for transfer in a bulk transfer under section 764(b) of the Bankruptcy Act and § 190.06 of these regulations. In a voluntary case, if no contracts are eligible for transfer pursuant to such section, generally all open commodity contracts, except certain commodity futures contracts which are bona fide hedges and are identified as such in specified records of the debtor, must be promptly liquidated. (§ 190.02(f)(1)).[42] It should be noted that the trustee would only be required to operate even those bona fide hedging accounts which are transferable upon customer instruction for ten days after the order of relief. If the customer requesting transfer were unable to effect a transfer during that time, the trustee would then be free to, and indeed required to, liquidate such customer's positions. In each of the bankruptcies monitored by the Commission where it was possible to transfer accounts, such accounts had been transferred on or before the tenth business day following entry of the order of relief so the Commission believes that the establishment of this time frame would allow ample time for all possible transfers to be arranged to permit the maintenance of desired hedges.

The limitation on accounts which may be transferred upon customer instructions to bona fide hedging accounts is imposed because the principal purpose for allowing account transfers is to preserve the hedging mechanism and the market-related economic objectives that mechanism serves. As Chairman Bagley stated:

> [H]edging can be and is an extremely valuable and essential economic tool. It is, in fact, one of the primary justifications for the very existence of the futures market system. However, in order for the hedging mechanism to work, the integrity of futures contracts must be beyond question, and hedgers must be able to keep their futures positions open as long as their cash positions are open and to close out their futures positions as soon as they close out their cash positions. If hedgers do not have this ability, they will become exposed to the adverse price movements the hedging mechanism is designed to protect against. Therefore, in the event of the bankruptcy of a futures commission merchant, the treatment of the open contracts entered into by the futures commission merchant on behalf of his customers must, to the greatest extent possible, protect the integrity of each futures contract and permit customers to exercise continuous control over their own positions.[43]

Although speculators are necessary to the liquidity of the market, maintenance of their positions is less critical. Further, unlike hedges, it may be unnecessary to reestablish such positions subsequent to a liquidation. However, even bona fide hedges identifiable to particular customers must be liquidated if there is a failure to meet a margin call or if the contract is about to go into deliverable position.

Similarly, omnibus accounts would be required to be liquidated under these regulations because it is not practicable to obtain meaningful customer instructions with respect to individual positions which are part of an omnibus account. The trustee will only know who the carrying broker is and will not have information as to the identities of the underlying customers. It is the underlying customers, and not the broker, who would have an interest in maintaining and controlling open positions.

The voluntary bankruptcy is the usual context in which bulk transfers which do not depend on customer instructions will occur. Requiring bulk transfers in an involuntary bankruptcy is more problematic. The proposed regulations would make the filing of an involuntary petition against any commodity broker the basis of an order transferring such broker's accounts unless the commodity broker is an FCM or required to register as an FCM and demonstrates to the Commission's satisfaction that it can meet the minimum financial requirements of rule 1.17 and otherwise is in compliance with the commodity Exchange Act and the regulations thereunder. For example, even if a commodity broker is in full compliance with the Commission's minimum financial rules on the filing date, the Commission may wish to be assured that the broker is properly segregated and can restore undermargined accounts with its own funds to avoid a precipitous default at some later date. There may be some concern that if an involuntary petition is contested and the defendant firm ultimately prevails, the previous transfer of accounts will have unnecessarily forced the alleged debtor out of business. For example, the Bankruptcy Act expressly prohibits the mere filing of a petition from constituting a default on contract obligations without some other default or non-performance of the affected contract.[44] There may, however, be no reasonable alternative to some intervention by the Commission at the point of filing the petition. If accounts may not be transferred until an adjudication of bankruptcy, no account transfers would be possible under section 764(b) in an involuntry case. This is because adjudication, even in an uncontested case, will ordinarily take more than four business days; whereas, to be free from avoidance, accounts transfers must occur within that many days after the filing of a petition.[45]

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[41] It is expected that the matters which the Commission believes need to be addressed in a commodity broker bankruptcy proof of claim will also be addressed by either the local rules of court or by the Bankruptcy Rules which are currently being drafted by an Advisory Committee of the Federal Judicial Conference. Therefore, the Commission is not now proposing a uniform proof of customer claim form.

[42] It is not necessary that the trustee take the four days allowed by section 764(b) of the Code to make the decision whether a bulk transfer is possible. If it appears that no bulk transfer can be made on the first day after bankruptcy, the trustee would be free to liquidate all accounts except those bona fide hedging positions required to remain open pending receipt of customer instructions.

[43] *See* Bankruptcy Act Revision: Hearings on H.R. 31 and 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 94th Cong., 2d Sess. Pt. 4, at 2400 (1976) ("Bankruptcy Testimony").

[44] 11 U.S.C. 365(e). *See also* 11 U.S.C. 303(f) which reads in pertinent part "*except to the extent that the court orders otherwise*, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced." (Emphasis added). On the other hand, other provisions of the Bankruptcy Act (e.g., 11 U.S.C. 362 "the stay provision") take effect upon the filing of a petition, notwithstanding that an order of relief has not yet been entered.

[45] For example, in In re Euro-Swiss International Corporation, 80-10177 (Bank. Ct. S.D.N.Y. 1980), an involuntary petition was filed on 12/3/79; a hearing on the petition was postponed on 1/31/80; the debtor filed in reorganization on 2/7/80; this filing was contested and was dismissed on 3/11/80, thereby restoring the *status quo*; on 4/2/80, a rehearing was held on the issues raised in the 3/11/80 hearing; a decision was rendered in that rehearing by the Bankruptcy Court on 4/3/80; that decision was appealed and the appellate court remanded for further action on 10/20/80. Thus, several months passed without an adjudication of bankruptcy.

Moreover, even in uncontested cases, the time given the debtor to answer an involuntary filing may extend beyond the five-day transfer period. In Jefferson National Investment Corporation, 80-00352 (Bank. Ct. M.D. Fla. 1980), the involuntary petition

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Nonetheless, the alleged debtor in an involuntary bankruptcy would be able under this rule to secure a reprieve from the Commission upon making a showing of the financial security of its customer accounts.[46]

In addition to transferring or liquidating accounts, the trustee must also make decisions with respect to specifically identifiable property other than commodity contracts. Such property must be liquidated if instructions for its return are not received by the trustee in a timely manner. (§§ 190.02(f)(2)(ii) and 190.03(c)). In addition, the trustee must liquidate such property if it loses 10% of its value, or it is not in fact returned in a timely manner. (§§ 190.02(f)(2)(i) and 190.03(c)).

Finally, all property which is not specifically identifiable must be liquidated. (§ 190.02(f)(3)). There are certain special rules for how to liquidate contracts and property contained in § 190.04(d).

Operation of Open Accounts. Prior to the primary liquidation date, these proposed rules would authorize the trustee, in its discretion, to make margin payments on behalf of open commodity positions pending their liquidation regardless of whether they were specifically identifiable to a particular customer. However, the rules would not permit the trustee to make payments on behalf of open commodity positions of the debtor or of non-public customers out of segregated funds. (§ 190.02(g)(1)).

The trustee would also be directed to make a margin call with respect to accounts which may remain open for transfer pursuant to customer instructions as soon as possible and would be authorized to require that such call be answered in one hour.[47] Thereafter, margin calls would be required to be made as under ordinary operating circumstances, provided that if certain margin levels are not maintained, the trustee may liquidate the customer account. (§ 190.02(g)(2)). The trustee's authority to issue margin calls and to liquidate positions is necessary to decrease the likelihood that accounts which may remain open will go into deficit, particularly because of the likely reluctance of customers to give money to a bankrupt and of the expense to the estate of pursuing small claims. Deficits which accrue in accounts which are operated after the primary liquidation date, if unrecoverable, would be shared pro rata by accounts containing open positions after the primary liquidation date. (*See* § 190.07(d)(3)). In order to protect amounts which are deposited as margin from being distributed pro rata, the rules would require the full amount of margin paid by a customer to be credited to the portion of its net equity claim, as adjusted, which would be funded.

Subsequent to the Primary Liquidation Date

Section 190.03 would primarily address the operation, until liquidation is required, of any open contracts for which transfers may be made pursuant to instructions of a customer.[48] Such accounts are intended to be operated just as if no bankruptcy had occurred, provided that (1) their opening balance will be no greater than the funded balance of the customer's net equity claim less any returns of property prior to the primary liquidation date (the calculation of funded balance will be more fully discussed below), (2) no disbursements other than those specifically authorized by these regulations could be made with respect to such accounts, and (3) no new positions could be added. (§§ 190.03(a)(1) and (2); §§ 190.03(a)(5) and 190.04(e)(2); and (§ 190.04(d)(3), respectively). As in the case of accounts which were in the process of liquidation, margin calls would be made and customers would be required to meet such calls to maintain their open contracts. Such margin payments would not be able to be distributed pro rata because, as in ordinary practice, they would be credited directly to the account for which they were made. (§ 190.03(a)(4)).

After the expiration of the periods set forth in the above required notices for receipt of customer instructions and actual transfer or return of property, § 190.03(b) would make clear that all accounts for which instructions were not provided or for which transfers and returns were not timely made on the terms provided must be liquidated. (*See also* § 190.03(c) with respect to the liquidation of specifically identifiable property other than commodity contracts).

During the period the accounts established under § 190.03(a) remain open, the account balance of each account should reflect the amount available for transfer.

Operation of the Debtor's Estate—General

Proposed § 190.04 would contain several general requirements concerning the administration and operation of the estate of a debtor which is a commodity broker. This section would make clear that, except as otherwise specifically provided in Part 190, the trustee would be required to comply with all of the requirements of the Act and the regulations thereunder in administering the debtor's estate. For example, the trustee would be required to segregate property of a debtor which was an FCM in the same manner that an FCM would be required to segregate such property. However, the trustee would be required to allocate any property as provided in § 190.08.

Computation of Funded Balance. In addition to any calculations which would be required under the Act and the regulations, a funded balance would be required to be computed daily for every account, open or closed. (§ 190.04(b)). This means that in some cases the same funded balance would be carried forward, from one day to the next. This calculation would be required to enable the trustee to determine on a daily basis the amount of equity available for transfer under § 190.06 or § 190.08(d)(2). It would also assist the trustee in determining whether a margin call is required.

Recordkeeping. These proposed regulations would make all records of the debtor immediately available to the Commission and to the United States Department of Justice upon bankruptcy. The Commission must be able to immediately review the debtor's records if it is to make an informed decision concerning whether or not to approve bulk transfers and thus to render them immune to attack by a trustee. In an involuntary proceeding, such access will enable the Commission to determine not only the appropriate approach in bankruptcy, but also to determine whether there have been violations of its minimum financial rules, or other violations of its regulations, or of the Act. The accessibility of all records will further be essential in tracing or in otherwise locating diverted or converted funds and, as such, should be an invaluable aid in the restoration of

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was filed on 3/17/80 and, no order of relief could have been entered by the court until the date set for the debtor's response, which was 4/9/80, well over five days past the filing date.

[46] Frivolous claims of banking are not likely because the proponents of an involuntary proceeding can be required to file a bond for damages which may be assessed against such proponents if the case is dismissed. 11 U.S.C. 303(e)(i).

[47] This provision may also have the beneficial effect of maximizing the likelihood of a bulk transfer. Of course, if there is a substantial shortfall of segregated funds and no insurance of the shortfall, a bulk transfer may, nontheless, be impossible.

[48] As previously noted, this period should only exceed ten days by such period as is necessary to liquidate in an orderly manner accounts for which transfers are not effected during such period.

assets to the estate. (§§ 190.04(c) (1) and (2)).

Liquidation. The Commission expects that there may be cases in which the liquidation of positions held on behalf of customers of a particularly large commodity broker, or the liquidation of a substantial position in a particular commodity held by a customer, may have an unusually adverse effect upon the market or a distorting effect upon price. In this eventuality or for some other reason, a trustee, or in the alternative an affected clearing organization, may apply to the Commission for authority to close open positions by book entry, to the extent that a commodity broker holds matching positions which are reflected on its books.[49] Where positions are closed by book entry, the execution price would be required to be either the average price of identical contracts liquidated by normal methods on the exchange floor on behalf of the commodity broker, or if no unmatched positions are closed in accordance with rule 1.38, the execution price would be the settlement price for such contract at the close of business on the market day preceding liquidation. In appropriate cases, this rule would permit trustees and clearing organizations to close positions overnight. (§ 190.04(d)(1)).

In addition to specifying which open commodity contracts must be liquidated, this proposed regulation requires the trustee to close out a debtor's futures and cash positions as simultaneously as is reasonably possible. (§ 190.04(d)(2)). Like the proposed rule on transferring both sides of a spread, these rules are intended to insure to the extent possible that "covered transactions" of the debtor are "no risk" transactions for the estate. If such "covered positions" are not closed out simultaneously, a potential loss not contemplated in effecting these transactions could arise. Moreover, to keep one or the other side of a covered transaction open after the other side is closed would, in effect, transform a hedging transaction into a speculative one. Finally these rules would make clear that, although a trustee is not permitted to put on new trades for customers, if the debtor itself holds significant positions in a contract, the trustee may hedge such positions pending liquidation with Commission approval. (§ 190.04(d)(3)).

Other Matters. Section 190.02(f)(1) would require the liquidation of all commodity contracts, except certain bona fide hedges. Section 190.04(e)(1) would provide that, for purposes of determining a bona fide hedge, a trustee need not look beyond the designation of the contract as such in the commodity broker's records. This provision is intended to prevent litigation as to whether a given transaction was a hedge. Such litigation could disrupt transfers after the fact.

Section 190.04(e) also would direct the trustee to invest the customer estate, would limit disbursements to customers to those permitted by the rules and would set a standard for determining when margin calls must be answered by customers.

Deliveries

Proposed § 190.05 is intended to minimize the interference with deliveries which would be caused by an intervening bankruptcy. The Code and these regulations direct the trustee to prevent contracts from remaining open beyond the last day of trading or the first day on which notice of intent to deliver is made.[50] The probelm, however, is what to do with contracts which are in a deliverable position on the filing date, or which through inadvertence, fall into such a position after the trustee assumes control of the estate.

In this connection, the Code provides that:

> With respect to any commodity contract that has remained open after the last day of trading in such commodity contract or with respect to which delivery must be made or accepted under the rules of a contract market on which such commodity contract was made, the trustee may operate the business of the debtor for the purpose of—(1) Accepting or making tender of notice of intent to deliver the physical commodity underlying such commodity contract; (2) Facilitating delivery of such commodity; or (3) Disposing of such commodity if a party to such commodity contract defaults.[51]

The Commodity Exchange Act further authorizes the Commission, as noted above, to develop rules for the operation of the debtor's estate.[52]

The Commission believes that the cash portion of any delivery transaction should occur outside the bankrupt estate. (§ 190.05(b)). Because of the differences in the delivery mechanisms of the different contract markets and the Commission's reluctance to unnecessarily interfere with such mechanisms, § 190.05 would require each contract market to develop its own rules for permitting the cash portion of deliveries affected by a bankruptcy proceeding to be effected without property or money being routed to or through the debtor (§ 190.05(b)(1)). The Commission expects to provide a deferred effective date for § 190.05(b)(1) to permit the contract markets to put these required delivery rules in place. In contrast, recovery on the futures position involved in the delivery would be deferred until disposition of the estate (§ 190.05(b)(2)). This rule is intended to avoid any possibility that the physical commodity or the cash tendered in connection with a delivery would pass through the estate and thereby become part of the customer property pool, to be distributed pro rata. Obviously, a person taking delivery on a corn contract does not want to receive 60% of his corn many months after his corn contract went into deliverable position.

As the cash portion of a delivery transaction is an exchange between two customers, the intervention of the debtor is not an essential element. Nor is that intervention essential to preserve a fair distribution of the estate. If the property for which delivery is to be made is already a part of the debtor's estate on the date of the order of relief and a customer is making delivery, ordinarily the party taking delivery from such customer will be paying into the estate an amount equivalent to the value of the property it is receiving. Therefore the estate should be receiving as much in value as it has given up. (§ 190.05(c)(2)). This case is really no different from an ordinary delivery where no bankruptcy has occurred. If a customer is taking delivery, the customer would be required to pay the estate the full value of the property it will be acquiring in cash (as provided in the section on receiving the return of specifically identifiable property).[53] In this case, the estate would also receive the cash equivalent of the property released so that normally the estate would be neither augmented nor depleted by this transaction. (§ 190.05(c)(1)).

If the customer were to default, apart from any remedies the estate would have against the customer, the estate would also have the property at its disposal to mitigate damages. In this connection, it should be noted that these rules would require delivery to be made or taken regardless of the intervening bankruptcy, if otherwise required. (§ 190.05(b)(1)). Finally, these rules would also address the responsibilities of a debtor for its own contracts which

[49] Such a book entry would be reflected in the records of the debtor by the closing out of offsetting long and short positions in the same commodity in the same delivery month.

[50] 11 U.S.C. 766(b) and §§ 190.05(a), 190.02(f)(1) and 190.03(b)(5).

[51] 11 U.S.C. 766(b).

[52] 7 U.S.C. 24.

[53] § 190.06(d)(1).

are in a deliverable position. (§ 190.05(c)(3)).

Transfers

Section 190.06 as proposed would deal primarily with those transfers of accounts which occur before a bankruptcy filing, pursuant to exchange rules or the Commission's minimum financial rules,[54] and those transfers which occur within the five business days following a bankruptcy filing which may be protected by Commission action from reversal by the trustee as preferences.[55] It is expected that such transfers will be bulk transfers of most, if not all, customer contracts and the property margining the same. Transfers of the positions which, under § 190.03 of these proposed rules, may remain open after the primary liquidation date in conformity with customer instructions, must be effected in accordance with § 190.08(d) which is designed to achieve a strict pro rata distribution. These transfers, in contrast to §§ 190.06(e) and (f) "bulk" transfers, are expected to be made on an individual basis in the limited circumstances in which they would be permitted.

Transfer Rules

The Commission believes that a first step in developing a workable transfer procedure under the Bankruptcy Code is ensuring that the existing rules or ad hoc procedures for transferring accounts would not conflict with the proposed regulations. (§ 190.06(a)(1)). For example, it is possible that certain margin rules now in effect would preclude potential transferees of commodity accounts from accepting less than the full amount of margin required to margin the transferred accounts. In such a case, this proposal would require modification of the rules of the self-regulatory organizations ("SROs") to permit, at least in some circumstances, acceptance of transfers subject to a claim for any margin deficit against the customer, if the customer is undermargined, or against the bankrupt estate, if the loss is due to undersegregation or peculations. In this regard, the Commission recognizes that SROs may want to develop further criteria than are set forth in these regulations concerning the amount of risk a transferee could assume or rules providing that a member's security deposit with the exchanges could be applied against account deficits in transfer situations.

Notice. Proposed § 190.06(b) would require that a commodity broker notify the Commission before any extraordinary transfer of customer accounts. The assumption underlying this proposal is that all transfers not made upon routine requests of customers would be transfers motivated or required because of a broker's financial instability.

Financial Requirements for Transferees. Proposed § 190.06(c) would impose three minimum financial requirements for the transferees of commodity accounts. First, no transfer would be acceptable by a commodity broker if its acceptance would cause that broker to violate the Commission's minimum financial requirements. This proscription is self-explanatory. Second, a transferee would be permitted to accept open positions which are not accompanied by sufficient margin for those positions only if it deposits in segregation enough of its own money to eliminate the deficiency. Although such a broker would have a claim against customers with respect to undermargined accounts accepted by it, if the shortfall of transferred funds were due primarily to undersegregation, the transferee broker would be assuming the loss on those accounts if that loss were unrecoverable from the bankrupt estate. A claim arising from undersegregation would ordinarily be a claim against the estate to which the transferee could be subrogated [56] and not a claim against the individual account holder. Third, recipients of transfers would be required to keep the contracts which they receive open for one business day unless the customer for whose benefit the transfer is made fails to meet a margin call within such period.

Customer Instructions. The Commission is proposing to require that customer agreements be drafted so that a customer may indicate its desired disposition of any commodity futures contract which cannot be transferred in accordance with section 764(b) of the Code and which is a bona fide hedging position. The Commission proposal would further require that the agreement inform a customer that after a bankruptcy filing, delivery cannot be taken on contracts which were capable of being liquidated at any time after the filing date and prior to the last day of trading. Thus, customers who may desire to take delivery on their positions will probably wish to indicate that they would like such positions to be transferred.[57] The purpose of obtaining instructions as to whether a customer desires its account to be held open for transfer beyond the close of business on the fourth business day after a filing in bankruptcy is to inform the trustee not only which accounts to hold open for transfer, but also which accounts may be liquidated immediately. Of course, any customer who requested transfer of a position in the customer agreement could, if circumstances changed or if he changed his mind, advise the trustee in writing to liquidate.

These rules would require the customer's preference with respect to a bona fide hedging account to be recorded, so as to enable a trustee to determine directly from the basic customer account records whether or not a contract is subject to a liquidation or transfer instruction. (§ 190.06(d)(2)).

Eligibility for Transfer Under Section 764(b) of the Bankruptcy Act. Proposed section 190.06(e) would enumerate those accounts or parts of accounts which are not eligible for transfer free from the trustee's avoidance powers under section 764(b) of the Code. The

[54] *See* 17 CFR 1.17(a)(4). Section 1.17(a)(4) reads as follows:

A registrant who is not in compliance with this § 1.17 or unable to demonstrate compliance with this § 1.17 as required by paragraph (a)(3) of this section, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the registrant is able to demonstrate such compliance. *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization. *Provided, further,* That is such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

[55] Section 764(b) of the Bankruptcy Act reads as follows:

Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before five days after the date of the filing of the petition, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

(1) A transfer of a commodity contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, securities, or other property margining or securing such commodity contract; or

(2) The liquidation of a commodity contract entered into or carried by or through the debtor on behalf of a customer.

[56] The Commission believes that the claim of a transferee against the debtor's estate would be a derivative customer claim.

[57] Although these regulations strive to preserve delivery as an alternative to offset, because most positions are settled without delivery being taken, the regulations would not create special rules except in cases where there is a deliverable position on the filing date. *See* § 190.05.

Commision's testimony before Congress recommended that only those open commitments which are fulfilled on exchanges be susceptible of transfer.[58] Proposed § 190.06(e)(1) follows the Commission's recommendation to Congress, but would also permit the transfer of those contracts held by a debtor which are part of a "principal transaction", such as a dealer option contract, if the underlying obligee is not bankrupt. This is because it would be difficult, if not impossible, to transfer the accounts of commodity broker debtors who make their own market (dealer option grantors) or which are the market (clearing organizations).

Also, this proposed rule would provide that no monies or property may be transferred in respect of an account which would exceed the customer's funded balance, *i.e.*, the customer's pro rata share of the estate as estimated at the time of transfer, less the value of any property previously transferred (§ 190.06(e)(2)).[59] Although to be free of the trustee's avoidance powers, it is not necessary that transfers be strictly pro rata, the Commission believes that in the interests of equity, any bulk transfer should approximate, to the extent possible, the distribution which would be made in bankruptcy.

Special Rules for Transfers Under Section 764(b) of the Bankruptcy Code

Dealer Options. Proposed regulation § 190.06(f)(1) would make every dealer option contract held by an FCM debtor transferable whether or not the FCM had properly segregated the premium, unless the customer on whose behalf the option was held owed money to the FCM. This rule would also require the option grantor to deliver full performance upon exercise of the transferred option whether or not its claim in bankruptcy for the premium is payable in full.[60]

Clearing Organizations. The Commission is proposing that all open commodity contracts, even those in a deliverable position, be liquidated in the event of a clearing organization bankruptcy because it would be highly unlikely that an exchange could maintain a properly functioning futures market in the event of the collapse of its clearing organization.[61] The Commission has proposed no other rules with respect to the operation of clearing organization debtors. Under section 764(b)(2) of the Code, the Commission has the power to permit a distribution of the proceeds of a clearing organization liquidation free from the avoidance powers of the trustee. Because the bankruptcy of a clearing organization would be unique, the Commission is not proposing a general rule in this regard. The potential for disruption of the Markets, and of the nation's economy as a whole, in the case of a clearing organization bankruptcy, together with the desirability of the Commission's active participation in developing a means of meeting such an emergency, has disposed the Commission to take a case-by-case approach with respect to clearing organizations. (*See* § 190.06(f)(2).)[62]

Partial Transfers. Proposed rule § 190.06(f)(3) would make clear that a trustee can make a bulk transfer of less than all customer accounts.

Pre-Bankruptcy Transfers. The Commission's minimum financial rules, which are designed to safeguard customers from losses resulting from the financial failure of certain commodity firms, require that all customer accounts be transferred upon the failure of a commodity firm to meet the Commission's minimum financial requirements.[63] That requirement, together with the "early warning" requirements of rule 1.12 [64] (which are designed to give sufficient advance notice to the Commission and to appropriate designated SROs [65] of a firm's financial problems), are designed to permit ameliorative measures to be taken before customer losses occur.

Thus, the Commission's regulations clearly contemplate that the transfer of customer accounts would occur in appropriate cases prior to bankruptcy. The operation of these rules would be severely impeded, absent a provision which allowed the Commission to insulate such transfers from avoidance as preferences, assuming that the transferor firm ultimately became bankrupt. [66] Without such a provision, account transfers made in compliance with the Commission's financial rules could be recalled from their transferee at a later date, potentially jeopardizing the financial stability of the transferee and interfering with the willingness of firms to accept account transfers.

The proper functioning of the Commission's minimum financial rules depends to a great extent on the cooperation of regulated firms. The proposed regulations therefore would provide that transfers which are made prior to the filing of a bankruptcy petition, and which comply with § 1.17(a)(4)[67] of the Commission rules will not be voidable by the trustee notwithstanding the eligibility requirements of §190.06(e). (§ 190.06(g)(1).) The Commission retains the power, however, to challenge such transfers for noncompliance with that section, *i.e.*, for failure to transfer all customer accounts or otherwise. Similarly, the Commission could approve such transfers even if strict compliance with § 1.17(a)(4) were not possible, *e.g.*, if all customer accounts could not be transferred.[68] (§ 190.06(h).) The proposed rule is intended to minimize the need for Commission intervention in transfers which occur pursuant to its minimum financial rules or pursuant to contract market rules, even if it is expected that the broker will become the subject of a bankruptcy proceeding within 90 days or less. [69] The proposed regulations provide more flexibility in effecting protected transfers prior to bankruptcy than thereafter because the Commission desires to give its current safeguards ample opportunity to work. [70]

Ideally, any pre-bankruptcy transfer of assets under the minimum financial rules would approximate a post-bankruptcy distribution scheme, while avoiding the litigation and other administrative expenses commonly associated with bankruptcy proceedings. This is because such transfers should occur before a firm becomes seriously undersegregated.

These rules would also propose to use the Commission's authority under section 764(b) (1) and (2) to insulate from reversal by the trustee certain transfers to another broker of customer accounts or omnibus customer accounts initiated by public customer of the debtor responsible for such customer accounts. This is because such transfers might not be regarded as made in the ordinary course of business and

[58] *See* Bankruptcy Testimony at 2407 (futures), 2413 (clearing organizations), 2418 (options), and 2420 (leverage).

[59] *See* § 190.07(c).

[60] Commission rule 32.12(b)(4), 17 CFR 32.12(b)(4), provides that "the grantor of any option offered and sold to an option customer * * * [pursuant to the exemption for dealer options] shall be liable jointly and severally with any person that sells its options to option customers for all damages sustained by the option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person * * * "

[61] Bankruptcy Testimony at 2411.

[62] Section 764(b) of the Code permits the Commission to proceed by order as well as by rule.

[63] 17 CFR 1.17(a)(4).

[64] 17 CFR 1.12.

[65] 17 CFR 1.3(ee), (ff).

[66] *See* 11 U.S.C. 764(b).

[67] 17 CFR 1.17(a)(4).

[68] It should be noted that § 1.17(a)(4) does not require transfers to be made pro rata.

[69] *See* 11 U.S.C. 547.

[70] Of course, a receiver of the assets of a commodity broker prior to the filing of bankruptcy would ordinarily follow the post-bankruptcy rules in making distributions or transfers.

therefore would be voidable under section 547 of the Code. The consequences of such a reversal could be potentially far-reaching, possibly threatening the financial solvency of the transferee firm. Therefore, the Commisison has a market-related interest in insulating such transfers from collateral attack. Specifically, the margin supporting the transferred positions or substantial portions thereof may have been passed along to the commodity broker's ultimate customers or elsewhere in the market chain, so that permitting their recovery could prevent containment of the impact of the initial bankruptcy. (*See* § 190.06(g)(1)(ii).) The Commission therefore is proposing to protect "transfers" of this kind which it does not expressly disapprove [71] and which are not made in collusion with the debtor to achieve a greater share of the bankrupt estate than in the bankruptcy distribution. This rule would not, therefore protect transfers made with actual intent to defraud. Moreover, it should encourage Commission notification which in turn may alert the Commission to potential targets for increased surveillance.

Post-Filing Bankruptcy Transfers. Under this proposal, no post-filing transfer would be protected from a trustee's avoidance powers, unless the Commission is properly notified, does not disapprove and such transfer is made within the appropriate time frame. Although the Bankruptcy Code does not indicate who will make the transfers which will be protected by the Commission, the proposed regulations would permit the trustee, the commodity broker, an SRO, or the Commission to do so.

Unlike pre-bankruptcy filings, and unless the Commission otherwise determines, only those contracts and property eligible for transfer under proposed § 190.06 (e) and (f) could be transferred if the transfer is to be protected from avoidance by a trustee. This means that, although a strict pro rata distribution is not a statutory prerequisite for Commission insulation of such account transfers from attack, these proposed regulations are intended to make an approximate pro rata distribution a condition of its insulation (§ 190.06(g)(2).)

Mutiple Transferees. Transfers under proposed § 190.06 (e) and (f) could be made to more than one transferee, so that the size of the debtor need not adversely affect its ability to find a willing transferee. Permitting a transfer to more than one transferee should also maximize the possibility that a transferee would accept a modest loss in order to handle the bankupt's customer accounts. (§ 190.06(g)(2).)

Liquidations (Withdrawals). Section 764(b)(2) also permits the Commission to protect the withdrawal or settling of accounts on or before the close of business on the fourth business day after bankruptcy from avoidance as improper transfers by the trustee in bankruptcy. [72]

These proposed regulations, for example, would provide that withdrawals by a public customer which occurred in the ordinary course of business, such as the routine settling of accounts, could not be attacked as voidable preferences. [73] (*See* § 190.06(g)(3).) The regulations would not, however, protect withdrawals by non-public customers, or by public customers which were made in collusion with the debtor to obtain a greater share of the bankrupt estate than that to which the withdrawing party is entitled, or withdrawals which were disapproved by the Commission.

The withdrawals protected by proposed § 190.06 (g)(1) and (g)(3) would be only those which occur prior to the filing date. Once a petition in bankruptcy has been filed, the considerations which should be weighed in connection with developing a policy concerning withdrawals change. The proceeds of any liquidations which occur after bankruptcy clearly should be held and not disbursed pending a bankruptcy distribution. The only possible exception might be a transfer which occurred inadvertently subsequent to, and without knowledge of, the filing. [74]

All of the proposed transfer regulations contained in § 190.06 are intended to provide the Commission with the necessary latitude to adjust its procedures for approving transfers, or the terms of its approval, based upon its practical experience in implementing the rules.

Net Equity

In order to determine what amounts may be transferred on behalf of, or distributed to, customers in a commodity broker bankruptcy, net equity must be calculated. Under the Code, this calculation is more complex for commodity customers than it would be for securities customers, because property held by a commodity broker on behalf of commodity customers must be valued as of the date of its return or transfer and not as if it had been liquidated as of the filing date. [75] Net equity therefore will fluctuate during the entire period that the debtor's estate contains open commodity contracts, and indeed will not become final until the final net equity determination date described in the proposed definitions (§ 190.01(s)).

The Commission is granted broad authority to define "net equity." [76] Therefore, the Commission has determined to propose a step-by-step method for calculating the estate's liability to a customer (*i.e.*, the customer's net equity claim) and of the customer's pro rata share of the assets available to pay that claim (*i.e.*, the customer's allowed net equity claim). This method is intended to simplify what could be a complex operation for a trustee who may not have particular commodity expertise.

The fact that net equity is a changing value would not create any problems of computation if it could be assumed that, in every commodity broker bankruptcy, there would be sufficient property in segregation for all customers to be paid their equity balances in full. The

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[71] It should be noted that 11 U.S.C 764(b) does not provide a time frame for Commission approval.

[72] "[T]ransfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest." 11 U.S.C. 101(40). It should be noted that the mere liquidation of an open commodity contract without any settlement or application of monies resulting therefrom should not be a "transfer" under the Code. The term "transfer" would seem to require the movement of obligations or of funds.

[73] *See* 11 U.S.C. 547(c)(2), which exempts certain transactions made in the ordinary course of business from the trustee's avoidance powers.

[74] The Commission does not now propose any rules for dealing with such accidental transfers.

[75] *Compare* 11 U.S.C. 761(17) *with* 15 U.S.C. 78*lll*(12) (1976 & Supp. III 1979).

[76] 11 U.S.C. 761(17) defines "net equity" as follows:

"[N]et equity" means, *subject to such rules and regulations as the Commission promulgates under the Act*, with respect to the aggregate of all of a customer's accounts that such customer holds in the same capacity—

(A) Balance remaining in such customer's accounts immediately after

(i) All commodity contracts of such customer have been transferred, liquidated or become identified for delivery; and

(ii) All obligations of such customer to the debtor have been offset; plus

(B) The value, as of the return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus

(C) The value, as of the date of transfer, of—

(i) Any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and

(ii) Any cash, security or other property of such customer transferred to such other person under section 766 of this title to margin or secure such transferred commodity contract. (Emphasis added.)

proposed calculation of net equity is complex because it assumes that in such cases complete segregation is likely to be the exception rather than the rule. In the event of undersegregation, it is this fluctuating concept of "net equity" which increases the difficulty of insuring a pro rata distribution of customer property.

The formula proposed by the Commission addresses this difficulty in two ways. First, it provides for an add-back of funds transferred prior to calculation of a customer's pro rata share of the estate (or funded balance) on the primary liquidation date.[77] Second, it provides that the net equity in accounts which remain open subsequent to the primary liquidation date (or which contain specifically identifiable securities) be apportioned a part of any shortfall as of that date. This proposal reflects the Commission's belief that any activity in customer accounts subsequent to the primary liquidation date should be attributed only to the account in which that activity occurs and should not be attributed to the estate as a whole. Therefore, these regulations would require the trustee to establish accounts with opening balances based on a calculation of the customer's share of the estate on the primary liquidation date for customers who have instructed that their commodity contracts remain open for transfer subsequent to that date (§§ 190.03(a) (1) and (2)).

The reason that it is desirable to "fix" the bankruptcy loss at a particular point in time can be illustrated as follows. Assume the debtor has only two customers. Customer A has equity in an open commodity contract which is equal to $600 on the date of bankruptcy, and Customer B has equity in open contracts on the same date worth $400. Upon bankruptcy, however, the amount of segregated property available to pay the two customers is $800. Therefore, if a pro rata distribution were immediately made the following distribution would occur:

$$\text{Customer A } \frac{600}{1000} \times \$800 = \$480$$

$$\text{Customer B } \frac{400}{1000} \times \$800 = \$320$$

Now assume, however, that Customer B's account is liquidated resulting in an equity balance of $400 and that Customer A's account which remains open loses $200. If no special rule is adopted to account for the $200 loss in Customer A's account, the following result occurs:

Customer A	Customer B	Customer property pool
$600 −200	$400	$800 −200
[1] 400	[1] 400	[1] 600

[1] Net equity.

Upon distribution, the pro rata share of each customer will be the same:

$$\frac{\$400}{800} \times \$600 = \$300 \text{ to Customer A}$$

$$\frac{\$400}{800} \times \$600 = \$300 \text{ to Customer B}$$

The problem with this approach is that it causes Customer B to share Customer A's trading loss. (Of course, profits in such accounts would also be shared.) Instead, the Commission is proposing that Customer A's loss be substracted from the distribution Customer A would have received in the first example. Customer B would then receive $320 and Customer A would receive $480 minus $200, or $280. If the result is otherwise, accounts which are liquidated in the first instance share losses with accounts which remain open. The Commission is proposing that net equities of customers who keep positions open following bankruptcy should be credited or debited directly for all losses and gains as they would have been had not bankruptcy occurred, with the exception that the initial "bankruptcy loss" would be shared pro rata.

The following hypothetical and explanation are provided to illustrate in detail how the Commission's proposed rules for calculating allowed net equity would operate.

Hypothetical

Assume that Commodity Broker XYZ Company has four individual customers: A, B, C and D. Customer A has three accounts: one is A's personal account, the second is designated "A special" and the third is designated "A in trust for W." On the filing date, each of the accounts have the following equity balances:

Accounts		
A personal	$100	Cash.
A special	50	Cash.
A in trust W	100	Futures (margin plus accruals).
B	250	Futures (margin plus accruals).
C	300	Futures (margin plus accruals).
D	200	IBM stock.
Total	1,000	

The amount segregated for customers on that date is $800 which means that the "bankruptcy loss" or "shortfall" is $200.

By the third day after the filing date, the following activities have occurred. D has paid the estate $200 and has received the return of his IBM stock in accordance with § 190.08(d)(1). $200 has been transferred to Broker Y on behalf of Customer C. Customer A's trust account for the benefit of W has been liquidated, resulting in an equity balance of $100. (For the sake of simplicity, no changes in the value of accounts between the filing date and the primary liquidation date have been assumed. It should be noted, however, that gains or losses in the value of individual positions between the filing date and the primary liquidation date will be shared pro rata. This result is consistent with the intent of the Bankruptcy Act and with the Commission's view that the forced liquidation losses caused by bankruptcy should be spread among all customers.)

Using the facts of the hypothetical and the Commission's proposed rule for calculating allowed equity, the first step would be to determine the equity balance of each account.

Equity is to be calculated by reference to the accounting records ordinarily maintained by a commodity broker with respect to each customer account. To determine account equity, the trustee must add any amount in the cash account (ledger balance) maintained for a customer to the open trade balance of that customer. By this computation, cash, securities or other property deposited by a customer is added to unrealized and realized gains, from which is subtracted unrealized and realized losses and those costs of establishing or liquidating a position which may be deducted from segregated funds held by FCMs under section 4d(2) of the Act.[78] As calculated, equity may be either a credit or a debit balance (§ 190.07(b)(1)). In this connection, the Commission is proposing the method for valuing the various types of commodity contracts which are not traded on exchanges and certain property (§ 190.07(e)).

Step 1—Equity Determination.

The equity balance computed in accordance with § 190.07(b)(1) would be as follows:

Customer	Equity balance
A personal	[1] $100
A special	[1] 50
A in trust for W	[1] 100
B	[2] 250
C	[2] 100
D	[1] 200
Total	600
Amount originally held in segregation for those customers (all of whom had futures accounts)	800
Less amount transferred for Customer C prior to Step 1	−200
Total	600
Shortfall in segregation	200

[1] Cash. [2] Futures.

[77] *See, e.g.*, 11 U.S.C. 761(17)(B).

[78] 7 U.S.C. 6d(2).

Both the Code by definition and these rules provide a special rule for calculating the necessary correction for the return of specifically identifiable property. Under these proposed rules, property other than commodity contracts cannot be returned to a customer prior to the final net equity determination date unless the full value of the property is paid into the estate (§ 190.08(d)(1)). Hence, the return of such property can be treated for purposes of computing net equity in the same manner as a liquidation of that property would be treated.

Step 2—Aggregation.

During this step in calculating net equity, accounts of the same class held in the same capacity must be combined. In the hypothetical, all of the customer accounts are of the same class, *i.e.*, futures accounts. The required combination of accounts held in the same capacity, therefore, results in the following figures.

Customer	Aggregated equity balance
A (including A special) (cash)	$150
A in trust for W (cash)	100
B (futures)	250
C (futures)	100
D (cash)	200
Total	800

The futures accounts held in the name of "A personal" and "A special" have been combined, pursuant to proposed § 190.07(b)(2)(i) through (xiii). Note that in the example given, aggregation of the accounts does not change the results because the accounts of Customer A which were held in the same capacity contained positive equity balances. Suppose, however, that Customer A had two accounts, one of which had a deficit balance of $50 and one of which had a credit balance of $150. If the accounts were not aggregated, the first account would have a $0 claim in a pro rata distribution; the second account would have a $150 claim, and Customer A would owe the estate $50. The proposed rule requiring aggregation would cause Customer A's first account to be setoff against its second account, thus reducing the claim of A against the estate to $100 and that of the estate against A to $0.

The proposed rules on aggregation indicate which accounts must be treated by a trustee as held in separate capacities. The significance of such a determination is that accounts which are held for a particular customer in separate capacities must be treated as though they are the accounts of separate customers, with the result that the account balances of such accounts may not be offset.[79] For example, if Customer A holds one account in his own name and another account as a trustee for X, and the net equity in A's own account is in deficit and the net equity in the trust account is a credit, the two accounts may not be aggregated for purposes of the pro rata distribution mandated by the Bankruptcy Act.

The proposed regulations on aggregation are modeled to some extent after those which have been issued under SIPA,[80] but differ in some respects to accommodate the different purposes which the commodity regulations serve.[81] The reason for permitting aggregation is to ease administration of the bankrupt estate. If two related accounts have opposing debits and credits, it ordinarily will be more efficient and less costly to setoff the two accounts than to pursue recovery of the debit balance. As a policy matter, regulations which would permit individuals to hinder or complicate a liquidation proceeding by proliferating accounts should be avoided. Therefore, the Commission is proposing, while protecting commonly observed forms of legal ownership, to permit offsets in those cases where one customer will not be disadvantaged to the benefit of another.

These proposed rules would enumerate which capacities will be treated as "separate" for purposes of computing net equity and which capacities will be treated as the "same." In general, all accounts in the same name or the same combinations of names may be aggregated unless the true owner of the account is different from the individual in whose name the account is carried, as in the case of a trustee. For example, guardianship accounts would be deemed to be accounts of the ward, and therefore, to be held in a different capacity from the account of a guardian held in his own name. Similarly, accounts maintained for the estate of a decedent would be treated as held in a different capacity from individual accounts of the administrator or executor of the estate. All accounts for a single estate, whether held in the name of the administrator, the executor, or in the name of the estate, would be treated as held in the same capacity. (§ 190.07(b)(2) (ii)–(iv)).

Trust accounts must be created by a legally valid written instrument and must be irrevocable in order to be treated as held in a separate capacity from accounts of the trust grantor. Such accounts would also be treated as held in a separate capacity from an account of the trustee in its individual capacity or from the account of any other trust. Corporate, partnership and association accounts would be treated as held in the capacity of the entity, and not that of the underlying owners or members of the entity, unless the entity exists only for the purpose of avoiding offsets in a liquidation proceeding. (§ 190.07(b)(2) (v) and (vi)).

The accounts which would be deemed to be held in separate capacities by these proposed rules parallel those which would be deemed to be held in separate capacities by SIPA in determining insurance claims; the other designations of separate capacities proposed by these rules have no precedent, because they relate solely to commodities issues. For example, commodity accounts held for different trading purposes by the same individual or entity would be treated as being held in the same capacity. Similarly, commodity accounts of different classes held by a single entity or individual would not be considered to be held in separate capacities, although where more than one account class is held, these rules would require that they be aggregated pursuant to an order of setoffs which has a "marshalling" effect. (§ 190.07(b)(2) (vii) and (viii)).

The Commission is also proposing that omnibus accounts of an FCM or of any other commodity broker be treated as held in a separate capacity from the proprietary accounts of such FCM or commodity broker and from any other omnibus customer account. This is intended to prevent an offset which would be in violation of Commission rule 1.22,[82] and is intended to dispel any possible confusion as to the propriety of setoffs of omnibus accounts for which the underlying customers are unknown to the carrying broker. (§ 190.07(b)(2)(ix)).

With respect to joint accounts which could be transferred under § 190.06, the Commission's proposed rule would basically perpetuate what has been the

[79] This result is mandated by 11 U.S.C. 763 of the Code which reads as follows:

(a) Accounts held by a particular customer in separate capacities shall be deemed to be accounts of separate customers.

* * * * *

(c) The net equity in a customer's account may not be offset against the net equity in the account of any other customer.

[80] *See* 17 CFR 300.100–300.201.

[81] Unlike the SIPA regulations, these regulations are not meant to limit the extent of insurance coverage (although they also could be used for that purpose), but rather to indicate for purposes of determining a customer claim whether a deficit in one account may be applied against a credit in another.

[82] 17 CFR 1.22.

current practice in the absence of regulations as to separate capacity, that is, the underlying composition of the account would not be examined.[83] If, however, such accounts were required to be liquidated, the trustee in bankruptcy would be permitted to consider the underlying components of the account in making setoffs. To the extent two accounts had the same underlying participants, they could be combined or offset regardless of the various precentage interests owned by the participants. For example, Account A with a credit balance of +4 has three participants, X, Y and Z, each of whom owns a ⅓ interest therein. Account B is owned 40% by X, 25% by Y and 35% by Z and has a deficit balance of −12. Under these proposed rules, the balance in Account A may be setoff against that in Account B if the two accounts are liquidated.

The Commission is further proposing that a participant's percentage interest in a joint account may be aggregated in the event of liquidation with such participant's individual account interests. The purpose of this proposal is to facilitate a pro rata liquidation by relieving the trustee of the burden of pursuing numerous claims by litigation or otherwise against individuals or entities in cases where there is property of such individuals or entities which is property of the "bankrupt estate" and which is, therefore, immediately available for the satisfaction of such claims. For example, assume that A owns an account in his own name with a deficit balance of −3. A also owns a ⅓ interest in Account ABC with a positive credit balance of +30. Under these rules, for purposes of liquidation only, A's ⅓ interest (+10) in ABC account may be set off against A's debit balance (−3) in its individual account, so that A's total net equity computed through this step for purposes of application of the pro rata distribution in bankruptcy would be +7.

The effect of this rule is that in transfer situations, the "entity" (whether or not a legal entity) would be respected. In liquidation, if the account is not a legally cognizable entity,[84] the interests of the underlying participants would be the basis of any bankruptcy distribution. (§ 190.07(b)(2)(x)).

These rules would also recognize the special legal status of certain pension plans. Unqualified plans could be treated like joint accounts. Similarly, accounts held in the name of X and Y doing business as XY Co. where XY Co. is not a separately constituted legal entity would be regarded as a combination account of X and Y subject to the joint account rules set forth above. (§ 190.07(b)(2) (xi) and (xii)).

The Commission wishes to point out that the rules proposed in this portion of Part 190 are meant to be invoked only with respect to liquidations under the Bankruptcy Act unless otherwise referred to and adopted for other purposes.

Step 3—Required Setoffs

The step in calculating net equity pertaining to setoffs has essentially two functions. First, as previously discussed, it would make clear that accounts of customers of different classes are held in the same capacity; second, it would prescribe the order of setoff between accounts of different classes; and finally, it would permit the trustee to set off claims for debts owed the debtor against amounts the estate may owe a customer.

Step 3 is an adjunct to Step 2 which would require the aggregation of accounts held in the same capacity. Step 3 would deduct from a customer's net equity claim any obligation the customer may owe the debtor which has not already been deducted in the computation of his account equity. Therefore, if the customer owes the debtor $5,000 on an outstanding loan which is due and payable upon demand, that $5,000 would be subtracted from such customer's account equity to determine his net equity claims. Similarly, if the customer has a credit balance in one account and a debit balance in another account in the same capacity but of a different class, those balances must be set off.

If a customer holds one or more classes of commodity accounts, however, the setoffs required under Step 3 are more complicated. In this connection, the Commission is proposing a method of allocating debit balances to credit balances of different classes which would not take account of the amount of funds available to pay the claims of any class, but would still distribute the setoff among classes. This method requires the trustee to determine the ratio of the positive balances to each other, and to distribute the negative balance in the same proportion.

In the hypothetical, no setoffs were required. But assuming slightly different facts, it is possible to demonstrate how such setoffs would be calculated in an example where a customer holds more than one class of commodity account. Assume Customer A owns the following accounts with the following equities:

Account class	Equity
Futures	$−50.00
Leverage	+100.00
Foreign futures	+200.00

The $50 debit balance would be required to be set off against the credit balance in each class of accounts as follows:

$100/$300 × $50 = $16.67 = leverage offset
$200/$300 × $50 = $33.33 = foreign futures offset

Net Equity After Offset:

	Credit balance		Portion of $50 offset		Resulting equity
Leverage	$100	−	16.67	=	83.33
Foreign Futures	200	−	33.33	=	166.67
	300	−	50.00	=	250.00
Futures	−50	+	50.00 offset	=	0

As indicated by the order of the steps proposed for computing net equity, ideally the setoffs referred to in Step 3 would be performed prior to the transfer of any money or equity out of the estate. This is because, once any equity has been transferred, it may be difficult to recover an excess payment. As a practical matter, however, a trustee may be required to make transfers under $190.06 before he has adequate information concerning other obligations owed by the customer to the debtor or vice versa.[85]

Step 4—Correction for distributions. A correction for distributions is necessary in calculating net equity in order to assure that any shortfall in the amount of customer funds available to pay customer claims is properly allocated, notwithstanding the prior transfer of funds on behalf of some customers. Returning to the hypothetical, if an add back were not required and distribution were made immediately upon the primary liquidation date, the following would occur:

[83] In cases where the pool is a legal entity such as a corporation or partnership, the pool will be treated in the manner corporations or partnerships are treated under these regulations, so that liquidation of a broker holding a corporate account will not cause a liquidation of the corporation.

[84] Pools are now required by the Commission's rules to be legal entities separate from the pool operator. 17 CFR 4.20(a) 46 FR 26004, 26015 (May 8, 1981) as amended by 46 FR 34310 (July 1, 1981). Therefore, it is expected that these provisions will primarily affect combination accounts.

[85] As pointed out previously, a transfer distribution approved by rule or order of the Commission pursuant to § 190.06 or section 764(b) of the Bankruptcy Act need not be strictly pro rata. Therefore, there would be some statutory margin for error which is helpful, as any estimated setoffs at the time of transfer could not be computed on totally reliable and complete evidence. However, the most likely error would be that a customer would receive too little money rather than an overpayment because the trustee might be unaware of other claims of the customer against the estate, but would ordinarily be aware of the estate's claims against the customer.

Customer	Account equity	Pre-primary liquidation date distribution
A (including A special) (cash)	$150	
A in trust for W (cash)	100	
B (futures)	250	
C (futures)	100	[1] $200
D (futures)	200	

[1] Transferred to broker Y.

The amount of funds in segregation on the filing date would be reduced by the $200 transferred to another broker and therefore as pointed out above would be only $600.

Customer	Distribution without add back	$200 add back	Distribution with add back
A (including A special)	150/800 × 600 $112.50	$150	$150/1000 × 800 = $120
A in trust	100/800 × 600 = 75.00	100	100/1000 × 800 = 80
B	250/800 × 600 = 187.50	250	250/1000 × 800 = 200
C	(100/800 × 600 = 75.00) [1] + $200 received = 275.00	300	300/1000 × 800 = 240 (less $200 received = 40) [1]
D	200/800 × 600 = 150.00	200	200/1000 × 800 = 160

[1] Do not add amounts in parentheticals.

Note that without the add back provision, Customer C would receive a total of $275; with the add back, however, Customer C would only receive $240, a difference of $35. As a result, without an add back each of the other customer's shares would be correspondingly reduced. (§ 190.07(b)(4)).

Step 5—Correction for Subsequent Events

This step in the calculation of net equity constitutes a recognition that certain events subsequent to the initial calculation of net equity would affect the "liability" of the estate to the customer. For example, if an unliquidated claim (*i.e.*, one which was not reduced to judgment) was estimated incorrectly based on new evidence supporting a different valuation, the net equity of the affected customer would be required to be adjusted. (§ 190.07(b)(5)). Of course, all errors in the calculation of net equity must also be corrected. It should be noted that because net equity represents the total liability of the estate to each claimant, the adjustment of net equity with respect to one customer should not affect the net equity of any other customer.

Step 6—Net Equity of Accounts Which Remain Open Subsequent to the Primary Liquidation Date

Of course, in accounts which remain open subsequent to the primary liquidation date equity must continue to be adjusted subsequent to that date. Gains or losses in such accounts for subsequent operations must be added or subtracted dollar for dollar to the net equity obtained for such accounts on the primary liquidation date. (§ 190.07(b)(6)).

Calculation of funded balance.

"Funded balance" is proposed to be computed as of the primary liquidation date and as such should reflect the "bankruptcy loss" attributable to each account. Thus, funded balance would be an estimate of a customer's allowed claim as to any given class of account as of that date. (§ 190.07(c)). Simply stated, the funded balanced of an account is equal to that account's pro rata share of the sum of all funds actually segregated upon the bankruptcy filing date or which are recovered by the trustee for customers and allocated among classes as required in § 190.08(c). The formula for computing a funded balance can be expressed as follows:

$$\text{Funded Balance of Customer A's Futures Account} = \frac{\text{Customer A's futures equity}}{\text{Sum of the aggregated credit equity balances of all customer's futures accounts (including that of Customer A)}} \times \text{All actually segregated futures funds on the filing date + all funds allocated to futures accounts thereafter + any § 190.07(b)(4) add-back}$$

For example, assume that the debtor has four customers: A, B, C and D on the filing date and that Customer A has a leverage account equity of $100 and a futures account equity of $300; Customer B has a futures account equity of $200; Customer C has a futures account equity of $100; and Customer D has a futures account equity of $400. On the same date, there is $600 in segregation for futures customers. Also assume that profits of $100 earned prior to the primary liquidation date are required to be allocated to the futures customer estate upon liquidation of all accounts.

Example #1:

$$\frac{\text{A's futures balance}}{\text{Futures balances of A+B+C+D}} \times \text{segregated funds on the filing date} + \text{funds required to be segregated thereafter} =$$

$$\frac{\$300}{\$300+\$200+\$100+\$400} \times (\$600+\$100) = \frac{\$300}{\$1,000} \times 700 = \$210$$

This example assumes no transfers prior to the primary liquidation date. If an add back of funds is required because of such transfers, the calculations are more complicated, as illustrated in Example #2.

Example #2

Assume $210 is transferred with respect to Customer A prior to the primary liquidation date. Under the Code, it would be improper to prorate B's, C's and D's claims using $90 as A's claim, because A will already have received $210 and B, C and D will have received nothing. Therefore, to find the funded balance for B, C, and D, A's claim is deemed to be the same as in Example #1 above, or $300. Therefore, not only A's share, but also B's, C's and D's share of the estate will be the same in this Example as in Example #1, *i.e.*, A's funded balance will still equal the $210, which A has already received.

Just as a customer's net equity claim may be affected by subsequent events, funded balance must also be corrected as of the primary liquidation date, not only for the recovery of property or the erroneous estimation of claims, but also for disallowed claims of other claimants or for the addition of claimants. The latter two adjustments must be made to funded balance and not net equity because, while net equity is based only

on liabilities of a single customer, funded balance, as a pro rata share of assets, may be affected by the addition or subtraction of claims. Moreover, to the extent deficits in open accounts cannot be fully adjusted by prorating them among open accounts, the funded balance of all net equity claims must be adjusted. (§ 190.03(c)(2)).

As in the case of net equity claims, the funded balance of accounts which contain open positions after the primary liquidation date must be directly adjusted to reflect gains or losses in each such account. Under these rules, adjusted funded balance should equal an account's pro rata share of the estate on the primary liquidation date, corrected for subsequent events and adjusted to reflect the activity which occurs in that account thereafter on a dollar for dollar, rather than, a pro rata basis. Although it may be fair and necessary to spread the losses to customers due to the debtor's undersegregation or to the forced liquidation of commodity positions which would not be eligible to remain open pursuant to customer instruction, there is little justification for requiring customers to share losses attributable not to the bankruptcy itself, but to the instructions of another customer. (§ 190.07(d)).

Valuation. These proposed regulations would establish how the trustee should value the property of the estate which is included in customer property. (§ 190.07(e)).

Principal Contracts. The Commission believes that a trustee will require direction in valuing contracts which are not traded on exchanges or in established secondary markets. In this connection, the Commission is proposing two special rules, one for the valuation of leverage contracts and one for the valuation of dealer options. (§ 190.07(e)(2)).

Dealer Options. The Commission staff has been developing proposed regulations with respect to dealer options which would require that the offerors of such contracts designate a particular spot price series for the commodity on which the granator proposes to issue options which shall be used in assessing such grantor's compliance with certain proposed segregation, financial and repurchase requirements.[86] This designated "cash price series", if available, must be used by the trustee in bankruptcy and in turn by the court in valuing such commodity contracts. Because the Commission's proposed regulations for dealer options have not been adopted, the Part 190 regulations would also suggest a basis for valuing such principal contracts where there is no designated cash price series in effect. § 190.07(e)(2)(ii). In such a case, the Commission's proposed rule would require that the value used for the underlying physical commodity be the lesser of (i) the market value of that commodity on the local cash market or (ii) the nearby delivery month price on a contract market which is the closest geographically to the commodity broker's principal place of doing business. The market value of the underlying commodity determined in a manner consistent with these proposed regulations can then be used to compute the value of the contract.

The valuation of dealer options also presents some additional problems. Proposed regulation § 190.06(f) would require the transfer of any dealer option contracts which had been marketed through a bankrupt FCM, if the dealer option grantor is not bankrupt. Transfer of a dealer option contract in such a case could be made, notwithstanding the fact that the FCM had not segregated sufficient funds to fully perform the contract upon exercise of the option. If, however, the dealer option grantor is itself bankrupt, these proposed rules would require the liquidation of the options which it has granted. In the case of the grantor's bankruptcy, the underlying obligor on the contract would ordinarily be unable to fully perform the option it has granted if the customer chooses to exercise the option. In determining how dealer option contracts should be valued, the Commission has decided to propose a method of valuation which would partially recognize their time-value.

The valuation proposed is intended to prevent a customer from receiving a better return if the option dealer is bankrupt than if it is solvent. This proposed method of valuation would result in a refund of a portion of the premium to customers for whom the in-the-money portion of the option, if any, did not exceed the premium.

The Commission's regulations require the segregation of the premium and of the amount by which the in-the-money amount exceeds the premium.[87] Rather than create a priority claim for funds which are not required to be in segregation (assuming this were possible under the Code), the proposed rules would require that the "customer property" value of a dealer option be a portion of the amount required to be segregated. The option purchaser could, of course, still attempt to claim the additional time value, if any, as a general creditor. The available models for determining time value, however, do not lend themselves to the assertion of a customer claim because of the many variables they incorporate.

The Commission, in proposing this formulation for valuing options, has rejected the view that the trustee be required to hold open all existing dealer options to determine their value until their expiration or exercise. Under this proposal, options would be valued on the primary liquidation date, at the greater of the in-the-money amount or the prorated value of the premium, if they are in-the-money, or in the trustee's discretion at an amount equal to the prorated value of the premium or to a premium recently paid for a similar option if they are not in-the-money.

For example, assume that on January 1, 1980, Customer A purchased an option to purchase 5,000 ounces of silver at $15 per ounce on or before December 31, 1980 for a premium of $7,500. Assume also that, on April 1, the dealer option grantor filed in bankruptcy and that on that day silver was selling for $18. The in-the-money amount on that date would be $15,000. To prorate the premium, the formula is as follows:

$$\frac{\text{number of days remaining in period}}{\text{total number of days in option period}} \times \text{premium} = \frac{\$275}{365} \times \$7,500 = \$5,650.68$$

In this example, the dealer option would be required to be valued by the trustee at the in-the-money of $15,000 which exceeds the prorated remainder of the premium. If the value of silver on April 1 was $16, the in-the-money amount would be $5,000 and the prorated value of the premium would be $5,650.68, as in the previous example. In this case, the option would be valued for bankruptcy purposes at the prorated value of the premium.

If the value of silver was $14 on April 1, the option would be out-of-the-money. The value of the option under these proposed regulations would then be the prorated value of the premium ($5,650.68) or in the trustee's discretion, the amount of a premium recently paid for a similar option. The trustee would probably elect to use a recent premium, if such premium were less than the prorated value of the premium paid by the customer. In this case, the recent premium should more nearly reflect actual market value.

[86] Proposed § 3.15(a)(5), 46 FR 23469, 23486 (April 27, 1981).

[87] 17 CFR 32.6, 32.12. *See also* 46 FR 23469, 23480 (April 27, 1981).

Leverage Contracts

The proposed rules would provide that if the leverage transaction merchant's records were not adequate to substantiate customer claims for profits in their contracts, the net equity of such customers would be computed based upon restitution of the amount of money advanced by the customer to purchase the contract. (§ 190.07(e)(2)(iv)).

Illegal Contracts

In addition to principal contracts, there are several other categories of contracts which pose valuation problems. One example is a so-called illegal contract. Some firms which deal in such contracts may even be registered with the Commission in some capacity and may be in partial compliance with Commission regulations.[88] However, usually the records of such firms are in disarray and there is a substantial likelihood that the firm may not have executed a good portion of the trades it received. Under ordinary contract law, illegal contracts can be rescinded and the parties returned to their positions prior to contracting. For these reasons, to the extent a customer priority is extended to customers of firms which deal in illegal contracts or which bucket contracts, it is the Commission's view, here proposed by rule, that customer claims should be based on a net equity figure which approximates "rescission" or "restitution" and not a claim for recovery of profits. (§ 190.07(e)(3)).

Securities and Other Property

Under proposed rule 190.07(e)(4), securities would be valued either by their exchange or over-the-counter value, in conformity with the way they would be valued as a matter of practice by the Securities Investor Protection Corporation,[89] or in the case of securities which are not publicly traded, by appraisal. All property valued by the trustee would be valued using such professional assistance as was necessary under the circumstances. The value of property which is sold would be equal in all cases to the net proceeds of sale, subject to any applicable rules of bankruptcy and other applicable rules or laws. (§ 190.07(e)(5)).

Allocation of Customer Property

Proposed rules § 190.08(a) through (c) would define the scope of customer property and would allocate property to each class of customer and for each account class. These rules are intended to (1) describe the property entitled to a customer priority, (2) subordinate claims for non-public customers for which no property is required to be segregated under the Act and the Commission's regulations to claims of public customers for which property is so segregated, (3) allocate property to the estate of the account class for which it is segregated or to which it is traceable, and (4) equalize the percentage of monies recovered by each account class.

Scope of Customer Property. The Code permits the Commission to determine by regulation how far the net may be cast to return customer property to the debtor's estate.[90] Consistent with the Act, the Commission's proposed definition of customer property makes clear that the property available for distribution to customers in priority to creditors is not limited to property which is actually segregated for the benefit of customers. For example, property may be part of the customer estate, whether located in a segregated account or elsewhere,[91] if it is specifically identifiable to a particular customer, or if it is a security and is found among the debtor's general funds or catalogued in the debtor's records to the extent there are customer claims for a security of the same type.[92] This approach is consistent with existing legal precedents concerning the tracing of property. For example, the Supreme Court has held that:

> It is * * * unnecessary for a customer, where shares of stock of the same kind are in the hands of a broker * * * to be able to put his finger upon the identical certificates of stock purchased for him. It is enough that the broker has shares of the same kind which are legally subject to the demand of the customer.[93]

The proposed definition of customer property also includes transferred or withdrawn property which would otherwise be customer property which is recovered through the trustee's exercise of its avoidance powers,[94] recoveries of debit balances in customer accounts (*i.e.*, customer property owed to the customer estate by customers of the debtor), and property generated from the investment of customer property by the trustee pending distribution of the estate. This expansion is necessary to make clear that property received by the trustee in bankruptcy (as well as property received by the debtor) which would have been customer property if received by the debtor, is to be included in customer property. Recoveries by the bankrupt of property that should have been customer property but for the bankruptcy should not benefit general creditors except to the extent customer claims have been satisfied in full and customers have no further claim against the debtor's estate.[95]

Customer property would also include converted property that is recoverable by the trustee in its discretion. The language of the proposed regulation in this regard is identical to that of the Code and is intended to make clear that to the extent property can be traced and restored to the customer estate, the trustee should attempt to trace and restore it, provided that the estate would be reasonably augmented as a result. Additionally, customer property could include customer property recovered by the Commission in any enforcement action, including one which seeks disgorgement of profits from the principals, agents, or employees of the debtor. Thus, the trustee's efforts to restore funds to the "customer estate" may be complemented by judgments secured in governmental enforcement actions which are permitted to continue after bankruptcy.[96]

Finally, the proposed definition would establish by rule, the presumption known as the "Rule of *Knatchbull* v. *Hallett*"[97] which is commonly employed to recover from a trustee monies or property which have been converted or misappropriated from a trust. This rule, originated by the English courts, presumes that where a wrongdoer

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[88] For example, as a commodity trading advisor.

[89] Under SIPA, net equity claim is *not* valued on liquidation, but rather at an artificial assumed liquidation on the filing date.

[90] 7 U.S.C. 24(a)(1).

[91] Note that the customer estate in the first instance would include all property in segregation, including the debtor's residual interest, if any. *See* 17 CFR 1.23. *See, e.g.*, § 190.08(a)(2)(i).

[92] It is not necessary to deal specifically with open positions of the debtor which are of the same type as those claimed by customers, because all profits in the debtor's trading accounts will be treated as customer property if there is a shortfall in segregation to cover customer claims. These profits will be payable to customers without the need for tying them to specific positions. It is not necessary to deal with such positions to permit their transfer to customers under Section 766 of the Code because proprietary positions will be required to be liquidated with the proceeds, if any being disbursed in cash.

[93] Gorman v. Littlefield, 229 U.S. 19, 24, 25 (1912).

[94] This approach is mandated by the Code itself. *See* 11 U.S.C. 764(a).

[95] This approach is also consistent with the approach taken by the securities subchapter of the Bankruptcy Code which in the definition of customer property states that customer property includes: "(iii) resources provided through the use or realization of a customer's debit cash balance * * *" 11 U.S.C. 741(4)(A)(iii), and permits the augmentation of the customer estate from certain funds received subsequent to the order of relief.

[96] *See* 11 U.S.C. 362(b) (4), (5).

[97] In re Hallet's Estate, 13 Ch. Div. 696, cited with approval in 3 Collier (Part 2), *On Bankruptcy*, ¶60.75 at 1196 (14th ed. 1979). *See also* Scott, *The Right To Follow Money Wrongfully Mingled with Other Money*, 27 HARV. L. REV. 125 (1913).

commingles his own funds in a bank account with those of another person and thereafter makes withdrawals from that account, the wrongdoer withdrew his own funds first.[99] The authority to establish such a presumption was implicit in the rule-making authority conferred on the Commission by Congress.[99] The notion of a specific fund of customer property serves to assure that no creditor of a customer can create a security interest in customer property superior to the claim of the customer itself.

Customer property would include any property received, acquired or held by or for the account of the debtor from or for the account of the customer such as margin payments, open positions, warehouse receipts, cash commodities, claims for unrealized as well as realized profits,[100] and contract claims (such as damages for non-delivery). Letters of credit are singled out for special treatment because the Commission believes that it is important to make clear that the full value of a letter of credit posted as margin would be drawn in the event of a bankruptcy and the full proceeds thereof would be treated as customer property. Similarly, the full value of securities hypothecated as margin less any loan proceeds would be treated as customer property.

Additionally, all premiums paid to purchase commodity contracts which are options are proposed to be included in the definition of customer property. The discussion concerning the calculation of net equity explains how premiums with respect to dealer options would be distributed.

The proposed definition of customer property does not include claims for rescission, misrepresentation, fraud, or for other unlawful conduct of the commodity broker which does not constitute a misappropriation of funds, nor for recovery of trading losses. Certain claims for reparations under section 14 of the Commodity Exchange Act would fall into the category of general creditors' claims and would not be claims entitled to customer priority. This exclusion would be consistent with the historical treatment of similar claims under the securities provisions of the Bankruptcy Act and under SIPA.[101] Similarly, any claims, such as general liability claims, which are not based upon recovery of property deposited in a commodity account would not be treated as customer claims. The regulations would also make clear that property received to open new accounts after the date of the order of relief would not be customer property. This means, however, that money received to margin existing positions after that date would be customer property as would be new account money received prior to entry of the order of relief. This is intended to correct the result reached in a recent case.[102]

The Commission expects that the most difficult problems in recovering funds which are not properly segregated for commodity customers will arise in joint commodity broker-securities dealer bankruptcies. For example, if cash is diverted to securities accounts, it would not be traceable to commodity customers under ordinary tracing rules. Moreover, if customer securities are diverted and hypothecated, there may be a proliferation of claims with respect to the same securities.

The Commission has determined that the problems of a joint commodity broker-security dealer bankruptcy may not lend themselves to any regulatory solution other than the establishment of a presumption which permits the following of diverted funds into the debtor's general estate. It appears to the Commission that the problems presented by the bankruptcy of a joint commodity broker-security dealer are best handled on a case-by-case basis because of the difficulty of adequately anticipating the issues which will need to be addressed, the likelihood that each such bankruptcy will be unique, and the many different and competing interests involved.

Allocation of Property Between Customer Classes. Proposed § 190.08(a) would subordinate the claims of non-public to those of public customers in a commodity broker bankruptcy. Section 1.3(y) of the Commission's regulations provides that the individual commodity accounts of a general partner and certain limited partners, an officer, director or owner of more than ten percent of the capital stock, or certain employees of a commodity broker must be treated as "proprietary," or nonpublic customer accounts. Section 4d(2) of the Commodity Exchange Act[103] and the regulations promulgated thereunder,[104] in conjunction with the definitions contained in Commission rules 1.3(k) and (y)[105] require the segregation of only those funds received for, or on behalf of, a public customer (*i.e.*, non-proprietary accounts).

Because the same statutory and definitional provisions read together also make it unlawful for a futures commission merchant to commingle insider and public customer funds, "customer," as used in the Code should not be construed to permit insiders for whom no funds are segregated to share ratably in the funds which were segregated on behalf of public

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[99] The rationale for the rule is twofold: first, that because it would be dishonest for a trustee to use the trust funds as his own, the trustee should not be presumed to use the trust funds rather than his own funds; and, second, that any wrongful use of funds by a trustee should not be presumed to reduce the trust beneficiary's claim to the balance of the trust.

An example of the presumption follows. The debtor has $2000 in segregation, trading accounts worth $500, typewriters worth $2000 subject to perfected security interests of $1000. Against the debtor are asserted public customer claims in the amount of $3000 and non-public claims of $1000.

First, the customer estate would be computed as follows: $2000 (funds in segregation) plus $1500 (an amount equal to the value of the assets in the general estate after the satisfaction of prior security interests). The resulting $3500 estate would be sufficient to satisfy all customer claims. However, payment of public customer claims would consume almost the entire estate. If non-public customers can directly trace and recover other monies, these can also be recovered. If not, non-public customers will stand as general creditors for $500 to the balance, if any, remaining in the debtor's estate after the computation of customer property and satisfaction of public customer claims. This approach is consistent with the intent of the Code and should not conflict with any other law.

It also should be noted that if non-public customers are implicated in wasting estate assets or in the conversion of customers' funds, their priority over general creditors could be suspended by the court under 11 U.S.C. 510(c)(1) which permits the subordination of any allowed claim to another claim, or could be totally disallowed by the court under 11 U.S.C. 502(d).

[99] 7 U.S.C. 24(a)(1).

[100] The allowance of claims for profits raises a number of potential problems. Foremost among these is the question of how to treat customer claims for profits where the customer claim itself is substantiated only by evidence in the customer's hands and not on the books of the debtor, e.g., a claim for bucketed or converted monies. It is the Commission's initial view that customer claims should be limited in such cases to claims for recovery of the amount invested. See §190.07(e)(3).

[101] Pub. L. No. 91-598, 84 Stat. 1636 (1970) (codified at 15 U.S.C. 78aaa-*lll et seq.*). *See, e.g.*, SEC v. S. J. Salmon & Co., Inc., 375 F. Supp. 867, 871 (S.D.N.Y. 1974) where the court stated that "this statutory scheme was designed to facilitate the return of property of customers of insolvent brokerage firms or, where that could not be done, to reimburse such customers if their property had been lost or misappropriated." Claims for fraud were to be treated as general creditors' claims. *See also id.* at 870 referring to the bankruptcy court's finding that a claim for rescission was not a "customer claim."

[102] Koci v. Freehling, In Re Bengal Trading [CCH] Comm. Fut. L. Rep. [1977-80 Transfer Binder] ¶21,231 (1981). In this case the court suggested that any money received after a company would have been required to transfer accounts under Commission Rule 1.17(a)(4) would not be customer property. This reasoning fails to take account of the fact that a company required to transfer accounts may not be insolvent and that in each of the FCM bankruptcies the Commission has monitored a § 1.17(a)(4) transfer would have been required months before the entry of an order of relief or even of a bankruptcy filing.

[103] 7 U.S.C. 6d(2).

[104] 17 CFR 1.20-1.30.

[105] 17 CFR 1.3 (k) and (y).

customers. If insiders are permitted to share in the pool of property segregated on behalf of public customers, then there will almost always be a shortfall of funds available to satisfy public customer claims upon the bankruptcy of a firm which has both tyes of customers. To eliminate any possble doubt on this matter, § 190.08(b) makes the preference of public customers express.[106]

Allocation of Property Among Account Classes

Proposed rule 190.08(c) similarly deals with how property should be allocated among account classes. In the first instance, all property segregated on behalf of a particular class would be allocated to the class on behalf of which it is segregated. This approach is consistent with the fact that differing segregation requirements exist for different classes of accounts. Obviously, much of the benefit of segregation would be lost if property segregated on behalf of a particular account class could be allocated to pay the claims of customers of a different account class for which less stringent segregation provisions were in effect.[107]

After assigning property which is segregated (or otherwise traceable) to the class for which it is segregated or to which it is traceable, § 190.08(c)(2) would require the allocation of any property not so identified or traceable so as to equalize the percentage of each claim for each class of accounts. Such property must be allocated first to the account class for which the funded portion of claims is lowest until the funded portion of claims for this class equals the funded portion of the class with the next lowest percentage of funded claims. Subsequently, property would be allocated proportionately to these two classes until the funded portion of claims for both classes equals the funded portion of the claims for the class with the next lowest funded portion of claims; and so forth. Of course, as discussed above, property would first be allocated according to these principles to public customers and thereafter would be allocated in the same order to non-public customers.

An example of the allocation calculations follows:

First assume three classes of accounts which after allocation of segregated funds are funded partially:

Customer account class	Claims	Segregated	Percentage funded
Options	$4,000	$2,000	50
Futures	8,000	7,000	87.5
Foreign futures	3,000	1,000	33.3

Next, assume recovery of $2,000. According to § 190.08(c)(2), a sufficient portion of the $2,000 must first be allocated to foreign futures to make the percentage of claims for such class that are funded equal 50%. Therefore $500 of the $2,000 would be allocated to foreign futures as follows:

Customer account class	Claims	Segregated and allocated	Percentage funded
Options	$4,000	$2,000	50
Futures	8,000	7,000	87.5
Foreign futures	3,000	1,000	50

Unallocated remainder = $1,500.

To make all classes 87.5% funded an additional $2,625 is necessary, but only $1,500 is available. Therefore that $1,500 must be allocated to options and futures so as to preserve an equal percentage of funded claims.

This would be accomplished as follows:

Options

$$\text{Allocation} = \frac{\$4{,}000 \text{ claims for options}}{\$7{,}000 \text{ claims for options and foreign futures}} \times \$1{,}500 = \$857.14$$

Foreign Futures

$$\text{Allocation} = \frac{\$3{,}000 \text{ claims for options}}{\$7{,}000 \text{ claims for options and foreign futures}} \times \$1{,}500 = \$642.86$$

Therefore each account would receive funds as follows:

Customer account class	Claims	Allocated	Percentage funded
Options	$4,000	$2,857.14	71.4
Futures	8,000	7,000	87.5
Foreign Futures	3,000	2,142.86	71.4

Proposed § 190.08 further deals with the allowance of claims by providing rules for: (1) The return or transfer of specifically identifiable property other than a commodity contract, (§ 190.08(d)(1)); (2) the transfer of a specifically identifiable open commodity contract upon customer instruction, (§ 190.08(d)(2)); and (3) the return in kind of specifically identifiable property which has been previously liquidated. (§ 190.08(d)(3)).

These regulations are proposed in order to facilitate achievement of the equitable distribution goal of the Code. As the Code prohibits the return of property which exceeds a customer's allowed pro rata share, it would be possible to take the position that property may never be returned in advance of the "final net equity determination date"—the date on which a customer's net equity and, hence proportionate share, of the bankrupt estate—is finally determined by the court. The Bankruptcy Act, however, seems to contemplate that specifically identifiable property may be returned at an earlier time.[108] In such a case, no good estimate of such customer's pro rata share of the estate may be available. As a result, it may not be possible to determine with any certainty the amount of money, if any, which must be deposited with the estate to cover the amount by which the return of the property would exceed the customer's share. Because a trustee would presumably be liable for any discrepancy between a payment to a customer and that customer's share of the estate which was not ultimately recovered, trustees may be unwilling to permit a return of property prior to a final net equity determination. These regulations would propose a compromise. They would permit the return of property prior to the final net equity determination date, but only if, on the date of its return, the customer deposits with the estate cash in the amount of the fair market value of the property to be returned.

If the specifically identifiable property which the customer is seeking to recover has been pledged or hypothecated either as security for a loan of the delivery price of a contract to the debtor on behalf of the customer or for any other loan,[109] including a loan of margin, on behalf of the customer, and the value of the property is less than the balance due on the loan, the property will be recoverable only upon repayment of the difference by the customer. This proposal serves two purposes: first, it would prevent the customer from receiving a value in excess of its actual claim against the debtor; and, second it should enable the lender to release the security to the trustee for redelivery because the lender's security interest

[106] *See* note 7 *supra* which concerns Congress' intent that there be a separate estate for each class of customer.

[107] *Compare* rules requiring segregation for futures customers (17 CFR 1.20–1.30) *with* the lack of segregation requirements respecting foreign brokers.

[108] *See, e.g.*, 11 U.S.C. 761(17)(B).

[109] *See e.g.*, 17 CFR 1.30.

should attach to the cash proceeds delivered to the trustee.

The Commission's approach to specifically identifiable property which are not open commodity contracts would permit a trustee in bankruptcy to exchange one kind of property contained in the debtor's estate with another kind of equal value. Such an exchange should not change the customer's economic position *vis-a-vis* the debtor or the debtor's position *vis-a-vis* the customer. As the debtor's estate would not be depleted, and might even be enhanced by the exchange, the offset of any debts owed by the customer to the debtor would not have to be made at this time.

Although it may be possible to permit the customer to deposit less than the full fair market value of property returned to the trustee prior to the final net equity determination date (based upon an estimate of the property available for distribution), as a practical matter, the trustee ordinarily will not have received all customer claims, and may not be able to estimate the extent of the claims against the debtor. Some claims may not even be reflected in the debtor's records. Specifically identifiable property would be required to be liquidated if it is not returned on the basis provided herein. Of course, if the specifically identifiable property were securities the customer could still request a return of property in kind when his final distribution share is known. (§ 190.08(d)(3)).

Transfer of Specifically Identifiable Commodity Contracts. To procure the transfer of specifically identifiable commodity contracts, an amount must be deposited in cash with the trustee which equals the difference between the customer's estimated pro rata share of the estate and the equity to be transferred less any hold back the trustee may in its discretion require to accommodate administrative expenses. As in the case of other specifically identifiable property, open contracts would be required to be transferred very early in the bankruptcy distribution, if they were to be transferred upon instruction. (*See* 190.02(b)(2)).

Because the preservation of hedged positions is one of the primary purposes of the Code, these rules would provide more flexible requirements for transferring contracts than for the return of other property.

Return of Like-Kind Securities. Proposed § 190.08(d)(3) would enable the trustee to deliver like-kind securities to a customer in the amount of its allowed net equity claim. This rule would permit the customer to receive a return of its securities in kind if the value of all its securities would exceed its pro rata share, and it does not have sufficient funds available to deposit the cash difference.[110] As stated in the legislative history to the recent amendments to SIPA, this approach may permit some customers to avoid unfavorable tax consequences which could result from the untimely liquidation of property and delivery of the cash proceeds.[111]

The following example illustrates the interplay of proposed § 190.08(d) (1) and (3). A customer has a net equity claim of $4,000 based upon IBM stock held by the debtor on his behalf. The aggregate of customer claims against the estate of the debtor is $30,000 and the estate contains only $25,000 of property which is considered to be customer property under the Bankruptcy Act. The customer's allowed net equity claim would then be equal to $4,000/$30,000 × $25,000, or $3,333. To recover the $4,000 worth of IBM shares, prior to their required liquidation under these rules, assuming such shares were specifically identifiable, the customer would be required by the Code and these regulations to pay $4,000 to the trustee.[112] If, however, the shares had been pledged to secure a loan to the debtor on behalf of the customer, or to the customer, with a balance due in the amount of $4,050 the customer would be required by the Code and § 190.08(d)(1) to post $4,050 with the trustee to recover the shares. In the alternative, pursuant to § 190.08(d)(3), the customer could wait until an interim or final distribution and request the trustee at that time to deliver $3,333 worth of IBM stock by purchasing $3,333 worth of similar shares, or a proportionate amount thereof.

[110] The concept of restoration of property in kind has a long history and was most recently made possible in securities liquidations by the 1978 amendments to SIPA. Section 8(d) of that Act, 15 U.S.C. 78fff-2(d), provides:

> The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 7(b)(1) and for the transfer of customer accounts under subsection (f), in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c), customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advance by SIPC under the provisions of section 9(a).

See also section 8(b)(2) of SIPA, 15 U.S.C. 78fff-2(b)(2).

[111] S. Rep. No. 95-763, 95th Cong., 2d Sess. 2 (1978).

[112] 11 U.S.C. 766 (c) and (d); § 190.08(d)(1)(i).

Disbursements

Proposed rule § 190.08(d)(5) makes clear that the allocation regulations are not intended to prevent preliminary distributions which are approved by the court. The Commission, however, believes that no differential distributions should be made.[113]

Member Property

The Code describes a customer of a clearing organization as an entity "with whom the debtor deals and that holds a claim against the debtor on account of cash, a security, or other property received by the debtor to margin, guarantee, or secure a commodity contract in such * * * [entity's] proprietary account or customers' account" [114] (*i.e.*, as a "clearing member").[115] Although the Code defines "member property," [116] authority is conferred on the Commission to provide by rule or regulation that certain property is to be "included in or excluded from" that definition.[117]

The inclusion or exclusion of property in the definition of member property is of considerable consequence because the Code provides that in the event of a bankruptcy of a clearing organization, so-called "customer property," which in that situation is based on clearing member accounts, will be divided into customer and member property, with property held on behalf of the clearing member's customers constituting the former. Customer property would then be distributed based on an allowed net equity claim for each clearing member's customer accounts, and member property would be distributed based on an allowed net equity claim for each clearing member's proprietary accounts.[118]

In this connection, proposed rule § 190.09(b) would treat any portion of a guaranty deposit or other security

[113] In the case of Incomco, Inc., an FCM which filed for bankruptcy August 1, 1980, a preliminary distribution of 20% was made under court supervision. Customers receiving payments agreed in writing to indemnify the trustee and the estate against overpayments and submitted to the jurisdiction of the bankruptcy court. The trustee also augmented his fidelity bond of $500 to $250,000. It is the Commission's view that in some cases individual customer indemnifications may not constitute security to the estate for overpayments because of the possible difficulty of collecting them in the event of an actual overpayment.

[114] 11 U.S.C. 761(9)(D).

[115] *See* 17 CFR 1.3(c).

[116] [C]ustomer property at any time received, acquired, or held by or for the account of a debtor that is a clearing organization, from or for the proprietary account of a customer that is a clearing member of the debtor. 11 U.S.C. 761(16).

[117] U.S.C. 24(a)(1).

[118] 11 U.S.C. 766(i).

deposit or membership of a member not needed to satisfy its obligations to the clearing organization, as customer rather than member property to the extent that there was insufficient segregated property to satisfy claims based on clearing members' customer accounts. This would mean that clearing members would to that extent insure not only their own performance, but also all of the obligations of the clearing organization to the customers of its members in the event of that clearing organization's bankruptcy. Because the clearing organization is a membership organization which acts as a mechanism whereby the members effectuate commodity trades for customers as well as for themselves, the Commission believes that creating such a responsibility for payment of the clearing members' customers is reasonable.

General

Notices. Proposed rule § 190.10(a) indicates that all notices must be delivered to the Washington, D.C. Office of the Commission for the attention of the Director of the Division of Trading and Markets, and must be made by a telegram or similar form of communication. The Commission believes this rule is necessary to assure that the time frames for giving customer instructions are not made logistically impracticable because of their dependence on the regularity and timeliness of mail deliveries.

Disclosure Rule. Proposed rule § 190.10(b) is intended to advise customers who deposit non-cash margin of their rights to its return upon the bankruptcy of the commodity broker. The Commission believes that there is a need for this special disclosure provision because a customer who, for example, deposits gold or IBM shares to margin a commodity contract may have the expectation that its right to the return of such property would be unaffected by the pro rata provisions of the Bankruptcy Act. Such an expectation would not be unreasonable in view of the prior treatment of specifically identifiable securities in the bankruptcy of securities firms. In order to keep paper work in this connection to a minimum, the disclosure need only be made one time to each customer. Retention of an acknowledgment of its receipt would be required for the greater of the period prescribed in rule 1.31 or the duration of the customer's account.[119]

Forward Contracts. An entity whose sole claim against the debtor is based on a forward contract is specifically excluded from the definition of "customer of a commodity broker." Although this exclusion is implied by the definition itself, the Commission is proposing to expressly exclude such contracts from the special protections accorded to customers by these proposed regulations because forward contract merchants and forward contracts are specifically addressed in sections 362(b)(6) and 546(d), respectively, of the Bankruptcy Code. (§ 90.10(c).)

Regulatory Flexibility Act Certification

Proposed Part 190 establishes rules which, with the few exceptions described below, do not become operative until the filing of a petition in bankruptcy. As such, although firms may decide to adjust their business practices so as to obtain the most favorable treatment in the event of bankruptcy, there is nothing in the proposed rules themselves which would compel firms handling customer accounts to take any action prior to the institution of a bankruptcy proceeding except to make a one-time disclosure to customers posting specifically identifiable property as margin and to identify in their records hedged accounts for which there is a freeze upon liquidation. Although the rules may affect the small-business customers of a bankrupt commodity broker, these effects are restricted to defining such customers' priority in a bankruptcy distribution more fully and as such, would not affect such customers' operations. The rules come into play for the most part upon bankruptcy and merely further elucidate a distribution plan set forth in the Bankruptcy Act.

The proposed rules would, however, require each self-regulatory organization ("SRO") to conform its existing rules regarding the transfer of accounts from insolvent firms and to develop rules concerning deliveries from or to bankrupt estates which are consistent with the rules contained in this Part. It is not anticipated that Part 190 will materially alter the current practice of such SROs except to permit transfers under certain circumstances subsequent to the actual filing of a bankruptcy petition. Under prior law, no account transfers subsequent to bankruptcy could be effected without the consent of the trustee. Under the new Bankruptcy Act, certain transfers which occur after the filing of a bankruptcy petition may be insulated by the Commission from avoidance by a trustee in bankruptcy. This is a major relief provision. The cost of making rule changes, which ordinarily should be limited to legal and administrative costs would be far outweighed by the benefits of assuring that effective mechanisms for making deliveries and transfers in the event of the insolvency of a major firm are in place so as to prevent liquidations of open contracts from unusually depressing the commodity markets or major delivery defauts. The requirement that SROs adopt complementary implementing rules is also intended to maximize the responsibility of self-regulatory organizations upon bankruptcy and to limit the needed intervention of the Commission, thus insuring that the duration of the agency decision-making process will not in itself adversely affect the opportunity for customers to continue certain of their commodity positions with a transferee firm as contemplated by the Bankruptcy Act in the event of the bankruptcy of their current broker. In this connection the Commission has proposed to define the term "small entity" as permitted under the Regulatory Flexibility Act to exclude FCMs and contract markets.[120] *A fortiori*, then, SROs are associations of firms and individuals and, therefore, are not small businesses as such.

The flagging in an FCM's records of hedged accounts with a freeze on liquidation in the event of bankruptcy will involve a very minor computer or recordkeeping change. Such flagging will assure the prompt liquidation of hedges which customers desire to be liquidated in such circumstances, and will considerably reduce the number of customers for which the trustee is obligated to evaluate customer instructions, thus reducing the administrative expenses of the estate.

Finally, the new document which rule § 190.10(b) would require an FCM to maintain is a disclosure statement which would inform customers of the treatment of certain types of property in the event of a bankruptcy. It is a short statement. The Commission believes that this disclosure is necessary because most customers do not consult lawyers before purchasing commodity contracts, and because the disclosed treatment of certain property may be contrary to these customers' reasonable expectations. It need only be given to customers posting property other than cash as margin and it need only be given once to each customer.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this rule, if promulgated, will not have a significant

[119] 17 CFR 1.31.

[120] 46 FR 23940, 23941 (April 29, 1981).

economic impact on a substantial number of small entities. However, the Commission particularly invites comment from any small firms which believe that the promulgation of this rule will have such an impact.

Paperwork Reduction Act

In accordance with section 3504(h)(1) of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2817 (44 U.S.C. 3504(h)(1)), proposed rules 190.04(e)(1), 190.06(b), 190.06(d), 190.10(a), and 190.10(b) which contain the collection of information and recordkeeping requirements necessary to implement the Bankruptcy Act were submitted to the Director of the Office of Management and Budget concurrently with their publication in this **Federal Register** notice.

Public Comments

The Commission recommends that, where possible, persons submitting comments on this proposal identify the specific sections of the rule with respect to which their comments are being made to assist the Commission in reviewing the comments and responding thereto.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, as amended, and in particular sections 2(a)(1), 2(a)(11), 4c(d), 4d, 8a and 19; 7 U.S.C. 2 and 4, 6c(b), 6c(d), 6d, 12a and 24 (1976 and Supp. III 1979), and pursuant to certain other authority contained in the Bankruptcy Reform Act of 1978, and in particular 11 U.S.C. 761(17), 764(b), and 766, the Commission hereby proposes to amend chapter 1 of Title 17 of the Code of Federal Regulations by adding a new Part 190, as follows:

Part 190 is proposed to be added to 17 CFR Chapter I to read as follows:

PART 190—BANKRUPTCY

Sec.

190.01 Definitions.
190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.
190.03 Operation of the debtor's estate subsequent to the primary liquidation date.
190.04 Operation of the debtor's estate—general.
190.05 Making and taking delivery on commodity futures contracts.
190.06 Transfers.
190.07 Calculation of allowed net equity.
190.08 Allocation of property and allowance of claims.
190.09 Member property.
190.10 General.

Authority: Secs. 2(a)(1), 2(a)(11), 4c, 4d, 4g, 5a, 8a and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 2, 4a(j), 6c, 6d, 6g, 7a, 12a and 24 (1976 and Supp. III 1979) and Secs. 761, 764 and 766 of the Bankruptcy Reform Act of 1978, 11 U.S.C. 761, 764 and 766 (Supp. III 1979).

§ 190.01 Definitions.

For purposes of this Part:

(a) "Account class" means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts and commodity options accounts: *Provided, however,* That to the extent that the equity balance of a customer as defined in § 190.07 in a commodity option as defined in § 1.3(hh) of this chapter may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this Part as being held in a futures account.

(b) "Allowed net equity" means the amount calculated as allowed net equity in accordance with § 190.07(a).

(c) "Bankruptcy Code" means, except as the context of the regulations in this Part otherwise requires, those provisions of the Bankruptcy Reform Act of 1978, as amended from time to time, relating to ordinary bankruptcies (Chapters 1 through 5) and to liquidations (Chapter 7 with the exception of subchapter III), together with the Federal rules of bankruptcy procedure relating thereto.

(d) "Business day" means weekdays, not including Federal holidays.

(e) "Clearing organization" shall have the same meaning as that set forth in section 761(2) of the Bankruptcy Code and shall include any organization which clears commodity options which are traded on or subject to the rules of a contract market or a board of trade.

(f) "Commodity broker" means any person who is registered or required to register as a futures commission merchant under the Act including a person registered or required to be registered as such under parts 32 and 33 of this chapter, and a "commodity options dealer," "foreign futures commission merchant," "clearing organization," and "leverage transaction merchant" with respect to which there is a "customer" as those terms are defined by reference to the Bankruptcy Code in this section.

(g) "Commodity contract" shall have the same meaning as that set forth in section 761(4) of the Bankruptcy Code.

(h) "Commodity options dealer" shall have the same meaning as that set forth in section 761(6) of the Bankruptcy Code.

(i) "Court" means the bankruptcy court having jurisdiction over the debtor's estate.

(j) "Cover" shall have the same meaning as that set forth in § 1.17(j) of this chapter.

(k) "Customer" shall have the same meaning as that set forth in section 761(9) of the Bankruptcy Code.

(l) "Customer claim of record" means a customer claim which is determinable solely by reference to the records of the debtor.

(m) "Customer class" means each of the following two classes of customers which must be recognized by the trustee: Public customers and non-public customers.

(n) "Customer property," "customer estate" are used interchangeably to mean the property subject to pro rata distribution in a commodity broker bankruptcy which is entitled to the priority set forth in section 766(h) of the Bankruptcy Code and includes certain cash, securities, and other property as set forth in § 190.08(a).

(o) "Dealer option" means an option granted, offered or sold pursuant to Section 4c(d) of the Act and the Commission's regulations thereunder.

(p) "Debtor" means an individual, association, partnership, corporation, or trust with respect to which a proceeding is commenced under subhapter IV of Chapter 7 of the Bankruptcy Code.

(q) "Equity" means the amount calculated as equity in accordance with § 190.07(b)(1) of this part.

(r) "Filing date" means the date a petition commencing a proceeding under the Bankruptcy Code is filed.

(s) "Final net equity determination date " means the latest of (1) the day immediately following the date on which all commodity contracts held by or for the account of customers of the debtor have been transferred, liquidated or satisfied by exercise or delivery, (2) the bar date for filing customer proofs of claim, or (3) the date following the disposition of all disputed claims.

(t) "Foreign future" shall have the same meaning as that set forth in section 761(11) of the Bankruptcy Code.

(u) "Foreign futures commission merchant" shall have the same meaning as that set forth in section 761(12) of the Bankruptcy Code.

(v) "Funded balance" means the amount calculated as funded balance in accordance with § 190.07(c) of this part.

(w) "Illegal commodity contract" means any commodity contract which is prohibited by sections 4, 4c(a)(B), 4c(c), 4h, or 19 (7 U.S.C. 23) of the Act.

(x) "In-the-money amount" means:

(1) With respect to a call option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option exceeds the strike price of the option; and

(2) With respect to a put option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option is exceeded by the strike price of the option.

(y) "Joint account" means any commodity account held by more than one person and includes any account of a commodity pool which is not a legal entity.

(z) "Leverage transaction merchant" shall have the same meaning as that set forth in section 761(14) of the Bankruptcy Code.

(aa) "Net equity" means the amount calculated as net equity in accordance with § 190.07(b) of this part.

(bb) "Non-public customer" means any person enumerated in § 1.3(y) of this chapter, who is defined as a customer under paragraph (k) of this section.

(cc) "Open commodity contract" means a commodity contract which has been established in fact and which has not expired, been redeemed, been fulfilled by delivery or exercise, or been offset by another commodity contract.

(dd) "Order of relief" means the filing of the petition in bankruptcy in a voluntary case and the adjudication of bankruptcy in an involuntary case.

(ee) "Premium" means the amount agreed upon between the purchaser and seller, or their agents, for the purchase or sale of a commodity option.

(ff) "Primary liquidation date" means the first business day immediately following the date on which all commodity contracts have been liquidated or transferred which are not being held open for later transfer in accordance with § 190.03 of this part.

(gg) "Principal contract" means a contract which is not traded on a board of trade, and includes leverage contracts and dealer options, but does not include transactions executed off the floor of a board of trade pursuant to rules approved by the Commission or pursuant to rules of a board of trade located outside the United States, its territories or possessions.

(hh) "Proprietary account" means any commodity account owned by the debtor.

(ii) "Public customer" means any person defined as a customer under paragraph (k) of this section except a non-public customer.

(jj) "Security" shall have the same meaning as that set forth in section 101(35) of the Bankruptcy Code.

(kk) "Short term obligation" means any security, note, or other obligation with a duration or maturity date of 180 days or less.

(ll) "Specifically identifiable property" means:

(1) With respect to the following property received, acquired, or held by or for the account of the debtor from or for the account of a customer to margin, guarantee or secure an open commodity contract:

(i) Any security which as of the filing date is:

(A) Held for the account of a customer;

(B) Registered in such customer's name;

(C) Not transferable by delivery; and

(D) Not a short term obligation; or

(ii) Any warehouse receipt, bill of lading or other document of title which as of the filing date:

(A) Can be identified on the books and records of the debtor as held for the account of a particular customer; and

(B) Is not in bearer form and not otherwise transferable by delivery.

(2) With respect to open commodity contracts, and except as otherwise provided in paragraph (ll) (5) of this section, any such contract which as of the filing date can be identified in the books and records of the debtor as held for the account of a particular customer.

(3) With respect to warehouse receipts, bills of lading or other documents of title, or with respect to physical commodities received, acquired, or held by or for the account of the debtor for the purpose of making or taking delivery from or for the account of a customer, a document of title or commodity which as of the filing date can be:

(i) Identified on the books and records of the debtor as received from or for the account of a particular customer; or

(ii) Identified to a particular customer by such other evidence of ownership as the trustee may require.

(4) Notwithstanding paragraph (ll)(1) of this section, fully paid securities identified on the books and records of the debtor as held by the debtor for or on behalf of the commodity account of a particular customer for which, according to such books and records as of the filing date, no open commodity contracts were held in the same capacity.

(5) Open commodity contracts transferred in accordance with the provisions of § 190.06.

(6) Except as is otherwise specified in this paragraph (ll), no customer property may be treated as specifically identifiable property.

(mm) "Strike price" means the price per unit multiplied by the total number of units at which a person may purchase or sell the physical commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option.

(nn) "Trustee" means, as appropriate, the trustee in bankruptcy appointed to administer the debtor's estate and any interim or successor trustee.

§ 190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.

Subsequent to the filing date and prior to the primary liquidation date, the debtor's estate shall be operated as follows:

(a) *Notices to the Commission.*—(1) *General.* Each commodity broker which files a petition in bankruptcy, or against which such a petition is filed, shall promptly, but not later than twenty-four hours after the time of such filing, notify the Commission in accordance with § 190.10(a) of the filing date, the court in which the proceedingf has been filed, and the docket number assigned to that proceeding by the court.

(2) *Of transfers under Section 764(b) of the Bankruptcy Code.* On or before the close of business on the third business day after the filing date, the trustee, the applicable self-regulatory organization, or the commodity broker must notify the Commission in accordance with §190.10(a) whether such entity or organization intends to transfer or to apply to transfer open commodity contracts on behalf of the commodity broker in accordance with section 764(b) of the Bankruptcy Code and § 190.06(e) or (f).

(b) *Notices to customers.*—(1) *Specifically identifiable property other than commodity contracts.* Not later than twenty-four hours after the entry of an order of relief with respect to a commodity broker, the trustee must publish for two consecutive days, in a daily newspaper or newspapers of general circulation approved by the court serving the location of each branch office of the commodity broker, a notice to customers stating that all specifically identifiable property of customers other than open commodity contracts will be liquidated commencing on the fifth business day after the second publication date if the customer has not instructed the trustee in writing on or before the close of business on the fourth business day after the second publication date to return such property pursuant to the terms for distribution of

specifically identifiable property contained in § 190.08(d)(1). Such notice must describe specifically identifiable property in accordance with the definition in this Part and must specify the terms upon which that property may be returned. Publication of the definition contained in § 190.01(ll) will constitute a sufficient description of specifically identifiable property for purposes of this paragraph (b)(1).

(2) *Request for instructions regarding transfer of open commodity contracts.* The trustee must use its best efforts to request promptly, but in no event later than forty-eight hours after entry of an order of relief, customer instructions concerning the preferred disposition of the specifically identifiable open commodity contracts not required to be liquidated under paragraph (f)(1) of this section. The request for customer instructions required by this paragraph (b)(2) must state that the trustee is required to liquidate any such commodity contract for which transfer instructions have not been received on or before the close of business on the fifth business day after entry of the order of relief, and any such commodity contract for which instructions have been received which has not been transferred in accordance with § 190.08(d)(2) on or before the close of business on the tenth business day after entry of the order of relief.

(3) *Involuntary cases.* Prior to entry of an order of relief, and upon leave of the court, the trustee appointed in an involuntary proceeding may notify customers of the commencement of such proceeding and may request customer instructions with respect to the preferred disposition of specifically identifiable property, including open commodity contracts.

(4) *Notice of bankruptcy and request for proof of customer claim.* The trustee must promptly notify each customer of record in writing that an order of relief has been entered and must instruct each such customer to file a proof of customer claim containing the information specified in paragraph (d) of this section. Such notice may be given separately from the notices provided for in paragraphs (b)(1) and (3) of this section.

(c) *Disposition of customer instructions in the event of a transfer pursuant to Section 764(b) of the Bankruptcy Code.* If the debtor's open commodity contracts have been, or are to be, transferred in accordance with section 764(b) of the Bankruptcy Code and § 190.06, customer instructions received by the trustee with respect to open commodity contracts, or with respect to specifically identifiable property which is to be transferred with such contracts, shall be transmitted to the transferee of such contracts or property who shall comply therewith to the extent practicable.

(d) *Proof of customer claim.* The trustee shall cause the proof of customer claim form referred to in paragraph (b)(4) of this section to set forth the bar date for its filing and to specify information sufficient to determine a customer's claim in accordance with the regulations contained in this Part, including generally:

(1) The class of commodity account upon which each claim is based;

(2) The number of accounts held by each claimant, and the capacity in which they are held;

(3) The equity as of the filing date of each account based on commodity transactions in that account;

(4) Whether each account is a public or a non-public customer account;

(5) Whether any account is a discretionary account;

(6) A description of all transactions in each account during the 90 days preceding the filing date, and in the case of non-public customer accounts, within the year preceding the filing date;

(7) A description of all claims against the debtor not based upon a commodity account of the claimant;

(8) A description of all claims of the debtor against the claimant not included in the equity of a commodity account of the claimant;

(9) A description of any deposits of money, securities or property with the debtor made by the claimant indicating the portion of such, if any, which was contained in the information provided in paragraph (d)(3) of this section and identifying any such property which would be specifically identifiable property as defined in paragraph (ll) of this section.

(10) Whether the claimant is or was an "affiliate," "insider," or "relative" of the debtor as these terms are defined by sections 101(2), (25), and (34), respectively, of the Bankruptcy Code;

(11) The amount of the claimant's percentage interest in any joint account;

(12) Whether the claimant wishes to receive payment in kind, to the extent possible, for any claim for securities; and

(13) Copies of any documents which support the information contained in the proof of customer claim, including without limitation, customer confirmations, account statements, and statements of purchase or sale.

(e) *Transfers.*—(1) *Voluntary cases.* The trustee for a commodity broker which voluntarily commences a liquidation under subchapter IV of Chapter 7 of the Bankruptcy Code must, as soon as possible, and in any event no later than the close of business on the fourth business day after the filing date, use its best efforts to effect a transfer in accordance with §§ 190.06(e) and (f) of the open commodity contracts and equity held by the commodity broker for or on behalf of its customers.

(2) *Involuntary cases.* A commodity broker agains which an involuntary petition in bankruptcy is filed, or the trustee if a trustee has been appointed in such case, must use its best efforts to effect a transfer in accordance with §§ 190.06 (e) and (f) of all open commodity contracts and equity held by the commodity broker on behalf of its customers and such other property as the Commission in its discretion may authorize, on or before the close of business on the fourth business day after the filing date, and immediately cease doing business: *Provided, however,* That the commodity broker may trade for liquidation only, unless otherwise directed by the Commission, by any applicable self-regulatory organization or by the court: And, *Provided, further,* That if the commodity broker demonstrates to the Commission within such period that it was in compliance with the segregation and financial requirements of this chapter on the filing date, and the Commission determines, in its sole discretion, that such transfer or liquidation is neither appropriate nor in the public interest, the commodity broker may continue in business subject to applicable provisions of the Bankruptcy Code and of this chapter.

(f) *Liquidation.* After entry of the order of relief and subject to paragraph (e) of this section, which requires the trustee to attempt to make certain transfers permitted by § 190.06 and Section 764(b) of the Bankruptcy Code, the following commodity contracts and other property held by or for the account of a debtor must be liquidated by the trustee promptly and in an orderly manner, subject to limit moves and to applicable procedures under the Bankruptcy Code:

(1) *Open commodity contracts.* All open commodity contracts except:

(i) Dealer option contracts, if the dealer option grantor is not the debtor, which cannot be transferred on or before the close of business on the fourth business day after the filing date; and

(ii) Commodity futures contracts which are bona fide hedging positions or part of a bona fide hedging transaction for which an instruction prohibiting liquidation is noted prominently in the

accounting records of the debtor and timely received under paragrah (b)(2) of this section.

Notwithstanding the foregoing, all open commodity contracts must be liquidated if such contracts would otherwise remain open beyond the last day of trading, or the first day on which notice of intent to delivery may be tendered with respect thereto, whichever occurs first, or if a customer fails to meet a margin call with respect thereto.

(2) *Specifically identifiable property other than open commodity contracts.* Specifically identifiable property other than open commodity contracts to the extent that:

(i) The fair market value of such property is less than 90% of its fair market value on the date of entry of the order of relief; or

(ii) The trustee has not received instructions to return such property upon the terms contained in § 190.08(d)(1) on or before the end of the period set forth in paragraph (b)(1) of this section.

(3) *All other property.* All other property not required to be transferred or returned pursuant to customer instructions which has not been liquidated in accordance with paragraphs (f)(1) and (f)(2) of this section.

(g) *Treatment of open commodity contracts.*—(1) *Margin payments by the trustee.* Prior to the primary liquidation date, the trustee may make variation margin payments to a clearing member or to a clearing organization, as appropriate, pending liquidation of any open commodity contracts required to be liquidated under paragrah (f)(1) of this section, whether or not such contracts are specifically identifiable to a particular customer: *Provided,* That no payments may be made on behalf of non-public customers or the debtor from funds which are segregated for the benefit of public customers.

(2) *Margin calls.* The trustee, or in the case of an involuntary bankruptcy, the commodity broker against which the petition is filed or the trustee if a trustee has been appointed, must issue margin calls with respect to any account in which the open commodity contracts are not required to be liquidated under paragraph (f)(1) of this section and in which the funded balance less the value on the date of return or transfer of any property previously returned or transferred does not equal or exceed:

(i) 100% of the maintenance margin requirements of the applicable board of trade with respect to the open commodity contracts in such account; or

(ii) If there are no such maintenance margin requirements, 100% of the clearing organization margin requirements applicable to the open commodity contracts in such account; or

(iii) If there are no maintenance margin requirements or clearing organization margin requirements, then 50% of the initial margin applicable to the open commodity contracts in such account.

A margin call shall be made as soon as possible following the filing date. The trustee shall be authorized, but not obligated, to liquidate any commodity contracts for which such margin call is not met within one hour. Thereafter, the trustee may liquidate any commodity contract for which a margin call is not met within a reasonable time as defined in § 190.04(e)(4).

(3) *Margin payments by the customer.* The full amount of any margin payment by a customer in response to a margin call under parapraph (g)(2) of this section must be credited to the funded balance of the particular account for which it was made.

§ 190.03 Operation of the debtor's estate subsequent to the primary liquidation date.

Subsequent to the primary liquidation date, accounts which contain open commodity contracts not required to be liquidated under § 190.02(f)(1) shall be operated by the trustee as follows:

(a) *Operation of accounts held open for transfer.*—(1) *Establishment of transfer accounts.* On the primary liquidation date, the trustee must open a new account for each class of account of a customer which contains a commodity contract not required to be liquidated under § 190.02(f)(1). The opening balance of such account must be equal to its funded balance, less the value on the date of its transfer or return of any property transferred or returned with respect to the net equity claim for such account prior to the primary liquidation date.

(2) *Accounting for transfer accounts.* The opening balance of any account established on the primary liquidation date in accordance with paragraph (a)(1) of this section must be adjusted for operations on or subsequent to the primary liquidation date in the same manner as the equity in a commodity futures account maintained for or on behalf of a customer would be adjusted in the ordinary course of business prior to the filing date: *Provided, however,* That such accounts must also be adjusted to reflect certain adjustments to the funded balance in accordance with § 190.07(c)(2), such that the balance in that account will always be equal to the adjusted funded balance of the claimant's net equity claim adjusted for corrections and subsequent operations less the value on the date of transfer or return of any property transferred or returned with respect to that claim prior to the primary liquidation date.

(3) *Margin calls.* The trustee must prompty issue margin calls with respect to any account established under paragraph (a)(1) of this section in which the balance does not equal or exceed 100% of the maintenance margin requirements of the applicable board of trade with respect to the open commodity contracts in such account, or if there are no such maintenance margin requirements, 100% of the clearing organization margin requirements applicable to the open commodity contracts in such account, or if there are no maintenance margin requirements or clearing organization margin requirements, then 50% of the initial margin applicable to the commodity contracts in such account.

(4) *Margin payments.* The trustee may make variation or maintenance margin payments with respect to any customer account which contains open commodity contracts after the primary liquidation date if such payments do not exceed the balance of the account established under paragraph (a)(1) of this section with respect to which such contracts are credited. Any customer for which commodity contracts remain open subsequent to the primary liquidation date will not be relieved of the obligation to make margin payments by reason of the bankruptcy of the commodity broker: *Provided,* That the full amount of any margin payments made by a customer subsequent to the primary liquidation date must be credited to the account, established in accordance with paragraph (a)(1) of this section, for which it was made.

(5) *Distributions.* No distribution of equity may be made to or on behalf of customers by the trustee with respect to an account established in accordance with paragraph (a)(1) of this section, except pursuant to paragraph (a)(4) of this section and to § 190.08(d).

(b) *liquidation of accounts held open for transfer.* Commodity contracts held open for transfer by the trustee in accordance with paragraph (a)(1) of this section must be liquidated promptly and in an orderly manner, if:

(1) Any payment of margin would result in a deficit in that account;

(2) The customer for, or on whose behalf, the account is held fails to meet a margin call within a reasonable time;

(3) The trustee has received no customer instructions with respect to

such contract by the close of business on the fifth business day after entry of the order of relief;

(4) The commodity contract has not been transferred in accordance with § 190.08(d)(2) on or before the close of business on the tenth business day after entry of the order of relief; or

(5) The commodity contract would otherwise remain open beyond the last day of trading in such contract or the first day on which notice of delivery may be tendered with respect to such contract, whichever occurs first.

(c) *Liquidation of specifically identifiable property other than open commodity contracts.* All specifically identifiable property other than open commodity contracts which have not been liquidated prior to the primary liquidation date, and for which no customer instructions have been timely received must be liquidated, to the extent reasonably possible, no later than the close of business on the fifth bussiness day after final publication of the notice referred to in § 190.02(b)(1). All other specifically identifiable property must be liquidated or returned, to the extent reasonably possible, no later than the close of business on the seventh business day after final publication of such notice.

§ 190.04 Operation of the debtor's estate—general.

(a) *Compliance with the Act and regulations.* Except as specifically provided otherwise in this Part, the trustee shall comply with all of the provisions of the Act and of the regulations thereunder as if it were the debtor.

(b) *Computation of funded balance.* Using the information available, the trustee must compute a funded balance for each customer account which contains open commodity contracts as of the close of business each day subsequent to the filing date until the final liquidation date. Such computation must be completed prior to noon on the next business day.

(c) *Records.*—(1) *Maintenance.* Subject to the requirements of the Bankruptcy Code, records of the computations required by this Part shall be maintained in accordance with § 1.31 of this chapter by the trustee for the greater of the period required by § 1.31 of this chapter or for a period of one year after the close of the bankruptcy proceeding for which they were compiled.

(2) *Accessibility.* The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, the parties to the bankruptcy proceedings, the Commission and the United States Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the United States Department of Justice immediate access to all records of the debtor, including records required to be retained in accordance with § 1.31 of this chapter and all other records of the commodity broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

(d) *Liquidation.*—(1) *Alternative liquidation methods.* Liquidation of open commodity futures contracts held for a proprietary or a customer account by or on behalf of a commodity broker which is a debtor shall be accomplished in accordance with § 1.38 of this chapter: *Provided, however,* That, in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit open commodity contracts held by or for a commodity broker to be liquidated, or settlement on such contracts to be made by book entry. Such book entry shall match trades on the books of the commodity broker using an execution price equal to the average liquidation price for contracts in the same commodity for the same delivery month held by or for the debtor which are not matched on the books of the commodity broker, or if there are no such unmatched contracts, using the settlement price as of the close of business on the market day immediately preceding liquidation for contracts in the same commodity for the same delivery month.

(2) *Liquidation of covered contracts of the debtor.* Any covered commodity owned by a debtor must be liquidated to the extent reasonably possible at the same time as its cover is liquidated.

(3) *Liquidation only.* Nothing in this Part shall be interpreted to permit the trustee to purchase new commodity contracts for customers of the debtor: *Provided, however,* That to prevent material erosion in value, the trustee may, in its discretion and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of limit moves or other market conditions.

(e) *Other matters.*—(1) *Determination as to bona fide hedges.* Notwithstanding § 1.3(z) of this chapter, in determining which contracts are eligible to be held open for transfer pursuant to customer instruction, the trustee may rely on the designation in the accounting records of the commodity broker that the account for or on behalf of which the contract is held is a bona fide hedging account.

(2) *Disbursements.* The trustee shall make no disbursements to customers prior to final distribution except with approval of the court or in accordance with § 190.08(d).

(3) *Investment.* The trustee shall promptly invest the equity resulting from the liquidation of commodity contracts, and the proceeds of the liquidation of specifically identifiable property in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States, and may similarly invest any customer equity in accounts which remain open in accordance with § 190.03: *Provided,* That such invested property is maintained in a depository located in the United States, its territories or possessions.

(4) *Margin calls—reasonable time.* Except as otherwise provided in this Part, a reasonable time for meeting margin calls shall be deemed to be one hour, or such greater period not to exceed one business day, as the trustee may determine in its sole discretion.

§ 190.05 Making and taking delivery on commodity futures contracts.

(a) *General.* In the event that the trustee is unable to liquidate an open commodity futures contract prior to the last day of trading in that contract as required by §§ 190.02(f)(1) and 190.03(b)(5), the trustee must use its bes efforts to prevent property which is to be delivered for or on behalf of a customer to fulfill that contract, or property for which delivery is being taken with respect to a customer pursuant to that contract, from becoming part of the debtor's estate.

(b) *Contract market rules for deliveries on behalf of a customer of a debtor.* Each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with Section 5a(12) of the Act and § 1.41 of this chapter, which:

(1) Permit the making and taking of delivery to fulfill a commodity futures contract for a physical commodity, which has not become part of the debtor's estate on the filing date but with respect to which commodity contract: (i) Trading has ceased on the filing date; (ii) notice of delivery has been tendered on or before the filing date; or, (iii) trading ceases before it can be liquidatd by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization organization as the party to whom

delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the payment for such physical commodity in any bankruptcy distribution: *Provided, however,* That such rules shall not relieve a customer of its obligation to make or to take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and

(2) Provide that the equity of a customer of the debtor in a futures contract upon which delivery is made or taken must be included in the net equity claim of that customer and, as such, must be distributed pro rata at the time of, and as part of, any disbursements to customers.

(c) *Delivery made or taken within the debtor's estate.* (1) If the property to be delivered is part of the debtor's estate on the date of the order of relief and a customer of the debtor is required to take delivery, the customer must pay for the physical commodity to be delivered in cash, in the same manner and to the same extent, as the customer would be required to pay for the return of specifically identifiable property under § 190.08(d)(1).

(2) If the property to be delivered is part of the debtor's estate on the date of the order of relief and a customer of the debtor is required to make delivery, the trustee must make delivery in the same manner as if no bankruptcy had occurred.

(3) If delivery is to be made or taken on behalf of a proprietary account the trustee must either make or take delivery, as the case may be, on behalf of the debtor's estate: *Provided,* That if the trustee, at any time, takes delivery of a physical commodity, the trustee must convert that physical commodity to cash as promptly as possible.

§ 190.06 Transfers.

(a) *Transfer rules.* No self-regulatory organization may adopt, maintain in effect or enforce rules which:

(1) Are inconsistent with the provisions of this Part;

(2) Interfere with the acceptance by its members of open commodity contracts and the equity margining or securing such contracts from futures commission merchants, or persons which are required to be registered as futures commission merchants, which are required to transfer accounts pursuant to § 1.17(a)(4) of this chapter; and

(3) Prevent the acceptance by its members of transfers of open commodity contracts and the equity margining or securing such contracts from futures commission merchants with respect to which a petition in bankruptcy has been filed, if such transfers have been approved by the Commission.

Provided, however, That this paragraph shall not limit the exercise of any contractual right of the self-regulatory organization to liquidate open commodity contracts.

(b) *Notice.* If a futures commission merchant, or a person required to be registered as futures commission merchant, intends to transfer commodity interests or accounts held by or for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant and such transfer is not upon the request of that customer in the ordinary course of business, the transferor must notify the Commission:

(1) If no petition in bankruptcy has been filed, as soon as possible but in any event prior to effectuation of the transfer; or

(2) If a petition in bankruptcy has been filed by or against such transferor, no later than is required under § 190.02(a)(2).

(c) *Financial requirements for transferees.* (1) No transfer may be made which would cause the transferee to be in violation of the minimum financial requirements set forth in this chapter.

(2) A transferee may accept a transfer of open commodity contracts even though the money, securities and other property eligible for transfer under the regulations contained in this Part is insufficient to fully margin such positions, if the transferee deposits an amount equal to the margin deficiency with the appropriate clearing organization or futures commission merchant, and agrees to accept the transfer subject to any loss due to the failure to recover such deficiency from the customers whose contracts it has accepted or from the estate of the debtor.

(3) The transferee of a commodity contract must keep that contract open one business day after its receipt, unless the customer for whom the transfer is made fails to respond within a reasonable time to a margin call for the difference between the margin transferred with such contract and the margin which such transferee would require with respect to a similar commodity contract held for the account of a customer in the ordinary course of business.

(4) No commission may be collected by the transferor with respect to the transfer of an open commodity contract.

(d) *Customer instructions.*—(1) *Customer agreement.* The customer agreement which is executed by a customer upon opening a commodity account with a futures commission merchant must provide an opportunity for each customer to instruct the futures commission merchant as to that customer's preferred disposition of any open commodity contract which is not transferred in accordance with this Part by the close of business on the fourth business day after the filing date and which is a bona fide hedging position or part of a bona fide hedging transaction as defined in § 1.3(z) of this chapter. The customer agreement must also state that positions which are being traded on the filing date must be liquidated, no later than the first notice day of intent to tender delivery or the last trading day, whichever occurs first.

(2) *Record of bankruptcy instructions.* Each futures commission merchant must indicate prominently in the accounting records in which it records open trade balances the cutomer accounts which are bona fide hedging accounts with respect to which a customer has instructed in the customer agreement, or otherwise in writing, that transfer rather than liquidation is the preferred disposition of commodity contracts which remain open on the filing date.

(e) *Eligibility for transfer under section 764(b) of the Bankruptcy Code.* (1) *Accounts eligible for transfer.* Subject to the requirements of paragraph (e)(2) of this section, all accounts are eligible for transfer after the filing date pursuant to section 764(b) of the Bankruptcy Code, except:

(i) Proprietary accounts;

(ii) Leverage accounts, if the debtor is the leverage transaction merchant with respect to such accounts;

(iii) Dealer option accounts, if the debtor is the dealer option grantor with respect to such accounts;

(iv) Accounts which contain no open commodity contracts; or

(v) Accounts which are in deficit.

(2) *Amount of equity which may be transferred.* In no case may money, securities or property be transferred in respect of any eligible account if the value of such money, securities or property would exceed the funded balance of such account as of the close of business on the business day immediately preceding transfer less the value on the date of return or transfer of any property previously returned or transferred with respect thereto.

(f) *Special rules for transfers under Section 764(b) of the Bankruptcy Code.*—(1) *Dealer options.*— (i) *Eligibility for transfer.* Prior to exercise, any dealer option contract held by or for the account of a debtor which is a furtures commission merchant from or for the account of a customer may be transferred even if the funded balance available for transfer which is attributable to such contract does not equal 100 percent of the premium paid with respect to such contract: *Provided,* That a dealer option contract will be eligible for transfer only if any deficiency in the funded balance of the customer account in which it is held is not due to amounts owed by such customer to the debtor: and, *Provided further,* That the transferee of any dealer option contract need not segregate more than an amount equal to that portion of the premium which is transferred with the contract.

(ii) *Obligation of the dealer option grantor.* In the event of the transfer of a dealer option contract pursuant to this section, the failure of the debtor futures commission merchant to segregate 100 percent of the premium paid for such contract, or the falure of the dealer option grantor to collect 100 percent of such premium, shall not excuse the dealer option grantor from its obligation to perform such contract in full upon its exercise, without any setoff or set aside of the premium deficiency.

(2) *Clearing organizations.* Commodity contracts held by a clearing organization which is a debtor may not be transferred.

(3) *Partial transfers.*—(i) *Of the customer estate.* If all eligible customer accounts held by a debtor cannot be transferred under this section, a partial transfer may nonetheless be made. The Commission will not disapprove such a transfer for the sole reason that it was a partial transfer if it would prefer accounts, the liquidation of which could adversely affect the market.

(ii) *Of a customer account.* If all of a customer's open commodity contracts cannot be transferred under this section, a partial transfer of contracts may be made. A partial transfer may be effected by liquidating that portion of the open commodity contracts held by a customer which represent sufficient equity to permit the transfer of the remainder. If a customer is holding contracts which are bona fide hedging positions or which are part of a bona fide hedging transaction, any partial transfer must prefer such positions, to the extent possible, consistent with this Part. If any commodity contracts to be transferred in a partial transfer are part of a spread or straddle, both sides of such spread or straddle must be transferred or neither side may be transferred.

(g) *Prohibition on avoidance of transfers under section 764(b) of the Bankruptcy Act.*—(1) *Pre-filing transfers.* Notwithstanding the provisons of paragraph (e) of this section, th following transfers may not be avoided by a trustee:

(i) The transfer of commodity accounts prior to the filing date in full compliance with § 1.17(a)(4) unless such transfer is disapproved by the Commission; or

(ii) The transfer prior to the filing date by a public customer, including a transfer by a public customer which is a commodity broker on behalf of its public customers, of commodity accounts held from or for the account of such customer by or on behalf of the debtor unless:

(A) The customer transferor acted in collusion with the debtor or its principals to obtain a greater share of the bankrupt estate than that to which it would be entitled in a bankruptcy distribution; or

(B) The transfer is disapproved by the Commission.

(2) *Post-filing transfers.* On or after the filing date:

(i) If a customer account is eligible to be transferred under paragraph (e) or (f) of this section, such a transfer to one or more transferees shall not be voidable as a preference by the trustee if the transfer is made on behalf of the commodity broker by the trustee of the commodity broker or by any self-regulatory organization of the commodity broker:

(A) On or before the close of business on the fourth business day after the filing date; and

(B) The Commission is notified in accordance with § 190.02(a)(2) prior to the transfer and does not disapprove the transfer; or

(ii) If a customer account is transferred by the Commission on or before the close of business on the fourth business day after the filing date upon such terms and conditions as the Commission may deem appropriate and in the public interest, such a transfer to one or more transferees shall not be voidable as a preference by the trustee.

(3) *Withdrawals prior to bankruptcy.* The withdrawal or settlement of a commodity account by a public customer, including a customer which is a commodity broker on behalf of its customers, prior to the filing date may not be avoided by a trustee unless:

(i) The customer making the withdrawal or settlement acted in collusion with the debtor or its principals to obtain a greater share of the bankrupt estate than that to which such customer would be entitled in a bankruptcy distribution; or

(ii) The withdrawal or settlement is disapproved by the Commission.

(h) *Commission action.* Notwithstanding any other provision of this section, in appropriate cases and to protect the public interest, the Commission may:

(1) Prohibit the transfer of customer accounts; or

(2) Permit transfers of accounts which do not comply with the requirements of this section.

§ 190.07 Calculation of allowed net equity.

Allowed net equity shall be computed as follows:

(a) *Allowed claim.* The allowed net equity claim of a customer shall be equal to the aggregate of the funded balances of such customer's net equity claim for each account class plus or minus the adjustments specified in paragraph (d) of this section.

(b) *Net equity.* Net equity means the total claim of a customer against the estate of the debtor based on the commodity interests held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor. Net equity shall be calculated as follows:

(1) *Step 1—Equity determination.* Determine the equity balance of each customer account by computing, with respect to such account, the sum of:

(i) The ledger balance;

(ii) The open trade balance; and

(iii) The current realizable market value, determined as of the close of the market on the last preceding market day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

(A) For purposes of this paragraph (b)(1), the ledger balance of a customer account shall be calculated by adding:

(*i*) Cash deposited to purchase, margin, guarantee, secure, or settle a commodity contract;

(*ii*) Except as is otherwise provided in this chapter, the cash proceeds of such cash, securities, or other property held from or by the customer by or for the account of the commodity broker; and

(*iii*) Gains realized on trades, and

(B) Subtracting from the result:

(*i*) Losses realized on trades;

(*ii*) Disbursements to or on behalf of the customer; and

(*iii*) The normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees, insurance and other costs and charges lawfully incurred in connection with the purchase, sale, exercise, or liquidation

of any commodity contract in such account.

For purposes of this paragraph (b)(1), the open trade balance of a customer's account shall be computed by subtracting the unrealized loss in value of the open commodity contracts held by or for such account from the unrealized gain in value of the open commodity contracts held by or for such account.

(2) *Step 2—Customer determination (aggregation).* Aggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity. Paragraphs (b)(2)(i) through (b)(2)(xiii) of this section prescribe which accounts must be treated as being held in the same capacity and which accounts must be treated as being held in a separate capacity.

(i) Except as otherwise provided in this paragraph (b)(2), all accounts which are maintained with a debtor in a person's name and which, under this paragraph (b)(2), are deemed to be held by that person in its individual capacity shall be deemed to be held in the same capacity.

(ii) An account maintained with a debtor by a guardian, custodian, or conservator for the benefit of a ward, or for the benefit of a minor under the Uniform Gift to Minors Act, shall be deemed to be held in separate capacity from accounts held by such guardian, custodian or conservator in its individual capacity.

(iii) An account maintained with a debtor in the name of an executor or administrator of an estate shall be deemed to be held in a separate capacity from accounts held by such executor or administrator in its individual capacity.

(iv) Subject to paragraph (b)(2)(iii) of this section, an account maintained with a debtor in the name of a decedent, in the name of the decedent's estate, or in the name of the executor or administrator of such estate shall be deemed to be accounts held in the same capacity.

(v) An account maintained with a debtor by a trustee shall be deemed to be held in the individual capacity of the grantor of the trust unless the trust is created by a valid written instrument for a purpose other than avoidance of an offset under the regulations contained on this Part. A trust account which is not deemed to be held in the individual capacity of its grantor under paragraph (b)(2)(v) of this section shall be deemed to be held in a separate capactiy from accounts held in an individual capacity by the trustee, by the grantor or any successor in interest of the grantor, or by any trust beneficiary, and from accounts held by any other trust.

(vi) An account maintained with a debtor by a corporation, partnership, or unincorporated association shall be deemed to be held in a separate capacity from accounts held by the shareholders, partners or members of such corporation, partnership or unincorporated association, if such entity was created for a purpose other than avoidance of an offset under the regulations contained in this Part.

(vii) A hedging account of a person shall be deemed to be held in the same capacity as a speculative account of such person.

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, and foreign futures accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however,* That such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

(ix) An omnibus customer account of a futures commission merchant maintained with a debtor shall be deemed to constitute one account and to be held in a separate capacity from the proprietary accounts and any other omnibus customer account of such futures commission merchant.

(x) A joint account maintained with the debtor shall be deemed to be held in a separate capacity from any account held in an individual capacity by the participants in such account, from any account held in an individual capacity by a commodity pool operator or commodity trading advisor for such account, and from any other joint account: *Provided, however,* That if such account is not transferred in accordance with § 190.06, it shall be deemed to be held in the same capacity as any other joint account held by identical participants and a participant's percentage interest therein shall be deemed to be held in the same capacity as any account held in an individual capacity by such participant.

(xi) An account maintained with a debtor in the name of a plan which, on the filing date, has in effect a registration statement in accordance with the requirements of § 1031 of the Employee Retirement Income Security Act of 1974 and the regulations thereunder shall be deemed to be held in a separate capacity from an account held in an individual capacity by the plan administrator, any employer, employee, participant, or beneficiary with respect to such plan.

(xii) Except as otherwise provided in this section, an account maintained with a debtor by an agent or nominee for a principal or a beneficial owner shall be deemed to be an account held in the individual capacity of such principal or beneficial owner.

(xiii) Accounts held by a customer in separate capacities shall be deemed to be accounts of different customers. The burden of proving that an account is held in a separate capacity shall be upon the customer.

(3) *Step 3—Setoffs.* (i) The net equity of one customer account may not be offset against the net equity of any other customer.

(ii) Any obligation which is not required to be included in computing the equity of a customer under paragraph (b)(1) of this section, but which is owed by such customer to the debtor must be deducted from any obligation not required to be included in computing the equity of a customer which is owed by such debtor to the customer. If the former amount exceeds the latter, the excess must be deducted from the equity balance of the customer obtained after performing the preceding calculations required by paragraph (b) of this section: *Provided,* That if the customer owns more than two classes of accounts the excess must be offset against each positive equity balance in the same proportion as that positive equity balance bears to the total of all positive equity balances of accounts of different classes held by such customer.

(iii) A negative equity balance obtained with respect to one customer account class must be set off against a positive equity balance in any other account class of such customer held in the same capacity: *Provided,* That if a customer owns more than two classes of accounts such balance must be offset against each positive equity balance in the same proportion as that positive equity balance bears to the total of all positive equity balances in accounts of different classes held by such customer.

(iv) To the extent any indebtedness of the debtor to the customer which is not required to be included in computing the equity of such customer under paragraph (b)(1) of this section exceeds such indebtedness of the customer to the debtor, the customer claim therefor will constitute a general creditor's claim rather than a customer property claim, and the net equity therefor shall be separately calculated.

(v) The rules pertaining to separate capacities and permitted setoffs contained in this section must be applied subsequent to the entry of an order of relief; prior to the filing date the provisions of § 1.22 of this chapter and

of Section 4d(2) of the Act shall govern what setoffs are permitted.

(4) *Step 4—Correction for distributions.* The value on the date of transfer or distribution of any property transferred or distributed subsequent to the filing date and prior to the primary liquidation date with respect to each class of account held by a customer must be added to the equity obtained for the customer for accounts of that class after performing the steps contained in paragraphs (b)(1)–(3) of this section: *Provided, however,* That if all accounts for which there are customer claims of record and 100% of the equity pertaining thereto are transferred in accordance with § 190.06 and Section 764(b) of the Bankruptcy Code, net equity shall be computed based solely upon those customer claims, if any, filed subsequent to bankruptcy which are not claims of record on the filing date.

(5) *Step 5—Correction for subsequent events.* Compute any adjustments to Steps 1 through 4 of this paragraph (b) required to correct misestimates or errors including, without limitation, corrections for subsequent events such as the liquidation of unliquidated claims at a value different from the estimated value previously used in computing net equity.

(6) *Step 6—Net equity of accounts which remain open subsequent to the primary liquidation date.* If the accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the trustee must adjust the net equity obtained for that customer pursuant to the steps contained in paragraphs (b)(1)–(5) of this section as provided in paragraphs (d)(1) and (d)(2) of this section.

(c) *Calculation of funded balance.* "Funded balance" means a customer's pro rata share of the customer estate with respect to each account class available as of the primary liquidation date for distribution to customers of the same class.

(1) The funded balance of any customer claim shall be computed by multiplying the ratio of the amount the net equity claim of such customer for any account class bears to the sum of the net equity claims of all customers for accounts of that class by the sum of:

(i) The value of the money, securities or property segregated on behalf of all accounts of the same class;

(ii) The value of any money, securities or property which must be allocated under § 190.08 to customer accounts of the same class; and

(iii) The amount of any add-back required under paragraph (b)(4) of this section.

(2) *Corrections to funded balance.* The funded balance must be adjusted, as of the primary liquidation date, to correct for subsequent events including, without limitation:

(i) Added claimants;

(ii) Disallowed claims;

(iii) Liquidation of unliquidated claims at a value other than their estimated value;

(iv) Recovery of property; and

(v) Deficits generated by the continued operation of accounts after the primary liquidation date which cannot be fully adjusted under paragraph (d) of this section.

(d) *Adjustments to funded balance for operations subsequent to the primary liquidation date.* If accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the funded balance for each class must be adjusted until liquidation or transfer of all such open commodity contracts of that customer of the same class, as follows:

(1) Unrealized and realized gains and any receipts of margin with respect thereto must be added to the funded balance;

(2) Unrealized and realized losses, and the normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees and other costs and charges lawfully incurred with respect to the maintenance or liquidation of such open commodity contracts, and any distributions must be subtracted from the funded balance; and

(3) Subject to claims against the trustee for failure to liquidate, any deficit which is not recovered from the customer on whose behalf it is incurred must be charged against the funded balance of each account which remained open on the date the deficit occurred in the same proportion as the funded balance of each account bears to all the funded balances of all accounts which remained open on that date.

(e) *Valuation.* In computing net equity, commodity contracts and other property held by or for a commodity broker must be valued as provided in this paragraph (e): *Provided, however,* That if identical commodity contracts, securities, or other property are liquidated on the same date, but cannot be liquidated at the same price, the trustee may use the average of the liquidation prices in computing the net equity of each customer holding such contracts, securities or property.

(1) *Exchange-traded contracts.* The value of an open commodity contract which is traded on a board of trade shall be equal to the settlement price as of the close of business on the board of trade upon which it is traded: *Provided,* That if such contract is transferred its value shall be determined as of the close of business on the date of its transfer; and *Provided further,* That if such contract is liquidated, its value shall be equal to the net proceeds of liquidation.

(2) *Principal contracts.* For purposes of valuing contracts for which there is no established secondary market:

(i) *Cash price series approved by Commission.* The market value of the physical commodity which is the subject of a principal contract shall be computed using a cash price series approved by the Commission for use by the dealer option grantor, in the case of dealer options, and by the leverage transaction merchant, in the case of leverage contracts.

(ii) *No cash price series approved by Commission.* If no applicable cash price series has been submitted to the Commission, or if such a cash price series has been submitted, but has not been approved by the Commission, the market value of the physical commodity which is the subject of a principal contract shall be equal to the lesser of:

(A) The market value of the physical commodity as of the close of business on the local cash market most proximate to the debtor's principal place of business; or

(B) The spot month settlement price on a contract market which trades contracts in that physical commodity.

(iii) *Special rule for valuing dealer options.* A dealer option which is in-the-money will be deemed to have been exercised for purposes of determining its value which shall be equal to the greater of:

(A) The in-the-money amount; or

(B) The premium paid for such option divided by the number of days contained in the option period and multiplied by the number of days remaining in such period on the liquidation date: *Provided,* That, in the trustee's sole discretion, the trustee may reduce such value to an amount which does not exceed the average of the premiums recently paid for similar options granted by the same grantor.

Any time value not reflected in this computation claimed by a customer must be treated as a general creditor's claim.

(iv) *Special rule for valuing leverage contracts.* Notwithstanding paragraphs (e)(2)(i) and (ii) of this section, if the records of the debtor are not sufficient to substantiate customer claims for profits and to identify the owners of contracts with losses, the liquidation value of a leverage contract shall be deemed to be an amount equal to the

total deposit made by a customer in respect to such contract.

(3) *Illegal contracts.* The value of an illegal commodity contract or of a commodity futures contract which has not been established in fact shall be deemed to be equal to the value of the total deposit made by a customer in respect to such contract.

(4) *Securities.* The value of a listed security shall be equal to the closing price for such security on the exchange upon which it is traded. The value of over-the-counter securities traded pursuant to the National Association of Securities Dealers Automated Quotation system shall be equal, in the case of a long position, to the closing bid price and, in the case of a short position, to the closing asking price. The value of all other over-the-counter securities shall be equal in the case of a long position, to the average of the bid prices for long positions, and in the case of a short position, to the average of the asking prices for the short positions. If liquidated prior to the primary liquidation date, the value of such security shall be equal to the net proceeds of its liquidation. Securities which are not publicly traded shall be valued by the trustee subject to approval of the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances.

(5) *Property.* Cash commodities held in inventory, as collateral or otherwise, shall be valued at their fair market value. Subject to the other provisions of this paragraph (e), all other property shall be valued by the trustee subject to approval by the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances: *Provided, however,* That if such property is sold, its value for purposes of the calculations required by this Part shall be the net proceeds of such sale: *Provided further,* That the sale is made in compliance with all applicable statutes, rules and orders of any court or governmental entity with jurisdiction thereover.

§ 190.08 Allocation of property and allowance of claims.

The property of the debtor's estate must be allocated among account classes and between customer classes as provided in this section. The property so allocated will constitute a separate estate of the customer class and the account class to which it is allocated, and will be designated by reference to such customer class and account class.

(a) *Scope of customer property.*

(1) Customer property includes the following: (i) All cash, securities, or other property or the proceeds of such cash, securities or other property received, acquired, or held by or for the account of the debtor, from or for the account of a customer, including a non-public customer, which is:

(A) Property received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(B) Open commodity contracts;

(C) Warehouse receipts, bills of lading, or other documents of title or property held or acquired by the debtor to fulfill a commodity contract;

(D) Profits or contractual rights accruing to a customer as the result of a commodity contract;

(E) The full proceeds of a letter of credit if such letter of credit was received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(F) Property hypothecated under § 1.30 of this chapter to the extent that the value of such property exceeds the proceeds of any loan of margin made with respect thereto, and

(ii) All cash, securities, or other property which:

(A) Is segregated on the filing date;

(B) Is a security owned by the debtor to the extent there are customer claims for securities of the same class and series of an issuer;

(C) Is specifically identifiable to a customer;

(D) Is property of a type described in paragraph (a)(i) of this section which has been withdrawn and subsequently is recovered by the avoidance powers of the trustee;

(E) Represents recovery of any debit balance, margin deficit, or other claim of the debtor against a customer account;

(F) Was unlawfully converted but is part of the debtor's estate;

(G) Is property of the debtor that any applicable law, rule, regulation, or order requires to be set aside for the benefit of customers, unless including such property in the customer estate would not significantly increase the customer estate;

(H) Is property of the debtor's estate recovered by the Commission in any proceeding brought against the principals, agents, or employees of the debtor;

(I) Is proceeds from the investment of customer property by the trustee pending final distribution; or

(J) Is cash, securities or other property of the debtor's estate, including the debtor's trading or operating accounts and commodities of the debtor held as inventory, but only to the extent that the property enumerated in paragraphs (a)(v) and (a)(2)(i) through (a)(2)(viii) of this section is insufficient to satisfy in full all claims of public customers.

(2) Customer property will not include:

(i) Claims against the debtor for rescission or damages for any wrongdoing of the debtor, including claims for misrepresentation or fraud, or for any violation of the Act or of the regulations thereunder;

(ii) Other claims for property which are not based upon property received, acquired or held by or for the account of the debtor, from or for the account of the customer;

(iii) Forward contracts as defined in § 190.10(c);

(iv) Property delivered to or from a customer to or by another customer to fulfill a commodity contract held for or on behalf of either customer by the debtor if such delivery is effected pursuant to § 190.05 by a commodity broker other than the debtor;

(v) Property deposited by a customer with a commodity broker after the entry of an order of relief which is not necessary to meet the maintenance margin requirements applicable to the accounts of such customer; and

(vi) Property hypothecated pursuant to § 1.30 to the extent of the loan of margin with respect thereto.

(b) *Allocation of property between customer classes.* No portion of the customer estate may be allocated to pay non-public customer claims until all public customer claims have been satisfied in full. Any property segregated on behalf of non-public customers must be treated initially as part of the public customer estate and allocated under paragraph (c)(2) of this section.

(c) *Allocation of property among account classes.*—(1) *Segregated property.* Subject to paragraph (b) of this section, property held by or for the account of a customer, which is segregated on behalf of a specific account class, or readily traceable on the filing date to customers of such account class, must be allocated to the customer estate of the account class for which it is segregated or to which it is readily traceable.

(2) *All other property.* Money, securities and property received from or for the account of customers on behalf of any account class which is recovered on behalf of the customer estate and which cannot be allocated in accordance with paragraph (c)(1) of this section, must be allocated as of the primary liquidation date in the following order:

(i) To the estate of the account class for which, after the allocation required in paragraph (c)(1) of this section, the percentage of each public customer net

equity claim which is funded is the lowest, until the funded percentage of net equity claims of such class equals the percentage of each public customer's net equity claim which is funded for the account class with the next lowest percentage of funded claims; and then

(ii) To the estate of the two account classes referred to in paragraph (c)(2)(i) of this section so that the percentage of the net equity claims which are funded for each class remains equal until the percentage of each public customer net equity claim which is funded equals the percentage of each public customer net equity claim which is funded for the account class with the next lowest percentage of funded claims, and so forth, until the percentage of each public customer net equity claim which is funded is equal for all classes of accounts; and then,

(iii) Among account classes in the same proportion as the public customer net equity claims for each such account class bears to the total of public customer net equity claims of all account classes until the public customer claims of each account class are paid in full; and, thereafter,

(iv) To the non-public customer estate for each account class in the same order as is prescribed in paragraphs (c)(2)(i) to (iii) of this section for the allocation of the customer estate among account classes.

(d) *Distribution of customer property.*—(1) *Return or transfer of specifically identifiable property other than a commodity contract.* Specifically identifiable property other than an open commodity contract not required to be liquidated under § 190.02(f)(2) may be returned or transferred on behalf of the customer to which it is identified only if cash is first deposited with the trustee in an amount equal to the greater of:

(i) The full fair market value of such property on the return date; or

(ii) The balance due on the return date on any loan by the debtor to the customer for which such property constitutes security.

(2) *Transfers of specifically identifiable commodity contracts under section 766 of the Bankruptcy Code.* Any specifically identifiable commodity contract which is not required to be liquidated under §§ 190.02(f)(1) or 190.03(b), and which is not otherwise liquidated, may be transferred on behalf of a customer: *Provided,* That such customer must first deposit cash with the trustee in an amount equal to the amount by which the equity to be transferred to margin such contracts together with any other disbursements made, or to be made, to such customer, plus a reasonable reserve in the trustee's sole discretion, exceeds the aggregate of the funded balances for each class of account of such customer less the value on the date of transfer or return of any property transferred or returned prior to the primary liquidation date with respect to a claim for such account: and, *Provided further,* That adequate security for the nonrecovery of any overpayments by the trustee is provided to the debtor's estate by the customer.

(3) *Distribution in kind of specifically identifiable securities.* If any securities of a customer would have been specifically identifiable under § 190.01(*ll*)(4) if that customer had had no open commodity contracts, the customer may request that the trustee purchase or otherwise obtain the largest whole number of like-kind securities, with a fair market value (inclusive of transaction costs) which does not exceed that portion of such customer's allowed net equity claim that constitutes a claim for securities, if like-kind securities can be purchased in a fair and orderly manner.

(4) *Proof of customer claim.* No distribution shall be made pursuant to paragraphs (d)(1) and (d)(3) of this section prior to receipt of a completed proof of customer claim.

(5) *No differential distributions.* No further disbursements may be made to customers for whom transfers have been made pursuant to § 190.06 and paragraph (d)(2) of this section, until a percentage of each net equity claim equivalent to the percentage distributed to such customers is distributed to all public customers. Partial distributions, other than the transfers referred to in § 190.06 and paragraph (d)(2) of this section, made prior to the final net equity determination date must be made pursuant to a preliminary plan of distribution approved bythe court, upon notice to the parties and to all customers, which plan requires adequate security to the debtor's estate for the nonrecovery of any overpayments by the trustee and distributes an equal percentage of net equity to all public customers.

§ 190.09 Member property.

(a) *"Member property".* "Member property" means, in connection with a clearing organization bankruptcy, the property which may be used to pay that portion of the net equity claim of a member which is based on its proprietary account.

(b) *Scope of member property.* Member property shall include all money, securities and property received, acquired, or held by a clearing organization to margin, guarantee or secure the proprietary account of a clearing member: *Provided, however,* That any guaranty deposit or similar payment or deposit made by such member and any capital stock, or membership of such member in the clearing organization shall also be included in member property after payment in full of that portion of the net equity claim of the member based on its customer account and of any obligations due the clearing organization which may be paid therefrom in accordance with the by-laws or rules of the clearing organization.

§ 190.10 General.

(a) *Notices.* All notices required to be given to the Commission under this Part, shall be directed to the Washington, D.C. headquarters of the Commission (2033 K Street, N.W., Washington, D.C. 20581) and addressed to the Secretariat, for the attention of the Director of the Division of Trading and Markets. All such notices shall be in writing and shall be given by telegram or other similarly rapid means of communication. For purposes of this Part, notice to the Commission shall be deemed to be given only upon actual receipt.

(b) *Disclosure statement for non-cash margin.*

(1) No commodity broker may accept property other than cash from or for the account of a customer to margin, guarantee, or secure a commodity contract unless:

(i) The commodity broker first furnishes the customer with a separate written document which contains only the statement set forth in paragraph (2) of this section in bold-faced print in at least ten point type; and

(ii) The commodity broker receives an acknowledgment, signed and dated by the customer, that it has received and understood the statement, which acknowledgment must be retained by the commodity broker for the greater of the period required in § 1.31 of this chapter or until the customer who executes such acknowledgement terminates or closes its account.

(2) The disclosure statement required by paragraph (b)(1) of this section is as follows:

This statement is furnished to you because Rule 190.10(b) of the Commodity Futures Trading Commission requires it:

1. YOU SHOULD KNOW THAT IN THE UNLIKELY EVENT OF THIS COMPANY'S BANKRUPTCY PROPERTY, INCLUDING PROPERTY SPECIFICALLY TRACEABLE TO YOU, WILL BE RETURNED, TRANSFERRED OR DISTRIBUTED TO YOU, OR ON YOUR BEHALF, ONLY TO THE EXTENT OF YOUR PRO RATA SHARE OF ALL PROPERTY

AVAILABLE FOR DISTRIBUTION TO CUSTOMERS.

2. IF THE NON-CASH PROPERTY WHICH YOU DEPOSIT WITH US IS ONE OF THE LIMITED TYPES OF PROPERTY WHICH CAN BE RETURNED TO YOU OR TRANSFERRED ON YOUR BEHALF, YOU MAY BE REQUIRED TO PAY THE FULL FAIR MARKET VALUE OF SUCH PROPERTY IN CASH IN ORDER TO RECOVER IT.

3. NOTICE CONCERNING THE RETURN OF SPECIFICALLY IDENTIFIABLE PROPERTY WILL BE BY PUBLICATION IN A LOCAL NEWSPAPER.

4. THE COMMISSION'S REGULATIONS CONCERNING BANKRUPTCIES OF COMMODITY BROKERS CAN BE FOUND AT 17 CODE OF FEDERAL REGULATIONS PART 190.

(3) The statement contained in paragraph (c)(2) of this section need be furnished only once to each customer to whom it is required to be furnished by this paragraph.

(c) *Forward contracts.* For purposes of this Part, an entity for or with whom the debtor deals who holds a claim against the debtor solely on account of a forward contract will not be deemed to be a customer. For purposes of this Part, the term "forward contract" shall mean a contract for deferred delivery of a cash commodity which must be ultimately settled by delivery rather than by offset and which is not an illegal contract under the Act or the regulations thereunder.

(d) *Notice of court papers pertaining to the operation of the estate.* The trustee shall promptly provide the Commission with copies of any complaint, motion, or petition filed in a commodity broker bankruptcy which concerns the disposition of customer property. Court papers shall be directed to the Washington, D.C. headquarters of the Commission addressed as provided in paragraph (a) of this section.

(e) *Other.* The Bankruptcy Code will not be construed by the Commission to prohibit a commodity broker from doing business as any combination of the following: futures commission merchant, commodity option dealer, foreign futures commission merchant or leverage transaction merchant, nor will the Commission construe the Bankruptcy Code to permit any operation, trade or business, or any combination of the foregoing, otherwise prohibited by the Act or by any rule, regulation or order of the Commission thereunder.

Issued in Washington, D.C. on November 19, 1981

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-33937 Filed 11-23-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20 and 803

[Docket No. 79N-0182]

Medical Devices; Medical Device Experience Reporting; Abeyance of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Abeyance of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the medical device experience reporting proposed rule, published in the Federal Register of November 18, 1980, will be held in abeyance until further notice. FDA proposed to require manufacturers and distributors (including importers) of medical devices to submit reports concerning specified problems encountered with medical devices. FDA will not take any final action based on the proposed rule until further notice is published in the Federal Register. This action is being taken in light of the comments received and Executive Order 12291 entitled "Federal Regulation."

DATE: Comments may be submitted at any time.

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

FOR FURTHER INFORMATION CONTACT: Robert A. Forst, Bureau of Medical Devices (HFK-143), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7194.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 18, 1980 (45 FR 76183), FDA proposed to require device manufacturers and distributors (including importers) to submit reports to FDA concerning deaths, injuries, deficiencies, and remedial actions associated with their devices. Interested persons were given 90 days to submit comments. FDA received more than 300 written comments. In addition, on February 2, 1981, FDA held a public hearing to receive oral comments on the proposal.

Most of the comments received in writing and at the public hearing were opposed to the proposed regulation. Some comments requested that FDA withdraw the proposal pending reevaluation of the need for such a regulation. However, the majority of comments criticized the scope of the proposed rule, which they characterized as overly broad. The comments on the breadth of the proposal (1) discussed the cost of compliance with the rule as proposed; (2) questioned FDA's ability to process the number of reports that may be submitted; (3) questioned the need for many of the reports required (e.g., deaths and injuries that, after investigation, are determined not to be device-related); (4) objected to reporting routine maintenance repairs; (5) claimed that the number of unnecessary and insignificant reports that would be required to be submitted would prevent FDA from adequately addressing reports of serious device deficiencies; and, (6) opposed a requirement for reporting by distributors.

FDA had decided not to withdraw the proposal. As discussed in the preamble to the proposed regulation (45 FR 76184-76185; November 18, 1980), the legislative history of the Medical Device Amendments of 1976 (Pub. L. 94-295) expressly contemplates this type of reporting regulation. Furthermore, other health care products regulated by FDA (e.g., approved and investigational human drugs, approved and investigational veterinary drugs, blood and blood products) are the subject of reporting requirements similar to the proposed rule. FDA has no basis for concluding that medical devices are sufficiently distinguishable from these other products so as to justify the complete absence of a mandatory reporting system for adverse device experiences, when such a system has proved important in the regulation of other medical products.

FDA does believe, however, that the comments on the scope of the proposed rule merit serious consideration and thorough review. In addition, since publication of the proposed rule, FDA has become subject to requirements more extensive than those in effect at the time of publication. On February 17, 1981, the President issued Executive Order 12291 entitled "Federal Regulations." Executive Order 12291 requires Federal agencies, to the extent permitted by law, to base administrative decisions upon adequate information concerning the need for and consequences of the decisions and to undertake regulatory action only when the potential benefits of the action to society outweigh the potential costs. The Order also requires agencies to prepare a regulatory impact analysis of every major rule. Thus, FDA will also review the proposed rule in light of Executive Order 12291. Finally, FDA has recently initiated a major field inspection program of complaint files maintained under the good manufacturing practices

(GMP) regulations for medical devices (21 CFR Part 820). Under this program, complaint files of 500 randomly selected device firms will be evaluated as to their quality and scope. The first 73 of those inspections are expected to be completed by October 31, 1981; the remainder will be scheduled for fiscal year 1982. The results of this inspection program will permit FDA to reconsider whether GMP complaint files could serve as an adequate partial or complete substitute for reporting requirements of the proposed rule. Thus, the proposal will also be reviewed in light of the results of the complaint file inspection program.

In light of the foregoing three reasons for review of the proposal, the proposed medical device experience reporting regulation will be held in abeyance until further notice. FDA will not take any final action based on the proposal until notice thereof has been published in the Federal Register.

For the reasons above, FDA believes that there is good cause under 21 U.S.C. 360j(d)(2) to allow the submission of additional comments by anyone who has information that would assist FDA in making its decision. The agency is particularly interested in suggestions for narrowing the scope of the proposed rule and comments on the merits and demerits of such an approach. Examples of possible means of narrowing the proposal are (1) redefining reportable events; (2) exempting class I devices from the reporting requirements; (3) specifically excluding the reporting of routine maintenance corrections; and (4) exempting some distributors or limiting their reporting obligations.

Two copies of any comments are to be submitted, except that individuals may submit one copy, to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 8 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502(t), 519, 701(a), 704(e), 52 Stat. 1055, 90 Stat. 564–565, 578, 581 (21 U.S.C. 352(t), 360j, 371(a), 374(e))) 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)).

Dated: November 5, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 81–33959 Filed 11–23–81; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 801 and 899

[Docket No. 80N–0071]

Restricted Devices; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the restricted devices proposed rule published in the **Federal Register** of October 3, 1980. This action is being taken in light of the comments received and Executive Order 12291 entitled "Federal Regulation."

FOR FURTHER INFORMATION CONTACT: Michael A. Lidsky, Bureau of Medical Devices (HFK–143), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7194.

SUPPLEMENTARY INFORMATION: Since before the enactment of Medical Device Amendments of 1976 (Pub. L. 94–295), FDA has restricted the sale and distribution of devices by means of the prescription devices regulation in § 801.109 (21 CFR 801.109). That regulation, which remains in effect, provides that certain devices may be sold and distributed only by or on the order of licensed practitioners and specifies the conditions under which the devices may be exempt from the "adequate directions for use" labeling requirements of section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(1)).

In the **Federal Register** of October 3, 1980 (45 FR 65619), FDA issued a proposed rule on restricted devices under section 520(e) of the act (21 U.S.C. 360j(e)). This proposal would have restricted the sale, distribution, and use of certain types of medical devices to health professionals, including licensed practitioners. The proposal also would have established uniform labeling and advertising requirements for restricted devices. Under the proposal, devices would be restricted on the basis of their potential for harmful effect or the need for collateral measures to ensure their proper use.

FDA received 134 comments on the proposal. Many comments argued that the current prescription devices regulation provides sufficient regulatory controls for the dispensing and labeling of devices and that the proposed regulatory requirements were unwarranted and overly burdensome. Many comments also argued that FDA exceeded its authority under section 520(e) of the act. Other comments argued that the conceptual approach used in the proposal was fundamentally flawed. Still other comments stated that the proposed rule had not gone far enough in restricting devices that presented special problems in their safe handling and use.

Since publication of the restricted devices proposed rule, FDA has become subject to requirements more extensive than those in effect at the time of publication. On February 17, 1981, the President issued Executive Order 12291 entitled "Federal Regulation," which requires Federal agencies, to the extent permitted by law, to base administrative decisions upon adequate information concerning the need for, and consequences of, the decisions and to undertake regulatory action only when the potential benefits of the action to society outweigh the potential costs. The Order also requires agencies to prepare a regulatory impact analysis of every major rule.

In the light of the comments received and Executive Order 12291, FDA is withdrawing the restricted devices proposed rule. FDA will use the inspectional authority available under 21 U.S.C. 374(e) for inspection of records required by the good manufacturing practice regulation (21 CFR Part 820), as well as the dispensing and labeling requirements of the present prescription devices regulation and other applicable regulations, in regulating medical devices.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 510, 514, 515, 520(e), 521, 701(a), 704(a), 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055, 67 Stat. 477 as amended, 76 Stat. 794–795 as amended, 90 Stat. 546–549, 567, 574, (21 U.S.C. 321, 352, 360, 360d, 360e, 360j(e), 360k, 371(a), 374(a))) 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)).

Dated: November 5, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 81–33960 Filed 11–23–81; 8:45 am]

BILLING CODE 4160–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Ch. II

Federal Regulations; Agency Regulatory Agenda; Semiannual Summary

AGENCY: Agency for International Development, International Development Cooperation Agency.

ACTION: Agency regulations agenda.

SUMMARY: The Agency for International Development (A.I.D.), is publishing this Agenda as required by Section 5(a) of Executive Order 12291, Federal Regulations (46 FR 13193, February 19, 1981) and by the Regulatory Flexibility Act (Pub. L. 96–354, September 30, 1980). This agenda reports the status of those regulations currently under review and gives A.I.D.'s plan for the issuance of proposed regulations during the next six months. The agenda is divided into two sections: (1) an agenda concerning regulations which would have a significant economic impact on a substantial number of small entities; and (2) an agenda of existing regulations under Agency review pursuant to E.O. 12291 which may be revised, revoked or continued without change. It is expected that the information provided in this agenda will enable the public to be more aware of, and more effectively participate in A.I.D.'s rule making process.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda or the Review List, in general, contact: Mr. Joseph R. Ellis, Office of Management Planning, Agency for International Development, Washington, D.C. 20523, Telephone (202) 235–2386.

Specific

For further information about any particular item on the Agenda, contact the individual listed as contact for that item.

Regulatory Flexibility Act

Status

In announcing its plan for the periodic review of existing A.I.D. regulations under the requirements of the Regulatory Flexibility Act (RFA) (46 FR 41229, August 14, 1981), A.I.D. explained the circumstances for tentatively concluding that none of its regulations causes significant economic impact on a substantial number of small entities and invited public suggestions and comments with respect to this conclusion. The Agency did not receive any comments or suggestions during the comment period. Consequently, A.I.D. is not formally scheduling a review of its existing regulations for RFA implications. A.I.D. will maintain continued internal discussion and oversight to identify relevant regulations as new items and proposed revisions are made. When final rules are issued, A.I.D. will announce the review date as a part of the preamble for each regulation falling under RFA requirements.

Agenda

The Agency does not anticipate any rule making activity over the next six months that will fall within the requirements of RFA.

Executive Order 12291

Status

The following regulations were listed in the April 1981 Agenda as being under review pursuant to Section 5(a) of Executive Order 12291:

1. Review of the Regulations governing the requirements and procedures applicable to Commodity Transactions financed by A.I.D. (22 CFR Part 201) was completed and the final rule published in 46 FR 47067, September 24, 1981.

2. Regulations governing the registration of agencies for voluntary foreign aid (22 CFR Part 203) are being revised, specifically the definition of Private Voluntary Organizations (PVOs) and the conditions of their registration. A notice will be published in the **Federal Register** for public comment. Inquiry regarding the regulations on PVO registration may be directed to : Robert S. McClusky, Chief, Public Liaison Division, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, D.C. 20523, Telephone (202) 235–1844.

3. Regulations governing nondiscrimination in federally-assisted programs of A.I.D. (22 CFR Part 209) are being revised. Inquiries regarding these Regulations may be directed to: Nancy Frame, Office of the General Counsel, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632–8218.

4. The Regulations governing the policy and procedures for public access to Agency information (22 CFR Part 212) are being revised. Inquiry regarding these Regulations may be directed to: Arnold H. Dadian, Office of Public Affairs, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632–1850.

5. Regulations governing the collection of civil claims by the Agency for International Development (22 CFR Part 213) have been reviewed and no changes have been made. A.I.D. will shortly seek OMB review and clearance prior to publication in the **Federal Register** as a final rule.

6. The Regulations governing A.I.D. Advisory Committees (22 CFR Part 214) have been reviewed and have been submitted to OMB for clearance. No substantive changes have been made and, upon clearance by OMB, the regulations will be published as a final rule in the **Federal Register.** Inquires regarding these regulations may be directed to: Gwendolyn H. Joe, Office of Management Planning, Agency for International Development, Washington, D.C. 20523, Telephone (202) 235–2113.

7. Regulations covering the implementation of the Privacy Act of 1974 (22 CFR Part 215) are being reviewed. Inquiry regarding these Regulations may be directed to: Arnold H. Dadian, Office of Public Affairs, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632–1850.

Agenda

The Agency does not expect to issue any new significant regulations, nor to review any currently effective ones other than those listed above during this agenda period—October 1981–April 1982.

None of the above regulations is a "major rule" within the meaning of Executive Order 12291, nor would any of the regulations have a significant economic impact on a substantial number of small entities.

Dated: November 5, 1981.

John F. Owens,

Assistant Administrator (Acting), Bureau for Program and Management Services.

FR Doc. 81-33938 Filed 11-23-81; 8:45 am]

BILLING CODE 6116-01-M

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

Correction

In FR Doc. 81–33560, published on page 57253, on Friday, November 20,

1981, in the second column, in the list of initial priorities near the bottom of the column, the entry for Section 14 should have read "(Use of Equipment)".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Former Prisoners of War

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Administration is proposing to amend its adjudication regulations to implement a provision of a new law, the Former Prisoner of War Benefits Act of 1981, which provides that disabilities resulting from a number of specified diseases may be considered service connected if a former prisoners of war was held for at least 30 days.

DATES: Comments must be received on or before December 23, 1981. We propose to make this change effective October 1, 1981, the date specified in the new law, designated as Pub. L. 97-37.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until January 4, 1982.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202-389-3005).

SUPPLEMENTARY INFORMATION: Section 3, Pub. L. 97-37 (95 Stat. 935) defines the term "former prisoner of war." Proposed regulations implementing this provision will be published later.

Prior to enactment of section 4, Pub. L. 97-37, 38 U.S.C. 312(b) provided that certain veterans who had been held as prisoners of war for not less than 6 months were deemed to have suffered from dietary deficiencies, forced labor or inhumane treatment in violation of the terms of the Geneva Conventions of July 27, 1929, and August 12, 1949. Section 312(c), title 38, United States Code further provided that in the case of former prisoners of war who had suffered from dietary deficiencies, etc., the diseases of avitaminosis, beriberi, chronic dysentery, helminthiasis, malnutrition (including optic atrophy associated with malnutrition), pellagra, or any other nutritional deficiency, which became manifest to a degree of 10 percent or more at any time after service or psychosis which became manifest to a degree of 10 percent or more within 2 years after discharge from service, could be considered to be service connected notwithstanding that there is no record of such disease during service.

Section 4, Pub. L. 97-37 amends 38 U.S.C. 312, effective October 1, 1981, to provide that in the case of a veteran who was detained or interned as a prisoner of war for not less than 30 days all of the above mentioned diseases as well as any of the anxiety states, which became manifest to a degree of 10 percent or more at any time after service shall be considered to be service connected, notwithstanding that there is no record of such disease during service. The term "anxiety states" has the meaning prescribed under the heading "Anxiety States (or Anxiety Neuroses)" in the *Diagnostic and Statistical Manual of Mental Disorders* (Third Edition), published by the American Psychiatric Association.

The proposed amendments of 38 CFR 3.307 and 3.309 implement the foregoing provisions of section 4, Pub. L. 97-37.

The Administrator hereby certifies these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply to benefits for former prisoners of war. They will have no significant impact on small entities in terms of compliance costs, recordkeeping requirements, or effects on competition.

The agency has determined that these regulations are nonmajor in accordance with Executive Order 12291 because they simply implement statutory requirements and would have little or no economic impact, in themselves.

The catalog of Federal Domestic Assistance Program Number is 64.109.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until January 4, 1982. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and the above room number.

Approved: November 4, 1981.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

The Veterans Administration proposes to amend 38 CFR Part 3 as follows:

1. Section 3.307 is amended as follows:

a. By removing the reference "paragraph (a)(3), (4) and (5)" and inserting the reference "paragraph (a)(3) and (4)" in the first sentence of paragraph (a)(2).

b. By removing the last sentence of paragraph (b) which reads "Where, for the purposes of § 3.309(c), the issue is presented as to whether a prisoner of war suffered from dietary deficiencies, forced labor, or inhumane treatment (in violation of the terms of the Geneva Conventions of July 27, 1929, and August 12, 1949), while held as a prisoner of war, it will be resolved on the basis of all evidence available including the statements of comrades and the veteran's own statement in certified form."

c. By revising paragraph (a)(5) as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner of war related disease; wartime and service on or after January 1, 1947.

(a) *General.* * * *

(5) *Diseases specific as to former prisoners of war.* The diseases listed in § 3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service. (38 U.S.C. 312)

* * * * *

2. In § 3.309, paragraph (c) is revised as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(c) *Diseases specific as to former prisoners of war.* If a veteran is (1) a former prisoner of war and (2) as such was interned or detained for not less than 30 days, the following diseases may be considered service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or

air service even though there is no record of such disease during service.

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.

(38 U.S.C. 312)

[FR Doc. 81-33921 Filed 11-23-81; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-1982-7]

Approval and Promulgation of Implementation Plans; North Carolina: PSD and NSR Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve implementation plan revisions which North Carolina submitted on April 16, 1981. These revisions include regulations providing for prevention of significant deterioration (PSD) and new source review (NSR) regulations for sources in or impacting nonattainment areas. The public is invited to submit comments on this proposal.

DATE: To be considered, comments must be received on or before December 24, 1981.

ADDRESSES: Copies of the materials submitted by North Carolina 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, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365
Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, 512 N. Salisbury Street, Raleigh, North Carolina 27611, Archdale Building

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the Region IV Air Programs Branch at 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: Following notice and public hearing in conformity with 40 CFR 51.4, the North Carolina Environmental Management Commission adopted numerous regulation changes which were submitted to EPA on April 16, 1981, for approval as implementation plan revisions. EPA proposes to approve the revisions described in this notice.

A new regulation 2D.0530, Prevention of Significant Deterioration, is added; this incorporates by reference portions of 40 CFR 51.24 in effect as of December 16, 1980 (date of State's hearing), and is intended to meet the requirements of that Federal regulation. In the following summary of the State's PSD rule, all unidentified citations are to be understood as referring to 40 CFR 51.24.

The State's regulation provides that the definitions of paragraph (b) shall apply except that the "reasonable period" of paragraph (b)(3)(ii) (definition of "net emission increase") shall be seven years, and the limitations of paragraph (b)(15)(ii) (definition of "baseline area") shall not apply. The State is required by paragraph (b)(3)(ii) to define the reasonable period over which increases and decreases in emissions are summed for determining if a net increase has occurred. The State has demonstrated that its submitted definition of "baseline area" is at least as stringent as those contained in paragraph (b), as required therein.

All areas of North Carolina are designated Class II except for mandatory Class I areas. The State may propose to EPA that areas be redesignated to a different classification following the provisions of paragraphs (e) and (g). Indian lands are to be redesignated only by proposal of the appropriate Indian Governing Body.

Increases in baseline concentrations shall be limited to those set forth in paragraph (c) and (d), and exclusions from increment consumption shall be in accordance with paragraph (f).

Major sources and modifications shall comply with the requirements of paragraphs (i) through (o). If a source or modification becomes major solely through a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source to emit a pollutant, such as a restriction on hours of operation, the provisions of the North Carolina regulation shall apply as though construction had not begun for that source. This provision closes a loophole which would otherwise allow a source to avoid PSD requirements by first obtaining permit restrictions exempting it from PSD review, and by then having the restrictions removed.

The degree of emission limitation required under the State regulation shall not be affected by that portion of a stack height, not in existence before December 31, 1970, as exceeds good engineering practice, or by any other dispersion technique not implemented before then.

As provided in paragraph (l), any substitution in or modification of a dispersion model shall be subject to a public comment period.

As provided in paragraph (s), permits may be issued on the basis of innovative technology.

Sources impacting Class I areas shall be subject to provisions which are in accord with those of paragraph (p), providing for interaction with Federal Land Managers.

The Federal regulation provides that a final determination is to be made within one year following submittal of a complete application by a prospective source. However, North Carolina law requires issuance of a permit within 90 days of a complete application. To minimize possible conflict between Federal and State requirements, subdivision (p) of regulation 2D.0530 specifies that the statutory 90 days will be considered to begin at the end of the public comment period, at the end of any public hearing held on the application, or when the applicant supplies information requested by the agency in response to comments received during the comment period or at any hearing, whichever is later. Even so, if it becomes apparent that the State's review of the application will not be complete within 90 days, responsibility for processing the application will be turned back to EPA at the end of 70 days of the 90-day period, and the source will not be allowed to construct until it receives a PSD permit from EPA.

The material of existing regulation 2H.0608, Permits for Sources Impacting Nonattainment Areas, is incorporated in two new regulations designed to meet the requirements of 40 CFR 51.18(j), as promulgated on August 7, 1980 (45 FR 52743 ff.). New regulation 2D.0531 describes the procedures to be used in issuing a permit to certain new major stationary sources in a nonattainment area. New regulation 2D.0532 deals with permits for certain new major sources located outside a nonattainment area but contributing to ambient violations in it. Regulation 2H.0608 is repealed.

Regulation 2D.0531(e)(3)(B) provides a partial waiver from "The requirements of this Subdivision * * *" for sources that are "required to be modified as a result of EPA regulations * * *" The State is requested to submit information which clarifies the scope of this partial waiver provision, including what requirements are being waived and the relationship of the provision to reasonable further progress.

Action

EPA proposes to approve these changes in the North Carolina plan. The public is invited to submit written comments on the proposal. After considering relevant comments received together with all other available information, the Agency will take final action.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified (46 FR 8709) that the present rule will not, if promulgated, 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 imposes no new burden on sources.

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

(Secs. 110, 161 and 172 of the Clean Air Act (42 U.S.C 7410, 7471, and 7502))

Dated: September 29, 1981.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-33915 Filed 11-23-81: 8:45 am]

BILLING CODE 6560-38-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6196]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287-0270, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4.

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Darien, Town, Fairfield County	Long Island Sound	Five Mile River from confluence with Long Island Sound to approximately 960 feet north of Davis Land extended.	*16
			Confluence of Five Mile River to Contentment Island Road extended.	*18
			Scotts Cove Shoreline from Contentment Island Road extended to East Osceola Drive extended.	*15
			Scotts Cove Shoreline from East Osceola Drive extended to Great Island.	*17
			Great Island to Hay Island	*18
			Hay Island to Molly Pond	*18
			Holly Pond entire shoreline from confluence of Noroton River to Brush Island Road extended.	*16

Maps available for inspection at the Office of Planning and Zoning, and Department of Public Works, Town Hall, 719 Boston Post Road, Darien, Connecticut.

Send comments to Honorable William H. Patrick, First Selectmen of Darien, Town Hall, 719 Boston Post Road, Darien, Connecticut 06820.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Dept in feet above ground. *Elevation in feet (NGVD)
Connecticut	Groton Long Point Association, New London County.	Fishers Island Sound	From North Corporate Limits, to approximately 770 feet north of cross street extended.	*14
			From approximately 770 feet north of cross street extended to Groton Long Point.	*16
			From Groton Long Point to approximately 240 feet west of Weston Road extended.	*16
			From approximately 240 feet west of Weston Road extended to approximately 1,360 feet south of Venetian Street extended.	*15
			From approximately 1,360 feet south of Venetian Street extended to approximately 720 feet south of confluence of Lower Lagoon.	*16
			From approximately 720 feet south of confluence of Lower Lagoon to confluence of Lower Lagoon.	*15
			From confluence of Lower Lagoon to Island Avenue extended.	*13
			From Island Avenue extended to Northern Corporate Limits.	*14

Maps available for inspection at the Groton Long Point Association Community Center, Groton Long Point, Connecticut.

Send comments to Honorable Joseph Devine, President of the Groton Long Point Association, 5 Atlantic Avenue, Groton Long Point, Connecticut 06340.

Rhode Island	Lincoln, Town, Providence County	Blackstone River	Downstream Corporate Limits	*61
			Front Street (upstream side)	*63
			Pratt Dam (upstream side)	*68
			Martins Street (upstream side)	*74
			Ashton Dam (upstream side)	*82
			Albion Road (upstream side)	*89
			Manville Road (upstream side)	*105
			Upstream Corporate Limits	*116
		Moshassuck River	Downstream Corporate Limits	*52
			Dam at Factory Bridge (upstream side)	*63
			Barney Pond Dam (upstream side)	*77
			Upstream side of Breakneck Hill Road	*107
			Footbridge approximately 2,875' upstream of Breakneck Hill Road (upstream side).	*122
			Sherman Avenue (upstream side)	*170
			State Route 246 (upstream side)	*181
		Crookfall Brook	Confluence with Blackstone River	*116
			Dam (approximately 515' upstream of old River Road) upstream side.	*174
			Sayles Hill Road (upstream side)	*209
			Approximately 625' upstream of Old Grant Road	*279

Maps available for inspection at the Municipal Offices, 100 Old River Road, Lincoln, Rhode Island.

Send comments to Honorable Burton Stallwood, Town Administrator of Lincoln, Municipal Offices, 100 Old River Road, Lincoln, Rhode Island 02865.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 30, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33748 Filed 11-23-81; 6:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6012]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Massachusetts; Correction

AGENCY: FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 17798 on March 20, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Great Barrington, Berkshire County, Massachusetts.

DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0270, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Great Barrington, Berkshire County, Massachusetts, previously published at 46 FR 17798 on March 20, 1981, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A

flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The following location descriptions have been amended to read as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding and location	Elevation in feet national geodetic vertical datum
Housatonic River:	
Current: Downstream of U.S. Route 7	*682
Former: Downstream of Breached Dam	*682
Current: Upstream of U.S. Route 7	*688
Former: Upstream of Breached Dam	*688
Williams River:	
Current: 0.17 mile Downstream of Conrail Bridge	*703
Former: 2.17 miles Downstream of Conrail Bridge	*703
Current: Upstream of Wright Lane	*726
Former: Upstream of Night Avenue	*726

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 27, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33749 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6015]

National Flood Insurance Program; Proposed Flood Elevation Determinations for the City of Gadsden, Etowah County, Ala.

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Gadsden, Etowah County, Alabama. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for inspection at City Hall, 90 Broad Street, Gadsden, Alabama 35999.

Send comments to: Mayor Steve Means or Mr. David Kelley, Assistant Mayor, City Hall, 90 Broad Street, Gadsden, Alabama 35999.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, P.E., National Flood Insurance Program (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the city of Gadsden, Alabama, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Previous publication of proposed base (100-year) flood elevations for Gadsden, Alabama appeared in 46 FR 18726 on March 26, 1981, in 46 FR 39456 on August 3, 1981, and in *The Godsden Times* on March 11, and March 18, 1981. This notice will serve to supersede those previous publications.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and to not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for the City of Gadsden, Alabama are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIOINS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Gadsden, Etowah	Coosa River	Just downstream of confluence of Big Wills Creek	*519
			Just upstream of confluence of Big Wills Creek	*520
			Confluence of Nowlin Branch	*520
			Confluence of Town Creek	*521
		Big Wills Creek	Just downstream of Brooke Avenue	*526

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Little Wills Creek	Just upstream of southern corporate limits (approximately 2100 feet upstream Southern Railway Crossing.	*536
		Black Creek	Just upstream of Chestnut Street	*525
			Just upstream of Tuscaloosa Avenue	*531
			Just downstream of Noccalula Road	*694
			Just upstream of Noccalula Road	*699
		Town Creek	Just upstream of Tuscaloosa Avenue	*527
		Nowlin Branch	Just upstream of Elmwood Avenue	*524
			Just upstream of North 7th Street	*532
			Just upstream of Doyle Street	*540
		Greenway Creek	Just downstream of Springfield Avenue	*530

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director).

Issued: November 5, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33745 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6192]

National Flood Insurance Program; Proposed Base Flood Elevation and Zone Designation Determinations for the City of Zachary, East Baton Rouge Parish, Louisiana

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the Mayor, 4650 Main Street, Zachary, Louisiana.

Send comments to: The Honorable John Womack, Mayor, City of Zachary, P.O. Box 310, Zachary, Louisiana 70791.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Zachary, Louisiana in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base flood elevations and zone designations are as follows:

Source of flooding and location	Elevation (feet) national geodetic vertical datum	Zone designation
Upper White Bayou:		
At the southernmost corporate limits.	81	A2.
Approximately 350 feet north of Spur Lane.	83	A2.
Cypress Bayou Tributary No. 2:		
Approximately 100 feet downstream of Baker-Zachary Highway.	86	A1.
Just downstream of Baker-Zachary Highway.	88	A1.
White Bayou:		
Approximately 2400 feet downstream of Lower Zachary Road.	86	A2.
At the northernmost corporate limits.	108	A2.

The special flood hazard areas located along White Bayou, Copper Mill Bayou and Indian Bayou, have been revised from Zone A3 to Zone A2. The base flood elevations and zone designations have been revised to resolve the inconsistencies between the city of Zachary, the city of Baker, and East Baton Rouge Parish and/or to coincide with the published profiles.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or

regulations on participating communities.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: November 3, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33741 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6195]

National Flood Insurance Program; Proposed Elevations and Zone Designations for the Borough of Allendale, New Jersey

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed elevations and zone designations will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed elevations and zone designations are available for review at the Mayor's Office, Allendale, New Jersey.

Send comments to: The Honorable Edward N. Fitzpatrick, Mayor, Borough of Allendale, P.O. Box 288, Allendale, New Jersey 07401.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, National Flood Insurance Program, 500 C Street, Donohoe Building, Room 510, Washington, D.C. 20472, (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed elevations and zone designations (100-year flood) for the Borough of Allendale, New Jersey in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

The proposed elevations and zone designations together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding and location	Elevation (feet) (NGVD)	Zone
Ramsey Brook: Immediately downstream of Erie Railroad.	314	A4.
Ramsey Brook: Point approximately 800 feet upstream of Erie Lackawanna Railroad.	324	A4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: October 28, 1981.

Lee M. Thomas,

Associate Director, Office of State and Local Programs and Support.

[FR Doc. 81-33735 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6121]

Proposed Flood Elevation Determinations for the City of Grand Junction, Colorado

AGENCY: FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Grand Junction, Colorado.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 46 FR 39617 on August 4, 1981 and in *The Daily Sentinel*, published on or about July 15, 1981, and July 22, 1981, and hence supersedes those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at Engineering Department, 250 N. 5th Street, Grand Junction, Colorado.

Send comments to: The Honorable Louis Brach, 250 N. 5th Street, Grand Junction, Colorado 81501

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., National Flood Insurance Program, (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Grand Junction, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations the are basis for floodplain management measures that the community is required to either adopt or show evidence of

being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations are:

Source of flooding and location	#Depth in feet above ground Elevation in feet (NGVD)
Colorado River: At intersection of Chulusta Avenue and Fairview Avenue	*4556
Indian Wash: At the southwest corner of the intersection of Orchard Avenue and 28¼ Road	*4633
Leach Creek: At intersection of Leach Creek and upstream side of Patterson Road	*4545
Horizon Drive Channel: At intersection of Horizon Drive Channel and 25½ Road	*4573
Approximately 1280 feet upstream of intersection with 25½ Road	*4583

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 30, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33746 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6200]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determinations for the City of Mankato, Blue Earth County, Minnesota

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 202 East Jackson Street, Mankato, Minnesota.

Send comments to: The Honorable Herbert Mocol, City of Mankato, 202 East Jackson Street, Mankato, Minnesota 56001.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the city of Mankato, Minnesota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed zone designations are as follows:

Zone A15, Zone B, and Zone C along the Minnesota River north of U.S. Route 14 within two recently annexed areas.

Zone A, Zone B, and Zone C behind the floodwall and levee on the south side of the Minnesota River upstream of Main Street, along Indian Creek, and behind the floodwall and levee on the east side of the Blue Earth River from its confluence with the Minnesota River to U.S. Route 169.

Zone B and C along the Blue Earth River upstream of U.S. Route 169.

Zone A99 behind the proposed floodwall on the east side of the Minnesota River downstream of Main Street.

Zone A20 along the Minnesota River upstream of its confluence with the Blue Earth River within a recently annexed area.

Zone A along Indian Creek within a recently annexed area.

Zone B behind the levee on the west side of the Minnesota River south of U.S. Route 14.

The proposed base flood elevations are as follows:

773 feet MSL through 775 feet MSL along the Minnesota River north of U.S. Route 14 within two recently annexed areas.

784 feet MSL through 785 feet MSL along the Minnesota River upstream of its confluence with the Blue Earth River within a recently annexed area.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 3, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33736 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6184]

National Flood Insurance Program; Proposed Zone And Base Flood Elevation Determinations for The City of Newport, Lincoln County, Oregon

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zones and base flood elevations as described below.

The proposed zones and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zones and base flood elevations are available for review at the Office of the City Planner, 810 S.W. Alder Street, Newport, Oregon. Send comments to: Mr. Jan Monroe, City Planner, City of Newport, 810 S.W. Alder Street, Newport, Oregon 97365.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, National Flood Insurance Program, Washington, D.C. 20472, (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zones and base flood elevations for the City of Newport, Oregon in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zones and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zones and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zones and base flood elevations are as follows:

Source of flooding and location	Elevation (feet) national geodetic vertical datum	Zone designations
Pacific Ocean:		
Between the northernmost corporate limits and the limit of detailed study.	.....	V.
North of N.W. 58th Street	31	V14.
Between N.W. 58th Street and N.W. 43rd Street.	.....	V.
Along the South Beach State Park.	.....	V.
Just south of the South Beach State Park.	31	V8.
North of confluence with Henderson Creek.	16	V8.
At confluence with Henderson Creek.	30	V8.
West of Airport Way	31	V6.
West of Surfland Way	40	V10.
At confluence with Grant Creek.	31	V10.
West of Miracle View Drive	40	V10.
Yaquina Bay: At the easternmost corporate limits.	10	A3.

The flood boundary floodway delineation along Big Creek, between U.S. Route 101 and N.E. Big Creek Road, has been revised to reflect more accurate topographical information.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rules provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective JANUARY 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: October 22, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33738 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6204]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determination for the City of Newark, Licking County, Ohio

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 40 West Main Street, Newark, Ohio.

Send comments to: The Honorable Mary M. Lusk, City of Newark, 40 West Main Street, Newark, Ohio 43055.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zones designations for the City of Newark, Ohio, in accordance with

section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minumum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed zone designations are as follows:

Zone A1 and Zone C along Log Pond Run from the westernmost corporate limits to a point approximately 4800 feet upstream of 21st Street in two recently annexed areas.

Zone A and Zone C along Tributary Number 1 within a recently annexed area west of Londondale Parkway.

Zone C in portions of the area bounded by 21st Street, Pierson Drive, Pierson Boulevard, Grafton Avenue, English Avenue, and Mount Vernon Road; within a recently annexed area northwest of Londondale Parkway; and in an area bounded on the south by Sharon Valley Road and on the north, east, and west by the corporate limits.

The proposed base flood elevations are as follows: 886 feet MSL along Log Pond Run at the westernmost corporate limits through 873 feet MSL along Log Pond Run at a point approximately 4800 feet upstream of 21st Street.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood harzard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 3, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33737 Filed 11-23-81; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6201]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determinations for the City of St. Paul, Ramsey County, Minn.

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 347 City Hall, Saint Paul, Minnesota.

Send comments to: The Honorable George Latimer, City of Saint Paul, 347 City Hall, Saint Paul, Minnesota 55102.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Saint Paul, Minnesota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed zone designations and base flood elevations are as follows:

Source of flooding and location	Elevation national geodetic vertical datum	Zone designation
Mississippi River:		
Approximately 800 feet downstream of Lock and Dam Number One.	718	A20 and C.
Approximately 2,500 feet downstream of Lock and Dam Number One.	717	A20 and C.
Approximately 4,300 feet downstream of Lock and Dam Number One.	716	A20.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: October 28, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33740 Filed 11-23-81: 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6193]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determinations for the City of St. Michael, Wright County, Minn.

AGENCY: FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the City of St. Michael offices, St. Michael, Minnesota.

Send comments to: The Honorable Elmer Eichelberg, City of St. Michael, St. Michael, Minnesota 55376.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0270.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of St. Michael, Minnesota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed zone designations and base flood elevations are as follows:

Source of flooding and location	Elevation national geodetic vertical datum	Zone designation
Crow River: Between eastern and southern corporate limits.	884	A8 and B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 3, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33739 Filed 11-23-81: 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6143]

Proposed Flood Elevation Determinations in the Town of Prescott Valley, Yavapai County, Ariz.

AGENCY: FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Prescott Valley, Yavapai County, Arizona.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 46 FR 47628 on September 29, 1981 and in the *Prescott Courier*, published on or about August 14, 1981, and August 21, 1981, and hence supersedes those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Planner's Office, Town Hall, Yavapai Road, Prescott Valley, Arizona.

Send comments to: the Honorable Raymond Sandberg, P.O. Box 5456, Prescott Valley, Arizona 68312

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287-0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locatioins in the Town of Prescott Valley, Arizona, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies

that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms tha basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations are:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Aqua Fria River:	
Most downstream corporate limit crossing	*4,836
Intersection of Mingus Circle and Mountain View Drive	*4,890
Intersection of Hill Drive and Mountain View Drive	*4,912
Intersection of Robert Road and Winchester Drive	*4,926
Navajo Drive Wash: Eastern corner of intersection of Towago Drive and Navajo Drive	*4,876

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: October 30, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-33747 Filed 11-23-81; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 46, No. 226
Tuesday, November 24, 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

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1981 Crop Terms and Conditions of Indemnification; Amendment

Pursuant to the provisions of sections 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts (30 FR 9402) and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found that the amendment hereinafter set forth to the Terms and Conditions of Indemnification Applicable to 1981 Crop Peanuts (46 FR 35703) will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement.

Amendment of the second and third from last paragraphs of the Terms and Conditions of Indemnification is necessary to provide a new and more desirable method for establishing indemnification values on lots of unwholesome peanuts on which handlers seek indemnification. The method currently in use provides payment of indemnification values that greatly exceed market prices due to changes in the market situation. This proposed amendment would change the manner in which such values are calculated so that the indemnification values would be realistic and better represent up-to-date market values.

Therefore, the second and third paragraphs from the last of the Terms and Conditions of Indemnification Applicable to 1981 Crop Peanuts (46 FR 35703) is amended by deleting both paragraphs and replaced by the following:

For the purpose of paying indemnification beginning October 21, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the prices listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category as of May 31, 1982, shall be applied during the remainder of the crop year.

The indemnification value for each category of peanuts eligible for indemnification shall be the domestic market price, established during the averaging period, less two cents per pound (on the pounds indemnified) or the most recent price per category listed in the Peanut Market News, whichever is lower.

The Peanut Administrative Committee has recommended that this amendment be issued as soon as possible so as to implement and effectuate the provisions of the marketing agreement dealing with the Terms and Conditions of Indemnification. Marketing of the 1981 peanut crop is well underway and such terms and conditions for actual operation under the agreement should therefore be modified and made effective as soon as possible on the date specified herein. Handlers of peanuts who will be affected by such amendment have signed the marketing agreement authorizing the issuance of such terms and conditions, they are represented on the Committee which recommended such amendment and time does not permit prior notice of the proposed amendment to such handlers.

The foregoing amendment of the Terms and Conditions of Indemnification Applicable to 1981 Crop Peanuts is hereby approved and made effective October 21, 1981.

Dated: November 18, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-33869 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

1981 Burley Tobacco, Price Support Rates; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1981 Burley Tobacco Price Support Rates; Correction.

SUMMARY: This document corrects a notice of determination of the price support rates for 1981-Crop Burley Tobacco that appeared at page 46150 in the **Federal Register** on Thursday September 17, 1981 (46 FR 46150). This action is necessary to correct an error in a rate which appeared in the table of support rates.

EFFECTIVE DATE: November 24, 1981.

ADDRESS: Director, Tobacco and Peanuts Division, ASCS, USDA, Room 5738 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry Millner, ASCS, (202) 447-4281.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 46-180, appearing at page 46150 in the issue of September 17, 1981, the support rate for tobacco grade "X3L" in the bottom line of the second column of rates is corrected by changing "172" to "177".

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

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-33871 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Alpena Sportsman's Island, Mich.; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

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 Alpena Sportsman's Island, RC&D Measure, Alpena County, Michigan.

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, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for critical area treatment and public water-based fish and wildlife development. Critical area treatment will include critical area planting (7,500 beach grass plants), ¼ acre of seeding, 500 tree and shrub plantings, 4,700 feet of recreation trails, 5 recreation walkways and 30 trail signs. Public water-based fish and wildlife development installation will include five fishing platforms, one canoe landing area, one handicapped viewing deck, one entrance control gate and one entrance sign. Total construction cost is estimated to be $20,300; $10,600 RC&D funds and $9,700 local funds.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FNSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until December 24, 1981.

Dated: November 13, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Pretection 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)

Homer R. Hilner,

State Conservationist.

[FR Doc. 81-33677 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-16-M

Chippewa County RC&D Measure, Michigan; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

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 Chippewa County, RC&D Measure, Chippewa County, Michigan.

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, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for critical area treatment. The planned works of improvement include the following items: land grading and shaping, critical area planting (see, fertilizer and mulch), grade stabilization structures (pipes and rock chutes), rock riprap and armored channels. Total construction cost is estimated to be $206,000; $123,000 RC&D funds and $84,000 local funds.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FNSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until December 24, 1981.

Dated: November 13, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, 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)

Homer R. Hilner,

State Conservationist.

[FR Doc. 81-33678 Filed 11-23-81; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Cost Comparison Reviews Scheduled for Commercial or Industrial Activities Performed by Government Personnel; Postponement

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Postponement of Cost Comparison Reviews Scheduled for Commercial or Industrial Activities Performed by Government Personnel in the Bureau of Economic Analysis.

SUMMARY: Notice is hereby given that the cost comparison reviews scheduled for commercial or industrial activities performed by Government personnel in the Bureau of Economic Analysis (BEA), published in the **Federal Register**, Monday, July 28, 1980 (45 FR 49966, No. 146), will be postponed until FY 1983. The new schedule for the reviews will be published when established.

BEA will postpone its cost comparison reviews of computer and data conversion operations because the limited resources available for reviews have been redirected to conduct a systems study mandated by Department of Commerce management-by-objective requirements.

FOR FURTHER INFORMATION CONTACT: Vincent C. Finelli, Chief, Computer Systems and Services Division, Bureau of Economic Analysis, Department of Commerce, Washington, D.C. 20230, (202) 523-0981.

Allan H. Young,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. 81-33875 Filed 11-23-81; 8:45 am]

BILLING CODE 3510-06-M

International Trade Administration

Imported Steel Mill Products Trigger Price Mechanism; Carbon Steel Anti-surge Provision

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing the results of its examination of second quarter 1981

surges of certain basic carbon steel mill products. Two investigations of unfair trade are being initiated by the Department based upon information developed during these reviews.

FOR FURTHER INFORMATION CONTACT:
Joseph A. Spetrini, Import Administration, U.S. Department of Commerce, (202) 377–3793.

SUPPLEMENTARY INFORMATION:

The Carbon Steel Surge Mechanism

On October 8, 1980 the Department of Commerce announced the reinstatement of the steel trigger price mechanism (TPM) and the addition of the anti-surge provision to the TPM (45 FR 66833). The announcement states that "Whenever aggregate imports exceed 15.2 percent of apparent domestic consumption, the U.S. industry is operating below 87 percent capability utilization, and there appears to be a surge in imports of one or more specific products from one or more specific countries, Commerce will examine the situation to ascertain whether the imports are apparently (1) being dumped on a cost or price basis, (2) the result of government subsidization, or (3) the result of fair competition." That notice also states that "in determining whether there has been a surge in the volume of imports of a particular product or products, Commerce will consider the amount of increase in those imports, the period in which this increase occurred, and the significance of the amount in light of prevailing market conditions and seasonal and recent representative patterns in trade." Today Commerce reports the results of its examination of the surges previously identified.

The Surge Examinations

On August 20, 1981, the Department published its first carbon steel surge announcement (46 FR 42323). Because aggregate surge conditions were met—imports comprised 18.2 percent of domestic apparent consumption[1] and average capability utilization was 85.1 percent in the second quarter—Commerce further analyzed steel import trends and identified surges in four product categories: structural shapes (AISI import category 3), sheet piling (category 4), carbon steel plate (category 5), and cold finished bars (category 12). The countries accounting for these surges were Spain, Republic of South Africa, and the United Kingdom for structural shapes; Canada and the United Kingdom for sheet piling; Romania and Spain for carbon steel plate; and France, Spain, and the United Kingdom for cold finished bars.

Over the last ninety days, the Department has examined each identified import surge to determine whether it appears to have been the result of unfair dumping or subsidization and if the apparent unfair trade practice has abated. Our examinations have included the following steps:

1. Analysis of trade data, primarily from the U.S. Census Bureau and the American Iron and Steel Institute (AISI);
2. Consultations, in conjunction with the United States Trade Representative, with representatives of concerned foreign governments, and examination of confidential written submissions of governments and foreign producers;
3. Analysis of information contained in Special Summary Steel Invoices (SSSI's);
4. Searches for home market prices as appropriate;
5. Analysis, by TSUSA line, of changes in import unit values to identify inconsistencies with market trends.

In those cases in which it appears that apparent unfair trade practices were responsible for the surge and that it is not abating, we are initiating antidumping or countervailing duty investigations as appropriate.

Results of Surge Examinations

Structural Shapes

The Department's review of import surges of structural shapes revealed that the surge in Spanish imports apparently involved unfair subsidization; notice of initiation of a countervailing duty investigation appears elsewhere in this **Federal Register.** Imports of Spanish structurals during the first nine months of 1981 exceeded 213 thousand net tons, compared to 118 thousand during the same period last year and 69 thousand in 1979. Our research indicates substantial evidence of possible subsidization of Spanish structurals producers and likely damage to U.S. producers.[2]

Our examination of structurals from the United Kingdom revealed that while the overall second quarter surge in structurals imports was caused by increased imports on the Gulf Coast, most of the increase in imports of U.K. structurals was in other regions—particularly in the West Coast, where there is only very limited U.S. production capability. September's imports of 10 thousand tons is below the average of the last six months of 15 thousand tons, and confidential data submitted to us by British Steel Corporation indicate a further decline in imports in coming months. Finally, a review of import trends over a longer period revealed that the surge in U.K. structurals imports was not dramatic by historical standards broader than those relied upon to identify the surge. We will continue to monitor imports of structural shapes from the United Kingdom and take appropriate action if conditions change.

Our review indicates that the second quarter surge of structural shapes from South Africa was not a sustained surge; rather, it was identified because the sporadic availability of shipping from South Africa to the United States led to the compression of imports. No indication of sales at less than fair value were found, as the dollar unit value of imports increased during 1981 even as the Rand depreciated, and volume dropped off 53 percent in the third quarter from the second quarter surge level. No further action is being taken at this time in connection with this surge, although the Department will continue to monitor the importation of structural shapes from South Africa and take appropriate action if conditions change.

Sheet Piling

Our examination of the surge imports of sheet piling from Canada found evidence that this product has been sold in the U.S. substantially below trigger prices and below home market prices. This appears to be a case where foreign market entry is gained and consolidated through sales below home market prices. Notice of initiation of an antidumping investigation of sheet piling from Canada appears elsewhere in this **Federal Register.**

Review of U.S. imports of sheet piling from the U.K. shows, as in the case of structurals from the U.K., that the identified import surge was not dramatic in broader historical terms than those used in the surge identification. U.K. exports to the U.S. were interrupted during 1978–1980 by labor strikes, antidumping actions, and an unusual domestic demand. Imports in September and October abated from their second quarter surge levels. September's imports of 100 net tons are well below the previous eight month average of 1866 net tons, and TPM monitoring information to date suggests that October's level will also be low. We will continue to monitor import levels of sheet piling from the U.K.

Plate

The surge examination of plate from Romania was terminated upon the

[1] Apparent consumption equals domestic shipments plus imports minus exports.

[2] Because Spain is not a signatory of the GATT subsidy code and has not assumed equivalent obligatons, the injury test will not apply.

initiation of an antidumping investigation on November 19.

The second quarter surge in plate imports from Spain was caused by accelerated shipments to fulfill contracts in anticipation of a fairly lengthy plant closure. Plate imports from Spain have abated from the second quarter surge levels, declining from 19 to 32 thousand tons in June and July to 9 and 1 thousand tons in August and September. We will continue to monitor imports of Spanish plate and take appropriate action if conditions change.

Cold Finished Bars

Our examination of the second quarter surge in cold finished bars from France did not reveal any unfair trade practices. The product surging was cold finished alloy bars used as drill collars for deep well oil exploration. Import statistics show that about 80 percent of cold finished bars from France entered at Houston, the primary port of entry for products used in oil exploration. Indications are that U.S. producers in the region were unable to meet demand for this product.

The review of cold finished bars from Spain produced no evidence of unfair trade. The average unit value of these non-alloy bars has increased over the last year even as the peseta depreciated, and imports dropped off in the third quarter from the second quarter surge level. We will continue to monitor Spanish cold finished bar imports.

Our review of cold finished bar imports from the United Kingdom found that these non-alloy bars are produced by independent British steel firms. At present, we have no specific information that these producers receive government assistance. Our examination of import unit values show rising dollar and pound values, which do not indicate a *prima facie* case of sales at less than fair value.

Dated: November 19, 1981.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 81-33940 Filed 11-23-81; 8:45 am]

BILLING CODE 3510-25-M

Steel Sheet Piling From Canada; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of information developed by the U.S. Department of Commerce under the Steel Trigger Price Mechanism for steel mill products, the Department is initiating an antidumping investigation to determine whether steel sheet piling from Canada is being imported at less than fair value. The Department is notifying the U.S. International Trade Commission of this action so that it may determine whether there is a reasonable indication that these imports are materially injuring or threatening to materially injure a U.S. industry.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: Bill Matthews, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 377-2291.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1977, the President approved implementation by the Treasury Department of a Steel Trigger Price Mechanism (TPM) applicable to imports of certain steel mill products. As stated in the **Federal Register** of December 30, 1977 (42 FR 65214), the TPM consisted of four major parts: (1) The establishment of trigger prices for basic steel mill products imported into the United States; (2) the use of a Special Summary Steel Invoice ("SSSI") applicable to imports of all basic steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of basic steel mill products exported to the United States, and (b) the condition of the domestic steel industry; and, (4) where appropriate, the expedited initiation and dispostion of proceedings under the antidumping law with respect to imports below the trigger prices.

Responsibility for administration of the antidumping law and the TPM was transferred to the Department of Commerce on January 2, 1980, as part of Reorganization Plan No. 3 of 1979.

The original TPM was designed as a substitute for major antidumping petitions by the domestic industry. On March 21, 1980, antidumping petitions involving basic steel mill products from seven European countries were filed with the Department of Commerce. As a result of these petitions, the Department suspended the TPM. On October 8, 1980, following withdrawal of the petitions against the European steel producers, the Department of Commerce announced its intention to reinstate the TPM in modified form (45 FR 66833).

The present TPM still incorporates the four principles described above. It is a monitoring device used by the Department of Commerce to identify those basic steel mill products most likely to be sold at less than fair value in the United States or with the benefit of countervailable subsidization. Actual C.I.F. prices of merchandise entering the United States are compared with applicable trigger prices established by the Department of Commerce. Since trigger prices reflect the estimated cost of production and shipping costs of the world's most efficient producers of steel, any imports entering the United States at prices significantly below the applicable trigger prices represent potential sales at less than fair value.

Initiation of Antidumping Investigation

The Department has examined SSSIs submitted by importers of steel sheet piling from Canada. Based on its information, the Department estimates that, during the period January-September 1981, 71.3 percent of the sheet piling entering the United States from Canada was sold below applicable trigger prices. The weighted average percentage increase in price necessary to reach trigger is 10 percent. The Department has also received information on Canadian home market prices of sheet piling. It has learned that in the last two quarters one Canadian exporter has apparently been selling in the U.S. at about 17 percent below home market prices. Such information indicates the possibility that steel sheet piling is being, or is likely to be, sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (hereafter referred to as "the Act").

There is also evidence indicating that these sales may be having an injurious effect upon the U.S. steel industry. Imports of Canadian steel sheet piling at less than fair value may be causing depressed conditions in the U.S. industry, including suppressed prices and declining shipments and sales.

Based on this information, I hereby determine in accordance with section 732(a) of the Act (19 U.S.C. 1673(a)) that an antidumping investigation should be initiated to determine whether steel sheet piling from Canada is being, or is likely to be, sold in the United States at less than fair value and whether a U.S. industry is being materially injured or is threatened with material injury by reason of imports of such merchandise.

Scope of the Investigation

For the purpose of this investigation, the term "sheet piling" covers sheet piling of iron or steel, currently provided for in items 609.9600 and 609.9800 of the *Tariff Schedules of the United States Annotated.*

Notification of International Trade Commission

As required by section 732(d) of the Act (19 U.S.C. 1673a(d)), the Department of Commerce is notifying the International Trade Commission ("ITC") of this determination and is making available to it all non-privileged and non-confidential information we used in reaching our decision to initiate. The Department will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

Under section 733(a) of the Act (19 U.S.C. 1673b(a)), the ITC must determine no later than 45 days from the date of notification whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel sheet piling from Canada. If that determination is negative, this investigation will be terminated, and we will publish no further notice. Unless this investigation is terminated or extended, the Department of Commerce will announce its preliminary determination no later than 160 days after publication of this notice. This notice is published pursuant to section 732 of the Act (19 U.S.C. 1673a) and § 353.37 of the Commerce Regulations (19 CFR 353.37).

Dated: November 19, 1981.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 81-33939 Filed 11-23-81; 8:45 am]

BILLING CODE 3510-25-M

Structural Steel Shapes From Spain; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of information currently before it, the U.S. Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of structural steel shapes from Spain receive or have received bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended. Because Spain is not a "country under the Agreement", the International Trade Commission will not be required to make an injury determination.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1977, the President approved implementation by the Treasury Department of the Trigger Price Mechanism ("TPM"), applicable to imports of certain steel mill products. As stated in the **Federal Register** of December 30, 1977 (42 FR 65214), the TPM consisted of four major parts: (1) The establishment of trigger prices for basic steel mill products imported into the United States; (2) the use of a Special Summary Steel Invoice ("SSSI") applicable to imports of all basic steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of basic steel mill products exported to the United States, and (b) the condition of the domestic steel industry; and, (4) where appropriate, the expedited initiation and disposition of proceedings under the antidumping law with respect to imports below the trigger prices.

Responsibility for administration of the antidumping and countervailing duty laws and the TPM was transferred to the Department of Commerce on January 2, 1980, as part of Reorganization Plan No. 3 of 1979.

The original TPM was designed as a substitute for major antidumping petitions by the domestic industry. On March 21, 1980, antidumping petitions involving basic steel mill products from seven European countries were filed with the Department of Commerce. As a result of those petitions, the Department suspended the TPM. On October 8, 1980, following withdrawal of the antidumping complaints against the European steel producers, the Department of Commerce announced its intention to reinstate the TPM in modified form (45 FR 66833). The present TPM, however, still incorporates the four principles described above.

The TPM, as reinstated, is designed to promote the elimination of injurious dumping and subsidization of imported basic steel mill products and thereby to moderate the adverse effects on the domestic industry that can result from unfair import competition. The Department's administration of the TPM includes the collection and analysis of information about government subsidization of steel industries in foreign countries.

Initiation of Countervailing Duty Investigation

The Department of Commerce has determined that an investigation is warranted to determine whether the Government of Spain is providing bounties or grants with respect to the manufacture, production, or exportation of structural steel shapes within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1303). This initiation is based on the Department's monitoring of structural steel shape imports and on the Department's analysis of the Spanish steel industry.

Because Spain is not a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), section 303 of the Act (19 U.S.C. 1303) applies to the investigation. Therefore, the International Trade Commission will not rule on the question of whether imports of structural steel shapes from Spain are injuring, or threatening to injure, the domestic industry. A countervailing duty equal to the net bounty or grant will be imposed if the Department of Commerce determines that structural steel shape imports from Spain benefit from bounties or grants within the meaning of section 303.

Scope of the Investigation

Structural steel shapes (AISI Category 3) are used in the construction of bridges, buildings, cranes, machinery, ships, and numerous other products.

For purposes of this investigation, the term "structural shapes" covers angles, shapes and sections of iron or steel, hot rolled, not drilled, not punched, and not otherwise advanced; of a height or width of 3 inches or more, currently provided for in items 609.80 and 609.82 of the *Tariff Schedules of the United States*.

The programs the Department intends to investigate include: capital grants, preferential loans, interest rate redutions, government capitalization, overrebates, if any, under the Desgravacion Fiscal and other export related programs, and research and regional development programs. Other government programs which may provide countervailable benefits to the production or exportation of structural steel shapes will be investigated as warranted.

If this investigation proceeds normally, the Department will announce

its preliminary determination no later than 85 days after publication of this notice.

Dated: November 19, 1981.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 81-33941 Filed 11-23-81; 8:45 am]

BILLING CODE 3510-25-M

National Telecommunications and Information Administration

Electromagnetic Radiation Management Advisory Council and Frequency Management Advisory Council; Joint Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Electromagnetic Radiation Management Advisory Council (ERMAC) and the Frequency Management Advisory Council (FMAC) will hold a joint meeting from 9:00 a.m. to 5:00 p.m on December 18, 1981, in Room 540, 1800 G Street, N.W., Washington, D.C.

The Electromagnetic Radiation Management Advisory Council was established December 11, 1968, in the Executive Office of the President. The ERMAC advises the Secretary of Commerce on side effects and the adequacy of control of electromagnetic radiation arising from telecommunications activities. It reviews, evaluates and recommends measures to investigate and mitigate potential undesirable effects on the environment, biological and physical, including equipment and materials, and develops recommended policy guidance in these areas. The Council consists of 15 members whose knowledge of telecommunications and electromagnetic radiation effects is balanced in the areas of medicine, biological sciences physics and engineering and also has designated observers from other Federal agencies. The Council reports to the Secretary through the Assistant Secretary for Communications and Information who is the Administrator of the National Telecommunications and Information Administration (NTIA).

The Frequency Management Advisory Council was established July 19, 1965, in the Executive Office of the President. The FMAC advises the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, academia and international negotiations. The Council reports to the Secretary through the Assistant Secretary for Communications and Information who is the Administrator of the National Telecommunications and Information Administration (NTIA).

The principal agenda item for the meeting will be a discussion of the lack of national standards for nonionizing radiation (radio-waves) exposure and use, its impact, associated activities, and possible courses of action.

The meeting will be open to the public. Oral questions and comments will be allowed, time permitting. Written questions and comments may be submitted before or after the meeting. Public seating will be available on a first-come, first-served basis. Copies of the minutes will be provided upon request when available.

Inquiries may be addressed to the Council Control Officers, Mr. Eugene Zucker (ERMAC) or Mr. Charles L. Hutchison (FMAC), National Telecommunications and Information Administration, Room 268, 1325 G Street, N.W., Washington, D.C. 20005, Telephone 202-724-3301.

Dated: November 19, 1981.

Cloyd C. Dodson,

Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 81-33880 Filed 11-23-81; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Navy

Science and Technology Sub-Panel of the Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Science and Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on December 9 and 10, 1981, from 9:00 a.m. to 5:00 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of strategic missiles and ABM systems and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Lieutenant Kathleen M. Cummings, Executive Secretary, CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, VA 22311, Telephone (703) 756-1205.

Dated: November 19, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-33895 Filed 11-23-81; 8:45 am]

BILLING CODE 3810-AE-M

Continued Withdrawal and Exclusive Jurisdiction Over the Chocolate Mountain Aerial Gunnery Range (South), Imperial and Riverside Counties, Calif.; Finding of No Significant Impact

Pursuant to the provisions of the regulations implementing the procedural provisions of the National Environmental Policy Act (Section 1508.13 of Title 40 CFR), the Department of the Navy gives notice that an environmental impact statement is not being prepared for the continued withdrawal and exclusive jurisdiction over the Chocolate Mountain Aerial Gunnery Range (South), California. The existing withdrawal of public lands for naval use was first granted in 1945, last renewed in 1961 and has since expired. Under provisions of the Federal Land and Policy Management Act of 1976, withdrawal actions for the Chocolate Mountain Range cannot be renewed and jurisdiction must be transferred to that department, bureau or agency having use for the land. No new "uses" are authorized by this action and any alterations from the land's present state are to be addressed in subsequent, site-specific environmental documentation.

The Southern portion of the Gunnery Range is comprised of approximately 252,000 acres at which, in selected locations, naval aerial gunnery related test and development projects are prosecuted. The proposed action is for the permanent withdrawal of about 133,000 acres of Bureau of Land Management (BLM) lands located in the Southern position. Except for these affected locations the remainder of the range remains in its "natural" state and

serves as a safety zone mandated by the operational characteristics of today's modern combatant aircraft.

The environmental assessment of this action, accomplished in close cooperation with the Bureau of Land Mangement, U.S. Department of the Interior, indicates that continued withdrawal and Navy jurisdiction over the lands in question will not cause significant impact on the environment. Studies completed and primarily addressing the "affected" acreage include: topography, minerals, geology, hydrology, air quality, cultural resources, biological resources, land use, socioeconomic aspects, environmental health and safety, and transportation. Alternatives included: no action, or reversion to public land status, enlargement or reduction of the range, relocation to other existing ranges on Navy lands, or creation of new and equivalent ranges. Of the alternatives addressed, the proposed continued withdrawal alternative is considered to have the least environmental impact. By virtue of the Navy's continued stewardship, the majority of the land in question has the greatest potential to remain in its undisturbed state.

As a result of the assessment and consultation with the Federal and state land management agencies involved, it has been determined that preparation and review of an environmental statement is not required.

The environmental assessment prepared by the Navy addressing this action is on file and may be reviewed by interested parties at the point of origin:

Commander, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066. (ATTN: Code 201).

or at the

Environmental Protection and Occupational Safety and Health Division (NOP-45), Office of the Chief of Naval Operations, Rm BD-766, Pentagon, Washington, D.C. 20350. Telephone: (202) 697-3668.

Additionally, a limited number of copies of the environmental assessment are available to fill single copy requests made to the above address. The Navy will receive comments on this proposed action for a 30-day period commencing on the date of this notice.

Dated: November 19, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-33910 Filed 11-23-81; 8:45 am]

BILLING CODE 3810-AE-M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., December 15, 1981 in Room 1E801 #5, The Pentagon, and from 9:30 a.m. to approximately 1:00 p.m., December 16, 1981 in Room 1E801 #3, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the recommendations/requests for information/continuing concerns made at the 1981 Fall Meeting, discuss current issues relevant to women in the Services, and plan the itinerary/program for the next Semiannual Meeting scheduled for April 25-29 1982 in San Diego, California.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Rm. 3D322, The Pentagon, Washington, D.C. 20301, telephone 202-697-5655 no later than December 11, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 19, 1981.

[FR Doc. 81-33858 Filed 11-23-81; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education, Meeting

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: December 7, 1981.

ADDRESS: The Holiday IV Room of the Holiday Inn Downtown, 175 Piedmont Avenue NE., Atlanta, GA in conjunction with the American Vocational Association.

FOR FURTHER INFORMATION CONTACT: Virginia Solt, NACVE Staff, 425—13th Street NW., Washington, D.C. 20004. Telephone (202) 376-8873.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meeting of the National Advisory Council on Vocational Education is open to the public. The proposed Agenda is as follows:

Monday, December 7, 1981

9:00 A.M.-4:00 P.M.

Continuing Discussion of NACVE's FY '82 Budget
Refinement of the NACVE Work Plan FY '82
Status Report on Appropriations/Legislation
Review of the NIE Vocational Education Study; Report and Implications

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Advisory Council on Vocational Education from 9:00 A.M. to 5:00 P.M., 425-13th Street NW., Suite 412, Washington, D.C. 20004.

Signed at Washington, D.C. on November 19, 1981.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 81-33832 Filed 11-23-81; 8:45 am]

BILLING CODE 4001-02-M

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under Section 10(a)((2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 12, 13, and 14, 1981—Business Meetings—9:00 a.m.–5:00 p.m.

ADDRESS: The meetings on December 12 and 13 will be held in Room 409 of the Reporters Building, 300 7th Street, SW., Washington, DC. The meeting of December 14, 1981 will be held in Room 4003, FOB #6, 400 Maryland Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Designated Federal Official, Room 421, Reporters, Building, 400 Maryland Avenue, SW., Washington, DC 20202. (202–245–2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The meeting of the Council is open to the public. The proposed agenda includes the following:

December 12, 1981

9:00 a.m.–9:15 a.m.—Opening remarks by the Chairperson
9:15 a.m.–9:30 a.m.—Update on the Status of Education
9:30 a.m.–10:30 a.m.—Council's reaction to the Annual Report Outline
10:30 a.m.–11:30 a.m.—Presentation by OBEMLA Division Directors and Unit Chiefs
11:30 a.m.–12:00 n—Presentation by the Inspector General
12:00 n–1:00 p.m.—Lunch
1:00 p.m.–1:30 p.m.—Presentation by Government Accounting Office
1:30 p.m.–3:30 p.m.—Committee Meetings
3:30 p.m.–until—Sub-committee Reports to the Council

December 13, 1981

9:00 a.m.–9:30 a.m.—Election of Vice-Chairperson
9:30 a.m.–12:00 noon—Strategy Sessions by Committees
12:00 noon–1:00 p.m.—Lunch
1:00 p.m.–until—Sub-committee Reports to the Council

December 14, 1981

10:00 a.m.–12:00 n—Meeting with Secretary Bell

Records are kept of all Council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 400 Maryland Avenue, SW., Washington, DC 20202 from the hours of 9:00 a.m. to 5:00 p.m.

Dated: November 18, 1981.

Gilbert Chavez,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 81-33851 Filed 11-23-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RA79–4, RA–79–22, RA–80–44, RA81–1–000]

Arizona Fuels Corp.; Requiring Supplemental Filing

Issued November 16, 1981.

This case is a consolidation of four petitions for review filed by Arizona Fuels Corporation (Arizona Fuels). A proposed order was issued September 15, 1981, and the Secretary of Energy filed comments on the order. On November 4, 1981, the participants filed a joint motion stating that they were entering into settlement negotiations which may moot the issues in this case. They also stated that, because of the complex nature of the issues involved, they expect it will take three months before a decision on settlement can be made. It was noted that in a related court case the Temporary Emergency Court of Appeals stayed its proceeding pending settlement negotiations until January 15, 1982.[1]

In light of the ongoing settlement negotiations which may moot the above-captioned dockets and obviate the need for Commission action on the proposed order, the participants shall file by January 15, 1982 a status report stating whether a settlement has been reached and whether the petitions for review will be withdrawn as moot. In the event that, prior to January 15, 1982, negotiations are terminated or the Temporary Emergency Court of Appeals lifts its stay of the court proceeding, the participants shall immediately file a statement informing the Commission of the status of the petitions for review.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33794 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[1] United States v. Arizona Fuels Corporation and Eugene Dalton, No. 9–58 (TECA October 30, 1981).

[Project No. 3615–001]

Branch River Mill, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

November 16, 1981.

Take notice that on October 6, 1981, Branch River Mill, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended),* for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 3615) would be located on the Branch River, at the Village of Union, in the Town of Wakefield, Carroll County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. John E. Bowker, President, Branch River Mill, Inc. 5 Main Street, Union, New Hampshire 03887.

Project Description. The proposed project would consist of existing facilities including: (1) A 50-foot long and 11-foot high granite masonry dam owned by the Applicant; (2) a reservoir with a surface area of 3 acres and gross storage capacity of 15 acre-feet at approximately surface elevation 500 feet m.s.l.; (3) an intake structure and 10-foot long sluiceway at the right (south) abutment of the dam leading to (4) a turbine-pit in the basement of the mill building with a newly installed 30-kW turbine-generator; (5) a 173-foot long transmission line; (6) and other appurtenances. Primarily a run-of-the-river project, the project can operate in a peaking mode based on an eight inch drawdown of the reservoir. Applicant estimates annual generation would be a maximum of 180,000 kWh.

Purpose of Project. Project energy would be sold to the Public Service Company of New Hampshire.

Agency Comments. The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New Hampshire Fish and Game Department are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its

resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before December 24, 1981, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (b) (1980).

Comments, Protests, Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before December 24, 1981.

Filing and Service of Responsive Documents. Any filings, must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, NE., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33796 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4448-000]

CHASM Hydro, Inc.; Application for Preliminary Permit

November 17, 1981.

Take notice that CHASM Hydro, Inc. (Applicant) filed on April 1, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 4448 known as the Forge Dam Project located on the Chateaugay River in Franklin County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John H. Dowd, Box 319, Chateaugay, New York 12920.

Project Description. The proposed project would utilize the existing facilities consisting of: (1) A 155-foot long and 20-foot high concrete reinforced masonry buttress-type dam with a 90-foot long wingwall at the right (east) side and a 77.5-foot long wingfall at the left (west) side; (2) two screened and steel-gated 6-foot square intake structures at the dam's left side; (3) a reservoir (Chateaugay Lake) having a surface area of 3,000 acres and a storage capacity of 82,500 acre-feet at normal maximum pool elevation 1,310 m.s.l.; (4) an 8-foot diameter 6-foot long steel penstock; and (5) appurtenant facilities.

Applicant proposes to construct: (1) An 8-foot diameter 400-foot long penstock along the left bank; (2) a reinforced concrete powerhouse containing a generating unit having a rated capacity of 350-kW; (3) a 600-foot long transmission line; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,150,000 kWh. Applicant would sell the project energy to New York State Electric & Gas Corporation.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would evaluate the existing facilities, determine the engineering, economic and environmental feasibility, perform studies, and prepare an application for an FERC license. Applicant estimates the cost of the work under the permit to be $20,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33(b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E.

Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33809 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5528-000]

County of Mono; Application for Preliminary Permit

November 17, 1981.

Take notice that County of Mono (Applicant) filed on October 19, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5528 to be known as the Silver Creek, near Bridgeport, within the lands of the Toiyabe National Forest in Mono County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Neil B. Van Winkle, County Counsel, County Courthouse, Bridgeport, California 93517.

Project Description. The project would consist of: (1) A 5-foot high concrete diversion structure; (2) a 2,000-foot long, 42-inch diameter conduit; (3) a 800-foot long, 30-inch diameter penstock; (4) a powerhouse with total installed capacity of 1,700 kW; and (5) a 1,000-foot long, 16-kV transmission line from the powerhouse to an existing Southern California Edison transmission line. The Applicant estimates that the average annual energy production would be 5.0 million kWh.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental and economic analysis; and prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $50,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33810 Filed 11-20-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5527-000]

County of Mono; Application for Preliminary Permit

November 17, 1981.

Take notice that County of Mono (Applicant) filed on October 19, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 5527 to be known as the Little Walker River Hydroelectric Project located on Little Walker River, near Bridgeport, within the lands of the Toiyabe National Forest, in Mono County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Neil B. Van Winkle, County Counsel, County Courthouse, Bridgeport, California 93517.

Project Description. The project would consist of: (1) A 5-foot high concrete diversion structure; (2) a 5500-foot long, 60-inch diameter low pressure pipeline; (3) a 500-foot long, 42-inch diameter steel penstock, (4) a powerhouse with total installed capacity of 1300 kW; (5) a 10,000-foot long, 16-kV transmission line from the powerhouse to an existing Southern California Edison transmission line. The Applicant estimates that the average annual energy production would be 8.0 million kWh.

Proposed Scope of Studies under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental and economic analysis; and prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $50,000.

Completing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be

obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33611 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-30-000]

El Paso Natural Gas Co.; Application

November 18, 1981.

Take notice that on October 9, 1981, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-30-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain meter stations and tap facilities on its existing 20-inch O.D. Maricopa County pipeline in Yavapai County, Arizona, to permit the delivery of natural gas to Southern Union Company (Southern Union) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant received a written request from Southern Union for natural gas service at a point on Applicant's existing 20-inch O.D. Maricopa County pipeline in Yavapai County, Arizona. Applicant states that the natural gas would be utilized to serve the requirements of a proposed high school and certain residential customers in the area.

Applicant proposes the construction and operation of a 1-inch O.D. tap and valve facility, a 250 B positive displacement meter and appurtenant facilities at a point on Applicant's existing 20-inch O.D. Maricopa County pipeline. Southern Union has projected the annual and peak day deliveries required to be 8,707 Mcf and 91 Mcf, respectively.

Applicant further states that the sale of natural gas to Southern Union would be made in accordance with its effective service agreement with Southern Union dated February 1, 1980. Applicant estimates the total cost of proposed facilities to be $34,116 which would be financed through use of internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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. 81-33707 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-5-000]

Glenn Martin Heller; Filing of Petition for Review

November 16, 1981.

Take notice that Glenn Martin Heller on November 9, 1981, filed a Petition for Review under 42 U.S.C. 7194(b)(1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intevene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 30, 1981 with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 30, 1981 in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000, Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room

1000. 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33799 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-12-000]

Gulf States Utilities Co.; Application

November 16, 1981.

Take notice that on October 30, 1981, Gulf States Utilities Company (Applicant), filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the Company to enter into a Guaranty Agreement for the issuance of not more than $50 million of Pollution Control Revenue Bonds.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 30, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedures (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33798 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5469-000]

Homestake Consulting & Investments, Inc.; Application for Preliminary Permit

November 17, 1981.

Take notice that Homestake Consulting & Investments, Inc. (Applicant) filed on October 13, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 5469 to be known as the Steep Creek Water Power Project located on Steep Creek near Eureka in Lincoln County, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William H. Delp, II, Independent Power Developers, Inc., P.O. Box 1467, Noxon, Montana 59853.

Project Description. The project would consist of: (1) A 3-foot high diversion structure with 10-sq. foot intake orifice; (2) a 4,400-foot long, 16-inch diameter pipeline; (3) a powerhouse with total installed capacity of 185-kW; and (4) a 13.4-mile long, 5-kV transmission line from the powerplant to an existing Lincoln Electric Corporation transmission line. The Applicant estimates that the average annual energy production would be 0.765 million kWh.

Proposed Scope of Studies under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic analysis; and prepare an FERC license application. No new roads would be needed to conduct these studies. The Applicant estimates that the cost of undertaking these studies would be $4,600.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in §4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "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, 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. 81-33812 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5548-000]

Hydro Resource Co.; Application for Preliminary Permit

November 17, 1981.

Take notice that Hydro Resource Company (Applicant) filed on October 21, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5548 to be known as the Cabin Creek Project located on Cabin Creek in Mason/Jefferson County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Hydro Resource Company, P.O. Box 485, Lynden, Washington 98264.

Project Description. The proposed project would consist of: (1) A 50-foot long, 8-foot high diversion structure on Cabin Creek; (2) a 5,350-foot long, 30-inch diameter diversion conduit; (3) a 1,650-foot long, 30-inch diameter penstock; (4) a powerhouse with a total installed capacity of 2,500 kW; and (5) a 12,000-foot long, 55-kV transmission line from the powerhouse to an existing transmission line. The Applicant estimates that the average annual energy production would be 16.5 million kWh.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. No new roads will be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $150,000.

Competing Applications. Anyone desiring to file a competing application

must submit to the Commission, on or before January 29, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 29, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33813 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5524-000]

Hydro Management Inc; Application for Preliminary Permit

November 17, 1981.

Take notice that Hydro Management Incorporated (Applicant) filed on October 15, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5524 to be known as the Piper Creek Power Project located on Piper Creek in Lake County, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. H. Edelman III, President, Hydro Management Incorporated, Route 1, Box 169, Ronan, Montana 59864.

Project Description. The proposed project would consist of: (1) A 22-foot long, 3-foot high diversion structure; (2) a 17,000-foot long, 14-inch diameter penstock; (3) a powerhouse with a total installed capacity of 624 kW; and (4) a 7,800-foot long, 14.4-kV transmission line from the powerhouse to an existing 14.4-kV transmission line owned by Missoula Electric Cooperative Incorporated. The Applicant estimates that the average annual energy production would be 3.8 million kWh.

Proposed Scope of Studies under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $2,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33814 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5531-000]

Hydro Resource Co.; Application for Preliminary Permit

November 17, 1981.

Take notice that Hydro Resource Company (Applicant) filed on October 16, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5531 to be known as the Jefferson Creek Project located on Jefferson Creek in Mason County Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) a 50-foot long, 8-foot high diversion dam on

Jefferson Creek; (2) a 6350-foot long, 60-inch diameter diversion conduit; (3) a 1650-foot long, 60-inch diameter penstock; (4) a powerhouse with a total rated capacity of 5000 kW; and (5) a 1500-foot long 55-kV transmission line from the powerhouse to an existing transmission line. The Applicant estimates that the average annual energy output would be 33 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. No new roads would be needed to conduct these studies. The Applicant estimates that the cost of undertaking these studies would be $150,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33(b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33815 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5521-000]

Hydro Management Inc.; Application for Preliminary Permit

November 17, 1981.

Take notice that Hydro Management Incorporated (Applicant) filed on October 15, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 5521 to be known as the Porcupine Creek Power Project located on Porcupine Creek in Lake County, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. H. Edelman III, President, Hydro Management Incorporated, Route 1, Box 169, Ronan, Montana 59864.

Project Description. The project would consist of: (1) A 19-foot high concrete diversion structure; (2) a 4,800-foot long, 14-inch diameter penstock; (3) a powerhouse with total rated capacity of 259 kW; and (4) a 9,300-foot long, 7.2-kV transmission line from the powerhouse to an existing 7.2kV Pacific Power and Light Company transmission line. The Applicant estimates that the average annual energy production would be 1.57 million kWh.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental and economic feasibility studies, and also prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $2,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 25, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 25, 1982.

Filing and Service of Responsive Documents. Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33810 Filed 11-20-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-76-000]

Kansas Gas & Electric Co.; Filing

November 16, 1981.

The Filing Company submits the following:

Take notice that on November 5, 1981 the Kansas and Electric Company (KG&E) tendered for filing a proposed change in its FPC Electric Service Tariff No. 136. The proposed Amendment changes the minimum and maximum amounts of power.

The Amendment is necessary because the customer requested a decrease in the amount of power to be delivered.

KG&E requests an effective date of October 19, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 4, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33800 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3763-001]

Long Lake Energy Corp.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

November 16, 1981.

Take notice that on September 11, 1981, Long Lake Energy Corporation (Applicant) filed an application under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 3763) would be located on the West Branch Oswegatchie River, Town of Diana, Village of Harrisville, Lewis County, New York. Correspondence with the Applicant should be directed to: Donald E. Hamer, 330 Madison Avenue—7th Floor, New York, New York 10017.

Project Description. The proposed project would utilize existing facilities consisting of: (1) A 385-foot long and 22.5-foot high concrete gravity-type dam having an 82-foot long spillway section with crest elevation 781.2 msl and a 60-foot long spillway section with crest elevation 784.3 msl and having a gated sluice section and a gated intake section; (2) a reservoir having a surface area of 23 acres and a storage volume of 80 acre-feet at pool elevation 781.5 msl; (3) an 11-foot diameter 150-foot long riveted steel penstock section; (4) a 150-foot long 25.5-kV transmission line; and (5) appurtenant facilities.

Applicant proposes to refurbish the existing facilities and would: (1) Install 24-inch high flashboards on the dam's lower spillway section; (2) create a reservoir having a surface area of 25 acres and a storage volume of 84 acre-feet at pool elevation 783.5 msl; (3) install a 10-foot diameter 345-foot long riveted steel penstock section; (4) construct a powerhouse containing two generating units having a total rated capacity of 1675-kW operated at a gross head of 39.5 feet and at a flow of 600 cfs; (5) reconstruct the tailrace; and (6) perform miscellaneous improvements.

The project would be operated as run-of-river. Applicant estimates that the average annual energy output would be 6.8 million kWh.

Purpose of Project. Project energy would be sold to Niagara Mohawk Power Corporation.

Agency Comments. The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the New York State Department of Environmental Conservation are requested, for the purposes set forth in section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comment they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Commission's representatives.

Competing Application. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before December 24, 1981 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before December 24, 1981.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, NE., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33801 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-17-000]

Louisville Gas & Electric Co.; Application

November 16, 1981.

Take notice that on November 4, 1981, Louisville Gas and Electric Company (Applicant) of Louisville, Kentucky, filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term debt securities not exceeding in the aggregate $130,000,000 outstanding at any one time, to be issued from time to time until a final maturity date of not later than December 31, 1984.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 3, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedures (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33802 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-764-000]

Minnesota Power & Light Co.; Order Accepting for Filing and Suspending Revised Rates, Denying Motions, Granting Intervention, and Establishing Price Squeeze and Hearing Procedures

November 13, 1981.

On September 15, 1981, Minnesota Power & Light Company (MP&L) tendered for filing increased rates and charges for full requirements service to sixteen municipal customers [1] and one rural electric cooperative customer,[2] as well as partial requirements service to the Cities of Hibbing and Virginia and one privately owned electric system customer.[3] MP&L also filed a notice of cancellation of its existing service agreements with Hibbing and Virginia and proposed new contracts for service to those Cities. In addition, the company submitted letter amendments increasing the transmission rate applicable to the City of Wadena and increasing the distribution wheeling rate applicable to United Power Association. The revised rates and charges would increase revenues from jurisdictional sales by approximately $8.5 million, based on the twelve-month period ending December 31, 1982. MP&L requests that the proposed rates, contracts, and amendments be made effective as of November 14, 1981, or, alternatively, suspended for no more than one day.

Notice of the filing was issued on September 25, 1981, with responses due on or before October 16, 1981. Timely protests were filed by nineteen residents of Hibbing, by the Cities of Two Harbors, Buhl, Nashwauk, Staples, Grand Rapids, Keewatin, Wadena, and Biwabik, by the Lake County Board of Commissioners, and by Congressman James L. Oberstar, Congressman Arland Stangeland, and Senator Rudy Boschwitz. The protests seek rejection of the filing or a maximum suspension, asserting that the increase is excessive and will adversely affect competition. The Public Service Commission of Wisconsin filed a timely notice of intervention on October 13, 1981.

A group of affected municipal and cooperative customers, collectively calling themselves "Named Jurisdictional Customers," (Customers) [4] filed a petition to intervene, as well as a protest and a motion for various forms of relief on October 16, 1981. Customers request that MP&L's proposed municipal partial requirements rates, terms and conditions be summarily rejected. In the alternative, Customers state that they would not object if MP&L were granted leave to file evidence in support of the partial requirements portion of the filing on the condition that it be made effective prospectively. They also allege that the proposed rate increase would result in a price squeeze and request that any difference between the wholesale rate of return resulting from this proposal and MP&L's requested retail rate of return be rejected. Customers further request that the filing be suspended for five months, that a hearing be initiated on a non-phased, expedited basis, and that all issues, including price squeeze, be disposed of prior to the expiration of the suspension period, or as soon as possible thereafter. Among the cost of service issues addressed by Customers are rate of return, working capital, depreciation rates, and demand allocation. Finally, customers suggest that hearings be held in MP&L's service area in northeast Minnesota.

MP&L answered the Customers' petition to intervene on October 30, 1981. The company stated that it would not oppose the interventions, but would subsequently submit a complete substantive response. On November 2, 1981, MP&L filed a detailed response opposing the Customers' motions and challenging the various cost of service arguments raised by the Customers.

Discussion

Initially, the Commission finds that participation in this proceeding by the Customers is in the public interest. Accordingly, their petition to intervene will be granted. The timely notice of intervention is sufficient to initiate participation in this proceeding by the Wisconsin Commission.

Customers assert that MP&L has failed to present a *prima facie* case in support of the changes it proposes in the rates, terms, and conditions of service contained in the agreements applicable to Hibbing and Virginia. The Commission finds the MP&L has substantially complied with the requirements of § 35.13 of the regulations.[5] Alternatively, Customers assert that the proposed service agreements with Hibbing and Virginia must be rejected because they have been tendered for filing without the concurrence of the affected customers. We note that MP&L's contracts with these customers have recently expired and, in any event, those contracts did not purport to prevent MP&L from unilaterally filing proposed rate changes. Thus, MP&L is not barred by contract or the Federal Power Act from submitting the instant filings. In the absence of such a limitation on MP&L's right to file rate changes, the motion to reject will be denied.

The Customers also suggest that the contract revisions applicable to Hibbing and Virginia should only be given prospective effect, because the customers have not agreed to them. In support of this request, they cite three instances in which a filing utility voluntarily initiated or agreed to such an arrangement, *Duke Power Co.*, Docket

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[1] The Cities of Aitkin, Biwabik, Brainerd, Buhl, Ely, Gilbert, Grand Rapids, Keewatin, McKinley, Mountain Iron, Nashwauk, Pierz, Porctor, Randall, Stables, and Two Harbors.

[2] Stuntz Cooperative Light & Power Association.

[3] Superior Water, Light & Power Company of Wisconsin. *See* Attachment A for rate schedule designations.

[4] This group includes all of the affected full and partial requirements firm service customers except Pierz, Proctor, and Randall. It also includes Wadena and an unincorporated association of cities, schools, districts, and towns, some of which are wholesale customers and MP&L, called Range Association of Municipalities and Schools.

[5] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F. 2d 1341 (D.C. Cir. 1971).

No. ER80–473 (August 19, 1980); *Wisconsin Power & Light Co.*, Docket Nos. ER80–297 and ER80–121 (May 30, 1980); *West Texas Utilities Co.*, Docket No. ER80–38 (February 4, 1980). However, nothing in the Commission's regulations or the statutes that they implement requires a utility to enter into such an arrangement, and the unilateral nature of the filing in the present docket provides no basis for concluding that the Commission can or should impose relief other than the suspension and refund protection sanctioned by section 205 of the Federal Power Act.

In addition, the Customers request summary rejection of that portion of the rate increase which can be attributed to the amount by which the wholesale rate of return exceeds MP&L's requested retail rate of return. The requested relief is inappropriate at this time. The appropriate rate of return is a matter which should be resolved at hearing. Furthermore, the purported differential in wholesale and retail rates of return does not, in itself, establish unlawful price squeeze without a comparison of other costs.[6] Whether differences between wholesale and retail rates can be justified is a question of fact which should be answered on the basis of an evidentiary record.

Finally, the customers seek an expedited, non-phased hearing, arguing that unless they receive price squeeze relief prior to the effective date of the rates, three of the affected municipal systems may be forced to sell out because they cannot offer retail service to their citizens at rates conpetitive with those of MP&L. While the Commission appreciates the concerns of these municipal systems, barring extraordinary circumstances, we believe that the scheduling of hearings is best controlled by the presiding judge. Furthermore, we have observed on a number of occasions that the most logical manner in which to pursue price squeeze allegations generally is to conduct a phased proceeding. This procedure allows a decision first to be reached on the cost of service, capitalization, and rate of return issues; the rate which would be deemed just and reasonable but for a consideration of price squeeze, can then be analyzed to determine whether a price squeeze exists. We believe that the facts should be further developed in order to determine how the hearing in this case would best be handled. Therefore, in accordance with the Commission's policy established in *Arkansas Power and Light Company*, Docket No. ER79–339 (August 6, 1979), we shall phase the price squeeze issue, but permit the presiding judge to modify this schedule upon a showing of good cause. We shall also permit the designated law judge to determine whether local hearings would be appropriate in these proceedings.

In view of the matters raised by the intervenors, our analysis of MP&L's filing indicates that the proposed rates, terms, and conditions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we shall accept the submittals for filing and suspend their operation as directed below.

In a number of suspension orders,[7] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. Although the customers have raised significant questions warranting inquiry at hearing, including price squeeze and various terms and conditions of service, our preliminary review suggests that the proposed rates may not yield excessive revenues. Under these circumstances, a maximum suspension appears neither necessary nor appropriate. Accordingly, the Commission will suspend MP&L's submittals for one day to become effective, subject to refund, on November 16, 1981.

The Commission orders:

(A) The requests to reject MP&L's filing in whole or in part are hereby denied.

(B) MP&L's revised rates, contracts, and amendments are hereby accepted for filing and are suspended for one day from sixty days after filing, to become effective, subject to refund, on November 16, 1981.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Chap. I), a public hearing shall be held concerning the justness and reasonableness of MP&L's rates, terms, and conditions of service.

(D) The petitioners are hereby permitted to intervene in this proceeding subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act: *Provided, however,* That participation by such intervenors shall be limited to the matters set forth in the petition to intervene; *And, provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered by the Commission in this proceeding.

(E) The Commission staff shall serve top sheets in this proceeding on or before November 16, 1981.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided for in the Commission's rules of practice and procedure.

(G) We hereby order initiation of price squeeze procedures and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

[6] *See Missouri Power and Light Co.*, Docket No. ER76–539, Opinion No. 31 and 31–A (October 27, 1978, and May 16, 1979); *Southern California Edison Co.*, Docket No. ER76–205, Opinion No. 62 (August 22, 1979); *Commonwealth Edison Co.*, Docket Nos. E–9002 and ER76–122, Opinion No. 63 (September 14, 1979).

[7] *E.g., Boston Edison Company*, Docket No. ER80–508 (August 29, 1980) (five-month suspension); *Alabama Power Co.*, Docket Nos. ER80–506, *et al.* (August 29, 1980) (one-day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80–488 (August 22, 1980) (one-day suspension).

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Minnesota Power and Light Company Rate Schedule Designations

Docket No. ER81-764-000

Filed: September 15, 1981

Designation and Customer

(1) Supplement No. 16 to Rate Schedule FPC No. 103 (Supersedes Supplement No. 15)—City of Biwabik
(2) Supplement No. 16 to Rate Schedule FERC No. 125 (Supersedes Supplement No. 15)—City of Brainard
(3) Supplement No. 16 to Rate Schedule FPC No. 104 (Supersedes Supplement No. 15)—City of Ely
(4) Supplement No. 16 to Rate Schedule FPC No. 106 (Supersedes Supplement No. 15)—City of Gilbert
(5) Supplement No. 16 to Rate Schedule FPC No. 100 (Supersedes Supplement No. 15)—Village of Grand Rapids
(6) Supplement No. 16 to Rate Schedule FPC No. 107 (Supersedes Supplement No. 15)—Village of Keewatin
(7) Supplement No. 16 to Rate Schedule FPC No. 117 (Supersedes Supplement No. 15)—Village of McKinley
(8) Supplement No. 16 to Rate Schedule FPC No. 123 (Supersedes Supplement No. 15)—City of Mountain Iron
(9) Supplement No. 16 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 15)—Village of Nashwauk
(10) Supplement No. 6 to Rate Schedule FPC No. 127 (Supersedes Supplement No. 5)—City of Pierz
(11) Supplement No. 16 to Rate Schedule FPC No. 115 (Supersedes Supplement No. 15)—Village of Proctor
(12) Supplement No. 6 to Rate Schedule FERC No. 128 (Supersedes Supplement No. 5)—City of Randall
(13) Supplement No. 21 to Rate Schedule FPC No. 111 (Supersedes Supplement No. 20)—City of Staples
(14) Supplement No. 18 to Rate Schedule FPC No. 118 (Supersedes Supplement No. 17)—Superior Water, Light & Power Company
(15) Supplement No. 8 to Rate Schedule FPC No. 124 (Supersedes Supplement No. 7)—City of Two Harbors
(16) Supplement No. 19 to Rate Schedule FPC No. 119 (Supersedes Supplement No. 18)—Village of Aitkin
(17) Supplement No. 16 to Rate Schedule FPC No. 121 (Supersedes Supplement No. 15)—Village of Buhl
(18) Rate Schedule FPC No. 132 (Supersedes Rate Schedule FPC No. 105—Village of Hibbing
(19) Supplement No. 13 to Rate Schedule FPC No. 112 (Supersedes Supplement No. 12)—Stunz Cooperative Light & Power Association
(20) Rate Schedule FERC No. 131 (Supersedes Rate Schedule FPC No 102)—City of Virginia
(21) Supplement No. 8 to Rate Schedule FPC No. 120 (Supersedes Supplement No. 7)—City of Wadena
(22) Supplement No. 2 to Supplement No. 1 to Rate Schedule FPC No. 126 (Supersedes Supplement No. 1 to Supplement No. 1)—United Power Association

[FR Doc. 81-33803 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-50-000]

Natural Gas Pipeline Company of America; Application

November 16, 1981.

Take notice that on November 2, 1981, Natural Gas Pipeline Company of American (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP82-50-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipeline Company (United), Southern Natural Gas Company (Southern), Texas Gas Transmission Company (Texas Gas), and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) and the construction and operation of certain natural gas facilities, 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 on October 20, 1981, Applicant entered into individual transportation agreements with United, Southern, Texas Gas and Tennessee pursuant to which Applicant would provide transportation service during two periods: an interim period which would commence after Applicant receives the authorization requested herein and all of the proposed facilities are in service and would end when the Phase I Trans-Anadarko facilities are in service; and a long-term period which would commence when the Phase I Trans-Anadarko facilities are in service and effective on the date deliveries of gas to United, Southern, Texas Gas and Tennessee to Custer County, Oklahoma, had begun.

Applicant specifically proposes to transport during the interim period up to 300 billion Btu of gas per day from various receipt points in the Anadarko area through Applicant's system for redelivery at specified points in Vermilion and Cameron Parishes, Louisiana, and in addition to transport during the long-term period up to 430 billion Btu of natural gas per day from various receipt points in the Anadarko area for redelivery in part to Vermilion and Cameron Parishes, Louisiana, and in part to the proposed interconnection with Trans-Anadarko in Custer County, Oklahoma, as specified below:

Shipper	Interim period		Long term period	
	Volume billion Btu per day	Redelivery point	Volume billion Btu per day	Redelivery point
United	110	Vermilion	145	Custer.
			55	Vermilion.
Southern	90	Vermilion	85	Custer.
			45	Vermilion.
Tennessee	50	Cameron/Chalkley	25	Custer.
			25	Cameron/Chalkley.
Texas Gas	50	Cameron/Lowry	25	Custer.
			25	Cameron/Chalkley.
	300		430	

Applicant states that the quantity of gas required under the agreements to be redelivered in Vermilion and Cameron Parishes, Louisiana, from the Anadarko area may be reduced and the quantity redelivered in Custer County, Oklahoma, correspondingly increased if Applicant permits in its sole discretion and subject to the receipt of requisite approvals and installation of any required facilities (1) United, Southern, Tennessee and Texas Gas to tender gas from either inside or outside the Anadarko area for redelivery to the Vermilion and Cameron Parish redelivery points, or (2) United, Southern, Texas Gas or Tennessee or another party to utilize the transportation capacity to the Vermilion and Cameron Parish redelivery points.

Applicant further states that in addition to the long-term demand quantities United, Southern, Texas Gas and Tennessee have requested that Applicant transport on a best-efforts basis overrun gas up to 25 percent of the long-term quantities for redelivery to the Custer County redelivery point.

For such transportation service, Applicant proposes to charge United, Southern, Texas Gas and Tennessee a monthly charge of $7.57 times the interim demand quantities as well as a commodity charge of 24.9 cents per million Btu for overrun gas and gas transported on a best-efforts basis during facilities construction. Applicant also proposes to charge United, Southern, Tennessee and Texas Gas a monthly transportation demand charge

of $7.57 times that portion of the long-term demand quantity from the Anadarko area required to be redelivered at the Cameron and Vermilion Parish redelivery points plus a demand charge of $1.12 times that portion of the long-term demand quantity to be redelivered at the Custer redelivery point.

Applicant further proposes pursuant to the agreements with United, Southern, Texas Gas and Tennessee to construct and operate 34.54 miles of 30-inch pipeline loop in Beckham County, Oklahoma, and Gray County, Texas, a 2.86 mile 26-inch and 30-inch loop in Hutchinson County, Texas, 37.38 miles of 36-inch loop in Cameron Parish, Louisiana, and appurtenant facilities including but not limited to a number of taps and meters for the receipt and redelivery of the subject gas and to replace the compressor impellers on six existing units, three at Station 154 and three at Station 111. Applicant estimates the cost of such facilities to be approximately $58,000,000. Applicant asserts that such facilities are required to provide service during the interim period.

While the Trans-Anadarko Phase I facilities are being constructed, Applicant in addition proposes to install approximately 3,000 horsepower of compression at Station 156 and appurtenant facilities including but not limited to a 24-inch tap and four 18-inch meters at Custer County, Oklahoma, to provide firm redeliveries of up to 300 billion Btu of gas per day to the Custer County redelivery point. Applicant estimates the cost of such additional compression and appurtenant facilities to be approximately $4,500,000.

It is asserted that under the provisions of Applicant's agreements with United, Southern, Texas Gas and Tennessee, Applicant has agreed to construct whatever facilities are necessary in both the interim and long-term periods in order to maintain firm service and that facilities in addition to those described above may be required in the future to increase the redeliveries to Custer County, Oklahoma, from 300 billion per day to 430 billion per day. Applicant states that it cannot identify such facilities, if any, until the receipt points for the additional 130 billion Btu per day are nominated by United, Southern, Texas Gas and Tennessee.

Applicant submits that financing of such construction would be achieved initially through funds on hand, issuance of commercial paper, use of existing bank lines of credit or other interim financing arrangements as may be negotiated and that permanent financing would be subsequently undertaken as part of Applicant's overall long term financing program.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public covenience 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 unnecessry for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33817 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER81-70-000 and ER81-71-000]

New England Power Co.; Refund

November 16, 1981.

The filing Company submits the following:

Take notice that on November 5, 1981, New England Power Company tendered for filing a refund report pursuant to the Commission's order of September 28, 1981 which accepted a partial offer of settlement in Docket Nos. ER81-70-000 and ER81-71-000.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 7, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33804 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5507-000]

North Unit Irrigation District; Application for Preliminary Permit

November 16, 1981.

Take notice that North Unit Irrigation District (Applicant) filed on October 14, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 5507 to be known as the Crooked River Power Project located on Crooked River, North Unit Main Canal and North Canal in Deschutes County, Oregon. One of the three project facilities lies on Federal lands administered by the Bureau of Land Management. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert Wagner, Secretary-Manager, North Unit Irrigation District, Rt. 2, Box 1224, Madras, Oregon 97741.

Project Description. The proposed project would consist of three facilities on the North Unit Main Canal, the Mile 2 Site, Station 688 Site and Crooked River Site. The Mile 2 Site would consist of: (1) A canal combining the North Unit Main and North Canals, with a radial gate and check structures; (2) a gated intake structure; and (3) a 72-inch diameter penstock. Station 688 Site would consist of: (1) A check structure and radial gate; (2) gated intake structure; and (3) 60-inch penstock. The Crooked River Site would consist of either (1) an existing 64-inch penstock at a pump station and (2) a new 64-inch penstock to convey flow to the powerhouse, or installing downstream: (1) A radial gate; (2) gated intake structure; and (3) a 90-inch penstock. Powerhouses at each site would contain turbine generators with 2.2, 1.4 and 2.1 or 10.7 MW capacity and between 20.2 and 45 GWh total annual energy production. Transmission lines already in place are very close to all three sites, and routing of connecting lines will be

determined during the permit term. Potential customers for project-generated power include Portland General Electric, Pacific Power and Light and other regional utilities.

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 term of 36 months, during which time engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of these activities is $100,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 13, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before January 13, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33806 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5364-000]

Olympia Brewing Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

November 16, 1981.

Take notice that on September 14, 1981, Olympia Brewing Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5364) would be located on the Deschutes River, in the City of Tumwater, in Thurston County, Washington. Correspondence with the Applicant should be directed to: Mr. Robert W. Sampson, Olympia Brewing Company, P.O. Box 947, Olympia, Washington 98507.

Project Description. The proposed project would consist of: (1) An existing 25-foot high and 197-foot long concrete dam, owned by the Applicant, and impounding; (2) a one-acre reservoir; (3) a 1,500-foot long and 8-foot diameter steel penstock; (4) a powerhouse containing one generating unit rated at 2,500 kW; and (5) a 750-foot long underground transmission line.

Purpose of Project. The average annual energy generation is estimated to be 7.8 million kWh. The power output would be sold to the Puget Sound Power and Light Company.

Agency Comments. The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington Departments of Fisheries and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before December 22, 1981 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before December 22, 1981.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's

regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, NE., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33805 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5534-000]

Messrs. Owen, Castagna, and Bean; Application for Preliminary Permit

November 16, 1981.

Take notice that Messrs. Owen, Castagna, and Bean (Applicants) filed on October 20, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5534 to be known as the Rock Creek Power Project located on Rock Creek near Huntington Lake in Madera County, California. The project would occupy lands of the United States within the Sierra National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Messrs. Owen, Castagna, and Bean, 1646 East Street, Redding, California 96001.

Project Description. The proposed project would consist of: (1) A 4-foot high diversion structure across Rock Creek; (2) a 1,486-foot long diversion conduit or channel; (3) a 30-inch diameter, 1,323-foot long penstock; (4) a powerhouse containing generating units with a combined rated capacity of 1,390 kW; and (5) appurtenant facilities.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $56,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before January 13, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 13, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33795 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-43-000]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application

November 16, 1981.

Take notice that on October 26, 1981, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82-43-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission open to public inspection.

Pursuant to an agreement dated October 13, 1981, Applicants propose to transport for United for a period of ten years up to 100,000 Mcf of natural gas per day purchased by United from Public Service Company of Oklahoma (PSO). It is submitted that Panhandle would receive such volumes of gas from Transok Pipe Line Company (Transok) at existing points of interconnection between the facilities of Panhandle and Transok in Garfield and Custer Counties, Oklahoma.

Applicants state that such gas would be redelivered by Trunkline to United at either an existing interconnection between the facilities of Trunkline and United in St. Mary Parish, Louisiana, where Trunkline and United receive gas or an existing interconnection between facilities of Trunkline and United in LaSalle Parish, Louisiana.

It is asserted that in the event that the volumes available for purchase by United under the contract with PSO are less than 100,000 Mcf per day Panhandle would accept Canadian gas acquired by United that may be delivered into Panhandle's system for United's account at an existing pipeline interconnection between Panhandle and Northern Natural Gas Company, Division of Inter-North, Inc. (Northern) near Mullinville in Kiowa County, Kansas, or near Panhandle's Greenburg compressor station in Kiowa County, Kansas, gas acquired by United under contracts with terms of two years or less shall be delivered into Panhandle's system for United's account at an existing pipeline interconnection between Panhandle and

Oklahoma Natural Gas Company (ONG) in Dewey County, Oklahoma, and/or gas purchased by United from United's subsidiary, Cotton Petroleum Company (Cotton), which is produced from wells owned by Cotton and attributable to Cotton's working interest in such wells. It is stated that volumes so tendered by United would be delivered to Panhandle at one of the two existing interconnections with Transok.

It is further stated that for such transportation service United would pay Panhandle a monthly charge of $556,000 based on the firm quantities of 100,000 Mcf per day subject to a reduction of 18.29 cents per Mcf if Panhandle is unable to receive gas at the point of receipt for any reason other than the failure of United to deliver gas; if Panhandle receives more than 100,000 Mcf of gas on any day the monthly charge would be increased 18.29 cents for each additional Mcf. Applicants submit that the montly charge would also be subject to increases or decreases as a result of Trunkline and Panhandle rate proceedings, that Panhandle would repay Trunkline for its *pro rata* share of the transportation service from the amounts paid by United and that Panhandle would retain six percent of the volume received for fuel usage.

Pursuant to another agreement dated October 13, 1981, Applicants also propose to receive, transport and redeliver to United for a limited term to expire January 1, 1983, up to an additional 100,000 Mcf per day. It is submitted that Panhandle would accept for the account of United on a firm basis from Transok in Garfield and Custer Counties, Oklahoma, for transportation all of the volumes of gas committed for sale to United during the term of such agreement in excess of 100,000 Mcf per day but not to exceed 200,000 Mcf per day; however, in the event the volumes available for purchase by United in excess of 100,000 Mcf per day are less than 100,000 Mcf per day then United would have the right to include for transportation Canadian gas delivered to Panhandle for United's account by Northern in Kiowa County, Kansas, gas acquired by United under contracts with terms of two years or less and delivered to Panhandle by ONG in Dewey County, Oklahoma, or other mutually agreeable points, and gas acquired from Cotton from wells owned by and attributable to Cotton's working interest and delivered to Panhandle by Transok in Garfield and Custer Counties, Oklahoma.

Applicants state that in any event the transportation quantity under the agreement would not exceed 100,000 Mcf per day.

It is stated that Panhandle would transport the gas to Trunkline less a 6 percent fuel reduction for redelivery to United by Trunkline at one or more of the following points of redelivery:

(1) Trunkline/United interconnection at Centerville, Louisiana;

(2) The existing point downstream of the Exxon Garden City, Louisiana, plant where Trunkline and United receive gas; or

(3) The Trunkline/United interconnection near Olla, Louisiana.

For such limited term transportation service, it is asserted United would pay Panhandle a monthly charge of $554,000 based on the firm quantity of 100,000 Mcf of gas per day subject to a reduction of 18.29 cents per Mcf if Panhandle is unable to receive gas at the point of receipt for any reason other than the failure of United to deliver gas. Applicants assert that should Panhandle receive more than 100,000 Mcf of gas on any day the monthly charge would be increased 18.29 cents for each additional Mcf. Applicants submit that the monthly charge would also be subject to increase or decrease as a result of Trunkline and Panhandle rate proceedings; and that Panhandle would pay Trunkline for its *pro rata* share of the transportation service from the amounts paid by United.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33818 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 5247-000]

State of California Department of Water Resources; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

November 17, 1981.

Take notice that on August 17, 1981, State of California Department of Water Resources (Applicant) filed an application under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5247) would be located on Castaic Creek in Los Angeles County, California, near Castaic, California. Correspondence with the Applicant should be directed to: Mr. Ronald B. Robie, Director, Department of Water Resources, P.O. Box 388, Sacramento, California 95802.

Project Description. The proposed project would consist of: (1) An 18-inch diameter steel penstock connecting an existing outlet of the Castaic dam and reservoir with; (2) a powerhouse with a total installed capacity of 900 kW; (3) an afterbay and overflow weir located downstream from the powerhouse to maintain tailwater elevation; and (4) a 150-foot long, 12-kV underground transmission line connecting to an existing Southern California Edison Company's 12-kV overhead transmission line.

Purpose of Project. The estimated average annual energy output would be 2.08 million kWh which would be added to the power generated by other powerplants of the Applicant. The estimated cost of the proposed project is $1,606,600.

Agency Comments. The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purpose set forth in section 408 of the Act, to submit within

60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before January 4, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before January 4, 1982.

Filing and Service of Responsive Documents. Any filings, must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, NE., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33819 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-02-M

[Docket Nos. RP80-97, RP77-62, RP81-54 and RP81-56]

Tennessee Gas Pipeline Co.; Notice Rejecting Brief on Exceptions

November 13, 1981.

On November 2, 1981, the Indicated Producer Intervenors filed a Brief on Exceptions after the Presiding Judge had certified a contested settlement to the Commission in this proceeding.

The Commission's rules on settlements (18 CFR 1.18) provide for comments to the judge before certification of a settlement to the Commission. No further comments or briefing is provided for in the rules after certification. Accordingly, the Indicated Producers' Brief on Exceptions is rejected.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33806 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-74-000]

Wisconsin Public Service Corp.; Filing

November 16, 1981.

The filing Company submits the following:

Take notice that Wisconsin Public Service Corporation (WPS) on November 4, 1981, tendered for filing an initial service Agreement, dated October 16, 1981, with Wisconsin Public Power Incorporated System, Sun Prairie, Wisconsin (WPPI).

WPS states that the Agreement provides for wholesale electric service to be furnished by it to WPPI which is a municipal electric company created under § 66.073 of the Wisconsin Statutes. WPPI will resell the energy to municipalities which are members of WPPI.

WPS also tendered for filing together with the initial service Agreement with WPPI notices and agreements of cancellation of the following service agreements and rate schedules with four municipal wholesale customers (Cities):

Rate Schedule FPC No. 3—Agreement dated January 18, 1941 between WPS and City of Algoma

Rate Schedule FPC No. 6—Agreement dated July 3, 1956 between WPS and City of New Holstein

Rate Schedule FPC No. 37—Agreement dated June 22, 1978 between WPS and City of Sturgeon Bay

Rate Schedule FPC No. 9—Agreement dated October 22, 1963 between WPS and City of Two Rivers

WPS further states that when service under the Agreement with WPPI becomes effective, the four Cities above who have become members of WPPI, will cease to purchase energy from WPS and will thereafter be supplied by WPPI. Initially, WPS will continue to deliver energy to each of the Cities at same delivery point and in the same manner as heretofore. On an interim basis until a new rate schedule based upon a totalized coincident demand of WPPI at such delivery points are filed, the charge for electric service furnished to WPPI will be determined separately for each City in the same manner as if each City were still a separate customer of WPS purchasing energy under WPS's then applicable rate schedule, with the result that the quantities of service and revenues of WPS will be the same as if each City were still a direct wholesale customer of WPS.

WPS proposes an effective date of November 2, 1981, for the cancellation of the above-listed rate schedules and agreements with the Cities and the date when service will commence under the agreement with WPPI, and WPS therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 4, 1981. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33807 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: November 16, 1981.

JD NO.	WA #1	STATUS	SEC CAT	WELL NAME	FIELD NAME	PRICE	PURCHASER
TEXAS RAILROAD COMMISSION							
-ALAN P HEWITT			RECEIVED: 10/23/81 JA: TX				
8203418	F-78-040254	4208332368	102-4	KNOX 2-A	TURKEY RUN (UPPER GRAY)	150.0	SOUTHWESTERN GAS
-AMCOLE ENERGY CORP			RECEIVED: 10/23/81 JA: TX				
8203406	F-78-040187	4208332297	103	L H WENTZ EST #12	MEANS	16.0	PHILLIPS PETROLEU
8203405	F-78-040186	4208332344	103	L H WENTZ EST #13	MEANS	0.0	PHILLIPS PETROLEU
8203404	F-78-040185	4208332297	103	L H WENTZ EST #14	MEANS	0.0	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO			RECEIVED: 10/23/81 JA: TX				
8203401	F-78-040170	4208332474	102-4	DAVID FASKEN BL #1	C-RANCH SOUTH (WOLFCAMP)	25.9	AMOCO PRODUCTION
-ARCADIA REFINING CO			RECEIVED: 10/23/81 JA: TX				
8203595	F-76-040893	4240130596	102-4	C E LLOYD #1 #77152	CYRIL (COTTON VALLEY)	0.0	DELHI GAS PIPELIN
-ARCO OIL AND GAS COMPANY			RECEIVED: 10/23/81 JA: TX				
8203661	F-7C-041061	4223531750	103	J R SCOTT EST "74" #6	SPRAYBERRY TREND AREA	21.6	J L DAVIS
8203660	F-7C-041060	4223537753	103	J R SCOTT EST 74 #5	SPRAYBERRY TREND AREA	23.4	J L DAVIS
8203658	F-84-041055	4250131885	103	WILLARD UNIT #169-A	WASSON	1.5	SHELL OIL CO
-BAR-MAC & HOLLUB DRILLING CO			RECEIVED: 10/23/81 JA: TX				
8203696	F-83-041194	4205131193	102-4	LLOYD MORTON #5 LEASE #13793	INEZ JAMESON (NAVARRO -C	21.0	FERGUSON CROSSING
8203687	F-83-041169	4205131624	102-4	PRECISION HOMES #2	INEZ JAMESON (NAVARRO -A	58.0	FERGUSON CROSSING
-BARON COMPANY INC			RECEIVED: 10/23/81 JA: TX				
8203439	F-7B-040345	4236732875	103	BRUNSON #1 93445	DICEY CONGLOMERATE	0.0	LONE STAR GAS CO
-BASS ENTERPRISES PRODUCTION CO			RECEIVED: 10/23/81 JA: TX				
8203635	F-84-040950	4226930939	102-4	T B HAVINS A GU #2	STESCOTT (ATOKA 6185*)	100.0	PALO DURO PIPELIN
-BEN J TAYLOR			RECEIVED: 10/23/81 JA: TX				
8203417	F-7B-040252	4236731840	103	SAVAGE B #1	MOBY DICK (CONGLOMERATE)	36.0	EMPIRE PIPELINE C
-BLAIR EXPLORATION INC			RECEIVED: 10/23/81 JA: TX				
8203415	F-7C-040226	4230730545	102-4	TAYLOR A #1	WALLOPE CREEK	0.0	SIOUX PIPELINE CO
-BLAIR OIL COMPANY			RECEIVED: 10/23/81 JA: TX				
8203569	F-10-040837	4223331040	103	RILEY #7	PANHANDLE-HUTCHINSON	70.0	PANHANDLE EASTERN
-BOCK & BACON			RECEIVED: 10/23/81 JA: TX				
8203586	F-83-040868	4240700000	103	CENTRAL COAL & COKE #1	MERCY (WILCOX 9100)	150.0	TENNESSEE GAS PIP
-CHEVRON U S A INC			RECEIVED: 10/23/81 JA: TX				
8203436	F-88-040345	4238930988	108	L H MEEKER 1-38	SOUTH MARSH (DELAWARE)	5.1	VALERO TRANSMISSI
8203438	F-88-040348	4238930945	108	REEVES ST #1-14	SOUTH MARSH (DELAWARE)	3.4	VALERO TRANSMISSI
8203437	F-88-040347	4238930870	108	REEVES ST #1-39	SOUTH MARSH (DELAWARE)	0.7	VALERO TRANSMISSI
8203684	F-8A-041164	4241531662	103	SACROC UNIT 10-14	KELLY-SNYDER	62.0	EL PASO NATURAL G
8203686	F-8A-041166	4241531649	103	SACROC UNIT 173-10	KELLY-SNYDER	24.0	EL PASO NATURAL G
8203681	F-8A-041151	4241531659	103	SACROC UNIT 26-17	KELLY-SNYDER	153.0	EL PASO NATURAL G
8203685	F-8A-041165	4241531882	103	SACROC UNIT 27-15A	KELLY-SNYDER	15.0	EL PASO NATURAL G
8203668	F-8A-041113	4241531655	103	SACROC UNIT 36-6	KELLY-SNYDER	506.0	EL PASO NATURAL G
8203667	F-8A-041112	4241581652	103	SACROC UNIT 52-3	KELLY-SNYDER	38.0	EL PASO NATURAL G
8203666	F-8A-041111	4241531887	103	SACROC UNIT 56-13	KELLY-SNYDER	48.0	EL PASO NATURAL G
8203682	F-8A-041152	4241531664	103	SACROC UNIT 9-11	KELLY-SNYDER	30.0	EL PASO NATURAL G

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JD NO	DOCKET	API NO	C SEC CAT	WELL NAME
8203683	F-RA-041153	4249531665	103	SACROC UNIT 9-12
-CITIES SERVICE COMPANY				RECEIVED: 10/23/81 JA: TX
8203585	F-78-040865	4238931178	103	PRIEST E #1
-CNR RESOURCES INC				RECEIVED: 10/23/81 JA: TX
8203396	F-76-042147	4218100000	102-4	STUCKEY #1
-COASTAL OIL & GAS CORP				RECEIVED: 10/23/81 JA: TX
8203420	F-10-040259	4237530847	103	MASTERSON C 1103P
-COLUMBIA GAS DEVELOPMENT CORP				RECEIVED: 10/23/81 JA: TX
8203474	F-05-040652	4228730935	102-2	IRA J LEHMANN #1
-COMINCO AMERICAN INC				RECEIVED: 10/23/81 JA: TX
8203698	F-10-041199	4235700000	108	CUDD #2
-CONOCO INC				RECEIVED: 10/23/81 JA: TX
8203394	F-10-040122	4217930826	103	CARRIE WRIGHT #18
8203636	F-04-040991	4242700000	108	FRIO D-5 UNIT #32
8203634	F-04-040989	4242700000	108	FRIO D-5 UNIT #54
8203624	F-08-040964	4213533697	103	J L JOHNSON #27 I D #01554
8203633	F-04-040988	4213100000	108	ROBERT-DRISCOLL #306
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 10/23/81 JA: TX
8203664	F-04-041095	4247930884	108	MCKENDRICK #1-A
-COSTA RESOURCES INC				RECEIVED: 10/23/81 JA: TX
8203555	F-08-040801	4218332625	103	REYNOLDS #3 #26672
-CRYSTAL OIL COMPANY				RECEIVED: 10/23/81 JA: TX
8203592	F-06-040881	4236530878	108	C G CLINE 1-A
8203593	F-06-040882	4236530878	108	C G CLINE 2-A
8203536	F-06-040734	4236530149	108	DOUGLAS EST #1
8203535	F-06-040732	4236530176	108	DOUGLAS EST #3
8203534	F-06-040731	4236530175	108	DOUGLAS EST #4
8203533	F-06-040730	4236530174	108	DOUGLAS EST #5
8203532	F-06-040729	4236530310	108	DOUGLAS EST #6
8203531	F-06-040728	4236530308	108	DOUGLAS EST #7
8203590	F-06-040879	4236530792	108	MYERS #2
8203591	F-06-040880	4236530788	108	MYERS #3
8203539	F-06-040737	4236530782	108	PIPPEN EST #1
8203538	F-78-040736	4236530783	108	PIPPEN EST #2
8203537	F-06-040735	4236530784	108	PIPPEN EST #3
-D & G GAS & OIL CO				RECEIVED: 10/23/81 JA: TX
8203399	F-01-040158	4228330716	102-4	A THEFF #1
8203400	F-01-040159	4228330759	102-4	PAUL TREFF #1
-DAVID A SCHLACHTER OIL & GAS				RECEIVED: 10/23/81 JA: TX
8203648	F-06-04126	4249930859	103	ARNOLD GLENN #1
-DELTA DRILLING CO				RECEIVED: 10/23/81 JA: TX
8203659	F-06-041056	4236500000	107-TF	HOWE #1 86444
-DORCHESTER EXPLORATION INC				RECEIVED: 10/23/81 JA: TX
8203423	F-03-040264	4231300000	102-2	DRY HEATH
-DOYNE MCIVER				RECEIVED: 10/23/81 JA: TX
8203469	F-78-040602	4208332494	103	KELLY-STEVENSON-WISE #1
-EL PASO NATURAL GAS COMPANY				RECEIVED: 10/23/81 JA: TX
8203646	F-10-041022	4217923699	108	COUSINS #1
8203573	F-7C-040842	4243519208	108	DEBERRY A #3
-ENERGETICS INC				RECEIVED: 10/23/81 JA: TX
8203675	F-03-041142	4214930456	102-2	ARLINE S BOWLES #1
8203677	F-01-041144	4217730635	102-2	H E CHRISTIAN #1 I D #06529
8203678	F-01-041145	4217730969	102-2	ILEY BRISCO #1 I D #07852

FIELD NAME	PROD	PURCHASER
KELLY-SNYDER	49.0	EL PASO NATURAL G
BARSTOW SOUTH (DELAWARE)	4.0	
GORDONVILLE E (VIOLA 105	105.0	UNION TEXAS PETRO
PANHANDLE (RED CAVE)	47.0	COLORADO INTERSTA
GIDDINGS (AUSTIN CHALK)F	15.0	PHILLIPS PETROLEU
MCGEE (MORROW UPPER)	7.0	PANHANDLE EASTERN
GRAY WHEELER	10.0	PHILLIPS PETROLEU
RINCON (FRIO D-5)	3.5	TENNESSEE GAS PIP
RINCON (FRIO D-5	3.2	TENNESSEE GAS PIP
FOSTER	9.1	ODESSA NATURAL CO
CONOCO-DRISCOLL	5.5	TRANSCONTINENTAL
LAREDO SOUTH (QUEEN CITY	13.0	VALERO TRANSMISSI
COSTA (TUBB)	47.4	PERRY GAS PROCESS
PANOLA	14.0	UNITED GAS PIPELI
PANOLA	14.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	11.3	UNITED GAS PIPELI
PANOLA	11.3	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
PANOLA	15.0	UNITED GAS PIPELI
STOREY E (5050 FRIO)	759.0	VALERO TRANSMISSI
STOREY E (5350 FRIO)	412.0	VALERO TRANSMISSI
YANTIS (HILL ZONE)	1.1	LONE STAR GAS CO
CARTHAGE (COTTON VALLEY)	1191.0	NATURAL GAS PIPEL
HEATH (GLEN ROSE)	297.0	SOUTH TEXAS GATHE
COLEMAN COUNTY REGULAR (	0.0	LONE STAR GAS CO
PANHANDLE - WEST	14.0	EL PASO NATURAL G
SONORA CANYON UPPER	14.0	EL PASO NATURAL G
GIDDINGS (AUSTIN CHALK)	6.0	PHILLIPS PETROLEU
CHRISTIAN (6800 BUDA)	52.0	VALERO TRANSMISSI
CHRISTIAN (6800)	2.0	VALERO TRANSMISSI

JC CD	JA DAT	DAT NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8203676	F-03-041143	4214930950	102-2	L Y SPEED #1	GIDDINGS (AUSTIN CHALK)	80.0	PHILLIPS PETROLEU
-ENRICH OIL CORPORATION				RECEIVED: 10/23/81 JA: TX			
8203628	F-78-040974	4244131801	102-4	BIBLE R A #1 ID-17168	GUION SE (GRAY SAND)	36.5	UNION TEXAS PETRO
8203629	F-78-040975	4244131694	102-4	HOUSE L C #1 ID-17137	ACKERMAN (PALO PINTO LM)	22.6	UNION TEXAS PETRO
8203627	F-7C-040973	4239931838	102-4	PRUSER G W #1 ID-08766	GWP (GOEN)	12.8	UNION TEXAS PETRO
-ERGCO CORP				RECEIVED: 10/23/81 JA: TX			
8203679	F-78-041147	4215131196	103	STUART #1	SYLVESTER (GOEN SAND)	0.0	PALO DURO PIPELIN
-ERGON ENERGY CORP				RECEIVED: 10/23/81 JA: TX			
8203429	F-10-040318	4235731142	103	BENNETT #2	FARNSWORTH-CONNER DES MO	43.9	PHILLIPS PETROLEU
-EXXON CORPORATION				RECEIVED: 10/23/81 JA: TX			
8203432	F-08-040324	4200332574	103	FULLERTON CLEARFORK UNIT #1717	FULLERTON	15.0	PHILLIPS PETROLEU
8203433	F-08-040326	4200332789	103	FULLERTON CLEARFORK UNIT #2637	FULLERTON	15.0	PHILLIPS PETROLEU
*8203596	F-04-040894	4227331494	103	K R ALAZAN 362 (94500)	ALAZAN NORTH (J-24)	274.0	ARMCO STEEL CORP
*8203601	F-04-040906	4227331536	103	K R ALAZAN 363 (94465)	ALAZAN NORTH (DEEP FRIO)	127.8	ARMCO STEEL CORP
*8203553	F-04-040798	4227331256	103	K R BORREGOS 547-F (94036)	BORREGOS (ZONE T-9)	300.0	ARMCO STEEL CORP
*8203554	F-04-040799	4227331329	102-4	K R LAGUNA LARGA 22 (93395)	T-C-B (H-62N)	614.0	ARMCO STEEL CORP
8203414	F-04-040225	4234730913	103	MCGILL BROS 469-C (94616)	KELSEY DEEP (ZONE 22-CS)	300.0	TRUNKLINE GAS CO
*8203640	F-04-041007	4226132475	103	RJK JR TR STILLMAN PAST 38	STILLMAN (SHALLOW)	280.0	ARMCO STEEL CORP
8203649	F-84-041029	4216532114	103	ROBERTSON CLFK UNIT #4503	ROBERTSON N (CLFK 7100)	15.0	PHILLIPS PETROLEU
8203557	F-84-041026	4216532962	103	ROBERTSON CLFK UNIT #7101	ROBERTSON N (CLFK 7100)	15.0	PHILLIPS PETROLEU
8203639	F84-041006	4213135103	103	V KOHLER A-135 #09632	KOHLER NE (MIRANDO #2)	26.0	TENNESSEE GAS PIP
-FORBASE - TRAVERSE				RECEIVED: 10/23/81 JA: TX			
8203468	F-09-040590	4249700000	103	BERTHA STEPHENS #2 (93845)	BOONSVILLE (BEND CONGL G	42.0	LONE STAR GAS CO
-FORTUNE PRODUCTION CO				RECEIVED: 10/23/81 JA: TX			
8203653	F-7C-041044	4223531289	103	BAKER A #2	CAL (CANYON)	60.0	CRA INC
-FRANK CASS				RECEIVED: 10/23/81 JA: TX			
8203421	F-7C-040867	4238300000	103	THELMA BEAM #1	SPRABERRY (TREND AREA)	65.0	EL PASO NATURAL G
-GAS WEST				RECEIVED: 10/23/81 JA: TX			
8203441	F-10-040367	4237530681	108	BIVINS 1-1 89321	PANHANDLE	0.0	COLORADO INTERSTA
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED: 10/23/81 JA: TX			
8203442	F-06-040376	4242330469	103	CAMPBELL #2	CHAPEL HILL NE (TRAVIS P	60.0	ETEXAS PRODUCERS
-GETTY OIL COMPANY				RECEIVED: 10/23/81 JA: TX			
8203631	F-7C-040980	4241500000	108	A M BROOKS #1	CODY BELL (CANYON)	15.0	ARCO OIL & GAS CO
8203695	F-78-041191	4243331196	103	FLOWERS CANYON SD UT #184	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8203694	F-78-041190	4243331197	103	FLOWERS CANYON SD UT #185	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8203693	F-78-041189	4243331195	103	FLOWERS CANYON SD UT #186	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8203692	F-78-041188	4243331233	103	FLOWERS CANYON SD UT #187	FLOWERS (CANYON SAND)	5.0	CITIES SERVICE CO
8203691	F-78-041187	4243331232	103	FLOWERS CANYON SD UT #188	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8203598	F-10-040902	4223531100	103	HERRING A TR 2 #114	PANHANDLE HUTCHINSON	9.1	PANHANDLE EASTERN
8203630	F-7C-040979	4241331020	103	JOHN H TREADWELL 70 #2	FORT MCKAVITT N (CANYON	11.0	ARCO OIL & GAS CO
8203630	F-7C-040979	4241331020	107-TF	JOHN H TREADWELL 70 #2	FORT MCKAVITT N (CANYON	11.0	ARCO OIL & GAS CO
8203603	F-08-040184	4210332502	103	NORTH MCELROY UNIT #2242	MCELROY	9.0	PHILLIPS PETROLEU
8203594	F-10-040890	4223531119	103	YAKE B #5	PANHANDLE HUTCHINSON	2.9	PANHANDLE EASTERN
8203597	F-10-040901	4223531162	103	YAKE B #6	PANHANDLE HUTCHINSON	3.6	PANHANDLE EASTERN
-GHR ENERGY CORP				RECEIVED: 10/23/81 JA: TX			
8203471	F-84-040627	4247932138	102-4	B M T #5	LA ROSITA (9900)	98.0	VALERO TRANSMISSI
8203471	F-84-040627	4247932138	107-TF	B M T #5	LA ROSITA (9900)	98.0	VALERO TRANSMISSI
-GO OIL CORP				RECEIVED: 10/23/81 JA: TX			
8203571	F-10-040839	4223531036	103	RILEY #5	PANHANDLE-HUTCHINSON	76.0	PANHANDLE EASTERN
8203572	F-10-040840	4223531038	103	RILEY #6	PANHANDLE-HUTCHINSON	67.0	PANHANDLE EASTERN
8203570	F-09-040838	4249731906	102-4	SHURTLEFF #1 ID NO 94488	COTTONDALE (STRAWN 3720)	0.0	LONE STAR GAS CO
-GULF OIL CORPORATION				RECEIVED: 10/23/81 JA: TX			
8203407	F-08-040189	4249531360	103	KEYSTONE CATTLE CO #356	KEYSTONE (COLBY)	74.0	CABOT CORP

JD NO	JA DKT	API NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-HANLEY COMPANY				RECEIVED: 10/23/81 JA: TX			
8203445	F-7C-040414	4238331781	103	UNIVERSITY 58-18C #1 (7C-08791)	SPRAGBERRY (TREND AREA)	10.0	NORTHERN NATURAL
-HENRY PETROLEUM CORP				RECEIVED: 10/23/81 JA: TX			
8203669	F-7C-041114	4249300000	102-2	KAMISSKI #1	PATTON (AUSTIN CHALK)	0.0	J L DAVIS
-HEXAGON OIL & GAS INC				RECEIVED: 10/23/81 JA: TX			
8203408	F-7B-040193	4214330687	102-4	FEYER #1	X-RAY SOUTH (MARBLE FALL	76.0	VALERO TRANSMISSI
8203409	F-7B-040194	4214330670	102-4	WHITIS #1	X-RAY SOUTH (MARBLE FALL	72.0	VALERO TRANSMISSI
-HIGHLAND RESOURCES INC				RECEIVED: 10/23/81 JA: TX			
8203451	F-06-040453	4200131078	102-4	B G LAMBRIGHT #1	BLACKFOOT NORTH (RODESSA	180.0	LONE STAR GAS CO
-HNG OIL COMPANY				RECEIVED: 10/23/81 JA: TX			
8203444	F-08-040392	4247531711	103	BLACK 135 #1	RHODA WALKER (CANYON 590	6.7	CLAJON GAS CO
8203672	F-7C-041132	4243532235	103	BROWN "63" #4	SAWYER (WOLFCAMP)	9.0	INTRATEX GAS CO
8203672	F-7C-041132	4243532235	108	BROWN "63" #4	SAWYER (WOLFCAMP)	9.0	INTRATEX GAS CO
8203412	F-08-040209	4247531709	103	KEWANEE 112 #6	RHODA WALKER (CANYON 590	0.0	DELHI GAS PIPELIN
8203411	F-7C-040208	4243532185	103	MAYFIELD "39" #3 (84470)	SAWYER (STRAWN NORTH)	0.0	INTRATEX GAS CO
8203671	F-7C-041128	4243532513	103	MAYFIELD 46 #3	SAWYER (CANYON)	24.0	INTRATEX GAS CO
8203671	F-7C-041128	4243532513	107-TF	MAYFIELD 46 #3	SAWYER (CANYON)	24.0	INTRATEX GAS CO
-IMC EXPLORATION COMPANY				RECEIVED: 10/23/81 JA: TX			
8203392	F-8A-040115	4211531502	102-4	TAYLOR #1	DERDEN (MISSISSIPPIAN)	47.0	TEXACO INC
-INDIAN WELLS OIL CO				RECEIVED: 10/23/81 JA: TX			
8203582	F-7C-040854	4223531660	103	HARRIS 60-1	PROBANDT (CANYON)	36.0	NORTHERN NATURAL
8203574	F-7C-040845	4213531647	103	LINDLEY 34A-1	W CANYON	15.0	NORTHERN NATURAL
8203577	F-7C-040849	4223531667	103	PHILLIPS 1-3	IRION (WEST CANYON)	0.0	NORTHERN NATURAL
8203578	F-7C-040850	4223531685	103	PHILLIPS 1-4	IRION (W CANYON)	42.0	NORTHERN NATURAL
8203576	F-7C-040848	4223531671	103	PHILLIPS 4-3	IRION (W CANYON)	17.0	NORTHERN NATURAL
8203575	F-7C-040847	4223531672	103	PHILLIPS 4-4	IRION (W CANYON)	15.0	NORTHERN NATURAL
8203550	F-7C-040792	4245130645	103	PROBANDT 58C-4	PROBANDT	28.0	CRA INC
8203581	F-7C-040853	4223531657	103	RICHEY #42A-2	PROBANDT (CANYON)	100.0	NORTHERN NATURAL
8203583	F-7C-040855	4223531696	103	RICHEY 54A-4	PROBANDT (CANYON)	72.0	NORTHERN NATURAL
8203580	F-7C-040852	4223531697	103	RICHEY 54A-5	PROBANDT (CANYON)	145.0	NORTHERN NATURAL
8203579		4223531659	103	RICHEY 55A-3	PROBANDT (CANYON)	105.0	NORTHERN NATURAL
-INEXCO OIL COMPANY				RECEIVED: 10/23/81 JA: TX			
8203475	F-03-040667	4214930905	102-2	T L FAJKUS #1	GIDDINGS (AUSTIN-CHALK)	36.0	PHILLIPS PETROLEU
-INLAND OCEAN INC				RECEIVED: 10/23/81 JA: TX			
8203440	F-12-040253	4217500000	102-4	WHIPP #1	CARTER THOMAS (COOK MTN)	219.0	UNITED GAS PIPELI
-J B REVIER PRODUCTION CO				RECEIVED: 10/23/81 JA: TX			
8203425	F-09-040270	4249700000	107-PE	J W GREEN #1	BOONESVILLE(5000' ATOKA)	36.0	SOUTHWESTERN GAS
-J CLEO THOMPSON & JAMES CLEO THOMPS				RECEIVED: 10/23/81 JA: TX			
8203470	F-7C-040605	4210533433	102-4	UNIVERSITY 29-28S #2	UNIVERSITY 29 (STRAWN-DE	250.0	
-JAMES K ANDERSON INC				RECEIVED: 10/23/81 JA: TX			
8203584	F-7C-040858	4239932045	102-4	DAVENPORT E #1	MYRNA LYNN (GARDNER)	0.0	UNION TEXAS PETRO
8203434	F-7C-040336	4239931921	103	O'DELL B #1	FRITZESS (ODOM LIME)	180.0	LONE STAR GAS CO
-JONES CO				RECEIVED: 10/23/81 JA: TX			
8203600	F-7B-040904	4242932893	102-4	LOLA MASON #1 (17424)	CAMPBELL (MIDDLE CONGLOM	180.0	SOUTHWESTERN GAS
-KAISER-FRANCIS OIL COMPANY				RECEIVED: 10/23/81 JA: TX			
8203426	F-10-040289	4229530946	103	BARTON B #2	BRADFORD S	100.0	PHILLIPS PETROLEU
-KEITH D GRAHAM				RECEIVED: 10/23/81 JA: TX			
*8203422	F-03-040263	4205131639	102-2	POPEK A #1	GIDDINGS (AUSTIN CHALK-3	105.1	CHAMPLIN PETROLEU
-KIM PETROLEUM CO INC				RECEIVED: 10/23/81 JA: TX			
8203459	F-10-040533	4217930820	103	HOPKINS #1	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8203458	F-10-040532	4217930813	103	HOPKINS #2	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8203462	F-10-040551	4217930896	103	SHERIDAN #1	PANHANDLE GRAY COUNTY	72.0	CABOT PIPELINE CO
8203461	F-10-040550	4217930897	103	SHERIDAN #2	PANHANDLE GRAY COUNTY	72.0	CABOT PIPELINE CO

JD NO	JA AT	API NO	D SEC CAT WELL NAME	FIELD NAME	PROD	PURCHASER
-LA ACEITE ENERGY INC			RECEIVED: 10/23/81 JA: TX			
8203402	F-78-040182	4205933092	102-4 NEUMAN 2241-A #2	PUTNAM N (CROSS CUT)	17.0	LONE STAR GAS CO
-LARIAT OIL & GAS			RECEIVED: 10/23/81 JA: TX			
8203452	F-78-040460	4236332589	102-4 CAMPBELL #1	VAN DYKE (ATOKA)	200.0	SOUTHWESTERN GAS
-LESTER A JONES			RECEIVED: 10/23/81 JA: TX			
8203623	F-10-040962	4217900000	108 BAILEY #1 (26956)	EAST PANHANDLE	8.0	WARREN PETROLEUM
-LEWIS B BURLESON			RECEIVED: 10/23/81 JA: TX			
8203443	F-08-040380	4237133385	102-4 KAY #1	BELDING WEST (YATES)	0.0	APACHE GAS CORP
-LOUISIANA CRUDE OIL & GAS CO INC			RECEIVED: 10/23/81 JA: TX			
8203398	F-78-040156	4213331752	103 HOWELL-CURRY #1 (15835)	EASTLAND COUNTY REGULAR	50.0	SOUTHWESTERN GAS
-MAXON PETROLEUM CO			RECEIVED: 10/23/81 JA: TX			
8203424	F-78-040266	4204932634	102-4 BRUSH #2	MAXON (CANYON 800)	10.0	ODESSA NATURAL CO
-MCBRAYER OIL CORP			RECEIVED: 10/23/81 JA: TX			
8203638	F-06-041002	4245930482	103 T D JAMES G U #1	ROSEWOOD (HOSSTON-COTTON	150.0	WESTERN GAS CORP
8203638	F-06-041002	4245930482	107-TF T D JAMES G U #1	ROSEWOOD (HOSSTON-COTTON	150.0	WESTERN GAS CORP
-MCCORMICK OPERATING CO			RECEIVED: 10/23/81 JA: TX			
8203657	F-06-041051	4240130717	103 PERRY THOMPSON GU #2	OAK HILL (COTTON VALLEY)	347.8	HYDROCARBON TRANS
8203447	F-03-040423	4220131128	103 SWEENEY EST #1	LANGHAM CREEK (6900*)	55.0	
8203473	F-06-040648	4240130693	103 VINSON GAS UNIT #1	OAK HILL (COTTON VALLEY)	224.3	HYDROCARBON TRANS
-MEADCO PROPERTIES			RECEIVED: 10/23/81 JA: TX			
8203663	F-7C-041090	4245130681	103 E SUGG 59 #1 RRC #08674	PROBANDT (CANYON)	1.0	
8203662	F-7C-041086	4223531560	102-2 FARMAR 12 #1 RRC #93356	ELA SUGG (WOLFCAMP)	68.0	CRA INC
-MID-AMERICA PETROLEUM INC			RECEIVED: 10/23/81 JA: TX			
8203588	F-7C-040873	4238331757	103 TALLEY B #1	SPRABERRY (TREND AREA)	10.0	NORTHERN NATURAL
8203637	F-7C-041009	4238331833	103 UNIVERSITY "17" #3	SPRABERRY TREND AREA	12.0	PHILLIPS PETROLEU
8203589	F-7C-040874	4238331811	103 UNIVERSITY 17 #1	SPRABERRY TREND AREA	14.0	PHILLIPS PETROLEU
8203625	F-7C-040971	4238331831	103 UNIVERSITY 17 #2	SPRABERRY TREND AREA	11.0	PHILLIPS PETROLEU
-MOBIL PRDG TEXAS & NEW MEXICO INC			RECEIVED: 10/23/81 JA: TX			
8203665	F-8A-041110	4207931267	103 CENTRAL LEVELLAND UNIT #343	LEVELLAND	9.1	AMOCO PRODUCTION
8203466	F-08-040562	4246131731	103 HARDWICKE UNIV SEC 48 #11	MCELROY	25.9	PHILLIPS PETROLEU
8203467	F-8A-040563	4207931266	103 NO CENTRAL LEVELLAND UNIT #341	LEVELLAND	1.8	AMOCO PRODUCTION
8203552	F-8A-040795	4221932981	103 NO CENTRAL LEVELLAND UNIT #342	LEVELLAND	7.7	AMOCO PRODUCTION
*8203551	F-0P-040794	4232930991	103 PRESTON SPRABERRY UNIT #2905	SPRABERRY (TREND AREA)	15.7	PHILLIPS PETROLEU
8203448	F-08-040442	4230130301	102-4 W D JOHNSON E #2	DIMMIT (CHERRY CANYON)	12.0	INTRATEX GAS CO
-MORROW RESOURCES INC			RECEIVED: 10/23/81 JA: TX			
*8203416	F-7C-040246	4232730371	102-2 PFLUGER A #1	CELERY (STRAWN 2975)	6.0	SUN OIL CO
*8203416	F-7C-040246	4232730371	103 PFLUGER A #1	CELERY (STRAWN 2975)	6.0	SUN OIL CO
-MR OIL CO			RECEIVED: 10/23/81 JA: TX			
8203549	F-0R-040791	4247532586	103 JOHNSON-B- #8	WARD-ESTES NORTH	21.0	WESTERN COUNTIES
-MTS LTD PARTNERSHIP			RECEIVED: 10/23/81 JA: TX			
8203393	F-08-040120	4243130955	103 COLE 32 #2	WAM (FUSSELMAN)	300.0	
-NORTH STAR PETROLEUM CORPORATION			RECEIVED: 10/23/81 JA: TX			
8203455	F-10-040477	4223300000	103 SKELLY-MERCHANT #2	PANHANDLE HUTCHINSON	22.0	PHILLIPS PETROLEU
-PALO PETROLEUM INC			RECEIVED: 10/23/81 JA: TX			
8203546	F-78-040775	4213331901	102-4 CLARK #2	BLIND HOG (RANGER)	78.5	ODESSA NATURAL CO
8203545	F-78-040774	4213331675	102-4 LEWALLEN #2	BLIND HOG (RANGER)	82.5	ODESSA NATURAL CO
8203547	F-78-040777	4204931937	102-4 STEEL G #1	BLIND HOG (RANGER)	113.2	ODESSA NATURAL CO
8203548	F-78-040778	4213331702	102-4 STEEL G #2	BLIND HOG (RANGER)	136.9	ODESSA NATURAL CO
-PALO-PLACER			RECEIVED: 10/23/81 JA: TX			
8203544	F-7C-040770	4246131527	103 LANGFORD 44-1	SPRABERRY (TREND AREA)	50.0	PHILLIPS PETROLEU
-PAUL E CAMERON JR INC			RECEIVED: 10/23/81 JA: TX			
8203428	F-04-040313	4242700000	102-4 CAMERON STATE 228 #1	CAMERON S (FRIO-4000)	73.0	CONOCO INC
-PEGGY ANN INC			RECEIVED: 10/23/81 JA: TX			

JD NO	DA NT	API NO	SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8203643	F-78-041012	4209330776	102-4	EDDIE LINDLEY #1 (90646)	DELEON N (STRAWN)	295.0	SOUTHWESTERN GAS
8203642	F-78-041011	4209330776	102-4	EDDIE LINDLEY #2 (91303)	DELEON N (STRAWN)	95.0	SOUTHWESTERN GAS
8203645	F-78-041014	4209330680	102-4	W A HARRIS #1 (86257)	DELEON N (STRAWN)	235.0	SOUTHWESTERN GAS
8203641	F-78-041010	4209330712	102-4	W A HARRIS #2 (86624)	DELEON N (STRAWN)	290.0	SOUTHWESTERN GAS
8203644	F-78-041013	4209330766	102-4	W A HARRIS #3 (89779)	DELEON N (STRAWN)	180.0	SOUTHWESTERN GAS
-PETROLEUM CORPORATION OF TEXAS			RECEIVED: 10/23/81 JA: TX				
8203450	F-08-040452	4249500000	103	BROWN-ALTMAN C #6	EMPEROR (DEEP)	22.6	CABOT CORP
8203449	F-08-040446	4249500000	103	BROWN-ALTMAN C #7	EMPEROR (DEEP)	5.8	CABOT CORP
8203427	F-7C-040387	4210500000	103	UNIVERSITY-PHILLIPS #17	FARMER (SAN ANDRES)	0.2	PECOS CO
-PHILLIPS PETROLEUM COMPANY			RECEIVED: 10/23/81 JA: TX				
8203587	F-08-040871	4249503437	108	ERNEST-5 (20321)	KERMIT SOUTH (DEVONIAN)	15.5	SID RICHARDSON GA
8203435	F-08-040339	4249531351	103	MCCABE FP #54 (21555)	HALLEY	3.0	EL PASO NATURAL G
8203626	F-10-040972	4242100000	108	SHEP #1	TEXAS HUGOTON	0.0	MICHIGAN WISCONSI
-PRITCHARD ENGINEERING & OPER INC			RECEIVED: 10/23/81 JA: TX				
8203680	F-76-041150	4220300000	103	J D FURRH #2 10451	ELYSIAN	150.0	ARKLA GAS
-R A W ENERGY CORP			RECEIVED: 10/23/81 JA: TX				
8203670	F-78-041116	4236731916	102-4	BRUMBAUGH #1 RRC ID#89644	GROGAN	36.0	SOUTHWESTERN GAS
-RAY HERRING			RECEIVED: 10/23/81 JA: TX				
8203463	F-78-040554	4242932888	103	SCARLETT 6-1	JOHNNY (CONGL)	36.0	WARREN PETROLEUM
-RETAMCO INC			RECEIVED: 10/23/81 JA: TX				
8203410	F-03-040196	4214930939	103	E T ZOCH #1	GIDDINGS (AUSTIN CHALK)	6.0	PHILLIPS PETROLEU
-ROBINSON BROS DRILLING CO INC			RECEIVED: 10/23/81 JA: TX				
8203673	F-03-041137	4214930734	103	A G KIRCHNER #1	GIDDINGS (AUSTIN CHALK)	13.0	PHILLIPS PETROLEU
8203674	F-01-041138	4217730690	103	J B LESTER #1	COST (AUSTIN CHALK)	18.0	TIPPERARY GATHERI
-ROMINES AND WARNER			RECEIVED: 10/23/81 JA: TX				
8203562	F-10-040822	4223300000	108	HUBER-STATE #10 (#01297)	PANHANDLE HUTCHINSON	0.5	PHILLIPS PETROLEU
8203567	F-10-040828	4223300000	108	HUBER-STATE #3 (#01297)	PANHANDLE HUTCHINSON	0.3	PHILLIPS PETROLEU
8203566	F-10-040827	4223300000	108	HUBER-STATE #4 (#01297)	PANHANDLE HUTCHINSON	0.3	PHILLIPS PETROLEU
8203565	F-10-040826	4223300000	108	HUBER-STATE #6 (#01297)	PANHANDLE HUTCHINSON	0.2	PHILLIPS PETROLEU
8203564	F-10-040825	4223300000	108	HUBER-STATE #7 (#01297)	PANHANDLE HUTCHINSON	0.4	PHILLIPS PETROLEU
8203563	F-10-040824	4223300000	108	HUBER-STATE #8 (#01297)	PANHANDLE HUTCHINSON	0.2	PHILLIPS PETROLEU
-SAGE PETROLEUM CO			RECEIVED: 10/23/81 JA: TX				
8203529	F-10-040725	4217900000	107-PE	ANDY #1	PANHANDLE	0.0	PIONEER CORP
8203521	F-10-040717	4217900000	107-PE	ANDY #10	PANHANDLE	0.0	PIONEER CORP
8203528	F-10-040724	4217900000	107-PE	ANDY #2	PANHANDLE	0.0	PIONEER CORP
8203530	F-10-040727	4217900000	107-PE	ANDY #3	PANHANDLE	0.0	PIONEER CORP
8203527	F-10-040723	4217900000	107-PE	ANDY #4	PANHANDLE	0.0	PIONEER CORP
8203526	F-10-040722	4217900000	107-PE	ANDY #5	PANHANDLE	0.0	PIONEER CORP
8203523	F-10-040719	4217900000	107-PE	ANDY #6	PANHANDLE	0.0	PIONEER CORP
8203524	F-10-040720	4217900000	107-PE	ANDY #7	PANHANDLE	0.0	PIONEER CORP
8203525	F-10-040721	4217900000	107-PE	ANDY #8	PANHANDLE	0.0	PIONEER CORP
8203522	F-10-040718	4217900000	107-PE	ANDY #9	PANHANDLE	0.0	PIONEER CORP
8203520	F-10-040716	4217900000	107-PE	BEAVERS #1	PANHANDLE	0.0	PIONEER CORP
8203513	F-10-040709	4217900000	107-PE	BEAVERS #11	PANHANDLE	0.0	PIONEER CORP
8203512	F-10-040708	4217900000	107-PE	BEAVERS #12	PANHANDLE	0.0	PIONEER CORP
8203519	F-10-040715	4217900000	107-PE	BEAVERS #3	PANHANDLE	0.0	PIONEER CORP
8203517	F-10-040713	4217900000	107-PE	BEAVERS #5	PANHANDLE	0.0	PIONEER CORP
8203516	F-10-040712	4217900000	107-PE	BEAVERS #6	PANHANDLE	0.0	PIONEER CORP
8203515	F-10-040711	4217900000	107-PE	BEAVERS #7	PANHANDLE	0.0	PIONEER CORP
8203514	F-10-040710	4217900000	107-PE	BEAVERS #8	PANHANDLE	0.0	PIONEER CORP
8203518	F-10-040714	4217900000	107-PE	BEAVERS NO 4	PANHANDLE	0.0	PIONEER CORP
8203511	F-10-040707	4217900000	107-PE	BENNY #1	PANHANDLE	0.0	PIONEER CORP
8203503	F-10-040699	4217900000	107-PE	BENNY #10	PANHANDLE	0.0	PIONEER CORP

JD NO	JA KT	API	SEC CAT	WELL NAME
8203502	F-10-040698	4217900000	107-PE	BENNY #11
8203501	F-10-040697	4217900000	107-PE	BENNY #12
8203500	F-10-040696	4217900000	107-PE	BENNY #13
8203499	F-10-040695	4217900000	107-PE	BENNY #14
8203498	F-10-040694	4217900000	107-PE	BENNY #15
8203497	F-10-040693	4217900000	107-PE	BENNY #16
8203496	F-10-040692	4217900000	107-PE	BENNY #17
8203510	F-10-040706	4217900000	107-PE	BENNY #2
8203509	F-10-040705	4217900000	107-PE	BENNY #3
8203508	F-10-040704	4217900000	107-PE	BENNY #4
8203507	F-10-040703	4217900000	107-PE	BENNY #5
8203506	F-10-040702	4217900000	107-PE	BENNY #7
8203505	F-10-040701	4217900000	107-PE	BENNY #8
8203504	F-10-040700	4217900000	107-PE	BENNY #9
8203495	F-10-040691	4217900000	107-PE	BENNY A #1
8203487	F-10-040683	4217900000	107-PE	BENNY A #10
8203486	F-10-040682	4217900000	107-PE	BENNY A #11
8203494	F-10-040690	4217900000	107-PE	BENNY A #2
8203493	F-10-040689	4217900000	107-PE	BENNY A #3
8203492	F-10-040688	4217900000	107-PE	BENNY A #4
8203491	F-10-040687	4217900000	107-PE	BENNY A #5
8203490	F-10-040686	4217900000	107-PE	BENNY A #6
8203489	F-10-040685	4217900000	107-PE	BENNY A #7
8203488	F-10-040684	4217900000	107-PE	BENNY A #9
8203485	F-10-040681	4217900000	107-PE	HUSTED #1
8203484	F-10-040680	4217900000	107-PE	MAJOR #1
8203483	F-10-040679	4217900000	107-PE	MAJOR #2
8203482	F-10-040678	4217900000	107-PE	MAJOR #3
8203481	F-10-040677	4217900000	107-PE	MAJOR #4
8203480	F-10-040676	4217900000	107-PE	MAJOR #6
8203479	F-10-040675	4217900000	107-PE	MAJOR #7
8203478	F-10-040674	4217900000	107-PE	MAJOR #8
8203477	F-10-040673	4217900000	107-PE	MAJOR #9
8203476	F-10-040672	4217900000	107-PE	MELTON #1
-SED INC			RECEIVED: 10/23/81 JA: TX	
8203543	F-02-040766	4202531377	108	W O WINSAUER #1
-SEQUOIA FOSSIL FUELS INC			RECEIVED: 10/23/81 JA: TX	
8203632	F-78-040985	4241733752	103	HUDMAN #1
-SHELL OIL CO			RECEIVED: 10/23/81 JA: TX	
8203609	F-09-040946	4216500000	108	B M C/STRAWN I/UNIT #409
8203618	F-8A-040956	4216500000	108	BAUMGART GEORGE -E- #27
8203395	F-8A-040141	4250131913	103	DENVER UNIT #3134
8203619	F-8A-040958	4216500000	108	KENDRICK R M #6-U
8203613	F-08-040951	4200300000	108	RAINEY DONNA #4
8203608	F-8A-040945	4216500000	108	S WASSON CLRFK UNIT #6502-S
8203607	F-8A-040944	4216500000	108	S WASSON CLRFK UNIT #6507-S
8203606	F-8A-040943	4216500000	108	S WASSON CLRFK UNIT #7407-S
8203605	F-8A-040942	4216500000	108	S WASSON CLRFK UNIT #7612-S
8203604	F-8A-040941	4216500000	108	S WASSON CLRFK UNIT #8410-S
8203603	F-8A-040940	4216500000	108	S WASSON CLRFK UNIT #8609-S
8203602	F-8A-040939	4216500000	108	S WASSON CLRFK UNIT #9404-S
8203614	F-08-040952	4200300000	108	SCARBOROUGH EST-B- #8
8203617	F-08-040955	4200300000	108	SCARBOROUGH W F #4

FIELD NAME	PROD	PURCHASER
PANHANDLE	0.0	PIONEER CORP
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PANHANDLE	0.0	PIONEER CORP
PANHANDLE	0.0	PIONEER CORP
LITTLE JOHN (1170)	10.0	UNITED GAS PIPE L
SHACKELFORD COUNTY REGUL	75.0	DELHI GAS PIPELIN
BIG MINERAL CREEK (STRAW	1.6	UNION TEXAS PETRO
WASSON 72	2.7	SHELL OIL CO
WASSON	1.1	SHELL OIL CO & CO
WASSON 72	6.2	SHELL OIL CO
UNION	0.4	PHILLIPS PETROLEU
WASSON 72	6.9	SHELL OIL CO
WASSON 72	6.5	SHELL OIL CO
WASSON 72	5.1	SHELL OIL CO
WASSON 72	6.4	SHELL OIL CO
WASSON 72	6.0	SHELL OIL CO
WASSON 72	8.5	SHELL OIL CO
WASSON 72	1.7	SHELL OIL CO
FULLERTON (SAN ANDRES)	7.3	PHILLIPS PETROLEU
FULLERTON (SAN ANDRES)	0.3	PHILLIPS PETROLEU

| | | |

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	WELL NAME	FIELD NAME	PROD	PURCHASER
-W R EDWARDS JR				RECEIVED: 10/23/81 JA: TX				
8203647	F-10-241007	4223300003	103		HEARKILLER #5	PANHANDLE HUTCHINSON	92.0	PANHANDLE PRODUCI
8203654	F-10-241047	4223300000	103		COBLE CATTLE CO #17-1	PANHANDLE HUTCHINSON	95.0	PANHANDLE PRODUCI
8203656	F-10-241049	4223300002	103		COBLE CATTLE CO 27-1	PANHANDLE HUTCHINSON	95.0	PANHANDLE PRODUCI
8203655	F-10-241048	4223300001	103		COBLE CATTLE CO 39-1	PANHANDLE HUTCHINSON	95.0	PANHANDLE PRODUCI
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 10/23/81 JA: TX				
8203558	F-08-240815	4210332421	103		W N WADDELL TR A #1175	SAND HILLS (WOLFCAMP)	9.0	EL PASO NATURAL G
8203556	F-08-240812	4210332547	103		W N WADDELL TR A #1186	SAND HILLS (JUDKINS)	15.0	EL PASO NATURAL G
-WELLS-BATTELSTEIN OIL & GAS INC				RECEIVED: 10/23/81 JA: TX				
8203446	F-04-240417	4240931454	102-4		MAEDGEN & SONS INC #1	MAEDGEN (4500)	800.0	UNITED GAS PIPE L
-WINDSOR PRODUCING CO				RECEIVED: 10/23/81 JA: TX				
8203391	F-03-240110	4228730825	103		LILLIAN ZIEHR #1	GIDDINGS (AUSTIN CHALK)	36.5	PGP GAS PRODUCTS
-ZODIAC ENERGY CORP				RECEIVED: 10/23/81 JA: TX				
8203599	F-09-240953	4223700003	108		W M MITCHELL #1	JACK COUNTY REGULAR	7.2	CITIES SERVICE CO

OTHER PURCHASERS VOLUME NO 543

8203416 LONE STAR GAS CO
8203422 FERGUSON CROSSING P L CO
8203551 EL PASO NATURAL GAS CO
8203553 E I DUPONT DE NEMOURS & CO INC
8203554 E I DUPONT DE NEMOURS & CO INC
8203594 E I DUPONT DENEMOURS & CO INC
8203631 E I DUPONT DENEMOURS & CO INC
8203648 E I DUPONT DE NEMOURS & CO INC
8203650 EL PASO NATURAL GAS CO
8203651 EL PASO NAT GAS CO
8203652 EL PASO NATURAL GAS CO

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before December 9, 1981.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1000 ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal seams
107-DV: Devonion shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-33823 Filed 11-23-81; 8:45 am]
BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: November 16, 1981.

JD NO	DOCKET	API NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION							
-MOBIL OIL CORP			RECEIVED: 10/26/81 JA: KS				
8203790	K-81-0679	1505520458	103	EARL BROWN UNIT B #2	PANOMA	0.0	CITIES SERVICE GA
8203789	K81-0678	1505520584	103	GLENN E DEW UNIT #2	PANOMA COUNCIL GROVE	70.0	CITIES SERVICE GA
-NORTHERN NATURAL GAS PRODUCING CO			RECEIVED: 10/26/81 JA: KS				
8203784	K81-0682	1505520459	103	BROWN #11 FARM #12	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8203787	K81-0683	1505520460	103	BROWN #13 UNIT #14	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8203788	K81-0717	1505520464	103	BROWN #2 FARM #3	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8203783	K81-0718	1505520466	103	BROWN #24 FARM #25	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8203786	K81-0722	1505520465	103	BROWN #5 FARM #6	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8203785	K81-0681	1505520458	103	BROWN #9 FARM #10	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION							
-CHAUTAUQUA NATURAL GAS CO INC			RECEIVED: 10/27/81 JA: NY				
8203888	1391	3101314174	103	C PARKER #1	LAKESHORE	45.0	COLUMBIA GAS TRAN
8203887	1392	3101314175	103	C PARKER #2	LAKESHORE	45.0	COLUMBIA GAS TRAN
8203892	1330	3101315010	103	C PARKER #3B	LAKESHORE	0.0	COLUMBIA GAS TRAN
8203889	1299	3101314765	103	C PARKER #4	LAKESHORE	60.0	COLUMBIA GAS TRAN
8203927	1298	3101314276	103	C PARKER #5	LAKESHORE	15.7	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION			RECEIVED: 10/27/81 JA: NY				
8203930	1435	3102912745	103	CLARENCE HEARY WN-1617	TOWN OF CONCORD	0.0	GENERAL SYSTEM PU
-DESERT GAS EXPLORATION CO INC			RECEIVED: 10/27/81 JA: NY				
8203885	1388	3101315026	103	BENDER #1 - D G 121	LAKESHORE	36.0	NATIONAL FUEL GAS
8203884	1387	3101315028	103	BENDER #3 - D G 123	LAKESHORE	40.0	NATIONAL FUEL GAS
8203886	1390	3101315027	103	BENDER WELL #2	LAKESHORE	12.0	NATIONAL FUEL GAS
8203934	1379	3101312988	108	CASTILONE UNIT #1	LAKESHORE	6.4	NATIONAL FUEL GAS
8203937	1382	3101312989	108	COSTELLO UNIT - D G 107	LAKESHORE	13.2	NATIONAL FUEL GAS
8203935	1386	3101314181	103	LARRAINE UNIT #1 - D G 111	LAKESHORE	21.0	NATIONAL FUEL GAS
8203890	1378	3101313157	103	MCPHERSON UNIT #1 - D G 105	LAKESHORE	30.0	NATIONAL FUEL GAS
8203933	1384	3101313050	108	NEWTON UNIT #1 - D G 103	LAKESHORE	4.0	NATIONAL FUEL GAS
8203936	1397	3101312991	108	O'DONOHUE UNIT #1 - D G 108	LAKESHORE	13.2	NATIONAL FUEL GAS
8203938	1383	3101313049	108	PULCI UNIT #1 - D G 102	LAKESHORE	4.0	NATIONAL FUEL GAS
-ENERGY OIL INC			RECEIVED: 10/27/81 JA: NY				
8203932	1339	3103714575	103	CUMMINGS #1	MEDINA	0.0	NATIONAL FUEL GAS
8203931	1337	3103714574	103	SILLIMAN #1	MEDINA	0.0	NATIONAL FUEL GAS
-ENVIROGAS INC			RECEIVED: 10/27/81 JA: NY				
8203894	991	3101314634	103	BOSTWICK VINEYARDS #1	LAKESHORE	18.0	NATIONAL FUEL GAS
8203893	992	3101314635	103	BOSTWICK VINEYARDS #2	LAKESHORE	18.0	NATIONAL FUEL GAS
8203896	891	3101314632	103	C HENDRICKSON #1	LAKESHORE	18.0	NATIONAL FUEL GAS
-P & S DRILLING INC			RECEIVED: 10/27/81 JA: NY				
8203891	1399	3102915378	103	HICKEY #1A	ALDEN LANCASTER	20.0	NATIONAL FUEL GAS

J...	J...	API NO	SEC DIST WELL NAME	FIELD NAME	PROD	PURCHASER
-PARAGON RESOURCES INC		RECEIVED: 10/27/81 JA: NY				
R203922	1214	3101314561	103 A HALL UNIT #598	LAKESHORE	0.0	COLUMBIA GAS TRAN
R203925	1215	3101314562	103 A HALL UNIT #599	LAKESHORE	0.0	COLUMBIA GAS TRAN
R203907	1187	3101313748	103 A SWANSON UNIT #561	LAKESHORE	12.0	COLUMBIA GAS TRAN
R203874	1146	3101313782	103 A TANNER UNIT #580	LAKESHORE	21.0	COLUMBIA GAS TRAN
R203914	1198	3101315514	103 ALLEN EIMERS UNIT #582	LAKESHORE	70.0	COLUMBIA GAS TRAN
R203905	1181	3101313762	103 C FISHER UNIT #554	LAKESHORE	28.0	COLUMBIA GAS TRAN
R203915	1197	3101314494	103 C THOMPSON UNIT #581	LAKESHORE	51.0	COLUMBIA GAS TRAN
R203880	1204	3101314818	103 CHAUTAUGUA FOREST PRODS UNIT #588	LAKESHORE	16.0	COLUMBIA GAS TRAN
R203920	1210	3101314557	103 D CLANCY UNIT #594	LAKESHORE	23.0	COLUMBIA GAS TRAN
R203921	1211	3101314558	103 D CLANCY UNIT #595	LAKESHORE	16.0	COLUMBIA GAS TRAN
R203898	1177	3101313756	103 D PROPHETER UNIT #550	LAKESHORE	140.0	COLUMBIA GAS TRAN
R203897	1178	3101313759	103 D PROPHETER UNIT #551	LAKESHORE	19.0	COLUMBIA GAS TRAN
R203900	1179	3101313760	103 D PROPHETER UNIT #552	LAKESHORE	10.0	COLUMBIA GAS TRAN
R203909	1199	3101313778	103 D SCHWARTZ UNIT #576	LAKESHORE	23.0	COLUMBIA GAS TRAN
R203882	1202	3101314549	103 E CLUTE UNIT #586	LAKESHORE	46.0	COLUMBIA GAS TRAN
R203908	1188	3101313770	103 G KRAUSE UNIT #563	LAKESHORE	9.0	COLUMBIA GAS TRAN
R203912	1190	3101313775	103 G STROEBEL UNIT #573	LAKESHORE	9.0	COLUMBIA GAS TRAN
R203904	1186	3101313767	103 G YONKER UNIT #559	LAKESHORE	18.0	COLUMBIA GAS TRAN
R203877	1139	3101315516	103 GREEN BROTHERS LUMBER UNIT #583	LAKESHORE	30.0	COLUMBIA GAS TRAN
R203906	1184	3101313765	103 H LAND UNIT #557	LAKESHORE	10.0	COLUMBIA GAS TRAN
R203905	1185	3101314419	103 H LAND UNIT #558-A	LAKESHORE	49.0	COLUMBIA GAS TRAN
R203895	1176	3101313757	103 J BERTRAM UNIT #549	LAKESHORE	37.0	COLUMBIA GAS TRAN
R203910	1192	3101313777	103 J BERTRAM UNIT #575	LAKESHORE	68.0	COLUMBIA GAS TRAN
R203881	1203	3101314550	103 J HANSEN UNIT #587	LAKESHORE	58.0	COLUMBIA GAS TRAN
R203883	1205	3101314552	103 J HANSEN UNIT #589	LAKESHORE	10.0	COLUMBIA GAS TRAN
R203913	1189	3101313771	103 J MEYERS UNIT #564	LAKESHORE	18.0	COLUMBIA GAS TRAN
R203875	1195	3101313781	103 M CRANDALL UNIT #579	LAKESHORE	39.0	COLUMBIA GAS TRAN
R203899	1180	3101313761	103 M EPH UNIT #553	LAKESHORE	23.0	COLUMBIA GAS TRAN
R203876	1194	3101313779	103 M HOLLISTER UNIT #577	LAKESHORE	140.0	COLUMBIA GAS TRAN
R203902	1182	3101313763	103 MAYVILLE CONS CLUB UNIT #555	LAKESHORE	21.0	COLUMBIA GAS TRAN
R203901	1183	3101313764	103 N JOHNSON UNIT #556	LAKESHORE	98.0	COLUMBIA GAS TRAN
R203924	1227	3101314887	103 R BREADS UNIT #612	LAKESHORE	30.0	COLUMBIA GAS TRAN
R203911	1191	3101313776	103 R GROUP UNIT #574	LAKESHORE	95.0	COLUMBIA GAS TRAN
R203878	1200	3101314547	103 R MANSFIELD UNIT #584	LAKESHORE	12.0	COLUMBIA GAS TRAN
R203879	1201	3101314548	103 R MANSFIELD UNIT #585	LAKESHORE	68.0	COLUMBIA GAS TRAN
-TROY ENERGY EASTERN INC		RECEIVED: 10/27/81 JA: NY				
R203929	1413	3102914822	103 CHARLES #1	LAKESHORE	0.0	NATIONAL FUEL GAS
R203928	1412	3102914853	103 CHARLES #2	LAKESHORE	0.0	NATIONAL FUEL GAS
R203918	1409	3102913583	108 MANN #2	EVANS	3.9	NATIONAL FUEL GAS
R203916	1408	3102913582	108 MANN #3	EVANS	13.7	NATIONAL FUEL GAS
R203926	1410	3102914851	103 MANN #4	LAKESHORE	0.0	NATIONAL FUEL GAS
R203917	1414	3102913584	108 SNYDER #1	EVANS	20.4	NATIONAL FUEL GAS
-TROY PIPE AND SUPPLY CO INC		RECEIVED: 10/27/81 JA: NY				
R203919	1405	3101311936	108 FADALE #1	PORTLAND	6.6	NATIONAL FUEL GAS
R203923	1406	3101311651	103 HAMM #2	PORTLAND	41.8	NATIONAL FUEL GAS
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OHIO DEPARTMENT OF NATURAL RESOURCES						
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-ALTHEIRS OIL INC		RECEIVED: 10/26/81 JA: OH				
R203733		3405320663	103 MERRILL GROVER #1A	CHESHIRE TWP	4.0	COLORADO GAS TRAN
R203732		3405320657	103 S SWISHER #2	CHESHIRE TWP	3.0	COLUMBIA GAS TRAN
-B B ENERGY		RECEIVED: 10/26/81 JA: OH				

JO NO	JA INT	API NO	S REC CAT WELL NAME
8203735		3412122646	103 ULLMAN #1
			RECEIVED: 10/26/81 JA: OH
-BELDEN & BLAKE & CO. 78			
8203740		3415123569	103 J & H FOHL #2 341108
8203736		3401921413	103 KIKO #1 341057
8203738		3401921458	103 L & S MIDAY #1 341110
8203737		3401921419	103 M SAVAGE COMM #3 341068
8203739		3415123568	103 T ESPENSCHEID COMM #1 341107
			RECEIVED: 10/26/81 JA: OH
-BOBBY ANDERSON			
8203734		3416725493	103 TRATCHEL #1
			RECEIVED: 10/26/81 JA: OH
-CAMERON & KINCAID			
8203746		3411925697	103 K HOMMAN 1-A
8203746		3411925697	107-IF K HOMMAN 1-A
			RECEIVED: 10/26/81 JA: OH
-CARLTON OIL CORP			
8203741		3411122145	103 HARRY CLINE #1
8203742		3416725266	103 HENDRICKS #1
			RECEIVED: 10/26/81 JA: OH
-CLINTON OIL CO			
8203743		3403124479	103 KAY & JOHN FOX #1-592
			RECEIVED: 10/26/81 JA: OH
-DONALD P SHANAHAN			
8203765		3411522473	103 ALBERT FINKEL 1-C
8203766		3416726679	103 MARY SWISHER #3
			RECEIVED: 10/26/81 JA: OH
-GUERNSEY PETROLEUM CORPORATION			
8203744		3411925709	103 OHIO POWER 7-N
			RECEIVED: 10/26/81 JA: OH
-HILLTOP DEVELOPMENT CORP			
8203745		3411925793	103 DAVID MCCANN #2
			RECEIVED: 10/26/81 JA: OH
-HORTIN & HUFFMAN			
8203747		3403124455	103 DALLAS & MARY LINT #1
			RECEIVED: 10/26/81 JA: OH
-J D DRILLING CO			
8203748		3410522022	103 ALBERT ROUSH #2
			RECEIVED: 10/26/81 JA: OH
-K S T OIL & GAS CO INC			
8203751		3415320986	103 CROWN POINT #2
8203749		3415320942	103 REVERE SCHOOL #1
8203750		3415320943	103 REVERE SCHOOL #2
			RECEIVED: 10/26/81 JA: OH
-KENSINGTON INVESTORS LTD			
8203752		3416726289	103 LEWIS & ZELLA MOORE #1
			RECEIVED: 10/26/81 JA: OH
-LUDCO INC			
8203753		3407321853	103 STATES OTTERBEIN #4
			RECEIVED: 10/26/81 JA: OH
-NEW FRONTIER EXPLORATION INC			
8203754		3415723556	103 ELMER LADRACH #1
			RECEIVED: 10/26/81 JA: OH
-OHIO PRODUCERS SERVICES INC			
8203755		3412725194	103 GOWER HARVEY JR & KATHLEEN #1
			RECEIVED: 10/26/81 JA: OH
-PIONEER OIL COMPANY INC			
8203758		3412725138	103 A CALENDINE #1
8203756		3412725133	103 J TRIMMER #1
8203757		3412725137	103 T EMMERT #1
			RECEIVED: 10/26/81 JA: OH
-QUADRANT EXPLORATION			
8203759		3416726718	103 FPLER #1-20
			RECEIVED: 10/26/81 JA: OH
-RIVER CITY DRILLING INC			
8203760		3416726239	103 PEN EDDY #1
			RECEIVED: 10/26/81 JA: OH
-ROYAL PETROLEUM 81-1			
8203762		3410522121	103 FRECKER #3
8203763		3410522133	103 FRECKER #4
8203761		3410522120	103 FRECKER WELL #1
			RECEIVED: 10/26/81 JA: OH
-SENECA ENERGY CORP			

FIELD NAME	PROD	PURCHASER
ULLMAN #1	12.0	COLUMBIA GAS TRAN
MARLBORO	36.5	EAST OHIO GAS CO
ROSE	36.5	EAST OHIO GAS CO
ROSE	36.5	EAST OHIO GAS CO
ROSE	36.5	EAST OHIO GAS CO
MARLBORO	36.5	EAST OHIO GAS CO
BARLOW	0.0	COLUMBIA GAS TRAN
BLUE ROCK	12.0	
BLUE ROCK	12.0	
WASHINGTON	50.0	
LIBERTY	36.5	
TIVERTON	15.0	
BEVERLY	8.0	EAST OHIO GAS CO
ELK RUN	8.0	EAST OHIO GAS CO
MEIGS	0.0	COLUMBIA GAS TRAN
MUSKINGUM	2.0	NATIONAL GAS & OI
MONROE	10.0	COLUMBIA GAS TRAN
SALISBURY	3.0	COLUMBIA GAS TRAN
BATH	160.0	EAST OHIO GAS CO
BATH	170.0	EAST OHIO GAS CO
BATH	170.0	EAST OHIO GAS CO
GRANDVIEW	100.0	
GREEN	1.8	
SANDY	24.0	BARTLO OIL & GAS
HOPEWELL	5.0	NATIONAL GAS & OI
THORN	10.0	NATIONAL GAS & OI
THORN	10.0	NATIONAL GAS & OI
THORN	10.0	NATIONAL GAS & OI
LIBERTY	100.0	EAST OHIO GAS CO
NEWPORT TOWNSHIP BELLS R	5.5	RIVER GAS CO
MEIGS	5.0	COLUMBIA GAS TRAN
BEDFORD	5.0	COLUMBIA GAS TRAN
BEDFORD	5.0	COLUMBIA GAS TRAN

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	FIELD NAME	PROD	PURCHASER
8203764		3407523223	103	NELSON ABRAHAMSEN #1	KNOX	25.0	COLUMBIA GAS TRAN
-SKY PETROLEUM CORP			RECEIVED: 10/26/81 JA: OH				
8203768		3403124124	103	BRINK-MELROSE #1	WASHINGTON	0.0	
8203767		3403124123	103	CHARLES GRAHAM #1	WEST BEDFORD	0.0	
8203769		3403124138	103	DENNIS & EVELYN HUFF #1	WASHINGTON	0.0	
-TIGER OIL INC			RECEIVED: 10/26/81 JA: OH				
8203770		3412122447	103	EMILENE SCHRAMM #2	ELK	0.0	COLUMBIA GAS TRAN
-TOWNER PETROLEUM CO			RECEIVED: 10/26/81 JA: OH				
8203776		3405923034	103	ALBAUGH #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8203771		3405922957	103	BLACK/DEIOMA #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8203775		3405923032	103	BLACKWOOD #3	GUERNSEY	0.0	TENNESSEE GAS PIP
8203779		3405923047	103	BOND/MAUPIN #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8203777		3405923035	103	HEINISH #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8203778		3405923036	103	MAUPIN #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8203772		3405923004	103	ST CLAIR #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8203773		3405923011	103	STARR-VAVOSA #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8203774		3405923021	103	T WARNER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
-WITCO CHEMICAL CORP			RECEIVED: 10/26/81 JA: OH				
8203780		3407322351	103	J CLEMENTS #2	GREEN	3.0	
-ZENITH OIL & GAS INC			RECEIVED: 10/26/81 JA: OH				
8203781		3408923829	103	STIMEL #1	PERRY	30.0	
8203782		3408924240	103	WEAVER #2-A	FALLSBURY	12.0	

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OKLAHOMA CORPORATION COMMISSION

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-ANR PRODUCTION CO			RECEIVED: 10/23/81 JA: OK				
8203829	14498	3514920131	107-DP	STOBBE #1-8	NW COLONY	620.5	MICHIGAN WISCONSI
-ANDOVER OIL COMPANY			RECEIVED: 10/23/81 JA: OK				
8203852	11151	3507322782	103	KRAUS #19-1		100.0	CITIES SERVICE GA
-APOLLO PRODUCTION LTD			RECEIVED: 10/23/81 JA: OK				
8203867	10960	3507322905	103	AHLDEN #14-11	NE OKARCHE	45.6	SID RICHARDSON CA
8203868	10958	3507322902	103	REHERMAN #15-9	NE OKARCHE	63.9	SID RICHARDSON CA
-B & H EXPLORATION CO			RECEIVED: 10/23/81 JA: OK				
8203854	11170	3513122238	103	HENSON-MARTIN #1	UNNAMED	2.3	DIAMOND S GAS SYS
8203853	11169	3513120710	103	PPOOL #1	UNNAMED	6.0	DIAMOND S GAS SYS
8203845	11171	3513121504	103	SMITH #2	UNNAMED	14.0	DIAMOND S GAS SYS
-BOGERT OIL CO			RECEIVED: 10/23/81 JA: OK				
8203865	11039	3507322934	103	EVERETT #2-4	SOONER TREND	135.0	PHILLIPS PETROLEU
-CADDO ENERGY			RECEIVED: 10/23/81 JA: OK				
8203815	11040	3501521078	103	OXLEY	CEMENT	36.5	MOBIL OIL CORP
-CANADIAN EXPLORATION CORP			RECEIVED: 10/23/81 JA: OK				
8203832	11209	3501721956	103	TAYLOR #7-2	NORTHWEST MUSTANG	300.0	DELHI GAS PIPELIN
-CHAMPLIN PETROLEUM COMPANY			RECEIVED: 10/23/81 JA: OK				
8203844	10717	3509321991	103	P B UNRUH #2	E CHANEY DELL	65.0	UNION TEXAS PETRO
-DEAN M MILLER			RECEIVED: 10/23/81 JA: OK				
8203824	10908	3511120793	108	ADA SMITH #2		9.3	PHILLIPS PETROLEU
-E LYLE JOHNSON INC			RECEIVED: 10/23/81 JA: OK				
8203808	10476	3501900000	108	FEE #1	FOX	0.0	AMINOIL USA INC
8203801	10477	3501912962	108	FEE #5	FOX	0.0	AMINOIL USA INC
8203806	10474	3501900000	108	PAGE #1	FOX	0.0	AMINOIL USA INC
8203807	10475	3501900000	108	PAGE #3	FOX	0.0	AMINOIL USA INC
-EASON OIL CO			RECEIVED: 10/23/81 JA: OK				
8203799	11092	3509320713	108	ALFRED DIETZ #2	OAKDALE	35.0	DELHI GAS PIPELIN

JD NO	JA TKT	API NO	T SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-EASON OIL COMPANY			RECEIVED: 10/23/81 JA: OK				
8203813	11089	3509320651	108	A D BECKWITH #1	OAKDALE	4.6	DELHI GAS PIPELIN
8203814	11090	3509320683	108	A D BECKWITH #2	OAKDALE	6.0	DELHI GAS PIPELIN
8203798	11091	3509320249	108	C E BROWN #1	OAKDALE	14.0	DELHI GAS PIPELIN
8203792	14589	3509320325	108	C E BROWN #2	OAKDALE	6.8	DELHI GAS PIPELIN
8203810	11086	3509320196	108	FRANK LAWRENCE #1	OAKDALE	17.0	DELHI GAS PIPELIN
8203800	14554	3509320268	108	FRANK LAWRENCE #2	OAKDALE	8.4	DELHI GAS PIPELIN
8203809	11085	3509320640	108	J W JEFFRIES #2	OAKDALE	24.0	DELHI GAS PIPELIN
8203791	14588	3509320737	108	J W JEFFRIES #3	OAKDALE	11.9	DELHI GAS PIPELIN
8203811	11087	3509320674	108	N A WILCOX #1	OAKDALE	4.0	DELHI GAS PIPELIN
8203812	11088	3515120355	108	RAY LOOMIS #1	OAKDALE	21.0	DELHI GAS PIPELIN
-ENTEX INC			RECEIVED: 10/23/81 JA: OK				
8203866	10956	3508321623	103	C M ACTON #1	S E ABELL	4.0	EASON OIL CO
-GEC PRODUCTION CO			RECEIVED: 10/23/81 JA: OK				
8203833	11198	3504921477	103	HOLT #1		250.0	BUCKEYE NATURAL G
-HARPER OIL COMPANY			RECEIVED: 10/23/81 JA: OK				
8203839	11123	3507322950	103	LOVE #1	SOONER TREND	70.0	CONOCO INC
-HEARTLAND EXPLORATION			RECEIVED: 10/23/81 JA: OK				
8203795	10784	3510321029	103	BELLMON #1	SOUTH TONKAWA	7.0	ARCO OIL & GAS CO
8203805	10783	3510321261	103	BRADY #1-36	SOUTH TONKAWA	35.0	ARCO OIL & GAS CO
8203804	10782	3510321031	103	HOSTETLER #1	SOUTH TONKAWA	7.0	ARCO OIL & GAS CO
8203871	10785	3510321141	103	STATE #1	SOUTH TONKAWA	7.0	ARCO OIL & GAS CO
-HILL RESOURCES INC			RECEIVED: 10/23/81 JA: OK				
8203794	11112	3507322833	103	O'HERN #25-4	SOONER TREND	92.0	OKLAHOMA GAS & EL
-IMPERIAL OIL COMPANY			RECEIVED: 10/23/81 JA: OK				
8203858	11071	3515121067	103	WIMMER #1-15	NE FALKNER	140.0	PANHANDLE EASTERN
-INTERNATIONAL GEOTHERMO ENERGY CORP			RECEIVED: 10/23/81 JA: OK				
8203856	11047	3501721456	103	STOUT 17-1	S REEDING	18.0	PHILLIPS PETROLEU
-INTERNORTH INC			RECEIVED: 10/23/81 JA: OK				
8203849	10950	3508722834	103	STRICKLAND #2-13	LORENA (EAST)	183.0	INTERNORTH INC
-JET OIL COMPANY			RECEIVED: 10/23/81 JA: OK				
8203846	11181	3504722458	103	HOUSTON #2	NORTH ELKHORN	20.0	AMINOL USA INC
8203847	11182	3508321534	103	SCHRAMMEL #1	NORTH MULHALL	32.0	EASON OIL CO
-JONES & PELLOW OIL CO			RECEIVED: 10/23/81 JA: OK				
8203793	10970	3513722563	103	BIFFLE 22-1	TUSSY	110.0	MOBIL OIL CORP
-KETAL OIL PRODUCING CO			RECEIVED: 10/23/81 JA: OK				
8203851	11144	3504722391	103	BIBY #3	SHELL LAKE	66.0	EASON OIL CO
-L & T OIL & GAS INC			RECEIVED: 10/23/81 JA: OK				
8203816	11041	3507322788	103	ANDERSON #1	ALTONA	183.0	CITIES SERVICE GA
8203817	11042	3510300000	103	CAMPBELL #3	S E ASP	150.0	AMINOIL USA INC
8203818	11043	3510321300	103	CAMPBELL #4	S E ASP	146.0	AMINOIL USA INC
8203819	11044	3510321337	103	CAMPBELL #5	SE ASP	126.0	
-LEE R ELLER			RECEIVED: 10/23/81 JA: OK				
8203855	11021	3514320822	103	ELLER #1	EAST BIRDCREEK	3.0	PHILLIPS PETROLEU
-LEECO OIL CO			RECEIVED: 10/23/81 JA: OK				
8203828	11020	3514321042	103	ELLER #3	SKIGTOOK (EAST BIRDCREEK	23.4	PHILLIPS PETROLEU
8203861	11015	3514721792	103	HAMIL A #1	SKIGTOOK (EAST BIRDCREEK	22.5	PHILLIPS PETROLEU
8203827	11018	3514320868	103	HURD #1	SKIGTOOK (EAST BIRDCREEK	6.0	PHILLIPS PETROLEU
-LEMA PETROLEUM INC			RECEIVED: 10/23/81 JA: OK				
8203840	11124	3510720890	103	HENDRIX #1	LYONS-QUINN	40.0	PHILLIPS PETROLEU
-LOBAR OIL CO INC			RECEIVED: 10/23/81 JA: OK				
8203826	10949	3508320847	103	LOVELL TOWNSITE #1	CRESCENT LOVELL	0.0	EASON OIL CO
-LRF CORP			RECEIVED: 10/23/81 JA: OK				

JOB NO	JA AT	API NO	S	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8203864	10363	3504321051		103		JOHNSON #1	OAKWOOD	550.0	DELHI GAS P L COR
8203821	10858	3506320819		103		MCCORMICK BIDDLE #1	SOUTH DUSTIN	0.0	PUBLIC SERVICE CO
8203823	10861	3506320836		103		SHEETS #1	SOUTH DUSTIN	36.0	PUBLIC SERVICE CO
8203822	10860	3506320817		103		SHEETS 1	SOUTH DUSTIN	36.0	PUBLIC SERVICE CO
-P-T LTD 83				RECEIVED: 10/23/81 JA: OK					
8203841	10738	3504722275		103		HOUSKA #32-2	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203869	10800	3504700000		103		LEE 22-2	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203831	10804	3509322022		103		LEHENBAUER 12-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203820	10805	3504722398		103		MIKESELL 36-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203870	10802	3504722375		103		MOORE 1-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203842	10739	3504722317		103		SKAGGS #26-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203830	10803	3509322023		103		SUIT 13-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203797	10735	3504722326		103		VALIK #13-2	SOONER TREND	35.0	WELLHEAD ENTERPRI
8203796	10734	3504722380		103		VAVERKA #25-1	SOONER TREND	35.0	WELLHEAD ENTERPRI
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 10/23/81 JA: OK					
8203837	11080	3501721371		108		MCCARTHY B #1	N CONCHO	12.0	PANHANDLE EASTERN
8203836	11078	3501721394		108		ROTHER A #1	N CONCHO	18.8	PANHANDLE EASTERN
8203835	11077	3501721467		108		WIEWEL D #1	N CONCHO	13.0	PANHANDLE EASTERN
8203834	11081	3501721204		108		ZUM-MALLEN b #1	W PIEDMONT	10.5	PANHANDLE EASTERN
-PORTS OF CALL OIL CO				RECEIVED: 10/23/81 JA: OK					
8203859	11072	3501722015		103		FRANKE #25-1	YUKON	326.0	PHILLIPS PETROLEU
-RALPH E PLOTNER OIL & GAS INVEST IN				RECEIVED: 10/23/81 JA: OK					
8203838	11118	3501721893		103		GEORGE RUSSELL #1-11	YUKON	76.9	PHILLIPS PETROLEU
8203843	11117	3501721932		103		KEN GOODMAN #1-26		36.0	CONOCO INC
8203850	11116	3501721839		103		SHADID #1-16	YUKON	160.0	PHILLIPS PETROLEU
-SEARCH DRILLING CO				RECEIVED: 10/23/81 JA: OK					
8203803	10771	3504321215		103		BALL #1-24	W EAGLE CITY	900.0	DELHI GAS PIPELIN
-SELLERS & SELLERS				RECEIVED: 10/23/81 JA: OK					
8203857	11049	3506320805		103		JERRY #1	SOUTH EAST LAMAR	113.2	CARR GAS CO
-STONE RIVER ENERGY CORP				RECEIVED: 10/23/81 JA: OK					
8203802	10643	3507322897		103		STATES #1	SOONER TREND	120.0	ONG WESTERN INC
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 10/23/81 JA: OK					
8203860	10697	3505920986		103		F STINSON -A- UNIT #3U	MOCANE-LAVERNE GAS AREA	130.3	COLORADO INTERSTA
-TEXAS OIL & GAS CORP				RECEIVED: 10/23/81 JA: OK					
8203863	11212	3507920415		103		REED G #1	ROCK ISLAND	450.0	
8203862	11211	3501721332		103		ROBISON D #1	S E EL RENO	66.0	
8203848	11213	3501920398		103		SHARPE #1	CUMMINGS	72.0	
-VIERSEN & COCHRAN				RECEIVED: 10/23/81 JA: OK					
8203873	10955	3509322202		103		PENNER #2-3	N W OKEENE	100.0	PHILLIPS PETROLEU
-VULCAN ENERGY CORP				RECEIVED: 10/23/81 JA: OK					
8203872	10875	3507322774		103		STRACK #1	SOONER TREND	234.0	PHILLIPS PETROLEU
-WESTERN PACIFIC PETROLEUM INC.				RECEIVED: 10/23/81 JA: OK					
8203825	10947	3509300009		103		LOUISE #1-10		86.5	UNION OF TEXAS OI
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED: 10/23/81 JA: WV					
8203716		4703501534		107-DV		DENVER A YOUNG #1	WASHINGTON DISTRICT	12.0	
8203709		4703501538		107-DV		JOHN J PFOST #12A	WASHINGTON	10.0	COLUMBIA GAS TRAN
8203710		4703501535		107-DV		JOHN J PFOST #6R	WASHINGTON	10.0	COLUMBIA GAS TRAN
-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED: 10/23/81 JA: WV					
8203718		4708300378		103		A-968	ROARING CREEK DISTRICT	0.0	COLUMBIA GAS TRAN
-ASHLAND EXPLORATION INC				RECEIVED: 10/23/81 JA: WV					

JD NO	JA KT	API NO	D	SEC	CAT	WELL NAME
8203714		4703903407			108	EASTERN ASSOCIATED COAL CORP #63
8203713		4703903405			108	JAMES F B PEYTON #2 - 068041
-BEREA OIL AND GAS CORPORATION						RECEIVED: 10/23/81 JA: WV
*8203705		4700121404			102-2	A HILL #1
8203719		4710721114			103	DAVID MORRIS #2
*8203704		4700121346			102-2	DEAN #1
*8203730		4700121382			102-2	FOSTER SHOMO #1
*8203726		4700121344			103	H J PROUDFOOT #2
*8203731		4700121344			102-2	H J PROUDFOOT #2
*8203707		4700121370			102-2	HYMES #1
*8203725		4700121370			103	HYMES #1
*8203729		4700121373			102-2	KARL SCHAFFER #1
*8203706		4700121347			102-2	R D MARSH #1
*8203727		4700121347			103	R D MARSH #1
*8203699		4700121388			102-2	R DAVIS #1
-CABOT OIL & GAS CORP						RECEIVED: 10/23/81 JA: WV
8203721		4703903651			103	SILER COAL & LAND A-11
-CARSON PETROLEUM CORP						RECEIVED: 10/23/81 JA: WV
8203702		4701702781	D		103	DROPPLEMAN #4
8203720		4704102948			103	LLD PETERS #2A
8203701		4701702864	D		103	SHAVER #1
8203703		4701702846	D		103	WYSONG #1
8203728		4701702848			103	WYSONG #2
-D C MALCOLM INC						RECEIVED: 10/23/81 JA: WV
8203708		4703903970			107-DV	J L D PAYNE #1
-FMF OIL & GAS PROPERTIES						RECEIVED: 10/23/81 JA: WV
8203711		4700101103			108	KEELEY #1
-HAROLD A WOODFORD						RECEIVED: 10/23/81 JA: WV
8203712		4708504578			108	LAYFIELD #1
-J & J ENTERPRISES INC						RECEIVED: 10/23/81 JA: WV
8203722		4700101192			103	B-294
-NRM PETROLEUM CORPORATION						RECEIVED: 10/23/81 JA: WV
8203723		4703902427			103	DAWSON #1
8203700		4709702180	D		103	TENNEY B-1
-ROYAL RESOURCES CORP						RECEIVED: 10/23/81 JA: WV
8203715		4700701506			103	FLEMING #1
-ST CLAIR OIL CO						RECEIVED: 10/23/81 JA: WV
8203717		4704122877			103	R N WHITE #3
-SWIFT ENERGY CO						RECEIVED: 10/23/81 JA: WV
8203724		4702103714			103	HENDERSON #1

FIELD NAME	PROD	PURCHASER
PAINT CREEK	6.0	COLUMBIA GAS TRAN
PAINT CREEK	17.0	COLUMBIA GAS TRAN
BARKER	18.0	CONSOLIDATED GAS
UNION	4.0	
VALLEY	27.0	CONSOLIDATED GAS
VALLEY	22.5	CONSOLIDATED GAS
VALLEY	9.9	CONSOLIDATED GAS
VALLEY	1.5	CONSOLIDATED GAS
VALLEY	15.0	CONSOLIDATED GAS
VALLEY	10.2	CONSOLIDATED GAS
BARKER	22.0	CONSOLIDATED GAS
BARKER	20.0	CONSOLIDATED GAS
BARKER	12.6	CONSOLIDATED GAS
BARKER	25.0	CONSOLIDATED GAS
WASHINGTON	35.0	TENNESSEE GAS PIP
ST CLAIR	35.0	CONSOLIDATED GAS
COURT HOUSE	0.0	CONSOLIDATED GAS
ST CLAIR	55.0	CONSOLIDATED GAS
ST CLAIR	35.0	CONSOLIDATED GAS
ST CLAIR	45.0	CONSOLIDATED GAS
BLUE CREEK	40.0	COLUMBIA GAS TRAN
ELLAMORE QUAD VALLEY DIS	0.0	COLUMBIA GAS TRAN
GRANT	3.2	PENNZOIL CO
VALLEY	200.0	PETRO-LEWIS CORP
GLADE RUN	0.0	
TAILMANSVILLE	0.0	COLUMBIA GAS TRAN
SALT LICK DISTRICT	10.7	EQUITABLE GAS CO
COLLINS SETTLEMENT	50.0	EQUITABLE GAS CO
GLENVILLE NORTH	50.0	COLUMBIA GAS TRAN

OTHER PURCHASERS

8203699	BROOKLYN UNION GAS CO
8203704	BROOKLYN UNION GAS CO
8203705	BROOKLYN UNION GAS CO
8203706	BROOKLYN UNION GAS CO
8203707	BROOKLYN UNION GAS CO
8203725	BROOKLYN UNION GAS CO
8203726	BROOKLYN UNION GAS CO
8203727	BROOKLYN UNION GAS CO
8203729	BROOKLYN UNION GAS CO
8203730	BROOKLYN UNION GAS CO
8203731	BROOKLYN UNION GAS CO

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-33824 Filed 11-23-81; 8:45 am]
BILLING CODE 6717-01-C

[Docket No. GP81-42-000]

Cline Oil & Gas Co.; Preliminary Finding Reversing Well Category Determination

September 3, 1981.

State of Ohio, Section 107 NGPA Determination, Clinton Sandstone Formation, Cline Oil & Gas Company, Greenless No. 1, J.A. No. 121-2017-3, 7, J.D. 81-28636.

On May 1, 1981, the Ohio Department of Natural Resources (ODNR) notified the Commission of its determination that the Cline Oil and Gas Company (Cline) Greenless No. 1 well qualifies as a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432), and as a tight formation well under section 107(c)(5) of the NGPA. The Commission published notice of the determination in the **Federal Register** on May 29, 1981. The section 103 determination became final on June 15, 1981 by operation of § 275.202. The section 107 determination has not yet become final, because the 45 day review period for the determination did not begin to run until July 10, 1981. That is the date ODNR completed its notice of determination by filing the explanatory statement required in § 274.104(a)(6). *See*, § 275.202(b).

The Commission has established two types of hight-cost gas produced from tight formations. Section 271.703(b)(2) of the Commission's regulations defines "new tight formation gas" as new natural gas (as defined in NGPA section 102(c)), certain OCS gas (as defined in section 102(d)), or natural gas produced from a new, onshore production well (as defined in NGPA section 103(c)) which is produced from a designated tight formation through a well the surface drilling of which began on or after July 16, 1979. Section 271.703(b)(3) of the regulations defines "recompletion tight formation gas" as natural gas which is produced from a designated tight formation through a well, the surface drilling of which was begun before July 16, 1979, if such well was not completed for production from such designated formation before July 16, 1979. The maximum lawful price for tight formation gas (including recompletion tight formation gas) is 200 percent of the section 103 price.

ODNR did not specify whether its section 107(c)(5) determination was for new or recompletion tight formation gas but, based upon the date on which drilling of the well commenced, the gas could only qualify as recompletion tight formation gas. The well completion record submitted with ODNR's notice of determination shows that the drilling of the subject well was commenced on July 26, 1978 and appeared to be completed, in this case fractured and perforated in the Clinton Sandstone, a designated tight formation, on March 24, 1979. Since the well appeared to be completed for production in the designated tight formation before July 16, 1979, the well did not appear to meet the requirements of § 271.703(b)(3) of the regulations which states, *inter alia*, that a recompletion tight formation gas well is one which was not completed for production from such formation before July 16, 1979.

The Commission Staff, by letter dated June 15, 1981, requested the ODNR provide an explanatory statement, in accordance with § 274.104(a)(6) of the Commission's regulations, to provide the basis for its affirmative section 107 determination for the subject well. The ODNR in its response dated July 10, 1981, stated "[t]he Ohio Division of Oil and Gas (Division) considers a well 'completed for production' when it has been put on line for the initial sale of gas." The material submitted by Cline to ODNR shows that: (1) The drilling of the well was completed on August 9, 1978, (2) the gas separator, oil storage tank, and related connections were transported to the lease on October 15, 1979 and (3) the date of initial delivery was October 16, 1979. Cline takes the position that the well was not completed for production until October 15, 1979, the day before the date of initial delivery, and should therefore qualify as recompletion tight formation gas.

In Order No. 99,[1] the Commission stated it was not free to make special prices available for gas whose development was encouraged by previously available prices. Accordingly, the Commission provided that gas produced from wells drilled prior to July 16, 1979, would qualify for the tight formation incentive price only if the well was not completed in a designated tight formation prior to July 16, 1979, in order to exclude gas whose development had been encouraged by previously available prices.

In keeping with the Commission policy announced in Order No. 99 of excluding gas whose development had been encouraged by previously available prices, the Commission finds that a well is completed for production if it has produced gas from the tight formation, or if all downhole work has been completed (e.g., perforated and fractured) and all downhole production facilities are in place and that surface facilities have no bearing on whether a well is completed for production. That Cline completed all the necessary downhole operations before the need for a tight sands program was announced by President Carter on July 16, 1979 means that the special section 107(c)(5) incentive price for gas from tight sands was not necessary to stimulate development of the subject well. Hence, the fact that gas did not actually flow from the tight formation prior to July 16, 1979, has no bearing on whether the well was completed for production. Since the subject well was perforated and fractured prior to July 16, 1979, the well in this case was completed for production prior to that date and gas produced therefrom should not qualify as recompletion tight formation gas.

Accordingly, it appears that substantial evidence does not exist in the record of this docket to support ODNR's determination that the subject well qualifies as recompletion tight formation gas under NGPA section 107(c)(5).

The Commission Finds: On the basis of the record submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determination submitted by ODNR that gas produced from the Clinton Sandstone Formation through the Greenless No. 1 well qualifies as section 107(c)(5) recompletion tight formation gas, is not supported by substantial evidence in the record on which the determination was made.

By the direction of the Commission

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-33821 Filed 11-23-81; 8:45 am]

BILLING CODE 6717-02-M

[1] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, issued on August 15, 1980 (45 FR 56034, August 22, 1980) in Docket No. RM79-76.

[Docket No. GP81-46-000]

State of Louisiana, Section 107 NGPA Determination, Ace Drilling Services, Inc., Arkadelphia Formation, Hopkins Estate No. 2 Well et al.; Preliminary Finding on Well Category Determination

September 30, 1981.

On June 4, 1981, the Commission received notices of determination that gas produced from the wells referenced in the attached Appendix qualifies as "recompletion tight formation gas" under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA) (15

U.S.C. 3301–3432). The Commission issued a notice of these determinations on June 29, 1981, 46 FR 34684 (July 2, 1981). The section 107 determinations have not yet become final because the 45-day review period for the determinations did not begin to run until August 17, 1981. That is the date the Louisiana Department of Natural Resources, Office of Conservation (LDNR) completed its notice of determination by filing the explanatory statement required in § 271.104(a)(6). *See*, § 275.202(b).

Under section 107(c)(5), the Commission has established an incentive price for two categories of gas produced from tight formations, "new tight formation gas" and "recompletion tight formation gas". The maximum lawful price for this gas is 200 percent of the section 103 price. Section 271.703(b)(3) of the Commission's regulations defines "recompletion tight formation gas" as natural gas which is produced from a designated tight formation through a well, the surface drilling of which gas begun before July 16, 1979, if such well was not completed for production in such designated formation before July 16, 1979.

The well completion reports submitted with LDNR's notices of determination show that the subject wells were completed, on this case fractured and perforated in the Arkadelphia formation, a designated tight formation, prior to July 16, 1979. Since the wells appeared to be completed for production in the designated tight formation before July 16, 1979, the wells did not appear to meet the requirements of § 271.703(b)(3).

By letter dated July 17, 1981, the Commission Staff, requested that LDNR provide an explanatory statement, in accordance with § 274.104(a)(6) of the Commission's regulations, to provide the basis for its affirmative NGPA section 107(c)(5) determinations. The LDNR in its response dated August 12, 1981 forwarded an explanatory statement prepared by the operator of the wells, Ace Drilling Services Inc. (Ace), that "[e]ach of the [subject] wells had not been completed for production before July 16, 1979, since the metering installations had not been fabricated and the meters set, nor had the gathering system been constructed so as to commence deliveries".

In Order No. 99 [1] the Commission stated it was not free to make special prices available for gas whose development was encouraged by previously available prices. Accordingly, the Commission provided that gas produced from a well drilled prior to July 16, 1979, the date that the need for a tight sands program was announced by President Carter, would qualify for the tight formation incentive price only if the well was not completed in a designated tight formation prior to July 16, 1979, in order to exclude gas whose development had been encouraged by previously available prices.

The Commission in Docket No. GP81-42-000 [2] stated:

> In keeping with the Commission policy announced in Order No. 99 of excluding gas whose development had been encouraged by previously available prices, the Commission finds that a well is completed for production if it has produced gas from the tight formation, or if all downhole work has been completed (e.g., perforated and fractured) and all downhole production facilities are in place and that surface facilities have no bearing on whether a well is completed for production.

That Ace completed all the necessary downhole operations before July 16, 1979, means that the special section 107(c)(5) incentive price for gas from tight sands was not necessary to stimulate development of the subject wells. Hence, the fact that metering installation had not been fabricated or the meters set, nor a gathering system in place prior to July 16, 1979 has no bearing on whether the well was completed for production. Since the subject wells were perforated and fractured in the designated tight formation prior to July 16, 1979, the wells in this case were completed for production in the formation prior to that date and gas produced therefrom does not qualify as recompletion tight formation gas.

Accordingly, substantial evidence does not exist in the record of this docket to support LDNR's determination that the subject wells qualify as recompletion tight formation gas under NGPA section 107(c)(5).

The Commission Finds: On the basis of the record submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determinations submitted by LDNR that gas produced from the Arkadelphia Formation through the wells listed in the Appendix qualifies as section 107(c)(5) recompletion tight formation gas, are not supported by substantial evidence in the record on which the determinations were made.

By the Commission.

Kenneth F. Plumb,

Secretary.

[1] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, Docket No. RM79-76 (August 15, 1980), 45 FR 56034 (August 22, 1980).

[2] Cline Oil & Gas Co., Notice of Preliminary Finding Reversing Well Category Determination (September 3, 1981).

APPENDIX

FERC control No.	JA NGPA docket No.	Applicant	Well name and No.	Perforated date [1]	Fracture date [1]
JD81-35124	81-1199	Ace Drilling Services, Inc	Hopkins Estate No. 2	03/13/78	03/15/78
JD81-35125	81-1198	Ace Drilling Services, Inc	Hopkins Estate No. 1	02/10/78	03/15/78
JD81-35127	81-1196	Hootkings Smith La. Ltd	V.C. Edwards No. 1	[3]	[3]
JD81-35128	81-1195	Reliance-Clement-Hootkins	H.D. Green No. 1	01/30/79	01/31/79
JD81-35129	81-1194	Reliance Trusts	Olinkraft No. 10	05/10/78	05/19/78
JD81-35130	81-1193	do	Olinkraft No. 7 [2]	10/12/77	10/13/77
JD81-35131	81-1192	do	Olinkraft No. 8	05/10/78	15/10/78
JD81-35133	81-1190	do	Olinkraft No. 28	01/02/79	01/14/79

[1] Information taken from an appendix to the documents forwarded by the LDNR in its notice of determination.
[2] Applicant erroneously identified this well as Olinkraft No. 1 in its original application.
[3] Undated.

[FR Doc. 81-33822 Filed 11-23-81; 8:45 am]
BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement Between United States and Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of 0.85 grams of uranium, enriched to 49.7% in U-235 for use as standard reference material at the Institute for Energy Technology, Kjeller, Norway.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of this nuclear material under Contract Number S-NO-35 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 9, 1981.

Dated: November 18, 1981.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Programs.

[FR Doc. 81-33833 Filed 11-23-81; 8:45 am]

BILLING CODE 6450-01-M

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangement Between United States and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Argeement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the export of 961,632 kilograms of uranium in the form of uranium ore concentrate to the European Community for ultimate use as fuel for light water power reactors. The material is to be converted to UF6, enriched to no greater than 5% in U-235, and fabricated into fuel assemblies within the European Community.

This subsequent arrangement is to be carried out under the above mentioned agreement in accordance with section 402(a) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subseqeunt arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 9, 1981.

Dated: November 18, 1981.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Programs.

[FR Doc. 81-33834 Filed 11-23-81; 8:45 am]

BILLING CODE 6450-01-M

Civil and Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangement Between United States and European Atomic Energy Commission and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-122, from Denmark to Sweden, 1,049.2 grams of uranium, containing 23.8 grams of U-235 (2.27% enrichment) in the form of unirradiated pellets, for recovery of contained uranium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 9, 1981.

Dated: November 18, 1981.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Programs.

[FR Doc. 81-33835 Filed 11-23-81; 8:45 am]

BILLING CODE 6450-01-M

Hearings and Appeals Office, Energy Department

Objection to Proposed Remedial Orders Filed Week of October 5 Through October 9, 1981

During the week of October 5 through October 9, 1981, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before December 14, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 17, 1981.

Atlantic Richfield Co., Los Angeles, California, HRO-0001, refined petroleum products

On October 6, 1981, the Atlantic Richfield Company (ARCO), P.O. Box 2679-T.A., Los Angeles, CA 90051, filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel issued to the firm on August 20, 1981.

In the PRO the OSC found that between August 1973 and November 1976, ARCO overstated its increased costs of purchased gasoline by approximately $7 million and overstated its increased costs of purchased lubes and greases by approximately $564,524, in violation of 10 CFR 212.82-83 and 212.12(b). According to the PRO the ARCO violation resulted in approximately $7,564,524 of overcharges.

Cracker Barrel Stores, Inc., Baton Rouge, Louisiana, HRO-0002, gasoline

On October 6, 1981, Cracker Barrel Stores, Inc., 7432 Industriplex Boulevard, Baton Rouge, Louisiana 70809, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on July 16, 1981. In the PRO, the Southwest District found that during the period May 1, 1979 to February 17, 1980, Respondent had charged more than the lawful selling price for gasoline

in violation of 10 CFR 212.93 and failed to keep and maintain books in violation of 10 CFR 210.92 and 212.93. According to the PRO, the Cracker Barrel Stores' violation resulted in $51,948.01 of overcharges.

Starks Shell Service, Seaside, California, HRO-0005, gasoline

On October 5, 1981, Starks Shell Service, 1600 Humbodt, Seaside, CA 93955, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 5, 1981.

In the PRO the Western District found that during the period April 1, 1980 through January 28, 1981, Starks charged prices for certain grades of gasoline in excess of the maximum lawful selling prices in violation of 10 CFR 212.93. According to the PRO the Starks Shell Service violation resulted in $9,105.14 of overcharges.

[FR Doc. 81-33926 Filed 11-23-81; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of the following meetings:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on December 1, 1981, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held in Paris on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 38th meeting.
3. Monthly assessments (October and November).
4. Forward stocks-at-sea reporting.
5. Quarterly oil forecast (3rd quarter 1981—2nd quarter 1982).
6. Legal clearances (U.S. and European Economic Community).
7. Dispute Settlement Centre:
—Report by Director;
—Panel of Arbitrators.
8. Demand restraint review:
—Italy;
—Co-examiner's report.
9. Trade discrepancies in the IEA Emergency Data System.
10. Monthly oil statistics, progress report.
11. Base period final consumption.
12. Emergency Management Manual amendments:
—Use of monthly rather than quarterly oil statistics;
—Trade discrepancies;
—Implementation of allocation.
13. Monthly country reports.
14. Allocation System Test-4 (April/May 1983):
—Design group;
—Testing of oil trading and pricing.
15. Industry Supply Advisory Group training seminar, December 15–17, 1981.
16. Any other business.
17. Future meeting dates.

II. A meeting of the Industry Advisory Board (IAB) to the IEA will be held on December 1 and 2, 1981, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 8:00 a.m. on December 1, and continuing after the conclusion of the December 1 meeting of the IEA Standing Group on Emergency Questions. The IAB will reconvene, if necessary to complete its business, on December 2, at 9:00 a.m.

The agenda of the meeting is as follows:

1. Opening remarks.
2. Data reporting for monitoring purposes—monthly country reports.
3. Report on the October meeting of an *Ad Hoc* Group of the IEA Governing Board.
4. Report on the October meeting of the IEA Governing Board.
5. Report on the December 1 meeting of the IEA Standing Group on Emergency Questions.
6. Application for legal clearances under the Treaty of Rome.
7. Future work program and meeting schedule.

III. A meeting of the Industry Supply Advisory Group (ISAG) to the IEA will be held on December 15–17, 1981, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:00 a.m. on December 15. The purpose of this meeting is to permit attendance by representatives of members of the ISAG at a joint IEA Secretariat-ISAG training seminar being held on those dates.

The agenda for the meeting is as follows:

I. Opening remarks
II. ISAG training seminar
A. IEA background:
1. Brief history of events leading to the Agreement on an International Energy Program;
2. Participating countries;
3. Government standing group (Standing Group on Emergency Questions);
4. Industry consulting group (Industry Advisory Board).
B. The Emergency Sharing System:
1. Objectives;
2. Emergency Management Organization overview;
3. Participating country—national responsibilities:
a. Stocks (emergency reserves);
b. Demand restraint;
c. National fair sharing (national oil reallocation).
4. Participating country—international responsibilities:
a. Oil reallocation (redressing allocation right/obligation imbalances).
5. Activation/deactivation of emergency procedures:
a. Basic data requirements;
b. Pre-crisis evaluation/consultation;
c. Trigger calculations (general and selective).
C. Responsibilities of the Emergency Management Organization:
1. Standing Group on Emergency Questions—Emergency Group;
2. Allocation Coordinator;
3. Standing Group on Emergency Questions—Emergency Group Coordinator;
4. Industry Advisory Board;
5. ISAG:
a. Manager;
b. Assistant Manager;
c. Country Supply Group (CSG);
d. Supply Coordination Group (SCG);
e. Supply Analysis Group (SAG, including Marine Advisor).
6. Secretariat:
a. Task Force I (data and statistics);
b. Task Force II (participating country coordination);
c. Task Force III (Analysis and coordination);
d. Administrative unit;
e. Task Force IV (documentation);
f. Task Force V (computing);
g. Office of Legal Advisor.
7. ISAG/Secretariat Cooperation;
8. Reporting companies;
9. National Emergency Sharing Organization and Government.
D. Legal considerations and documentation:
1. U.S. Government;
2. European Economic Community;
3. Other countries;
4. Secretariat/Organization for Economic Cooperation and Development security and operations regulations;
5. Documentation—filing.
E. Activities in an oil crisis—discussion by Allocation System Test-3 participants:
1. Theoretical.
a. Overviews:
(i) Example of a crisis situation;
(ii) Sequence of activities;
(iii) Communications.
b. Oil allocation:
(i) Description of Type 1 allocation;
(ii) Description of Type 2 allocation;
(iii) Description of Type 3 allocation;
c. Questionnaire A and B analysis:
(i) Reporting instructions;
(ii) Error identification;
(iii) Trade imbalances;
(iv) Standardized communications;
(v) ISAG formats.

2. The Allocation System Test-3 experience.

a. Allocation rights and obligations:

(i) Trigger calculation recapitulation;

(ii) Inter-relationship of base period final consumption (BPFC), demand restraint (DR), emergency reserve drawdown obligation (ERDO), and supply rights (SR);

(iii) Data base problems (growth, seasonlity of BPFC);

(iv) Sample of allocation rights/obligations calculation;

(v) Concept of on-top corrections.

b. Product imbalances.

c. Voluntary offers (Type 2 allocation):

(i) Categories (supply obligation (SO), supply right (SR), closed loop (CL), open receive (RO));

(ii) Solicitation;

(iii) Receipt;

(iv) Analysis;

(v) Posting;

(vi) Matching;

(vii) Implementation;

(viii) Rescission.

d. Other analysis activity:

(i) Historical supply patterns;

(ii) Crisis impact by country for crude and product separately;

(iii) Transportation considerations;

(iv) Demand restraint;

(v) Stocks.

III. Activation—Composition of ISAG during real emergencies.

IV. Brief overview of ISAG/Secretariat Operations Manual (ISOM).

V. Review and summary of seminar.

VI. Discussion of Allocation System Test-4 and other seminars—pricing.

VII. Closing remarks.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., November 19, 1981.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 81-32912 Filed 11-23-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53031; TSH-FRL-1990-7]

Premanufacture Notices; Monthly Status Report for October 1981

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for October 1981.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, D.C. 20460 (202-755-5687).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-208, 401 M Street, SW., Washington, D.C. 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances complied by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit PMNs for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979. EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

The monthly status report published in the **Federal Register** as required under section 5(d)(3), will identify: (a) PMNs received during the month; (b) PMNs received previously and still under review at the end of the month; (c) PMNs for which the notice review period has ended during the month; (d) chemical substances for which EPA has received a notice of commencement to manufacture; and (e) PMNs for which the review period has been suspended. Therefore, EPA is publishing the October 1981 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-53031]" and the specific PMN number. Nonconfidential portions of the PMNs, written comments received on individual PMNs, and other documents in the public record may be seen in Rm. E-106 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: November 17, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT OCTOBER 1981

PMN No.	Identity/generic name	FR citation	Expiration date
	1. 76 Premanufacture notices received during the month:		
81-489	Generic name: Acrylic modified epoxy-ester resin	46 FR 49945 (10/8/81)	Dec. 29, 1981
81-490	2,2-dimethylol,3-propanediol, polymer with 2-ethyl-2-hydroxymethyl-1,3-propanediol, 1,4-cyclohexane dimethanol, 1,6-hexandeioic acid, 1,3-isobenzofurandione and tall oil acids.	46 FR 49945 (10/8/81)	Dec. 29, 1981
81-491	Generic name: Amine salt of a phosphonic acid	46 FR 49945 (10/8/81)	Dec. 29, 1981
81-492	1,3-bis(1-methylethenyl) benzene	46 FR 49945 (10/8/81)	Dec. 29, 1981
81-493	Generic name: Co-polymeric organopolysiloxane	46 FR 49946 (10/8/81)	Dec. 29, 1981
81-494	Generic name: (Alkylaminoalkyl)-(substituted) benzotriazole	46 FR 49946 (10/8/81)	Dec. 29, 1981

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT OCTOBER 1981—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
81-495	Bis(3,5-di-*tert*-butyl-4-hydroxybenzyl)malonic acid, diester with 1-acrylol-2,2,6,6-tetramethyl-4-piperidinol	46 FR 49946 (10/8/81)	Dec. 29, 1981.
81-496	3-hydroxy-1 propanesulfonic acid	46 FR 49946 (10/8/81)	Dec. 30, 1981.
81-497	Generic name: Polymers of alkylamines and aryl epoxides	46 FR 49947 (10/8/81)	Dec. 30, 1981.
81-498	Generic name: Disubstitutedpolycarbocycle	46 FR 50149 (10/9/81)	Dec. 30, 1981.
81-499	Generic name: Pentasubstitutedbenzopyran	46 FR 50149 (10/9/81)	Dec. 30, 1981.
81-500	2-dodecyl-9-H-thioxanthen-9-one	46 FR 50147 (10/9/81)	Jan. 3, 1982.
81-501	Generic name: Polyester of a substituted alkanediol and carbomonocyclic anhydride	46 FR 50147 (10/9/81)	Jan. 3, 1982.
81-502	Generic name: Polymer of epon resin and alkane-dioic acid	46 FR 50148 (10/9/81)	Jan. 3, 1982.
81-503	Generic name: Copolymer of alkylacrlates and methancrylates	46 FR 50148 (10/9/81)	Jan. 3, 1982.
81-504	Generic name: Copolymer of alkylacrylates and methacrylates	46 FR 50148 (10/9/81)	Jan. 3, 1982.
81-505	Generic name: Copolymer of alkylacrylates and methacrylates	46 FR 50148 (10/9/81)	Jan. 3, 1982.
81-506	Generic name: Copolymer of alkylacrylates and methacrylates	46 FR 50148 (10/9/81)	Jan. 3, 1982.
81-507	Generic name: Isocyanate functional polyester	46 FR 50410 (10/13/81)	Jan. 4, 1982.
81-508	Generic name: Benzenedicarboxylic acid saturated mixed glycol polyester	46 FR 50410 (10/13/81)	Jan. 4, 1982.
81-509	Generic name: Lower alkyl ester of an alkyl propionic acid	46 FR 50410 (10/13/81)	Jan. 4, 1982.
81-510	Generic name: Heteromonocyclic fatty acid ester	46 FR 50411 (10/13/81)	Jan. 4, 1982.
81-511	Generic name: Fatty acids, esters with trimethylol propane and a polyol	46 FR 50411 (10/13/81)	Jan. 4, 1982.
81-512	Generic name: Substitutedheteropolycycle	46 FR 50840 (10/15/81)	Jan. 4, 1982.
81-513	Generic name: N-alkylhalogenatedbenzylamine	46 FR 50840 (10/15/81)	Jan. 5, 1982.
81-514	Generic name: Polyester from substituted alkane diols, alkanoic acids, and carbomonocyclic acids	46 FR 50841 (10/15/81)	Jan. 7, 1982.
81-515	Generic name: Polymer of styrene and acrylic acid with substituted acrylates and methacrylates	46 FR 50841 (10/15/81)	Jan. 7, 1982.
81-516	Polymer of isophthalic acid, diethylene glycol, trimethylol propane, adipic acid, dimethyl ethanolamine, and trimellitic anhydride.	46 FR 50841 (10/15/81)	Jan. 7, 1982.
81-517	Generic name: Alkonyl tetracarboxylate	46 FR 50481 (10/15/81)	Jan. 7, 1982.
81-518	Generic name: Oxepanone phthalate polymers	46 FR 50842 (10/15/81)	Jan. 7, 1982.
81-519	Generic name: Acrylic polyester resin	46 FR 50842 (10/15/81)	Jan. 7, 1982.
81-520	Generic name: Isocyanate functional polyester	46 FR 51643 (10/21/81)	Jan. 12, 1982.
81-521	Polymer of linseed oil, pentaeryythritol, benzoic acid, and toluene diisocyanate	46 FR 51643 (10/21/81)	Jan. 12, 1982.
81-522	Generic name: Substituted pyridine	46 FR 52225 (10/26/81)	Jan. 12, 1982.
81-523	Generic name: Modified polymer of substituted carbomonocycle, carbomonocylic acid, alkanedioic acid, and substituted alkanediol.	46 FR 52225 (10/26/81)	Jan. 12, 1982.
81-524	Generic name: Polyester from carbomonocyclic diacids, alkanedioic acid, alkane triol, and substituted alkane diols	46 FR 52225 (10/26/81)	Jan. 12, 1982.
81-525	Generic name: Polyisobutenylsuccinic acid, metal salt	46 FR 52226 (10/26/81)	Jan. 12, 1982.
81-526	Generic name: Hydrogenated dimer fatty acid polyamide resin	46 FR 52226 (10/26/81)	Jan. 12, 1982.
81-527	Generic name: Trisubstitutedheteropolycyclic salt	46 FR 52416 (10/27/81)	Jan. 14, 1982.
81-528	Generic name: Trisubstitutedheteropolycyclic salt	46 FR 52416 (10/27/81)	Jan. 14, 1982.
81-529	Generic name: Polymer of alkyl and polyfluoroalkyl acrylates	46 FR 52416 (10/27/81)	Jan. 15, 1982.
81-530	Generic name: Substitutedthiol salt	46 FR 52416 (10/27/81)	Jan. 15, 1982.
81-531	Generic name: Dialkylated polyalkylene polyamine	46 FR 52418 (10/27/81)	Jan. 17, 1982.
81-532	Generic name: Tetrafunctional secondary aromatic amine	46 FR 53209 (10/28/81)	Jan. 18, 1982.
81-533	Titanium (4) diisopropoxide disubstituted complex	46 FR 53209 (10/28/81)	Jan. 18, 1982.
81-534	2,3-epoxycyclohexanone	46 FR 53522 (10/29/81)	Jan. 19, 1982.
81-535	Generic name: Heteromonocycle modified fumarated rosin ester	46 FR 53522 (10/29/81)	Jan. 19, 1982.
81-536	Generic name: Polymer from a carbomonocyclic anhydride, alkanedioic acid and substituted alkane diols	46 FR 53522 (10/29/81)	Jan. 19, 1982.
81-537	1-amino-4-(phenylamino)-9,10-dihydro-9,10-dioxo-2-[(2'-methoxyethyl)oxo] anthracene	46 FR 53522 (10/29/81)	Jan. 19, 1982.
81-538	Sodium salt of the sulfonated reaction products of 1-amino-4-(phenylamino)-9,10-dihydro-9,10-dioxo-2-anthracene	46 FR 53523 (10/29/81)	Jan. 19, 1982.
81-539	Sodium salt of the sulfonated reaction products of 1-amino-4-(phenyl-amino)-9,10-dihydro-9,10-dioxo-2-[2'-methoxyethyl)oxo] anthracene.	46 FR 53523 (10/29/81)	Jan. 19, 1982.
81-540	Poly(oxy-1,2-ethanediyl),α-(1-oxononyl)-w-[(1-oxononyl)oxy]	46 FR 54403 (11/2/81)	Jan. 19, 1982.
81-541	Generic name: Substituted alkenoic acid methyl ester	46 FR 54403 (11/2/81)	Jan. 19, 1982.
81-542	Generic name: Substituted propiophenone	46 FR 54403 (11/2/81)	Jan. 19, 1982.
81-543	3-hydroxy-1-propanesulfonic acid monosodium salt	46 FR 54792 (11/4/81)	Jan. 24, 1982.
81-544	Generic name: Benzenesulfonic acid, 4-[[4-(2-hydroxy-1-naphthalenyl)azo]phenyl]-azo]-salt	46 FR 54792 (11/4/81)	Jan. 24, 1982.
81-545	N,'N-Isophthaloyl-bis(trimethylene urea)	46 FR 54792 (11/4/81)	Jan. 24, 1982.
81-546	Generic name: Substituted carbopolycyclic polyazo poly-sulfonic acid, salt	46 FR 54792 (11/4/81)	Jan. 23, 1982.
81-547	1,4-bis(1-methylethenyl) benzene	46 FR 55001 (11/5/81)	Jan. 25, 1982.
81-548	Generic name: A polymer of acrylic and methacrylic acid derivatives, a vinyl aromatic compound and a substituted propene compound.	46 FR 55001 (11/5/81)	Jan. 25, 1982.
81-549	Generic name: Aliphatic polyurethane-acrylic waterborne dispersion	46 FR 55002 (11/5/81)	Jan. 25, 1982 (11/5/81).
81-550	Generic name: Aliphatic polyurethane-waterborne dispersion	46 FR 55002 (11/5/81)	Jan. 25, 1982.
81-551	Generic name: Aliphatic polyurethane acrylic waterborne dispersion	46 FR 55002 (11/5/81)	Jan. 25, 1982.
81-552	Generic name: Succinimide of poly(alkene) and alkene/alkene copolymer	46 FR 55002 (11/5/81)	Jan. 25, 1982.
81-553	Generic name: Organic acid salt of the succinimide of poly(alkene) and alkene/alkene copolymer	46 FR 55002 (11/5/81)	Jan. 25, 1982.
81-554	Generic name: Metal alkyl thiocarbonate	46 FR 55003 (11/5/81)	Jan. 25, 1982.
81-555	Generic name: Sulfonylphenylsilane	46 FR 55003 (11/5/81)	Jan. 25, 1982.
81-556	Generic name: Sulfur containing polyamide	46 FR 55004 (11/5/81)	Jan. 26, 1982.
81-557	Generic name: Substituted alkenyl alkanoate	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-558	4-Hydroxy-3-(5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinyl-amino-2-naphthalenesulfonic acid disodium salt.	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-559	5-Acetylamino-4-hydroxy-3-(2-hydroxyl-4-(2-hydroxy-sulfonyl) ethylsulfonyl)-5-methyphenylazo)-2,7-naphthalenedisulfonic acid trisodium salt complex.	46 FR 5516 (11/6/81)	Jan. 27, 1982.
81-560	3-carboxy-4-(4-(2-hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-1-(3-sulfophenyl)-5-pyrazolone disodium salt	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-561	4-[4-[2-(hydroxysulfonyoxy)ethylsulfonyl]-5-methyl-2-methoxyphenylazo]-3-methyl-1-(3-sulfophenyl)-5-pyrazolone disodium salt	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-562	Mono, di, and triethanolamine salts of benzoic and phthalic acids	46 FR 55147 (11/6/81)	Jan. 28, 1982.
81-563	Generic name: N,N-disubstituted hetero monocyclic derivative	46 FR 55147 (11/6/81)	Jan. 28, 1982.
81-564	Generic name: Disubstitutedbenzene	46 FR 55558 (11/10/81)	Jan. 28, 1982.

II. 74 Premanufacture notices received previously and still under review at the end of the month:

81-414	Generic name: Polyalkanediol polyurethane	46 FR 45997 (9/16/81)	Nov. 29, 1981.
81-415	Generic name: Polymer of a propenoic acid derivative and a heteromonocycle	46 FR 45997 (9/16/81)	Nov. 29, 1981.
81-416	Generic name: Alkyl substituted polyalkylene polyamine	46 FR 45997 (9/16/81)	Nov. 29, 1981.
81-417	Generic name: Modified poly(urea/urethane)	46 FR 45998 (9/16/81)	Nov. 29, 1981.
81-418	Generic name: Nitropolyhaloalkylbenzenepolyamine	46 FR 45998 (9/16/81)	Nov. 29, 1981.
81-419	Generic name: Aliphatic ester	46 FR 45998 (9/16/81)	Nov. 30, 1981.
81-420	Generic name: Organo phosphorus-containing acid	46 FR 45998 (9/16/81)	Nov. 30, 1981.
81-421	Bisphenol A-epichlorohydrin resin-mixed acrylic polymer	46 FR 45999 (9/16/81)	Nov. 30, 1981.
81-422	Polymer of alkylpropenoate, propenoic acid, substituted propenoic acid, and vinyl benzene	46 FR 45999 (9/16/81)	Nov. 30, 1981.
81-423	Generic name: Alkenyl succinic acid, monoester	46 FR 45999 (9/16/81)	Nov. 30, 1981.
81-424	Polyurethane thermoplastic	46 FR 45999 (9/16/81)	Nov. 30, 1981.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT OCTOBER 1981—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
81-425	Aromatic aliphatic branched polyester resin	46 FR 45808 (9/15/81)	Nov. 30, 1981.
81-427	Generic name: Epoxidized glyceride polyoxyethylene ether	46 FR 45808 (9/15/81)	Nov. 30, 1981.
81-428	Substituted heteromonocyclic derivative of a substituted thiozantheno isoquinolin	46 FR 45808 (9/15/81)	Nov. 30, 1981.
81-429	Generic name: Silicon substituted organic ester	46 FR 45808 (9/15/81)	Nov. 30, 1981.
81-430	Generic name: Substituted aromatic amine	46 FR 45809 (9/15/81)	Dec. 1, 1981.
81-431	Generic name: Substituted aromatic amine	46 FR 45809 (9/15/81)	Dec. 1, 1981.
81-432	Generic name: Substituted aromatic amine	46 FR 45809 (9/15/81)	Dec. 1, 1981.
81-433	Generic name: Acrylic polymer	46 FR 45809 (9/15/81)	Dec. 1, 1981.
81-434	Generic name: Disubstituted cyclohexanol	46 FR 45809 (9/15/81)	Dec. 1, 1981.
81-435	1-(2-nitrophenyl) ethanone 45995	46 FR 45996 (9/16/81)	Dec. 2, 1981.
81-436	Generic name: Disubstituted heteropolycycle	46 FR 45995 (9/16/81)	Dec. 2, 1981.
81-437	Generic name: Polynitor polyhalo alkyl aniline	46 FR 47003 (9/23/81)	Dec. 7, 1981.
81-438	Generic name: Substituted arylamino anthraquinone derivatives	46 FR 47003 (9/23/81)	Dec. 7, 1981.
81-439	Generic name: Alkyd resin	46 FR 47003 (9/23/81)	Dec. 7, 1981.
81-440	Generic name: Substituted 1,4-bisarylamino anthraquinone	46 FR 47003 (9/23/81)	Dec. 7, 1981.
81-441	Generic name: Mixed mono and dialkylditho-thiadiazoles	46 FR 47004 (9/23/81)	Dec. 7, 1981.
81-442	Generic name: Benzyl ester	46 FR 47004 (9/23/81)	Dec. 7, 1981.
81-443	Generic name: Poly[(amino alkyl)alkylene oxide]	46 FR 47004 (9/23/81)	Dec. 7, 1981.
81-444	Generic name: Substituted heterocyclic-phenylazo dye	46 FR 47004 (9/23/81)	Dec. 7, 1981.
81-445	Generic name: Polyglycidyl-*m*-xylenediamine	46 FR 47004 (9/23/81)	Dec. 7, 1981.
81-446	Generic name: Polydimethylsiloxane, alkyl and terpenyl substituted	46 FR 47005 (9/23/81)	Dec. 7, 1981.
81-447	Generic name: Polyester based urethane	46 FR 47005 (9/23/81)	Dec. 8, 1981.
81-448	Generic name: Epoxy modified phenolic resin	46 FR 47295 (9/25/81)	Dec. 8, 1981.
81-449	Generic name: Fluoro methacrylate copolymer	46 FR 47005 (9/23/81)	Dec. 7, 1981.
81-450	Generic name: Di(aryl)polyhalosemi-metal	46 FR 47005 (9/23/81)	Dec. 7, 1981.
81-451	Generic name: Modified phenolic novolak resin	46 FR 47006 (9/23/81)	Dec. 9, 1981.
81-452	Generic name: Modified phenolic novolak resin	46 FR 47006 (9/23/81)	Dec. 9, 1981.
81-453	Generic name: Modified phenolic novolak resin	46 FR 47006 (9/23/81)	Dec. 9, 1981.
81-454	Generic name: Modified phenolic novolak resin	46 FR 47006 (9/23/81)	Dec. 9, 1981.
81-455	4-trifluoromethioxyphenylisocyanate	46 FR 47295 (9/25/81)	Dec. 12, 1981.
81-456	2-carbomethoxybenzene sulfonyl chloride	46 FR 47295 (9/25/81)	Dec. 12, 1981.
81-457	Generic name: Polymer of unsaturated fatty acid, dimer fatty acid, unsubsituted anhydride, aromatic dicarboxylic acid, aliphatic diol and hydroxy functional resins.	46 FR 47296 (9/25/81)	Dec. 12, 1981.
81-458	Monoethanolamine citrate in an aqueous solution	46 FR 47658 (9/29/81)	Dec. 14, 1981.
81-459	2,2-dimethylbicyclo[2.2.1]heptane-3-carboxylic acid, methylestor	46 FR 47659 (9/29/81)	Dec. 14, 1981.
81-460	Generic name: Substituted heteropolycycle	46 FR 47658 (9/29/81)	Dec. 14, 1981.
81-461	Benzene-methanamine, ar-ethenyl-N-methanophosphoric, disodium salt, polymer with diethernylbenzene	46 FR 47659 (9/29/81)	Nov. 22, 1981.
81-462	Benzaldehyde, 3-methoxy-4-(3-propanamonium-2-hydroxy-N-N-N-trimethyl chloride	46 FR 47855 (9/30/81)	Dec. 20, 1981.
81-463	Benzenesulfonic acid, 4-[2-(trichloromethyl) ethyl-, reaction product with silica	46 FR 47855 (9/30/81)	Dec. 20, 1981.
81-464	Generic name: Alkyl styrenated acrylate terpolymer	46 FR 47855 (9/30/81)	Dec. 20, 1981.
81-465	Generic name: Alkanedioic acid, (1-methyl, 5-hydroxymethyl heteromonocycle)diester	46 FR 47856 (9/30/81)	Dec. 20, 1981.
81-466	Generic name: Alkanedioic acid, bis(hydroxy-methyl heteromonocycle)ester	46 FR 47856 (9/30/81)	Dec. 20, 1981.
81-467	2-naphthalenesulfonic acid, 6-(acetylamino)-4-hydroxy-, sodium salt	46 FR 47856 (9/30/81)	Dec. 20, 1981.
81-468	4-chloronaphthalene 1,8-dicarboxylic acid anhydride	46 FR 47856 (9/30/81)	Dec. 20, 1981.
81-469	Generic name: Benzyl heteropolycyclic onium halide	46 FR 48319 (10/1/81)	Dec. 21, 1981.
81-470	Tris(tridecafluorohexyl)amine	46 FR 48319 (10/2/81)	Dec. 21, 1981.
81-471	Generic name: Urethane polymer	46 FR 48753 (10/2/81)	Dec. 22, 1981.
81-472	Generic name: Alicyclic alcohol	46 FR 48753 (10/2/81)	Dec. 22, 1981.
81-473	Generic name: Oxoarylpolyalkylbenzene alkyl nitrile	46 FR 48754 (10/2/81)	Dec. 22, 1981.
81-474	Generic name: Polyhaloalkylbenzene alkonoic acid ester	46 FR 48754 (10/2/81)	Dec. 22, 1981.
81-475	Generic name: Tris (substituted alkyl) phosphate	46 FR 48754 (10/2/81)	Dec. 22, 1981.
81-476	Generic name: Substituted mercaptophosphate	46 FR 48754 (10/2/81)	Dec. 22, 1981.
81-477	Generic name: Melamine-formaldehyde-polyethylene glycol resin	46 FR 48755 (10/2/81)	Dec. 22, 1981.
81-478	Generic name: Acrylic modified epoxy-ester resin	46 FR 48755 (10/2/81)	Dec. 22, 1981.
81-479	Generic name: Unsaturated acyl urea-urethane diol prepolymer	46 FR 48755 (10/2/81)	Dec. 22, 1981.
81-480	Generic name: Cationic acrylamide copolymer	46 FR 48752 (10/2/81)	Dec. 26, 1981.
81-481	Generic name: Polymer of linear glycols, aliphatic dicarboxylic acid, and aromatic dicarboxylic acid	46 FR 48752 (10/2/81)	Dec. 26, 1981.
81-482	Generic name: Polymer of linear glycols, aliphatic dicarboxylic acid, and aromatic di-(tri-) carboxlic acids	46 FR 48753 (10/2/81)	Dec. 26, 1981.
81-483	4(2'-aminophenyl thio)1,8-naphthalic anhydride	46 FR 48979 (10/5/81)	Dec. 27, 1981.
81-484	Generic name: Aromatic diazo dye	46 FR 48979 (10/5/81)	Dec. 27, 1981.
81-485	Generic name: Polymer of a substituted alkanediol, a carbomonocyclic anhydride and a substituted alkanoic ester	46 FR 48979 (10/5/81)	Dec. 27, 1981.
81-486	Generic name: Polyhaloalkylbenzene	46 FR 48980 (10/5/81)	Dec. 27, 1981.
81-487	Generic name: Aliphatic ester	46 FR 48980 (10/5/81)	Dec. 27, 1981.
81-488	Generic name: Polymer of vinyl acetate, substituted acrylic acid ester, substituted acrylic acid ester, and substituted acrylic acid.	46 FR 49197 (10/6/81)	Dec. 27, 1981.

III. 43. Premanufacture notices for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical had been added to the Inventory.)

81-327	Generic name: Polymer of an alkanedioic acid, an alkanediol and a substituted alkanoic ester	46 FR 38579 (7/28/81)	Oct. 5, 1981.
81-328	Generic name: Isocyanate modified polyester	46 FR 38579 (7/28/81)	Oct. 5, 1981.
81-329	Generic name: Isocyanate modified polyester	46 FR 38579 (7/28/81)	Oct. 5, 1981.
81-330	Generic name: Acrylic modified alkyd resin	46 FR 38580 (7/28/81)	Oct. 5, 1981.
81-331	Generic name: Acrylic modified alkyd resin	46 FR 38580 (7/28/81)	Oct. 5, 1981.
81-332	Generic name: High solids polyester resin derived from a mixture of phthalic acids and monobasic acids	46 FR 38580 (7/28/81)	Oct. 5, 1981.
81-333	1(3H)-isobenzofuranone,3-[4-(dethylamino)-2-hydroxy-phenyl]-3-[2-ethoxy-5-(phenyl-amino)phenyl]-	46 FR 38580 (7/28/81)	Oct. 7, 1981.
81-334	Spiro[isobenzofuran-1(3H), 9'-9[H]xathen]-3-one, 6'-(diethylamino)-2'-(phenylamino)	46 FR 38581 (7/28/81)	Oct. 7, 1981.
81-335	Generic name: Heteromonocycle modified maleated resin and tall oil fractions	46 FR 38581 (7/28/81)	Oct. 7, 1981.
81-336	Generic name: Ester of hydrozamic acid	46 FR 39869 (8/5/81)	Oct. 7, 1981.
81-337	Epoxy resin modified with substituted organic acid	46 FR 39890 (8/5/81)	Oct. 11, 1981.
81-341	Diethylenetriamine, phenol, formaldehyde polymer	46 FR 39890 (8/5/81)	Oct. 10, 1981.
81-342	Generic name: Benzene dicarboxylic acid, disubstituted	46 FR 39890 (8/5/81)	Oct. 11, 1981.
81-343	Generic name: Benzendicarboxylic acid, disubstituted	46 FR 39891 (8/5/81)	Oct. 11, 1981.
81-344	Generic name: Polymer of: bis-benzene derivative, mixed alkane diols, aliphatic triol, and aromatic diisocyanate	46 FR 39891 (8/5/81)	Oct. 12, 1981.
81-345	Generic name: Amine terminated epoxy curing agent	46 FR 39891 (8/5/81)	Oct. 12, 1981.
81-346	Polymer of acrylic acid, acrylonitrile, butyl acrylate, 2-hydroxyethyl acrylate, methylacrylate, and 2-ethylhexyl acrylate	46 FR 39891 (8/5/81)	Oct. 12, 1981.
81-347	Polymer of: methyl methacrylate, hydroxy propyl methacrylate, 2-ethyl hexyl acrylate, isobutoxy methyl acrylamide	46 FR 39892 (8/5/81)	Oct. 12, 1981.
81-348	Generic name: Substituted unsaturated alkene, isomer mix	46 FR 39892 (8/5/81)	Oct. 14, 1981.
81-349	2-naphthalenesulfonic acid, 7-amino-4-hydroxy-3-((4-((2-sulfooxyethyl)sulfonyl)2-hydroxyphenyl)azo	46 FR 39886 (8/5/81)	Oct. 15, 1981.
81-350	Generic name: Oxalamide derivative	46 FR 39886 (8/5/81)	Oct. 15, 1981.
81-351	Dimethyl ester, 1,4-benzenedicarboxylic acid polymer with 2,2-dimethyl-1,3-propanediol, 1,2-propanediol and hexanedioic acid	46 FR 39886 (8/5/81)	Oct. 15, 1981.

PREMANUFACTURE NOTICES MONTHLY STATUS REPORT OCTOBER 1981—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
81-352	Generic name: Epoxy urethane copolymer	46 FR 39886 (8/5/81)	Oct. 15, 1981.
81-353	Generic name: Mixed alkali metal and substituted amine salt of acid substituted sulfoheterocycle azo sulfocarbocycle azo substituted heterocycle sulfonin acid.	46 FR 39897 (8/5/81)	Oct. 19, 1981.
81-354	Generic name: Mixed alkali metal and substituted amine salt of substituted sulfocarbocycle azo sulfocarbocycle azo substituted carbocyclesulfonic acid.	46 FR 39967 (8/5/81)	Oct. 19, 1981.
81-355	Generic name: Condensation polymer of aromatic sulfonic acid and urea/triazine	46 FR 39887 (8/5/81)	Oct. 19, 1981.
81-356	Urea, 1-(3,4-dichlorophenyl)-2-thio	46 FR 39887 (8/5/81)	Oct. 19, 1981.
81-357	2-benzothiazolamine, 6-nitro-sulfate	46 FR 39888 (8/5/81)	Oct. 19, 1981.
81-358	Polymer of tetrabromophthalic anhydride, isophthalic acid, neopentyl glycol, propylene glycol, dipropylene glycol and maleic anhydride.	46 FR 39888 (8/5/81)	Oct. 19, 1981.
81-359	Copper para-toluenesulfonate hydrate	46 FR 39888 (8/5/81)	Oct. 19, 1981.
81-360	Phosphonic acid, [(dimethylamino)-methylene] bis-, monoammonium salt	46 FR 39892 (8/5/81)	Oct. 22, 1981.
81-361	Generic name: Aliphatic carbamate ester	46 FR 39893 (8/5/81)	Oct. 22, 1981.
81-362	Naphtalene sulfonic acid, diisononyl-, compound with 2,2',2"-nitrilotris[ethanol](1:1)	46 FR 39889 (8/5/81)	Oct. 25, 1981.
81-363	Generic name: Aliphatic acid ester	46 FR 40324 (8/7/81)	Oct. 25, 1981.
81-364	Generic name: Cycloaliphatic furan, tetrahydro	46 FR 40324 (8/7/81)	Oct. 25, 1981.
81-365	2-nitronaphthalene-4,8-disulfonic acid, diammonium salt	46 FR 39889 (8/5/81)	Oct. 25, 1981.
81-366	Generic name: Sulfo phenyl azo naphthalenol, 2,2',2"-nitrilotris [ethanol]salt	46 FR 40324 (8/7/81)	Oct. 25, 1981.
81-367	Generic name: Polymer of an alkoxy methyl amino resin	46 FR 40323 (8/7/81)	Oct. 26, 1981.
81-368	Generic name: Metallic beta diketonate	46 FR 40323 (8/7/81)	Oct. 26, 1981.
81-369	Generic name: Aliphatic polyamide	46 FR 40801 (8/12/81)	Oct. 26, 1981.
81-370	Generic name: Amine modified epoxy resin	46 FR 40801 (8/12/81)	Oct. 26, 1981.
81-371	Generic name: Polyester diol of halogenated compound and polyethylene glycol	46 FR 40325 (8/7/81)	Oct. 26, 1981.
81-372	Generic name: C.I. Direct Black 173	46 FR 40325 (8/7/81)	Oct. 26, 1981.

PMN No.	Chemical identification	FR citation	Date of commencement
	IV. 30 Chemical substances for which EPA has received notices of commencement to manufacture.		
80-190	Generic name: Copolyester from dimethyl terephthalate, alpha, omega-hydroxy terminated aliphatic hydrocarbons, and a polyalkylene glycol.	45 FR 56431 (8/25/81)	Oct. 1, 1981.
81-6	Polyester-amide polymer	46 FR 12837 (2/18/81)	Sept. 11, 1981.
81-10	Generic name: Sodium salt of silylated phosphonate	46 FR 11353 (2/6/81)	Oct. 21, 1981.
81-30	Generic name: Polyester resin derived from a mixture of phthalic acids with alkylene glycols and higher polyols	46 FR 16121 (3/11/81)	June 1, 1981.
81-105	Generic name: Alkoxylated alkylphenol substituted sulfosuccinate, isopropylamine salt	46 FR 20768 (4/7/81)	June 26, 1981.
81-132	Generic name: Maleic anhydride-based unsaturated polyester resin modified with mixed phthalic acids	46 FR 22650 (4/20/81)	July 16, 1981.
81-162	Generic name: Hydroxy-alkoxy alkyl alkane	46 FR 24992 (5/4/81)	July 1981.
81-163	Generic name: Acrylated alkoxylated aliphatic glycol	46 FR 25694 (5/8/81)	July 1981.
81-192	Generic name: Trisubstituted silylalkanol-acetate	46 FR 28506 (5/27/81)	Sept. 21, 1981.
81-193	Generic name: Poly(Oxyalkyl-disubstituted silane) aroyl, alkoxy terminated	46 FR 28507 (5/27/81)	Sept. 21, 1981.
81-210	Generic name: Aromatic disazo dye	46 FR 29527 (6/2/81)	Sept. 22, 1981.
81-211	Generic name: Aromatic disazo dye	46 FR 29527 (6/2/81)	Sept. 22, 1981.
81-212	Generic name: Aromatic disazo dye	46 FR 29528 (6/2/81)	Sept. 22, 1981.
81-213	Generic name: Aromatic disazo dye	46 FR 29528 (6/2/81)	Sept. 22, 1981.
81-214	Generic name: Aromatic disazo dye	46 FR 29528 (6/2/81)	Sept. 22, 1981.
81-215	Generic name: Aromatic disazo dye	46 FR 29529 (6/2/81)	Sept. 22, 1981.
81-216	Generic name: Aromatic disazo dye	46 FR 29529 (6/2/81)	Sept. 22, 1981
81-237	Generic name: Organohalo modified silica	46 FR 31346 (6/15/81)	Aug. 15, 1981.
81-248	Generic name: Poly(methyl vinyl ether/mono methyl maleate)	46 FR 31942 (6/18/81)	Sept 25, 1981.
81-283	Generic name: Chromophore substituted poly(oxyethylene)	46 FR 35347 (7/8/81)	Sept. 11, 1981.
81-284	Generic name: Chromophore substituted poly(oxyethylene)	46 FR 35347 (7/8/81)	Sept. 11, 1981.
81-288	Generic name: High solids mixed with phthalic, monobasic acid alkyd resin	46 FR 35340 (7/8/81)	Oct. 15, 1981.
81-296	Generic name: Bis dihydrogenated ether of halogenated aryl sulfone	46 FR 36242 (7/14/81)	Sept. 24, 1981.
81-299	Generic name: Metal resinate	46 FR 36243 (7/14/81)	Sept. 30, 1981.
81-305	Generic name: 4-(dialkylamino)styryldinitrile	46 FR 39212 (7/31/81)	Nov. 2, 1981.
81-313	Generic name: Chromophore substituted poly(oxyalkylene)	46 FR 37324 (7/20/81)	Sept. 25, 1981.
81-318	Generic name: Modified phenolic novolak resin	46 FR 37325 (7/20/81)	Sept. 26, 1981.
81-332	Generic name: High solids polyester resin derived from a mixture of phthalic acids and monobasic acids	46 FR 38580 (7/28/81)	Oct. 20, 1981.

PMN No.	Chemical identification	FR citation	Date of commencement
IV. 30 Chemical substances for which EPA has received notices of commencement to manufacture.			
81-340	Generic name: Modified phenolic novolak resin	46 FR 39890 (8/3/81)	Sept. 22, 1981.
81-371	Generic name: Polyester diol of halogenated compound and polyethylene glycol	46 FR 40325 (8/7/81)	Oct. 28, 1981.

PMN No.	Identity/generic name	FR citation	Date suspended
V. 7 Premanufacture notices for which the review period has been suspended.			
80-137	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-138	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-146	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-182	Generic name: Alkanedioic acids mixed alkanolamine salt	45 FR 54425 (8/15/80)	Oct. 30, 1980.
80-264	Generic name: Benzeneamine, [*N*-(1-methylhexylidene)-*N*-(1-methyl butylidene)-4,4'-methylene bis]	45 FR 73127 (11/4/80)	Dec. 24, 1980.
81-534	2,3-epoxycyclohexanone	46 FR 53522 (10/29/81)	Nov. 2, 1981.

[FR Doc. 81-33652 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51341A; TSH-FRL-1992-3]

Certain Chemicals; Premanufacture Notices, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the PMN specific chemical indentity on a premanufacture notice (PMN) submitted by the Upjohn Company, as required by section 5(a)(1) of the Toxic Substances Control Act (TSCA).

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: In the **Federal Register** on November 4, 1981 (46 FR 54792), EPA issued a notice of receipt of a PMN submitted by The Upjohn Company, 410 Sackett Point Road, North Haven, CT 06473.

In the FR Doc. 81-31790 appearing at page 54792 under "PMN 81-545", third column, the specific chemical identity "N,N'-Isophthaloyl-bis(trimethylene urea)" is corrected to read "N,N,'-dodecanedioyl-bis[3,4,5,6-tetrahydro-2(1H)pyrimidinone."

Dated: November 18, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-33677 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51355; TSH-FRL-1992-2]

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: January 16, 1982. PMN 81-588, 81-589, 81-590.

ADDRESS: Written comments, identified by the document control number "[OPTS-51355]" 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 81-588

Close of Review Period. February 15, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: 2-2'-thiodiethyl bis(alkyl succinic acid ester).

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>10 g/kg
Acute dermal toxicity LD_{50} (rat)—>3.16 g/kg
Skin irritation (rabbit)—Severely irritating
Eye irritation (rabbit)—Severely irritating

Exposure. The manufacturer states that during manufacture 24 workers may experience dermal exposure 2 hrs/day, 7 days/yr.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water. Disposal is to a publicly owned treatment works (POTW).

PMN 81-589

Close of Review Period. February 15, 1982.

Importer's Identity. Mitsubishi International Corporation, 277 Park Avenue, New York, NY 10017.

Specific Chemical Identity. 1,4-dihydro-9,10-anthracenedione.

Use. The importer states that the PMN substance will be used as an industrial catalyst applied to lignocellulosic materials in the alkaline pulping process.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	100,000
2d year	50,000	500,000
3d year	100,000	1,000,000

Physical/Chemical Properties

Appearance—Yellow granule
Melting point—202-210° C
Solubility: Water @ 25° C—0.28 mg/lit
Molecular weight—210.2

Toxicity Data

Acute oral toxicity LD_{50} (rat)—5,000 mg/kg
Ames salmonella—Not mutagenic

Exposure. The importer states that during use 2 workers may experience charge exposure 0.5 hr/day, 25 days/yr during stirring and transfer.

Environmental Release/Disposal. The importer states that less than 10 kg/yr will be released to air 0.5 hr/day, 25 days/yr. Disposal is to a bag filter.

PMN 81-590

Close of Review Period. February 15, 1982.

Importer's Identity. Mitsubishi International Corporation, 277 Park Avenue, New York, NY 10017.

Specific Chemical Identity. 1,4,4a,9a-tetrahydro-9,10-antracenedione.

Use. The importer states that the PMN substance will be used as an industrial catalyst to lignocellulosic materials in alkaline pulping process.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	100,000
2d year	50,000	500,000
3d year	100,000	1,000,000

Physical/Chemical Properties

Appearance—Yellow green granule
Melting point—102-103° C
Solubility: Water @ 25° C—74 mg/lit
Molecular weight—212.2

Toxicity Data

Acute oral toxicity LD_{50} (rat)—1,160 mg/kg
Ames salmonella—Not mutagenic

Exposure. The importer states that during use 2 workers may experience charge exposure 0.5 hr/day, 25 days/yr during stirring and transfer.

Environmental Release/Disposal. The importer states that less than 10 kg/yr will be released to air 0.5 hr/day, 25 days/yr. Disposal is to a bag filter.

Dated: November 18, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-33878 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-31-M

Receipt of Application Pursuant to the Steel Industry Compliance Extension Act of 1981: Jones & Laughlin Steel Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Application.

SUMMARY: On November 10, 1981 EPA received an application from Jones and Laughlin Steel Corporation pursuant to the Steel Industry Compliance Extension Act of 1981 (Pub. L. 97-23). The application requests that EPA extend certain deadlines for achieving compliance with Clean Air Act requirements. The Administrator will be making her interim findings with regard to the company's eligibility for an extension within a few weeks. Persons desiring to make public comment are encouraged to do so without delay.

DATE: Effective on November 24, 1981.

ADDRESS: Section 113(e)(3) of the Clean Air Act, as amended, provides that any records, reports or information obtained by the Administrator pursuant to this subsection shall be available to the public unless a person requests that such material be considered confidential in accordance with the purposes of 18 U.S.C. 1905 and the Administrator determines that public disclosure is likely to cause substantial harm to that person's competitive position.

Documents received by the Administrator that are not confidential in nature have been placed in Public Docket Number EN 81-16-J: Jones and Laughlin Steel Corporation, and will be available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at: Central Docket Section, Gallery One, West Tower Lobby, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Michael Alushin (EN-329), Office of Legal Counsel and Enforcement, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0658.

William A. Sullivan, Jr.,

Enforcement Counsel.

[FR Doc. 81-33879 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-31-M

[PF-180A; PH-FRL-1992-4]

Union Carbide; Feed Additive and Pesticide Petitions; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects a feed additive and pesticide petitions proposing the establishment of a feed additive regulation and tolerances for residues of the plant growth regulator 2-(*m*-chlorophenoxy)propionic acid.

ADDRESS: Written comments to: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of April 7, 1980, (45 FR 23511) that Union Carbide, Brookside Ave., Ambler, PA 19002, had submitted feed additive (FAP OF5248) and pesticide (PP OF2303) petitions to the EPA proposing that a feed additive regulation and tolerances be established for residues of the plant growth regulator 2-(*m*-chlorophenoxy)propionic acid in or on certain commodities.

In FR Doc. 80-10431, appearing in the third column of page 23511 under "SUPPLEMENTARY INFORMATION" the following information is corrected as follows:

a. Under petition "PP OF2303" the commodity meat, line 11, is corrected to read "meat (except kidneys), fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm".

b. Under petition, "FAP OF5248" the identification heading is corrected to read "FAP OH5248" and the tolerance level in the second line of the entry reading "0.3 ppm" is corrected to read "3.0 ppm".

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: November 13, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-33676 Filed 11-23-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Action on Proposed Accounting Guideline—Accrual Accounting

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice of action.

SUMMARY: On August 14, 1981, the FFIEC published in the **Federal Register** (46 FR 41204) a request for comment on its proposal to recommend a uniform accounting guideline for adoption by the three federal bank supervisory agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency). The guideline proposed would have required the use of accrual accounting by all FDIC-insured commercial and state chartered mutual savings banks, both for the maintenance of accounts and for the filing of reports of income and condition with the supervisory agencies. It was proposed that accrual accounting be required of banks with assets of $10 million or more beginning in 1983, and of banks under $10 million beginning in 1985. At its meeting of November 5, 1981, the FFIEC took two actions toward implementing the major provisions of its proposal: Enactment of a reporting requirement pursuant to section 1006(c) of the Federal Financial Institutions Examination Council Act of 1978 [Title X, Pub. L. 95-630], and recommendation of an accounting guideline pursuant to section 1006(b) of that Act. Depending on the size of the bank, these new procedures would first become effective either in 1983 or 1985, as originally proposed.

EFFECTIVE DATE: November 5, 1981.

FOR FURTHER INFORMATION CONTACT:

Rhoger H. Pugh, Chairman, Reports Task Force, Federal Financial Institutions Examination Council, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219, 202/447-1587.

SUPPLEMENTARY INFORMATION: On November 5, 1981, the FFIEC adopted a reporting requirement that will extend to all commercial and state chartered mutual savings banks ("banks") supervised by the three federal bank regulatory agencies, the accrual reporting requirement that currently applies only to such banks with assets in excess of $25 million. The reporting requirement requires banks to file their periodic reports of income and condition with their respective regulator on an accrual basis. As noted below, the extension of the current requirement will be implemented in two phases, with the smallest banks having an additional two years to conform to the requirement.

Separately, the FFIEC recommended to the three federal bank regulatory agencies that they adopt accounting guidelines to require all federally-supervised banks to maintain their internal accounts on an accrual basis. The FFIEC recommended that this requirement be phased in on the same schedule as the mandated reporting requirement.

Both the recommendation for an accrual accounting guideline, if approved by the individual agencies, and the new reporting requirement passed by the FFIEC will be implemented in two stages after receipt of appropriate clearances. For banks with assets of $10 million or more, the new procedures would become effective beginning with transactions and balance sheet positions in 1983. For smaller banks, those with assets under $10 million, the requirements would become effective for transactions and balance sheet positions in 1985.

The FFIEC's November 5 actions were taken, after consideration of public comment received on the August proposal, in the light of the Council's responsibility to promote uniform and effective supervision of financial institutions. The FFIEC determined that there would be an overriding advantage for both financial institutions and the supervisory agencies in having all banks reporting and accounting on an accrual basis. The FFIEC said that if the nation's banks both reported their income and condition and kept their books on an accrual basis, bank management could make better informed operating and policy decisions and the supervisory agencies would be better able to assess the conditions of the financial institutions they supervise.

In making its decisions, the FFIEC emphasized that the term "accrual accounting," as used in both the reporting requirement and the recommended accounting guideline, embodies the following three concepts:

—Only material items and accounts need to be handled on an accrual basis. Amounts that are not material to a bank's income and expenses may continue to be accounted for on a cash basis.

—The frequency with which accruals must be made depends largely on the volatility of the account in question. For most smaller institutions monthly accruals would probably provide acceptable results, although this must be determined individually by each institution.

—Reporting or accounting on an accrual basis does not necessarily have any effect on a bank's tax situation. A banking institution may elect to continue reporting for tax purposes on a cash basis in accordance with the rules established by the respective taxing authorities.

Under existing instructions for preparation of reports of income and condition, banks with assets of less than $25 million are permitted to file their reports on a modified cash basis, except for certain items that must be reported by all banks on an accrual basis: installment credit loan income, bond premium amortization, depreciation of fixed assets, and income taxes. Instructions for filing reports of income and condition will be revised to reflect the new requirements as soon as possible, well in advance of the effective dates for those changes.

The federal banking agencies currently have no general, internal accounting requirement for their supervised institutions. However, in recent years National banks and State chartered nonmember banks have been required to adopt accrual accounting as a condition of federal chartering or of obtaining FDIC deposit insurance. In making its recommendation that the banking agencies issue accounting guidelines to require all banks to adopt an accrual basis of accounting, the FFIEC did not recommend specific language for such guidelines, but rather set forth only the intended result. The FFIEC has requested the agencies to act on its recommendation for issuance of accrual accounting guidelines by December 11, 1981.

Dated: November 17, 1981.

Robert J. Lawrence,

Executive Secretary, FFIEC.

[FR Doc. 81-33870 Filed 11-23-81; 8:45 am]

BILLING CODE 6722-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 14, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statements should indicate that this has been done.

Agreement No.: T-3425-2.

Filing Party: Mr. Karl Myers, Rental Management Specialist, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3425-2 modifies the basic agreement between the Port of Seattle (Port) and Puget Sound Tug & Barge Co. (Puget Sound) which provides for the Port's term lease to Puget Sound of certain premises at Pier 16, Seattle, Washington. The purpose of the modification is to increase the rentals for the leased premises.

Agreement No.: T-3738-1.

Filing Party: Mr. Marion S. Moore, Jr., Traffic Manager, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402.

Summary: Agreement No. T-3738-1, between the South Carolina State Ports Authority (Port) and Orient Overseas Container Line, Inc. (OOCL), modifies the basic agreement between the parties (approved December 5, 1978) which provides for the Port's five year lease to OOCL (with renewal option) for certain premises at the Port's North Charleston Terminal, Charleston, South Carolina.

The purpose of the modification is (1) to change the location of the leased area to the Authority's Wando Terminal, (2) to change the rent after 1984, (3) to provide for overflow storage areas, (4) to provide a preference for OOCL's vessels on designated days, (5) to increase the annual wharfage guarantee, and (6) to change the form of the agreement from a lease to a license.

Agreement No.: T-4002.

Filing Party: Mr. William E. Emick, Jr., Deputy City Attorney, Office of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-4002, between the City of Long Beach (City) and Baker Commodities, Inc. (Baker), provides for a six-year lease by the City to Baker of 51,493 sq. ft. in the Harbor District of Long Beach to be used for the construction and operation of a liquid bulk terminal for the receipt, handling, loading, unloading, storage, processing, delivery and other disposition of tallow, vegetable oil, molasses and other bulk liquid merchandise. As compensation Baker will pay City a monthly rental of $3,160 for the first three years of the lease term, and the parties agree to renegotiate the monthly rental for the last three years. In addition, Baker will pay to City the total amount of all tariff charges (including use of the pipelines) accruing in connection with Baker's operations upon Harbor Department property, other than upon the leased premises, subject to the Port of Long Beach Tariff No. 3. Indemnification, insurance, maintenance of the facilities and assignments will be as agreed to by the parties.

Agreement No.: T-4003.

Filing Party: William E. Emick, Jr., Deputy, Office of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-4003, between the City of Long Beach (City) and Toyota Motor Sales, U.S.A., Inc. (Toyota) provides for the lease by City to Toyota of certain premises and facilities to be used as a contract marine terminal for the processing of vehicles. Toyota will observe the rates, rules and regulations of the Port's tariff in its operation of the premises and shall retain all revenues assessed through the tariff. As compensation for the use of the premises, Toyota will pay the City annual rental for the use of the premises according to a formula as set forth in the agreement. Rental is in lieu of all tariff charges otherwise assessable by the City except for dockage charges. The term of the lease is 10 years, with one (1) renewal option for an additional five (5) year period.

Agreement No.: 93-25.

Filing Party: Mr. David C. Nolan, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 93-25, among the member lines of the North Europe-United States Pacific Freight Conference, would amend the basic agreement to extend the joint service voting provision to December 31, 1982, beyond the present termination date of December 31, 1981.

Agreement No.: 5200-40.

Filing Party: Mr. David C. Nolan, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 5200-40 modifies the basic agreement of the Pacific Coast European Conference by dividing the conference into area groups and by providing that independent action may be taken by such groups.

Agreements Nos.: 8220-9 and 8420-10.

Filing Party: Jeffrey F. Lawrence, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, N.W., Suite 300, Washington, D.C. 20006.

Summary: Agreements Nos. 8220-9 and 8420-10 would amend, respectively, the organic agreements of the North Atlantic/Israel Freight Conference and the Israel/U.S. North Atlantic Ports Westbound Freight Conference for the purpose of incorporating neutral body self-policing provisions, authorizing agreement on credit rules, increasing the admission fee, amending the quorum and voting requirements, changing the rules governing suspension and withdrawal from membership, and other ancillary changes attendant with the complete revision of the agreements.

By Order of the Federal Maritime Commission.

Dated: November 18, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-33791 Filed 11-23-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 71-29]

Baton Rouge Marine Contractors, Inc. v. Cargill, Inc.; Order

On May 4, 1981, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's April 19, 1979 Report and Order in the above-captioned proceeding in which the Commission found that the charge levied against stevedores by Cargill, Incorporated for services and facilities at Cargill's grain terminal at the Port of Baton Rouge had not been shown to be unjust or unreasonable. Because the Court could not itself determine the question of the reasonableness of a charge in the first instance (see *e.g., Indiana Port Comm'n* v. *FMC*, 521 F.2d 281, 287 (D.C. Cir. 1975); and generally, *SEC* v. *Chenery Corp.*, 332 U.S. 194, 196–197 (1947); *Harborlite Corp.* v. *ICC*, 613 F.2d 1088, 1092–1093 (D.C. Cir. 1979)), it remanded the case to the Commission for further proceedings consistent with its opinion.

The Court found that the Commission's Report and Order was not supported by substantial evidence justifying the charge. The allocation of terminal costs imposed upon stevedores for benefits provided to them by the shipping gallery and other Cargill facilities was rejected in light of the "sharp disproportion to costs allocated to others [*i.e.*, the vessel and cargo interests] who may reap equal or greater benefit * * *" (slip opinion, page 16). This finding was based upon the standard articulated in *Volkswagenwerk* v. *FMC*, 390 U.S. 261, 281–282 (1968) that there must be a reasonable correlation of benefits to the charge that is imposed. On the other hand, the Court noted that the Commission could depart from the *Volkswagenwerk* comparative benefit standard if it adequately set forth the reasons why "a departure is justified under the statutory scheme and is consistent with the public interest" (slip opinion page 16).

Because this is a complaint proceeding, rather than a Commission-instituted investigation, it is the responsibility of the complainant, Baton Rouge Marine Contractors, Inc. (BARMA) to determine if and how it wishes to proceed. Once BARMA's choice is made, Cargill will be given an opportunity to respond and indicate what it wishes to present by way of argument and/or evidence in this proceeding. In making these determinations, the parties should bear in mind that as the Court explained, if support for the charge against stevedores is sought in "prevailing practices at unregulated elevators," the record must permit the Commission to determine, from substantial evidence, "whether free market forces are operative," and to give an "exposition of the similarities in costs and benefits between Cargill's elevator and those compared with it." (Slip opinion, page 16). After receipt of statements from the parties the Commission will be in a position to structure such further proceedings as may be necessary.

Therefore, it is ordered, That within 30 days from date of service of this order, Complainant, Baton Rouge Marine Contractors, Inc. (BARMA) shall file with the Commission and serve upon Cargill a statement indicating if it wishes to proceed with its complaint and, if so, what issues of fact or law it wishes to pursue and what procedures it feels are appropriate to such course of action; and

It is further ordered, That within 30 days after service of the statement of Complainant, Cargill shall file with the Commission and serve upon Complainant a response indicating, if appropriate, what issues of fact or law they wish to pursue and what procedures they feel are appropriate to such course of action; and

It is further ordered, That any request by any party for further evidentiary hearings shall be accompanied by a detailed recital of the facts the party intends to prove at the hearing and a description of evidence intended to be used to prove those facts; and

It is further ordered, That this order be published in the **Federal Register** and a copy thereof be served on all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118) as well as being served directly on all other parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-33789 Filed 11-23-81; 8:45 am]

BILLING CODE 6730-01-M

Canadian Pacific Railway Co. and Railway Express Agency, Inc.; Cancellation

Filing Party: R. Sevigny, Supervisor of Records, Canadian Pacific, Room 208 Windsor Station, Box 6042 Station "A", Montreal, Quebec H3C 3E4.

Agreement Nos. 8930 and 8930–1.

Summary: On November 13, 1981, the Commission received notice to terminate Agreement Nos. 8930 and 8930–1. The agreements have been terminated effective November 13, 1981, the date the notice was received by the Commission.

By Order of the Federal Maritime Commission.

Dated: November 18, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-33790 Filed 11-23-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-70]

Puerto Rico Maritime Shipping Authority—Proposed 2.9% Rate Increase Affecting Major Commodities in the U.S. Atlantic and Gulf/Puerto Rico and Virgin Islands Trades; Order of Investigation and Suspension

On September 24, 1981, the Puerto Rico Maritime Shipping Authority (PRMSA) filed amendments to its Tariff FMC–F No. 7, proposing a 2.9% increase in approximately 300 commodity items or rules, effective November 1, 1981,[1] in its service between Atlantic and Gulf ports and ports in Puerto Rico and the U.S. Virgin Islands. While these rate increases do not constitute a "general increase in rates" within the meaning of section 1 of the Intercoastal Shipping Act, 1933, as amended, (46 U.S.C. 843), a review of the tariff items to be affected reveals that substantially all of the top major moving commodities of PRMSA are being increased and that the increases would affect approximately 90% of PRMSA's revenues in the trade.

Protests to the proposed rate increases were filed by the Drug and Toilet Preparation Traffic Conference, Inc. (DTPTC) and the Government of the U.S. Virgin Islands and the Puerto Rico Manufacturers Association (GVI/PRMA). Suspension and investigation of the proposed rate increases is urged on the basis that these increases violate the Commission's Order in Docket No. 81–10, which found PRMSA's general rate

[1] At the Commission's request PRMSA voluntarily delayed the effective date of its rate increases to November 20, 1981 and submitted financial data in support thereof.

increase of February 28, 1981 unjust and unreasonable and ordered PRMSA to reduce its rates on or before October 25, 1981.[2] Additionally, it is argued that even after the rate reductions ordered by the Commission in Docket No. 81–10, these proposed rate increases would result in PRMSA achieving a rate of return on rate base higher than that permitted by the Commission. GVI/PRMA also allege that the proposed increases will have an adverse impact upon the people and economies of the Virgin Islands and Puerto Rico.

PRMSA's financial data project a rate of return on rate base of 12.77% for the 12-month period following the proposed effective date of the rate increases. However, this period includes approximately the last three months of the test year utilized in Docket No. 81–10 and it appears that, based upon the data submitted by the carrier, PRMSA will earn revenues in excess of the 17% maximum rate of return for that period. Although the data submitted do not clearly indicate that PRMSA will achieve an unreasonable rate of return on rate base for the period commencing March 1, 1982, the apparent conflict between the present proposed rate increases and the findings in Docket No. 81–10 requires a suspension of the rate increases through the end of the test year utilized in that proceeding and an investigation into whether PRMSA will exceed the 17% maximum rate of return established by the Commission for that period of time.

This investigation will not include the issue of what is a reasonable rate of return on rate base for PRMSA. The Commission will adhere to its findings in Docket No. 81–10 that PRMSA may not exceed a 17% rate of return on rate base for the test year period ending February 28, 1982. Despite indications in PRMSA's present submissions that actual operating results significantly vary from the projections submitted in Docket No. 81–10, these deviations do not indicate a shortfall in net revenues sufficient to justify the additional revenues PRMSA will derive from these proposed rate increases for the period November 20, 1981 through February 28, 1982. In addition, PRMSA did not purport to fully examine all of its operating expenses or revenues. Accordingly, the sole issue in this proceeding will be whether, for the period from November 20, 1981 through February 28, 1982, there has been a sufficient change in PRMSA's projected trade revenues and expenses which, after the additional revenue derived from these proposed rate increases, will result in a rate of return on rate base not in excess of 17%. PRMSA will bear the burden of stating those items which it alleges have significantly changed from its projections in Docket No. 81–10, including those which have a beneficial impact on net revenues as well as those which have a negative impact on net revenues. It also bears the ultimate burden of proof as to both the reasonableness of its projection methodology and the reliability of the results of its calculations. Finally, because PRMSA will not permitted to exceed a 17% rate of return, the Commission will not include as an issue in this proceeding the adverse economic impact of these rate increases.

Therefore, it is ordered, That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 817, 821, 845, and 845(a)), an investigation is hereby instituted into the justness and reasonableness of the tariff matter listed in Appendix A for the purpose of making such findings as the facts and circumstances warrant; and

It is further ordered, That this proceeding is hereby limited to the following specific issues bearing on the ultimate issue of the justness and reasonableness of the tariff matter herein under investigation:

(1) Will Respondent achieve a rate of return on rate base in excess of 17% for the period November 20, 1981 through February 28, 1982 as a result of the revenues derived from the tariff matter listed in Appendix A?

(2) Are Respondent's revenue and expense projections based on appropriate methodology and sufficiently accurate, and, if not, what are the appropriate projections? and

It is further ordered, That pursuant to section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C 845), the tariff matter set forth in Appendix A is hereby suspended and the use thereof deferred to and including February 28, 1982, unless otherwise ordered by the Commisison; and

It is further ordered, That the Puerto Rico Maritime Shipping Authroity is named Respondent in this proceeding; and

It is further ordered, That the Government of the Virgin Island, the Puerto Rico Manufacturers Association, and The Drug and Toilet Preparation Traffic Conference, Inc. are named Protestants in this proceeding; and

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 is made a party to this proceeding; and

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge; and

It is further ordered, That all parties to the proceeding lodge with the Presiding Administrative Law Judge prehearing statements no later than seven (7) days after the tariff matter listed in Appendix A would have otherwise gone into effect; and

It is further ordered, That subsequent to the exchange of prehearing statements by all parties, the Administrative Law Judge shall, at his discretion, direct all parties to attend a prehearing conference; and

It is further ordered, That after considering the procedural recommendations of the parties, the Administrative Law Judge shall further limit the issues to the extent possible and establish a procedure for their resolution; and

It is further ordered, That any hearing in this proceeding shall be completed within sixty (60) days of the effective date of the tariff matter under investigation; and

It is further ordered, That the Initial Decision of the Presiding Administrative Law Judge shall be submitted in writing to the Commission within one hundred and twenty (120) days of the effective date of the tariff matter under investigation; and

It is further ordered, That during the pendency of this investigation, Respondents will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission; and

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record; and

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); and

[2] Docket No. 81–10—Sea-Land Service, Inc., Trailer Marine Transport Corporation, Gulf Caribbean Marine Lines, Inc., and Puerto Rico Maritime Shipping Authority Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades, Order Partially Adopting Initial Decision, served September 25, 1981.

It is further ordered, That any limitation on intervention resulting from Rule 67(h) of the Commission's rules of practice and procedure (46 CFR 502.67 (h)) beyond that resulting from Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72) is waived pursuant to Rule 10 of the Commission's rules of practice and procedure (46 CFR 502.10); and

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

Finally, it is 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.

Appendix A

Puerto Rico Maritime Shipping Authority—Tariff FMC–F No. 7

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Rule 1, Par. (K)—6th Revised Page 77–A, effective 11/22/81 (except reduction)
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—8th Revised Page 97
—7th Revised Page 98 (except reduction)
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Rule 18, Par. (B)—5th Revised Page 100–B
Rule 140, Par. (D)—7th Revised Page 118
—7th Revised Page 119
Rule 365, Par. (B) (Exception)—3rd Revised Page 153
Rule 435, Par. 5—2nd Revised Page 159–A
Rule 765, Par. (I)—1st Revised Page 192–B
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*Vice Chairman Moakley dissents. Commissioner Daschbach's dissenting opinion is attached hereto.

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Puerto Rico Maritime Shipping Authority—Proposed 2.9% Rate Increase Affecting Major Commodities in the U.S. Atlantic and Gulf/Puerto Rico and Virgin Islands Trades—Order of Investigation and Suspension

Commissioner Richard J. Daschbach, dissenting.

The Commission's instant Order suspending the Puerto Rico Maritime Shipping Authority's (PRMSA) proposed 2.9 percent commodity rate increase imposes a regulatory burden on the government shipping line of Puerto Rico which defies description. It creates the type of economic hardship which the Commission is mandated to prevent. In effect, the Commission is not only suspending PRMSA's instant rate increase, but telling a company that has lost money during the past three years that it can institute no rate increase of any kind for at least the next four months, a prohibition which the Commission has rarely, if ever, imposed.

Since the FMC is statutorily mandated to exercise broad regulation in the U.S. domestic offshore trades, it is essential that it also exercise sound judgment in its oversight of these trades. It is therefore bewildering that the Commission could conclude that a corporation which has lost $16,354,000 during the past three fiscal years, including $4,303,000 during the fiscal year ending June 28, 1981, is nevertheless earning an excessive return on its rate base. However, that is precisely the finding that the Commission made regarding PRMSA in its September 25, 1981 decision in Docket No. 81-10, and which has straitjacketed the Commission in its consideration of the proposed 2.9 percent increase here.

The Commission's grave error in Docket No. 81-10, which has been continued here, has created three specific, serious problems. First the Commission ordered that PRMSA, already financially troubled, plunge deeper into debt by refunding to its customers nearly $3 million, with interest. The growing insolvency of PRMSA, which exists to serve the citizens of Puerto Rico, can only hurt these same residents of Puerto Rico, including shippers, who the Commission is allegedly "protecting" by its actions.

The second problem is that, in the instant proceeding, the Commission determined that because "the apparent conflict between the present proposed rate increase and the findings in Docket No. 81-10 requires a suspension of the rate increases through the end of the test year utilized in that proceeding" (see Order at p. 3), it had no choice but to investigate and suspend PRMSA's instant 2.9 percent rate increase, which only covered *some* of the steamship line's commodities. An increase of such limited scope and magnitude ordinarily would not even be subject to suspension under Pub. L. 95-475, but the Commission's decision in Docket No. 81-10 has saddled PRMSA with an artificial ceiling on its maximum allowable rate of return which will effectively prevent it from increasing *any* rate on *any* commodity until March 1982.

A third problem is created by the impact of the Commission's decisions in view of the rate parity which is a commercial reality in the Puerto Rico trades, whether the Commission chooses to ignore it or not. The FMC's findings in Docket No. 81-10 and the instant proceeding not only have adverse consequences for the citizens of Puerto Rico, but for PRMSA's competitors as well. The imposition of a rate ceiling on PRMSA essentially freezes Sea-Land, TMT, and Gulf Caribbean Marine Lines to the same artificially depressed rate level, thus preventing them from instituting the proposed rate increases which were specifically found just and reasonable in Docket No. 81-10, as well as precluding them from filing any new rate increases during the pendency of PRMSA's suspended rates.

The Commission's actions in Docket No. 81-10 and the instant proceeding result in regulation which is baffling and illogical. We are telling a company which is losing money that, at the same time, it is earning too much money. We are finding an excessive rate of return where common sense dictates that no such excess could possibly exist.

PRMSA's return on rate base for the five-year period between 1976 and 1980 averaged 5.66%. PRMSA's financial data project a rate of return on rate base of 12.77% for the 12-month period following the proposed effective date of the rate increases in question here (see Order at p. 2). In view of these figures, which are dramatically below the average rate of return for U.S. corporations and well below what a U.S. company can reasonably expect to earn in order to remain competitive, the Commission's finding in Docket No. 81-10 that PRMSA's return on rate base was over 20% for the test year in question is clearly a statitical anomally.

This aberration was based on a series of conclusions on a wide range of disparate issues, including both specific projections and abstract methodological matters. The cumulative effect of these findings resulted in the determination that PRMSA's rate of return was unacceptably high. This conclusion clearly mandates that, if the Commission intends to exercise sensible regulation over the U.S. domestic offshore trades, it must utilize a different approach to rate regulation of carriers operating in these trades.

The Commission's General Order 11 provides for considerable flexibility, stating that *"the methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure.* In evaluating the reasonableness of a [carriers] overall level of rates, the Commission will use return on rate base *as its primary standard. However, the Commission may also employ other financial methodologies in order to achieve a fair and reasonable result."* (46 CFR 512.1) (emphasis added)

The Commission's use of return on rate base in evaluating PRMSA's rate filing is not producing either fair or reasonable results, and it would appear that this is simply not an appropriate methodology for application to PRMSA's unique financial structure. In order to restore fundamental fairness, sound judgment, and good business sense to our regulation of PRMSA, its competitors, and the customers they serve, the Commission should shift to a "fixed coverage ratio" methodology in evaluating PRMSA's rates. Failure to do so may cause irreparable harm for which this Commission will bear a major responsibility.

[FR Doc. 81-33894 Filed 11-23-81; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Charter National Bancorp; Formation of Bank Holding Company

Charter National Bancorp, Encino, California, has applied for the Board's approval under § 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 Charter National Bank, Encino, California. The factors that are considered in acting on the application are set forth in § 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 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33836 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

First American National Bancshares, Inc.; Formation of Bank Holding Company

First American National Bancshares, Inc., North Little Rock, Arkansas, 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 First American National Bank, North Little Rock, Arkansas. 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 office 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 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33839 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Nickerson Bankshares, Inc.; Formation of Bank Holding Company

Nickerson Bankshares, Inc., Nickerson, 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 80 per cent or more of the voting shares of Nickerson State Bank, Nickerson, 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 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33840 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp of Morehead, Inc.; Formation of Bank Holding Company

Peoples BanCorp of Morehead, Inc., Morehead, Kentucky, 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 80.3 per cent or more of the voting shares of Peoples Bank of Morehead, Morehead, Kentucky. 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 Cleveland. 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 17, 1981.

Theodore E. Downing, Jr.

Assistant Secretary of the Board.

[FR Doc. 81-33841 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Security Financial Services, Inc.; Formation of Bank Holding Company

Security Financial Services, Inc., Canova, South Dakota, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 82.82 per cent of the voting shares of Security State Bank, Madison, South Dakota. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33842 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

State Capital Corp.; Formation of Bank Holding Company

State Capital Corporation, Brookhaven, 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 State Bank and Trust Company, Brookhaven, 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33843 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Blanchardville Financial Services, Inc.; Formation of Bank Holding Company

Blanchardville Financial Services, Inc., Blanchardville, Wisconsin, 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 88.7 per cent or more of the voting shares of The First National Bank of Blanchardville, Blanchardville, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 8, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33896 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

C. J. Bancshares, Inc.; Formation of Bank Holding Company

C. J. Bancshares, Inc., Carl Junction, 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 90.16 percent or more of the voting shares of Citizens Bank of Carl Junction, Carl Junction, 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 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 17, 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33898 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancorporation; Formation of Bank Holding Company

Commerce Bancorporation, Ft. Collins, Colorado, 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 Commerce Bank, Fort Collins, Colorado. 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 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33897 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Exchange Bancorporation, Inc.; Acquisition of Bank

Exchange Bancorporation, Inc., Tampa, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of First National Bank of Englewood, Englewood, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 17, 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33899 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Exchange Bancshares, Inc.; Formation of Bank Holding Company

Exchange Bancshares, Inc., Natchitoches, 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 80 percent or more of the voting shares of Exchange Bank and Trust Company, Natchitoches, 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 16, 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33900 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp; Acquisition of Bank

Fifth Third Bancorp, Cincinnati, Ohio, 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 successor by merger to The First-Mason Bank, Mason, Ohio. 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

Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 17, 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33901 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

First Edinburg Bancshares, Inc.; Formation of Bank Holding Company

First Edinburg Bancshares, Inc., Edinburg, 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 of the voting shares of First National Bank in Edinburg, Edinburg, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33902 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corporation; Acquisition of Bank

First Jersey National Corporation, Jersey City, New Jersey, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of the Washington Bank, Turnersville, New Jersey. 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 New York. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33903 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Merchantile Texas Corporation; Acquisition of Bank

Merchantile Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of Greenway Bank & Trust of Houston, Houston, 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 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33904 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Rockwall Bancshares, Inc.; Formation of Bank Holding Company

Rockwall Bancshares, Inc., Rockwall, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First State Bank, Rockwall, 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 17, 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 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33906 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Soloman Bancshares, Inc.; Formation of Bank Holding Company

Soloman Bancshares, Inc., Soloman, 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 80 percent or more of the voting shares of The Soloman State Bank, Soloman, 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)).

Soloman Bancshares, Inc., Soloman, Kansas, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in the sale of general insurance in a community with a population of less than 5,000.

Applicant states that it proposes to continue to engage in the activity of acting as agent for the sale of general insurance in Soloman, Kansas, a community with a population of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Soloman, Kansas, and the geographic area to be served is an area within 15 miles of Soloman, Kansas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y

as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than December 17, 1981.

Board of Governors of the Federal Reserve System, November 18, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33907 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

Winter Park National Company; Formation of Bank Holding Company

Winter Park National Company, Winter Park, Colorado 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 85 percent or more of the voting shares of The Bank of Winter Park, Winter Park, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 16, 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 17, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-33908 Filed 11-23-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[E-81-27]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving electric rates, Docket No. RM81-38.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving the proposed rulemaking proceeding of the Commission on the amount of constrtuction work in progress to be included in the rate base of electric utilities, Docket No. RM81-38.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: November 18, 1981.

Ray Kline,

Deputy Administrator of General Services.

[FR Doc. 81-33882 Filed 11-23-81; 8:45 am]

BILLING CODE 6820-AM-M

[E-81-28]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Illinois Commerce Commission involving water rates, Docket No. 81-0516.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Illinois Commerce Commission involving the application of the Illinois-American Water Company for an increase in its water rates in Docket No. 81-0516.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: November 18, 1981.

Ray Kline,

Deputy Administrator of General Services.

[FR Doc. 81-33883 Filed 11-23-81; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Psychology in Health Risk Communication; Impulse/Impact Noise Measurement Protocol; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public

for observation and participation, limited only by space available:

Psychology in Health Risk Communication

Date: December 18, 1981
Time: 10:00 a.m.–4:00 p.m.
Place: Robert A. Taft Laboratories, 4676 Columbia Parkway—Room B38, Cincinnati, Ohio 45226
Purpose: The meeting is intended to review the scope of a contractual study to evaluate alternative forms of composing/conveying health messages to workers aimed at enhancing their recognition of chemical hazards in their work environment and compliance with established safe work procedures. The message strategies will be drafted in accordance with rules representing a synthesis of ideas from the literature on communication-attitude change, reading education, health education and risk assessment.
Additional information may be obtained from: Dr. Alexander Cohea, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–8291

Impulse/Impact Noise Measurement Protocol

Date: December 18, 1981
Time: 8:30 a.m. to 4 p.m.
Place: Robert A. Taft Laboratories, 4676 Columbia Parkway—Auditorium, Cincinnati, Ohio 45226
Purpose: To discuss protocol for acoustic measurements of industrial impact noise exposure.
Additional information may be obtained from: Dr. John Erdreich, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–8281.

Dated: November 17, 1981.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 81-33889 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Philadelphia District Office, Chaired by Loren T. Johnson, District Director.

DATE: Wednesday, December 2, 1981, 9:30 a.m.

ADDRESS: William H. Green Federal Bldg., Rm. 6306, 6th and Arch Sts., Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Theresa A. Young, Consumer Affairs Technician, Food and Drug Administration, 2nd and Chestnut Sts., Philadelphia, PA 19106, 215–597–0837.

Kansas City District Office, Chaired by James A. Adamson, District Director.

DATE: Thursday, December 3, 1981, 9:30 a.m. to 12 m.

ADDRESS: Kansas City District, Conference Rm., 1009 Cherry St., Kansas City MO 64106.

FOR FURTHER INFORMATION CONTACT: Lorena A. Meyers, Consumer Affairs Officer, Food and Drug Administration, 1009 Cherry St., Kansas City, MO 64106, 816–374–3817.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 16, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33633 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

Farmers Feed & Supply Co.; "T"—Mixer for Swine; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Farmers Feed & Supply Co. providing for use of "T"—Mixer for Swine (tylosin) premix in manufacturing complete swine feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: December 4, 1981.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV–218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Farmers Feed & Supply Co., Ninth St. at Northwestern Tracks, Tipton, IA 52772, is the sponsor of NADA 98–688 which provides for use of a premix containing 0.4 grams of tylosin per pound in manufacturing complete swine feeds. The swine feeds are used for increased rate of weight gain and improved feed efficiency.

The application originally became effective on January 6, 1975. By letter of April 7, 1981, the sponsor requested withdrawal of approval of the NADA because the product is no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 98–688 and all supplements for "T"—Mixer for Swine (tylosin) premix is hereby withdrawn, effective December 4, 1981.

In a separate document published elsewhere in this issue of the **Federal Register**, § 558.625 *Tylosin* (21 CFR 558.625) is amended by removing paragraph (b)(29), which provides for approval of this NADA.

Dated: November 16, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-33632 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81F-0350]

American Hoechst Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Hoechst Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of butyric acid, 3,3-bis[3-*tert*-butyl-4-hydroxyphenyl]ethylene ester as an antioxidant and/or stabilizer for olefin polymers.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, 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 is given that a petition (FAP 1B3584) has been filed by American Hoechst Corp., Somerville, NJ 08876, proposing that 21 CFR 178.2010 of the food additive regulations be amended to provide for the safe use of butyric acid, 3,3-bis[3-*tert*-butyl-4-hydroxyphenyl]ethylene ester as an antioxidant and/or stabilizer for olefin

polymers by removing current restrictions on food type and temperature.

The potential environmental impact of this action is being reviewed. If the agency finds that an evironmental impact statement is not required and this petition results in a regulation, a notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 16, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-33846 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81P-0290]

Bio-Medical Innovations, Inc.; OTC Gonorrhea Specimen Collection Kit for Men; Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Microbiology Device Section of the Immunology and Microbiology Devices Panel that an over-the-counter (OTC) gonorrhea specimen collection kit for men be reclassified from class III (premarket approval) into class I (general controls). This recommendation was made after review by the Section of a reclassification petition filed by Bio-Medical Innovations, Inc., Glenview, IL 60025. After reviewing the Section recommendation and any public comments received, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on this reclassification petition will be announced in the Federal Register.

DATE: Comments by December 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Thomas M. Tsakeris, Bureau of Medical Devices (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On February 27, 1981, Bio-Medical Innovations, Inc., Glenview, IL 60025, submitted to FDA under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) a premarket notification stating that it intended to market an OTC gonorrhea specimen collection kit then called "Health Alert GSK." The device was intended for use at that time by both males and females; it is now intended for males only. After reviewing the information in the premarket notification, FDA determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976, nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Accordingly, the new device is automatically classified into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)).

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III can be marketed, it must either be reclassified under section 513(f)(2) or have an approved application for premarket approval under section 515 of the act (21 U.S.C. 360e), unless there is in effect for the device an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)). "Health Alert GSK" is not the subject of an application for premarket approval or an investigational device exemption.

On March 13, 1981, Bio-Medical Innovations, Inc., submitted to FDA under section 513(f)(2) of the act a reclassification petition for the "Health Alert GSK", renamed "Gonorrhea Screen Kit for Males." Secton 513(f)(2) of the act requires FDA to refer a reclassification petition to the appropriate advisory panel and to receive a recommendation on whether to approve or deny the petition. On May 4, 1981, the Microbiology Device Section of the Immunology and Microbiology Devices Panel (the Section) reviewed the petition and recommended that the device be reclassified into class I.

To determine the proper classification of the device, the Section considered the criteria specified in section 513(a)(1) of the act. For the purpose of classification, the Section assigned to this generic type of device the name OTC gonorrhea specimen collection kit for men and identified this type of device as an OTC speciment collection kit intended for use in screening males for urethral gonorrheal infection. The usual clinical symptom of urethral gonorrheal infection in the male is a purulent discharge from the urethral meatus of the penis. Having purchased the kit, a male patient, by following illustrated instructions, collects and prepares as a smear on a slide his own specimen of urethral exudate and mails the specimen to a designated laboratory. The specimen is identified by the patient with an information card containing his kit's coded identification number. the specimen is evaluated by the laboratory using standard microscopic technique. Three days after mailing, the patient may request his test results by telephone, using his identification number. Patients whose test results are positive are instructed to visit their doctors or health clinics as soon as possible. The presence of typical gram-negative, intracellular diplococci on a smear of a male's urethral exudate constitutes sufficient basis for a presumptive diagnosis of gonorrhea. Trained laboratory personnel performing microscopic examination of a gram-stained smear of urethral exudate from a male can diagnose gonococcal urethritis with approximately 95 percent sensitivity and close to 100 percent specificity.

Summary of the Reasons for the Recommendation

The Section gave the following reasons in support of its recommendation on reclassification:

1. The device in not an implant, is neither life sustaining nor life supporting, and does not present a potential unreasonable risk of illness or injury.

2. General controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device.

Summary of Data on Which the Recommendation is Based

The Section based its recommendation on the recommended procedures available in the literature for the laboratory diagnosis of gonorrhea, previous experience of Section members with the use by patients of other specimen collection devices, as well as data presented by the manufacturer.

The manufacturer conducted a study at a selected clinical site to determine whether male patients could collect and prepare suitable smears of their own urethral exudate for subsequent gram-staining and a microscopic examination in order to make a presumptive diagnosis of gonorrhea. The primary purpose of this study was to evaluate the ability of these patients to collect and prepare their own slide specimens with the same results as specimens collected and prepared by trained professionals using the same procedure. The diagnostic and treatment center used as the clinical site was selected for the study because its patients have a high incidence of gonorrhea and the

center has conducted other studies on sexually transmitted diseases (STD). The patients in this study were men who visited the clinic for routine STD examinations or had symptoms of possible STD origin.

The 161 men in the study were asked to fill out a questionaire regarding symptoms. The patients collected and prepared experimental slides of their own urethral exudate. These slides were stained and evaluated by trained personnel at the clinical study site. Control slides of urethral exudate from the same men were collected and prepared using standard clinical procedures by professionals trained in performing such procedures. In addition, specimens of the collected material were bacteriologically cultured for *Neisseria gonorrhoeae*, the etiologic agent of gonorrheal infection. All slides were then evaluated at the clinic site by the primary investigator. Complete data (experimental slides, control slides, and culture results) were available for 150 of the 161 participants. Data were incomplete for eight subjects (5.0 percent) because of unavailable control slides and/or culture results. Three subjects (1.9 percent), two of whom had no discharge, were unable to collect their own specimens. In 96 cases, the experimental and control slides, as well as culture results, were positive for *Neisseria gonorrhoeae*. Whenever an experimental slide was positive, the corresponding control slide was also politive. In one case, when the culture was negative for *Neisseria gonorrhoeae*, both experimental and control slides were positive. Thus, there was complete (100 percent) agreement for positive slide results. In 49 of the 53 (92.4 percent) cases for which negative control slides were available, there was agreement between experimental and control slides. The remaining four cases were considered inconclusive, ostensibly because of incorrect preparation of the patient-collected slides.

In summary, regarding the data for which there was complete information, there was 100 percent agreement with positive slide results and 92.4 percent agreement with negative slide results. The correlation between professionally collected and prepared control data and patient collected and prepared experimental test data supports the hypothesis that, with the use of properly written instructions, typical male patients can collect and prepare their own urethral exudate smears that are adequate for subsequent gram-staining and presumptive determination of urethral gonococcal infection.

Risks to Health

The Section concluded that failure of the device to perform satisfactorily may lead to an error in the diagnosis of gonorrhea thus placing individual patients at risk. In addition, the risk of an incorrect diagnosis for an individual relates further to the dissemination of infection to other individuals and communities. Therefore, FDA is interested in receiving comments on whether use of this device will result in unnecessary delays in seeking medical attention.

Additional Findings

The Section recommended that the device not be exempt from the requirements of the following sections of the act: section 510, registration, product listing, and premarket notification; section 519, records and reports; and section 520(f), good manufacturing practice.

The Section recommended that appropriate regulatory authorities certify the compliance with Federal, State, or other requirements of the laboratories that will perform the microscopic examinations of specimens to diagnose gonorrhea. The Section also recommended the following changes in the package insert labeling for the device:

a. Because of the need for a patient to seek medical attention for any symptom resembling urethritis, the manufacturer should omit a statement in the package insert that advises a patient who is currently receiving antibiotic therapy not to use the kit for at least 7 days following completion of therapy.

b. The insert instructions should inform the patient that the specimen should be allowed to dry on the slide in the air before the slide is placed in the slide box.

c. The insert instructions should contain a statement warning the patient to refrain from sexual relations until his condition is diagnosed and treated successfully.

d. The insert instructions should elaborate on the incidence and characteristics of nongonococcal urethritis in men, particularly urethritis caused by the bacterium *Chlamydia trachomatis*.

e. The insert instructions should explain that the laboratory report of an examined slide is presumptive evidence that the etiologic agent of gonorrhea was/was not detected in the specimen and that further confirmatory tests are required for a definitive diagnosis of gonorrhea.

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a Regulatory Impact Analysis, as specified in Executive Order 12291, nor a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Approval of this petition would not have a significant economic impact on a substantial number of small entities. The petitioner, and all future manufacturers of OTC gonorrhea specimen collection kits, would be relieved of the costs of complying with the premarket approval requirements in section 515 of the act. There are no off-setting costs that the petitioner would incur from reclassification into class I. The magnitude of the economic savings from approval of this petition depends on the extent of premarket approval studies the petitioner would have conducted and the number of future competitors satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings.

Interested persons may, on or before December 24, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this recommendation. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

November 12, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33849 Filed 11-19-81; 11:39 am]

BILLING CODE 4110-03-M

[Docket No. 81F-0332]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. Has filed a petition proposing that the food additive regulations be amended to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant in lubricants which have incidental contact with food.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 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 is given that a petition (FAP 1B3583) has been filed by Ciba-Geigy Corp., Plastics and Additives Division, Ardsley, NY 10502, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant in lubricants which have incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 16, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-33847 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

Compilation of Preambles for Foods, General; Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of another volume of the preamble compilation. This volume contains significant preambles of published **Federal Register** documents relating to the regulations of Foods, General, from March 1936 through March 1978.

ADDRESS: This volume may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Lola Batson, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: the preamble compilation series has been structured around the current organizational scheme for Food and Drug Administration regulations issued under Chapter I of Title 21 of the Code of Federal Regulations. This compilation is part of a comprehensive effort to make available to the public and the agency a central source for tracing, by subject, the historical development of agency regulations. The Foods, General volume contains preambles relating to food labeling regulations, good manufacturing practice regulations, and general regulations regarding food. This volume does not contain preambles relating to Food Standards regulations.

Each volume of the preamble compilation will be updated with an annual cumulative pocket supplement. The agency will publish in the **Federal Register** a notice of availability for each volume and pocket supplement as they become available.

The Foods, General volume may be purchased from the Superintendent of Documents (address above) for $18.00. To order, reference GPO stock No. 017-015-00197-1.

Dated: November 18, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33845 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0352]

Reclassification of Daily Wear Spherical Contact Lenses Consisting Principally of Hydroxyethylmethacrylate (HEMA) or Rigid Plastic Materials

AGENCY: Food and Drug Administration.

ACTION: Notice of Intent.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice of its intent to initiate proceedings to reclassify daily wear spherical contact lenses consisting principally of hydroxyethylmethacrylate (HEMA) or consisting principally of rigid plastic materials from class III (premarket approval) to class II (performance standards).

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

FOR FURTHER INFORMATION CONTACT: George C. Murray, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On January 16 and March 2, 1981, the Contact Lens Manufacturers Association (CLMA), Washington, DC 20006, submitted to FDA under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) petitions for the reclassification of contact lenses consisting principally of HEMA and contact lenses consisting principally of rigid plastic materials from class III to class II (81P-0084 and 81P-0085). The petitions were referred to the Ophthalmic Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (the Section) for its recommendations regarding the proposed changes in classification. During an open meeting on April 14, 1981, the Section considered the petitions and tentatively recommended that HEMA contact lenses and rigid plastic contact lenses be reclassified from class III into class II. Further consideration by the Section was delayed pending, among other things, clarification and supplementation by CLMA of certain aspects of its petitions. On June 11, 1981, CLMA submitted amended petitions intended to address various concerns raised by FDA, and concurred in by the Section, during the April 14 meeting. Subsequently, Section members were provided copies of the amended petitions, and were contacted (by mail, by telephone, or in person) about them. The Section members recommended approval of both petitions, as amended.

FDA has completed its review of CLMA's submissions and has concluded that they are not adequate to satisfy all the requirements of § 860.123 (21 CFR 860.123) of the regulations governing reclassification of medical devices. The agency believes, however, that CLMA's objectives are meritorious and has tentatively concluded that daily wear spherical contact lenses consisting principally of HEMA or rigid plastic materials should be reclassified from class III to class II. Accordingly, FDA, pursuant to section 513(e) of the act and § 860.130(b)(1) (21 CFR 860.130(b)(1)) of the regulations governing reclassification under section 513(e), is on its own initiative issuing this notice of intent to initiate changes in the classification of daily wear spherical HEMA contact lenses and daily wear spherical rigid plastic contact lenses. In a future issue of the **Federal Register**, FDA will publish proposals to reclassify each of these generic types of lenses. In light of the agency's decision to initiate proceedings to effect the changes in classification sought by CLMA, FDA has concluded that the petitions are moot, and will not publish the Section's recommendations as provided in section 513(e) of the act and § 860.130(c) of the regulations, or approve or deny the petitions, as provided in section 513(e) of the act and § 860.130(d) of the

regulations. Nonetheless, because of the potential significance of, and public interest in, any reclassification that might result from FDA's notice and comment rulemaking proceedings, CLMA's petitions, amended petitions, supporting exhibits, the transcript of the Section meeting, FDA's analysis of the petitions, and comments received on the petitions following the meeting are on file under the docket number found in brackets in the heading of this notice, in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

FDA invites public comment regarding any impact that reclassification of daily wear spherical contact lenses consisting principally of HEMA or rigid plastic materials would have on manufacturers or distributors of contact lenses, on the costs or prices paid by consumers purchasing contact lenses, on governmental agencies or geographic regions, on whether the rulemaking would have significant or adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Data and information supporting any such comments would be helpful. Comments are to be submitted to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The agency will address the requirements of the Regulatory Flexibility Act and Executive Order 12291 entitled "Federal Regulation" when any proposal based on this notice of intent is published in the **Federal Register.**

Dated: November 18, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-33848 Filed 11-23-81; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of Health Research, Statistics, and Technology; Assessment of Medical Technology

The Public Health Service (PHS) through the Office of Health Research, Statistics, and Technology (OHRST) announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness of intraoperative ventricular mapping. The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal government.

PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHRST with information relevant to this assessment should do so in writing no later than February 22, 1982. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to:

Medical and Scientific Evaluation Staff, Office of Health Research, Statistics and Technology, Room 17A40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

For further information contact: Pierre Renault, M.D., Chief, Medical and Scientific Evaluation Staff at the above address or by telephone (301) 443-4990.

Dated: November 16, 1981.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 81-33850 Filed 11-23-81; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N-33494]

Nevada; Airport Lease Application

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), as amended, Rosaschi Dusters has applied for an airport lease for the following land:

T. 11 N., R. 24 E., Mt. Diablo Mer., NV.
Sec. 6, All.

The area described comprises 640 acres in Lyon County, Nevada. The application was filed on June 19, 1981, and on that date, the land was segregated from all other forms of appropriation under the public land laws.

Interested persons may submit comments to the District Manager, Bureau of Land Management, 1050 East William Street, Suite 335, Carson City, Nevada 89701.

Thomas J. Owen,

District Manager.

[FR Doc. 81-33881 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A., Inc.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS-G 3401, 2316, and 4445, Blocks 8 and 288, South Marsh Island Area, and Block 133, Eugene Island Area, respectively, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-33887 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2111, Block 314, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OSC Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OSC Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-33886 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ODECO Oil & Gas Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCA 0228, Block 93, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-33885 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ODECO Oil & Gas Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 073, Block 19, South Pelto Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-33888 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Pennzoil Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3409, Block 351, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Lousiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, exeutives of affected local governments, and other interested parties became effective December 13,

1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-33684 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 13, 1981. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 9, 1981.

Carol D. Shull,

Acting Keeper of the National Register

CALIFORNIA

Alameda County

Berkeley, *First Unitarian Church*, 2401 Bancroft Way

Kings County

Hanford, *Hanford Carnegie Library*, 109 E. 8th St.

INDIANA

Fulton County

Akron vicinity, *Prill School*, NW of Akron

Vigo County

Terre Haute, *Collett Park*, N. 7th St. and Maple Ave.

LOUISIANA

Beauregard Parish

DeRidder, *Beauregard Parish Jail*, Pine St.

Cameron Parish

Dameron vicinity, *Sabine Pass Lighthouse*, Lighthouse Bayou

West Feliciana Parish

Angola vicinity, *Archeological Site 16WF21 (Bloodhound Site)* Angola Penitentiary

New York

Bronx County

Bronx, *Public School 15*, 4010 Dyre Ave.

Kings County

Brooklyn, *Public School 65K*, 158 Richmond St.

Brooklyn, *Public School 108*, 200 Linwood St.

Brooklyn, *Public School 111 and Public School 9 Annex*, 249 Sterling Pl. and 251 Sterling Pl.

New York County

New York, *Public School 157*, 327 St. Nicholas Ave.

Suffolk County

Brookhaven vicinity, *Smith Estate*, N of Brookhaven at Longwood and Smith Rds.

WEST VIRGINIA

Pendleton County

Franklin, *McCoy House*, Main St.

[FR Doc. 81-33823 Filed 11-23-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: November 18, 1981.

As indicated in our notice of November 13, 1981, the United States Court of Appeals for the Fifth Circuit, in No. 81-4437, *Central Forwarding, Inc., et al.* v. *Interstate Commerce Commission*, has stayed the Commission's decision in Ex Parte No. 311 (Sub-No. 4), *Modification of the Motor Carrier Fuel Surcharge Program*, served October 8, 1981, until further order of the Court.

Accordingly, the provisions of the present revenue-based surcharge will remain in effect, including the requirement that owner-operators be reimbursed at the level established by the Commission. Until the Court rules, we will continue to issue weekly decisions establishing the various surcharge levels.

In our recent decisions, an 18.0-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 17.8 percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 18.0 percent. All owner-operators are to receive compensation at this level.

No change is authorized in the 2.0-percent surcharge for United Parcel Service, or the 6.6-percent surcharge for bus carriers. However, the authorized surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators is increased to 3.1-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday, 12:01 a.m., November 20, 1981.

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

Agatha L. Mergenovich,

Secretary.

November 16, 1981.

APPENDIX.—FUEL SURCHARGE

Base date and price per gallon (including tax)

Jan. 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

Nov. 16, 1981 ..... 130.5¢

	Transportation performed by—			
	Owner-Operator	Other [1]	Bus Carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of Total Revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	17.8	3.1	6.6	[3] 2.8
Percent surcharge allowed	18.0	3.1	6.6	[4] 2.0

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-33863 Filed 11-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Motor Carriers; Lease and Interchange of Vehicles

Decided: October 29, 1981.

National Freight, Inc., (MC-2860 and MC-148941) and TLX, Inc. (MC-149473) have filed a petition for waiver of Subpart B, except paragraph (b) of § 1057.11 and paragraph (d) of § 1057.22 of Subpart C of the Lease and Interchange of Vehicles Regulations (49 CFR 1057).

Findings

1. The evidence furnished shows that petitioners are only controlled by segmented family members which by itself does not constitute a common

control relationship, a necessary element for purposes of the waiver requested.

It is ordered:

1. The petition of National Freight, Inc. and TLX, Inc. for the above partial waiver of Subparts B and C of the leasing regulations is denied without prejudice to a grant of the petition should they submit sufficient additional information for us to conclude that lawful common control, in fact, exists.

Decided: October 30, 1981.

National Freight, Inc., (MC–2860 and MC–148941) and Transportation System of America, Inc. (MC–153811) have filed a petition for waiver of Subpart B, Sections 1057.11 except paragraph (b) and 1057.12 and paragraph (d) of Section 1057.22 of Subpart C, of the Lease and Interchange of Vehicles Regulations (49 CFR 1057).

Findings

1. The evidence furnished shows that petitioners are only controlled by segmented family members which by itself does not constitute a common control relationship, a necessary element for purposes of the waiver requested.

it is ordered:

1. The petition of National Freight, Inc. and Transportation System of America, Inc. for the above partial waiver of Subparts B and C is denied without prejudice to a grant of the petition should they submit sufficient additional information for us to conclude that lawful common control, in fact, exists.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Robert S. Turkington, and John H. O'Brien. Board Member Robert S. Turkington not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–33868 Filed 11–23–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be isssued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–307

Decided: November 17, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 158181, filed September 11, 1981. Applicant: ALUMUNUM EXPRESS, INC., 333 Rocky Fort Dr., N.E., Newark, OH 43055. Representative: Andrew J. Burkholder, 275 E. State St., Columbus, OH 43215, (414) 228–8575. Transporting *metal products*, between points in Licking County, OH and Erie County, PA, on the one hand, and, on the other, points in OH and PA.

Volume No. OPY–2–224

Decided: November 16, 1981.

By the Commission, Review Board No. 1, Members: Parker, Chandler, and Fortier.

MC 107002 (Sub-591), filed November 5, 1981. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, 601–948–5711. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with Atlas Processing Co., of Shreveport, LA, and Chem Ash, Inc., of Redfield, AR.

MC 112713 (Sub-325), filed November 2, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., (same address as applicant), (913) 383–3000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Zenith Radio Corporation, of Chicago, IL.

MC 148353 (Sub-4), filed November 5, 1981. Applicant: PORTER LINES, INCORPORATED, 2251 North Dragon, Tucson, AZ 85745. Representative: Milton W. Flack, 8383 Wilshire Blvd., No. 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting *chemicals and related products, rubber and plastic products, clay, concrete, glass or stone products, food and related products, and metal products*, between points in NY, on the one hand, and, on the other, points in the U.S.

MC 152082 (Sub-7), filed November 2, 1981. Applicant: R. C. SERVICE, INC., 830 Supreme Dr., Bensenville, IL 60106. Representative: Thomas M. O'Brien, 10 S. La Salle St., Suite 1600, Chicago, IL 60603, 312–263–1600. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with

the Wessel Company, Inc., of Elk Grove Village, IL.

MC 152903 (Sub-4), filed November 2, 1981. Applicant: P & H TRUCKING, INC., 3600 W. 127th St., Alsip, IL 60406. Representative: Wulf Petersen, 43W225 Blue Larkspur, Elburn, IL 60119, (312) 365–9535. Transporting *steel and steel products*, between points in Cook County, IL, on the one hand, and, on the other, points in IN, IA, MI, MO, and WI.

MC 152993, filed November 5, 1981. Applicant: THOMAS E. TANZER, d.b.a. TANZER & TANZER TRUCKING CO., 115 Eastwind Dr. (P.O. Box 306), Lake Havasu City, AZ 86403. Representative: Thomas E. Tanzer (same address as applicant), 602–855–2527. Transporting *general commodities*, between ponts in Los Angeles, Orange and Ventura, Counties, CA, and, Mohave County, AZ.

MC 159092, filed November 2, 1981. Applicant: ROLLERS VAN & STORAGE CO., INC., 3170 East 36th St., Tucson, AZ 85713. Representative: Lewis P. Ames, 111 West Monroe, 10th Fl., Phoenix, AZ 85003, 602–257–5500. Transporting *household goods*, between points in AZ, CA, CO, UT, NM, NV and TX.

MC 159113, filed November 3, 1981. Applicant: VIKINGS' ADVENTURES, INC., 40 Garrett Rd., Upper Darby, PA 19082. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036, 202–296–2900. Transporting *passengers and their baggage, in the same vehicle with passengers*, in charter and special operations, between points in Lehigh, Northampton, Berks, Lancaster, Lebanon, Chester, Bucks, Montgomery, Philadelphia and Delaware Counties, PA and Atlantic County, NJ, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 159142, filed November 2, 1981. Applicant: C & C TRANSPORTATION, 6275 E. 39th Ave., Denver, CO 80207. Representative: William Avara, 13702 West 20th Pl., Golden, CO 80401, 303–278–8491. Transporting *beverages*, between points in the U.S., under continuing contract(s) with C & C Distributing Co., of Denver, CO.

Volume No. OPY–4–441

Decided: November 17, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 117786 (Sub-140), filed: November 6, 1981. Applicant: RILEY WHITTLE, INC., P.O. Box 19038 Phoenix, AZ 85005. Representative: A. Michael Bernstien, 1441 E. Thomas Rd., Phoenix, AZ 85014, (602) 264–4891. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI).

MC 136796 (Sub-8), filed November 5, 1981. Applicant: CHARLES OTTO, d.b.a. OTTO TRANFER, 417 Elm St., Delano, MN 55328. Representative: John B. Van de North, Jr., 2200 Firest National Bank Bldg., St. Paul, MN 55101, (612) 291–1215. Transporting *insulation*, between points in the U.S. (except AK and HI), under continuing contract(s) with Insulation Sales Company, Shelter Shield Products Division, of Hamel, MN.

MC 146046 (Sub-4), filed November 11, 1981. Applicant: INTERCOASTAL LINES, LTD., 200 Foxhunt Crescent, Syosset, NY 11791. Representative: Morton E. Kiel, Suite 1932, 2 World Trade Center, New York, NY 10048–0640, (212) 466–0220. Transporting *such commodities* as are dealt in or used by grocery, Department, and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Lever Brothers Company, of New York, NY.

MC 146596 (Sub-3), filed November 9, 1981. Applicant: FRED NcCAKK TRYCJUBGM UBC, 2079 Railroad Ave., P.O. Box 258, Ontario, NY 14519. Representative: James E. Brown, 36 Brunswick Rd., Depew, NY 14043, (716) 681–7190. Transporting *fertilizer* between Toledo, OH and Norfolk, VA, on the one hand, and, on the other, points in NY.

MC 147536 (Sub-36), filed November 9, 1981. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: Wilburn L. Williamson, Suite 615—East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112, (405) 848–7946. Transporting *clay, concrete, glass and stone products*, between points in the U.S. (except AK and HI).

MC 152266 (Sub-3), filed November 6, 1981. Applicant: ABC EXPRESS, INC., P.O. Box 890, Lebanon, TN 37087. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), (1) between points in GA and TN, and (2) between points in GA and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153906 (Sub-1), filed November 6, 1981. Applicant: LIONEL ABRAHAM CLOUD, d.b.a. LIONEL'S MOBILE HOME TRANSPORTING, Rural Route 4, Box 26, Baraboo, WI 53913. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608) 238–3119. Transporting *house trailers and mobile homes*, between points in IL, IN, MI, MN, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159176, filed November 6, 1981. Applicant: ANTHONY V. PATCHETT AND MICHAEL GORDON PIERCE, d.b.a. SUNSET MOVING & STORAGE OF CALIFORNIA, 5422 Oceanus St., Huntington Beach, CA 92649. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306 (805) 872–1106. Transporting *such commodities* as are dealt in or used by constructors of trade show exhibits, (1) between points in Orange County, CA, on the one hand, and, on the other Hartford, CT, Houston, TX, and points in NJ, (2) between Atlanta, GA, Dallas and Houston, TX, Denver, CO, Detroit, MI, Las Vegas, NV, Los Angles, CA, Miami, FL, New Orleans, LA, St. Louis, MO, and Washington, DC, and (3) between points in Clark County, NV, on the one hand, and, on the other, Chicago, IL and New York, NY.

MC 159186 filed November 9, 1981. Applicant: GENE POWELL, d.b.a. G & A TRANSPORTATION 237 Baldwin St., Montrose, MI 48457. Representative: Michael A. Wargula, 128 Sherburn Dr., Hamburg, NY 14075, (716) 845–6066. Transporting (1) *machinery*, between points in Shiwahassee County, MI, on the one hand, and, on the other, points in AL, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, NE, NV, OH, OK, OR, PA, TN, TX, UT, and WI, (2) *building materials*, between points in Genesee County, MI, on the one hand, and, on the other, points in OH, PA, IN, IL, AL, GA, MT, and ND, (3) *steel tubing*, between points in Huron County, MI, on the one hand, and, on the other, points in AR, GA, IL, IN, IA, KY, MI, MN, MO, NJ, NY, NC, OH, PA, TN, VA, WV, WI, and ND, (4) *fabricated metal products*, between points in Genesee County, MI, on the one hand, and, on the other, points in the U.S., and (5) *iron and steel foundry facings and graphite*, between points in Saginaw County, MI, on the one hand, and, on the other, points in IL, IN, and OH.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-33867 Filed 11-23-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules

of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this complaint is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams (Carleton not participating).

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-4-446

Decided: November 12, 1981.

MC 20337 (Sub-3), filed November 2, 1981. Applicant: O. K. MOVING & STORAGE CO. OF MARYLAND, INC., 8955 D'Arcy Rd., Upper Marlboro, MD 20772. Representative: Joseph T. Bell (same address as applicant), (301) 350-5866. Transporting *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

Volume No. OPY-4-447

Decided: November 13, 1981.

MC 159167, filed November 6, 1981. Applicant: ALEXANDER INTERNATIONAL, INC., P.O. Box 30250, 2496 Winchester Rd., Memphis, TN 38130. Representative: James W. Edgin, P.O. Box 42560, 1041 Lee's Mill Rd., Atlanta, GA 30320, (404) 997-2112. As a *broker of general commodities* (except household goods), between points in the U.S.

[FR Doc. 81-30129 Filed 11-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 199]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: November 18, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 1222 (Sub-53)X, filed October 16, 1981. Applicant: THE REINHARDT TRANSFER COMPANY, 1410 Tenth St., Portsmouth, OH 45662. Representative: Robert H. Kinker, 314 West Main St., P.O Box 464, Frankfort, KY 40602. Lead and Subs 13, 15, 17, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 38, 40, 42, 43, 45, 46F, 48F and 49F certificates and Subs E1, E2, and E3 letter notices: (A) Broaden (1) from (a) lead and Subs 19 and 46F, general commodities (with exceptions) to "general commodities (except classes A and B explosives)", (b) meat and lard and alcoholic liquors, lead; animal feed mixture and urea, Sub 13; foodstuffs, Sub 26; and, food and foodstuffs, Sub 37 to "food and related products"; (c) lead, iron and steel and articles of iron and steel manufacture and pallets and containers to "metal products and containers"; (d) lead, glass, glassware and containers to "such commodities as are dealt in or used by manufacturers or distributors of glass, glassware, and containers"; (e) firebrick, fireclay and fireclay products and containers, plate glass and window glass, and clay, lead; firebrick, fireclay and high temperature bonding mortar, Subs 15 and 17; and brick and refractories, Sub 23, to "clay, concrete, glass or stone products"; (f) lead, petroleum products to "petroleum or coal products"; (g) chemicals and cleaning compounds and paint, lead; dry fertilizer compounds, Sub 13, chemicals, materials and supplies used in the

manufacture of expanded plastics and plastic granules, Sub 24; calcium chloride and magnesium chloride, Sub 40; and chemicals, Sub 48F, to "chemicals and related products"; (h) lead, automobile axles to "transportation equipment"; (i) lead, refrigerators and refrigerator cabinets and refrigerator parts to "such commodities as are dealt in or used by manufacturers or distributors of refrigerator and refrigerators cabinets"; (j) lead, empty paint drums to "containers"; (k) lead, stampings to "metal products, and miscellaneous products of manufacturing"; (l) sheet steel, lead; iron and steel articles, Subs 27, 43, 49F, E1, E2, and E3; and metal products, Sub 48F, to "metal products"; (m) lead, shop machinery and machine rolls to "machinery"; (n) lead, pallets to "empty returned containers"; (o) foam, cellular, expanded, or sponge plastic articles and materials, Sub 20; expanded plastics and plastic granules, Sub 24; plastic foam cellular or expanded products and plastic products, Sub 35; plastic and plastic products, Sub 36; plastic foam shapes and forms, Sub 39; expanded plastic products, Sub 45; plastic film sheeting and plastic foam, Sub 48F; and plastic foam shapes and forms, Sub E2, to "rubber and plastic products"; (p) Sub 29, plastic granules to "chemicals and related products and rubber and plastic products"; (q) Subs 30 and 31, fibreboard partitions; and Sub 32, fibreboard and chipboard, to "pulp, paper and related products"; (r) Sub 32, waste and scrap paper to "waste or scrap materials not identified by industry producing", (s) plastic coated aluminum, Sub 35; and plastic coated metals, Sub 42 to "metal products"; and (t) Sub 42, magnesium engraving plate to "printed matter"; (2) authority to allow service at all intermediate points on its regular routes (a) between Maysville, KY and Aberdeen, OH, and, (b) between Hammond, IN and highway junction, (B) remove (1) (a) "truck load" restriction, lead; (b) "commodities in bulk" restriction, lead and Subs 20, 23, 24, 27, 29, 34, 35, 37, 40 and 45; (c) "size or weight" restriction, Subs 21, 22, 27, 32 and E2; (d) "originating at or destined to" restriction, Subs 21, 27, 37 and 42; and (2) restriction prohibiting the transportation of special commodities to named points, Sub 23;

(C) Broaden to (l) county-wide authority: (a) Marion County, WV (Fairmont), lead; (b) Boyd and Greenup Counties, KY, Lawrence County, OH and Wayne County, WV (Ashland, KY), lead and Subs 17, 23, and E1; (c) Greenup County, KY and Scioto County, OH (New Boston, OH) lead; (d) Butler and Warren Counties, OH (Middletown), lead; (e) Harrison County, WV (Clarksburg), lead; (f) Mercer County, WV and Bland County, VA (Bluefield, WV), lead; (g) Greenup County, KY and Scioto County, OH (Portsmouth, OH), lead and Subs 17, 23, 30, 31, 32, 34, and E2; (h) Greenup County, KY (Taylor), lead and Sub 23; (i) Jackson County, OH for (Oak Hill), lead and Sub 23; (j) Wayne and Henry Counties, IN (Cambridge City), lead and Sub 23; (k) Pleasants County, WV (St. Mary's), lead; (l) Clark County, OH (Springfield), lead; (m) Dearborn County, IN and Boone County, KY (Lawrenceburg, IN), lead; (n) Kanawha County, WV (Charleston), lead; (o) Fayette County, IN (Connersville), lead; (p) Sandusky County, OH (Clyde), lead; (q) Trumbull County, OH (Warren), lead; (r) Mahoning and Columbiana Counties, OH (Salem), lead; (s) Defiance County, OH (Defiance) lead; (t) Tuscarawas County, OH (Dover), lead; (u) Lawrence County, OH and Greenup and Boyd Counties, KY (Ironton, OH), lead, and Subs 17, 23, 34, and E2; (v) Lawrence County, OH, Boyd County, KY and Wayne County, WV (South Point, OH) Sub 13; (w) Carter County, KY (Hayward, Hitchens and Olive Hill), Subs 15 and 23; (x) Carter County, KY (Olive Hill, Hitchens and Grahn), Sub 17; (y) Greenup County, KY (facilities—Fullerton), Subs 17 and 23; (z) Rowan County, KY (Haldeman), Subs 15 and 23; (aa) Lawrence and Scioto Counties, OH (plantsite—Hanging Rock), Subs 20 and E2; (bb) Kankakee County, IL (facilities—Kankakee County), Subs 21, E2 and E3; (cc) Boyd County, KY (facilities—Ashland, Boyd County), Sub 43; (dd) Lawrence County, OH (Hamilton Township), Subs 24, 29, 34, 36, and E2; (ee) Lucas and Wood Counties, OH (facilities—Rossford), Sub 26; (ff) Putnam County, IL (facilities—Putnam County) Subs 27 and E2; (gg) Delaware County, IN (Eaton), and Washington and Westmoreland Counties, PA (Donora) in Sub 32; (hh) Bay, Midland and Saginaw Counties, MI (Midland), Subs 35 and 40; (ii) Hancock County, OH (Findlay), Subs 35 and 42, and E2; (jj) Champaign County, IL (Champaign), Sub 37; (kk) Adams County, IN (Decatur), Sub 39; (ll) Mason County, MI (Ludington), Sub 40; (mm) Scioto County, OH (facilities—Portsmouth, Scioto County), Sub 43; and (nn) Grundy and Will Counties, IL (Channahon), Sub 45; (2) radial authority, lead, and Subs 13, 15, 17, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 39, 40, 42, 43, 45, 48F, 49F, E1, E2, and E3; and (3) Kansas City, MO-Kansas City, KS commercial zone by removing exception against service to points in KS in the commercial zone in Sub 40.

MC 103191 (Sub-489)X, filed November 4, 1981. Applicant: THE GEO. A. RHEMAN CO., INC., P.O. Box 2095, 2019 Elgin Street, Station A, Charleston, SC 29403. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., NW., Washington, D.C. 20004. Subs 7, 23, 34, 38, 40, 45 and 51. Broaden: fly ash to "metals products" in Sub 7; dry fertilizer in Sub 23 and helium in Sub 51 to "chemicals and related products"; blasting sand to "ores and minerals and waste or scrap materials not identified by industry producing" in Sub 34; and alcoholic liquors to "food and related products" in Subs 38, 40 and 45; (2) remove restrictions: in bulk in Subs 7, 23, 344, 38, 40 and 45; in tank or hopper vehicles in Sub 7, and in tube-type trailers in Sub 51; broaden Cincinnati to Hamilton County, OH, in Subs 38, 40 and 45; Charleston to Charleston County, SC, in Sub 38; Savannah to Chatham County, GA, in Sub 45; and Goose Creek to Berkeley County, SC and to radial in Subs 23, 34 and 51.

MC 114052 (Sub-10)X, filed October 28, 1981. Applicant: CATENCAMP TRANSFER & STORAGE, INC., 218 East Richmond Street, Shawano, WI 54166. Representative: William P. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Sub-Nos. 5 and 8F permits, broaden (1) to "between points in the U.S.," under continuing contract(s) with named shippers; (2) Sub-No. 5, to "such commodities as are used by, dealt in, or distributed by a manufacturer of wood products, "from wood molding, laminated door jambs, and veneer products; and (3) Sub-No. 8, to "such commodities as are used by, dealt in, or distributed by a manufacturer of paper and paper products," from paper and paper products, and waste, scrap paper, and pallets.

MC 123640 (Sub-38)X, filed November 2, 1981. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Avenue, Ft. Wayne, IN 46803. Representative: Irving Klein, Southgate Tower, 371 Seventh Avenue, New York, NY 10001. Subs-18 and 22: (1) broaden territorial descriptions to: between points in the US, under continuing contract(s) with named shippers in each permit; and (2) remove the "except frozen foods, meats, and dairy products in vehicles equipped with mechanical refrigeration" restrictions in Sub 18.

MC 123640 (Sub-39)X, filed November

2, 1981. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Avenue, Ft. Wayne, IN 46803. Representative: Irving Klein, Southgate Tower, 371 Seventh Avenue, New York, NY 10001. Subs 25, 31 permits broaden to between points in continental U.S. under continuing contract(s) with named shippers.

MC 135824 (Sub-7)X, filed November 3, 1981. Applicant: KLAPEC TRUCKING COMPANY, R.D. 1, 673 N. Seneca St., Oil City, PA 16301. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. Lead, Subs 1, 3F and 4. Broaden: lead, ingots and ingot moulds to "metal products" and scrap metals to "waste or scrap materials"; Sub 1, parts 1(a) and (b) steel pigs, ingots, ingot molds and steel castings to "metal products"; Sub 1, part 1(c), steel and steel products to "metal products"; refractory products to "clay, concrete, glass or stone products"; fluxing materials to "chemicals and related products", scrap metals to "waste or scrap materials"; and electrodes to "machinery"; Sub 1, part 1(d), clay refractories to "clay, concrete, glass or stone products"; Sub 1, part 1(e), electrodes to "machinery"; Sub 1, part 1(f), scrap alloys to "waste or scrap materials"; (g) Sub 1, part (2), steel and steel products to "metal products"; Subs 3, 4, iron and steel articles to "metal products"; to radial authority in lead and Sub 1; remove restrictions against transportation of bulk/size and weight commodities and traffic originating/destined to named points in Sub 1; change to remove restrictions which prevent participation in joint-line service with other carriers in the Sub 1 certificate; broaden to Venango County for facilities at Oil City, PA in lead; Venango County for facilities at Oil City, PA; Fairfield County for Bridgeport, CT; Winnebago County for Rockford, IL; Howard and Lake Counties for Kokomo and Gary, IN; Kenton County for Covington, KY; Suffolk County for Braintree, MA; Waukesha and Milwaukee Counties for Waukesha and Milwaukee, WI; Morris and Elizabeth Counties for Florham Park and Hillside, NJ; Hamilton County for Chattanooga, TN; King County for Seattle, WA; Hancock and Upshur Counties for Newell and Buckhannon, WV; Jefferson County for Louisville, KY, and Howard County, for Kokomo, IN in Sub 1; and Venango County for Oil City, PA in Sub 3F.

[FR Doc. 81-33864 Filed 11-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OPY-4VOL-447]

Motor Carrier Permanent Authority Decision; Republications of Grants of Operating Rights Authority Prior to Certification

Decided: November 4, 1981.

The following grants of operating rights authorities are republished by order of the Commission to indicate a broader grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 153516 (Sub-1)(republication), filed July 20, 1981; published in the **Federal Register** issue of August 3, 1981; and republished this issue. Applicant: INTERSTATE EXPRESS, INC., P.O. Box 37144, Millard, NE 68137. Representative: William J. Boyd, 2021 Midwest Rd., Suite 205, Oak Brook, IL 60521. In a decision by the Commission, Review Board Number 2, decided November 4, 1981, and finds that performance by the applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting *such commodities* as are dealt in and used by food manufacturers and food business houses, (1) between points in Freeborn County, MN; Linn, Cherokee, Page, and Polk Counties, IA; Prince Georges County, MD; Jefferson County, KY; Cass County, IN; Warren County, IL; Saline County, MO; Denver, CO; Oklahoma City, OK; and Omaha, NE, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); and (2) between points in Sebastian County, AR; Emmet, Humboldt, and Woodbury Counties, IA; Cowley and Sedgwick Counties, KS; Nobles and Martin Counties, MN; El Paso and Lubbock Counties, TX; Montgomery, AL; Chicago and East St. Louis, IL; Shreveport, LA; Cincinnati, OH; Sioux Falls, SD; Amarillo, TX; and Memphis, TN, on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, will serve a useful public purpose, responsive to a public demand or need. That the applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to give notice of the authority actually granted.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-33861 Filed 11-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29749]

Union Pacific Railroad Company and Oregon Short Line Railroad Company; Exemption of Abandonment of 0.37 Mile of Track in Cassia County, ID

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 the abandonment by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 0.37 mile of track in Cassia County, ID. This is a portion of the Raft River Branch extending from MP 9.24 to the end of the line at MP 9.61.

DATES: This exemption will be effective 30 days after the date of this publication in the **Federal Register.** Petitions for reconsideration of this action must be filed within 20 days of publication.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, Washington D.C. 20423

and

(2) Petitioner's Representative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179

Pleadings should refer to Finance Docket No. 29749.

Copies of the full decision are available from: Interstate Commerce

Commission, Room 2227, 12th & Constitution Avenue, NW., Washington DC 20423, or by calling toll-free: 800–424–5403.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision.

Decided: November 17, 1981.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-33865 Filed 11-23-81; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

AGENCY: National Commission for Employment Policy.

ACTION: Notice of Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is given of the twenty-fourth meeting of the National Commission for Employment Policy at the Hyatt Regency Hotel, 400 New Jersey Avenue, N.W., Washington, D.C.

DATE: December 18, 1981, 9:00 a.m. to 4:00 p.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Commission members will discuss the future of employment and training delivery systems and the financing and management of such a system. They will hear reports on the staff work on labor market problems of Hispanics and developing a labor market policy for older workers.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Saks, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300 Washington, D.C. 20005 (202–724–1545).

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established as title V of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least two days before the meeting and not more than seven days after the meeting.

In addition, members of the general public may request to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the Director at least three days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written presentation.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of facts and views and shall not include any questioning of Commission members or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street, N.W., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C. this 17th day of November 1981.

Ralph E. Smith,

Deputy Director, National Commission for Employment Policy.

[FR Doc. 81-33919 Filed 11-23-81; 8:45 am]

BILLING CODE 4510-30-M

Meeting

AGENCY: National Commission for Employment Policy.

ACTION: Notice of Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is given of a conference on the future of employment and training delivery systems, sponsored by the National Commission for Employment Policy. The conference will be held at the Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, D.C.

DATE: December 16, 1981, 1:00–5:00 and December 17, 9:00–4:30.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The purpose of the conference is to provide background and direction to policymakers and Commission members for the development of future employment and training delivery systems. Sessions will consider delivering services at state and local levels in times of fiscal austerity, the role and capacity of the private sector in delivering employment and training services and financing and managing an employment and training system.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel H. Saks, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, D.C. 20005, (202–724–1545).

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established as title V of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues.

Signed in Washington, D.C., this 17th day of November 1981.

Ralph E. Smith,

Deputy Director, National Commission for Employment Policy.

[FR Doc. 81-33920 Filed 11-23-81; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Programs; 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 Literature Program to the National Council on the Arts will be held on December 11, 1981, from 9:00 a.m.-5:30 p.m. and on December 12, 1981, from 9:00 a.m.-1:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 12, 1981, from 12:30–1:30 p.m. to discuss policy.

The remaining sessions of this meeting on December 11, 1981, from 9:00 a.m.-5:30 p.m. and on December 12, 1981, from 9:00 a.m.-12:30 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 19, 1981.

[FR Doc. 81–33891 Filed 11–23–81; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Panel (Painting); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Painting) to the National Council on the Arts will be held December 15–17, 1981, from 9:00 a.m.–5:30 p.m. in room 1422 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 19, 1981.

[FR Doc. 81–33892 Filed 11–23–81; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 will be meeting on December 10, 1981, from 7:00 p.m. to 10:00 p.m. in the City Council Chambers, Kendig C. Bare Public Safety Building, 208 N. Duke Street, Lancaster, Pennsylvania 17604. The meeting will be open for public observation.

At this meeting the Panel will discuss alternative strategies for assuring financial resources to complete the TMI–2 cleanup.

Further information on the meeting may be obtained from Dr. William Travers, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: November 19, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–33927 Filed 11–23–81; 8:45 am]

BILLING CODE 7590–01–M

Screening Committee for Lawyer Vacancies on the Licensing Board Panel; Meeting

Notice is hereby given in accordance with section 10 of the Federal Advisory Committee Act that the NRC's Screening Committee for Lawyer Vacancies on the Atomic Safety and Licensing Board Panel will hold a meeting on December 15, 1981 and if necessary the morning of December 16, 1981. The meeting will begin at 9:00 a.m. each day at East West Towers, 4350 East West Highway, Room 415, Bethesda, Maryland 20014.

The Committee will meet in order to interview and consider the qualifications of administrative law judges who may be assigned to the Atomic Safety and Licensing Board Panel. All sessions will be closed.

I have determined in accordance with section 10(d) of Pub. L. 92–463 that it is necessary to close these meetings in order to protect information, the release of which would represent an unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6). Any discussion not involving personal privacy will be inextricably intertwined with discussion of Exemption 6 matters.

For further information, contact Charles J. Fitti, Assistant Executive Secretary, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301/492–7816).

Issued at Washington, D.C., this 19th day of November 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81–33928 Filed 11–23–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co.; Granting an Exemption From the Requirements of 10 CFR 50.48 and Appendix R for Fire Protection

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 the Boston Edison Company (the licensee).

This exemption related to a requirement for a fixed fire suppression system in the Control Room of the Pilgrim Nuclear Power Station, Unit 1. The basis for this action is set forth in the Commission's Exemption dated November 10, 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 and 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 18, 1981 and (2) the Commission's Exemption dated November 10, 1981. Items (1) and (2) are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Plymouth Public Library, North Street, Plymouth, Massachusetts 02360. 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, Maryland, this 10th day of November 1981.

For the Nuclear Regulatory Commission.

Philip J. Polk,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81–33929 Filed 11–23–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power and Light Co.; Granting an Exemption From the Requirements of 10 CFR 50.48 and Appendix R for Fire Protection

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), for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2.

This exemption related to a requirement for a fixed fire suppression system in the control room. The basis for this action is set forth in the Commission's exemption dated

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 and 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 6, 1981 and (2) the Commission's Exemption dated November 10, 1981. Items (1) and (2) are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. 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, Maryland, this 10th day of November 1981.

For the Nuclear Regulatory Commission.

Philip J. Polk,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-33930 Filed 11-23-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendent No. 68 to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation which revises the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont. The amendment is effective as of the date of its issuance.

The amendment establishes new vessel level setpoints that are consistent with the installation of a common reference level required by TMI Action Item II.K.3.27 in NUREG-0737.

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 December 1, 1980, (2) Amendment No. 68 to License No. DPR-28, 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 Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. 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. 81-33931 Filed 11-23-81; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket Nos. MC81-2, R81-1]

Attached Mail Proceeding, 1981 and Attached Mail Rates, 1981; Hearing

November 18, 1981.

Notice is hereby given that pursuant to the "Presiding Officer's Notice Delaying Proceedings", dated November 18, 1981, the hearing previously scheduled for November 23, 1981, at 9:30 a.m., is now rescheduled to be held on December 10, 1981, at 9:30 a.m., Hearing Room, Postal Rate Commission, 2000 L Street, NW., Suite 500, Washington, D.C. 20268.

David F. Harris,

Secretary.

[FR Doc. 81-33844 Filed 11-23-81; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18268; File No. SR-NYSE-81-18]

Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Margin for Options on U.S. Treasury Securities

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Commission is extending, until December 11, 1981, the public comment period with respect to a proposed rule change of the New York Stock Exchange relating to margin for options on U.S. Treasury securities.

ADDRESSES: Interested persons should submit six copies of their views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. SR-NYSE-81-18. All submissions will be available for public inspection at the Commission's Public Reference Room 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: D. Michael Lefever, Esq., Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC. 20549, (202) 272-3117.

SUPPLEMENTARY INFORMATION: Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), and Rule 19b-4 thereunder, the New York Stock Exchange, Inc. ("NYSE") has submitted a proposed rule change which, among other things, would establish margin requirements applicable to all NYSE members for exchange-traded options on Government National Mortgage Association pass-through securities ("GNMAs") and U.S. Treasury securities and over-the-counter options on U.S. Government securities other than GNMAs.[1] The proposed margin requirement for over-the-counter options on such securities is substantially greater than the margin

[1] The proposed rule change also includes proposed amendments to the NYSE's rules governing the extension of credit to customers on shelf registered, control and restricted securities. The Commission is considering this aspect of the proposed rule change separately. In addition, that portion of the NYSE rule governing margin on exchange-traded options on GNMAs, because it conformed to previously approved rules of the Chicago Board Options Exchange, was approved by the Commission on an accelerated basis. Securities Exchange Act Release No. 18205 (October 23, 1981), 46 FR 53565 (October 29, 1981).

proposed for exchange-traded options, particularly for in-the-money options. Commentators may wish to address the appropriateness of the proposed margin for over-the-counter options relative to that proposed for exchange-traded options.[2] In order to enable commentators to have sufficient time to address these any any other relevant issues, the Commission, in accordance with a request from the Public Securities Association,[3] is extending the period for public comment on the proposed rule change until December 11, 1981.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 18, 1981.

[FR Doc. 81-33825 Filed 11-23-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776, 5 U.S.C. App. I, Supp. II), and with the approval of the Secretary of the Treasury and the concurrence of the Office of Management and Budget, the Office of the Commissioner of Internal Revenue announces the renewal of the following advisory Committee:

Title: The Advisory Group to the Commissioner of Internal Revenue.

Purpose. The primary purpose of the Advisory Group is to provide an organized public forum for discussions of relevant tax administration issues between officials of IRS and representatives of the public. The Advisory Group also offers constructive observations about IRS' current or proposed policies, programs, and procedures and, where necessary, suggests ways to improve IRS' operations.

The Commissioner and other senior officials receive from the Advisory Group a significant amount of information about the problem taxpayers encounter not only in dealing with IRS but also in meeting obligations imposed on them statutorily. The Service uses the advice of the Advisory Group to develop a tax administration system which reflects the simplest, most equitable approach to administering the tax system that it is within our power to pursue. Accordingly, the Advisory Group conveys to the Service the public's perceptions of IRS activities.

Termination Date. The services of the Group are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date the Advisory Group's Charter is approved. The Advisory Group's Charter is approved by signature of the Assistant Secretary of the Treasury for Administration.

Roscoe L. Egger, Jr.,

Commissioner.

November 18, 1981.

[FR Doc. 81-33890 Filed 11-23-81; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Outpatient Clinic, Research and Education Addition, Veterans Administration Medical Center, Iowa City, Iowa; Finding of No Significant Environmental Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a proposed Outpatient Clinic, Research and Education Addition at the Iowa City Veterans Administration Medical Center (VAMC). A final site location has not been selected; however, the addition will consist of multilevels located adjacent to the main hospital building, providing between 93,500 to 132,000 gross square feet of newly constructed space. Existing space renovation, of a magnitude not yet determined, will also be included in the project scope.

Three alternative plans involving different functional adjacencies and points of attachment to the existing medical center have been examined along with the "No Action" alternative.

Concept proposal "A" envisons utilizing the immediate front lawn area directly north of the main entrance to the VAMC. Alternative Concept "B" locates the addition northwest of the existing main entrance with the structure enveloping the Medical Center's west wing. The third alternative, Concept "C", provides for construction of the addition adjacent to the west wing, but on the south side. This plan also would incorporate the wing itself.

All three alternative plans would require revisions in location and alignment of the onsite entrance road, traffic flow pattern and patient/employee parking areas.

Development of the project will have impacts on the human and natural environment affecting open space, soil erosion, and onsite traffic conditions. Short term effects of minor air degradation from construction activity and accompanying increases in noise levels during construction will also occur. In relation to both construction and operation, the project will be built in accordance with all applicable Federal, State and local air quality standards.

All environmental attributes analyzed would not be affected to any extent should the "No Action" alternate be selected. The commitment of resources, energy and labor to implement the development is irreversible and permanent once the project is in place. The commitment of land will be active only as long as the facility fulfills the mission of the VA.

The following mitigation actions will occur during project development. Soil erosion control, noise control during construction and air quality control measures will be implemented and comply with all Federal, State and local codes.

Parking demand needs will be mitigated through implementation of the parking analysis criteria combined with the requirements of OMB Circular A-118.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs, Room 950, Veterans Administration, 1425 K Street NW., Washington, D.C., (202-389-2526).

Questions or requests for single copies of the Environmental Assessment may

[2] In this regard, the Commission notes that the Federal Reserve Board recently amended Regulation T to provide that initial margin for exchange-traded options on exempted debt securities shall be that which is prescribed by the rules of the exchange on which the option is traded; and that initial margin for options on such securities traded over-the-counter shall be that which the creditor in good faith deems to be equivalent to the margin on comparable exchange-traded options. 12 CFR 220.8(j)(2).

[3] Letter to Gene Carasick, Assistant Director, Division of Market Regulation, from Lee A. Pickard, Pickard and Gerry, dated November 4, 1981.

be addressed to: Director, Office of Environmental Affairs, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: November 18, 1981.

Robert P. Nimmo,

Administrator.

[FR Doc. 81-33893 Filed 11-23-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 226
Tuesday, November 24, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 46, 56975, Thursday, November 19, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Tuesday, November 24, 1981.

CHANGES IN THE MEETING: 10 a.m., Tuesday, November 24, 1981.

CONTACT PERSON FOR MORE INFORMATION: Jane K. Stuckey, 245-6314.

[S-1748-81 Filed 11-20-81; 11:29 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, November 24, 1981

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 24, 1981, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Memorandum Opinion and Order regarding petitions for reconsideration and stay of certain rules providing an allocation of spectrum for automated inland waterways communications systems on the Mississippi River and connecting waterways (Gen Docket No. 80-1, RM-3101, RM-3128, RM-3129). *Summary:* The FCC will consider whether to grant or deny two petitions for stay and four petitions requesting partial reconsideration of the rules adopted in the Report and Order in Gen Docket No. 80-1. Essentially, the Report and Order allocated the 216-220 MHz band for use by automated, interconnected, river-wide maritime communications systems on the Mississippi River System. The new rules also prescribed basic operational and technical standards for such automated maritime systems.

General—2—*Title:* Notice of Proposed Rule Making proposing to add the Gulf Intracoastal Waterway to the authorized service area of Inland Waterways Communications Systems. *Summary:* The FCC will consider whether to adopt an NPRM which proposes to amend Sections 2.106, 81.913 and 83.1100 to add the Gulf Intracoastal Waterway to the authorized service area of Inland Waterways Communications Systems in the Maritime Mobile Service.

General—3—*Title:* Notice of Proposed Rule Making to implement changes in the frequencies, operating procedures and other criteria relating to radiotelephony in the band 4000-23000 kHz in the maritime mobile service adopted at the World Maritime Administration Radio Conference, Geneva, 1974. *Summary:* The FCC will consider whether to amend the rules to finalize the frequencies now assigned in the temporary assignment plan; several rule sections have been editorially reorganized and rewritten.

Private Radio—1—*Title:* Amendment of the Amateur Radio Service Rules (Part 97) to permit facsimile and television transmissions in additional frequency bands. *Summary:* The Commission will consider whether to adopt a Report and Order instituting final rules to permit facsimile and television operations (emission types A4, A5, F4 and F5) by amateur radio stations on most frequencies in the HF (high frequency) amateur bands where voice operations (emission types A3 and F3) are permitted.

Private Radio—2—*Title:* Beacon operation in the Amateur Radio Service. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking proposing to amend Part 97 of the Rules to define certain kinds of experimental transmissions by amateur radio stations as "beacon operation." The Notice also proposes rules to govern this type of operation.

Private Radio—3—*Title:* Inter-Governmental Maritime Consultative Organization: Preparation of Recommended Operational Standards applicable to equipment mandatorily fitted aboard vessels subject to the Safety of Life at Sea Convention. *Summary:* The Commission will consider adoption of a Notice of Inquiry concerning actions resulting from the Twenty-third Session of the Inter-Governmental Maritime Consultative Organization's (IMCO) Subcommittee on Radiocommunications. Consideration will be given to the future distress system being developed by IMCO as well as other technical and operating matters pertaining to the maritime mobile radio service. These IMCO actions may ultimately affect vessels which are mandatorily or voluntarily fitted with radio communication equipment.

Private Radio—4—*Title:* Report and Order concerning the deletion of the prohibition against the establishment of new public coast stations operating on frequencies below 27,500 kHz. *Summary:* The Commission is considering whether or not to adopt a Report and Order deleting Section 81.303(c) which prohibits the establishment of new public coast stations operating on frequencies below 27,500 kHz.

Common Carrier—1—*Title:* Amendment of Section 22.521(b) of the Commission's Rules to add Memphis, Tennessee, to the air-ground table of assignments in the Domestic Public Land Mobile Radio Service; amendment of Section 1.420 of the Commission's Rules to apply additional procedures in proceedings to amend the air-ground table of assignments. *Summary:* The Commission will consider whether to add Memphis, Tennessee, to the air-ground table of assignments in response to a petition filed by Mobile/Comm, Inc. The Commission will also consider whether to apply additional procedures in proceedings to amend the air-ground table of assignments.

Cable Television—1—Application for Modification of a Construction Permit in the Cable Television Relay Service (CAR-14627-02) filed April 15, 1980, by American Cable Television, Inc. American Cable Television, Inc., permittee of CARS station WCD-820, Fountain Hills, Arizona, has filed the above-captioned application for modification of its construction permit. Cross Country Cable, Ltd., has filed a petition to deny the application.

Cable Television—2—"Application for Review" (CSR-1916) filed October 5, 1981, by WLFI-TV, Inc., licensee of Station WLFI-TV (CBS, Channel 18), Lafayette, Indiana. WLFI-TV, Inc., licensee of Station WLFI-TV (CBS, Channel 18), Lafayette, Indiana, seeks Commission review of the decision of the Chief of the Cable Television Bureau in *WLFI-TV, Inc.*, Mimeo No. 003321 (released September 10, 1981), denying WLFI-TV's request for waiver of Section 76.92(g) of the Commission's Rules.

Television—1—*Title:* Mutually exclusive applications of Public Communication Foundation for North Texas and Denton Channel Two Foundation, Inc. for CP for a new ETV station on Channel 2, allocated to Denton, Texas. *Summary:* As their communities of license, PCF proposes Flower Mound, Texas (under the "15-mile rule") and Denton Channel Two proposes Denton. The Commission will consider a

hearing order which includes non-routine issues.

Complaints and Compliance—1—*Title:* Application for Review of staff action denying request for program logs more than two years old at the time of the request and denying request for public inspection of operating and maintenance logs. *Summary:* Vincent L. Hoffart seeks review of staff action denying his requests for "additional" program logs of KJRB, Spokane, Washington and for an order that operating and maintenance logs be available in a station's public inspection file. The Commission will review the staff's action and consider whether to grant or deny the Application for Review.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: November 17, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1745-81 Filed 11-20-81; 9:56 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold a Closed Commission Meeting, Tuesday, November 24, 1981.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Tuesday, November 24, 1981, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington D.C.

Agenda, Item No., and Subject

Hearing—1—Application for Review of the Review Board Decision in the Boulder City, Nevada FM proceeding (BC Docket Nos. 80-76, 80-77).

Hearing—2—Interlocutory appeal in the Anax Broadcasting, Inc., Buffalo, New York, UHF comparative proceeding (BC Docket Nos. 81-56-60).

Hearing—3—Options for further action in the Faulkner Radio, Inc. license renewal proceeding involving three AM and three FM stations (Docket Nos. 20910-15).

Hearing—4—Petition for Modification of Decision and Request for Stay in the Alexander S. Klein, Jr. comparative FM proceeding (Docket Nos. 20587-69).

Hearing—5—Petition for Reconsideration in the Belo Broadcasting Corporation/ Maxwell Broadcasting Corporation comparative renewal proceeding for standard broadcast station WFAA and FM broadcasting station (KZEW; Dallas, Texas (Docket Nos. 20945-48).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: November 17, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1746-81 Filed 11-20-81; 9:56 am]

BILLING CODE 6712-01-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Wednesday, November 25, 1981.

PLACE: 1700 G Street, N.W., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

MATTERS TO BE CONSIDERED:

Correspondent Activities
National Credit Union Administration
Liquidity Investments

No. 566, November 20, 1981.

[S-1747-81 Filed 11-20-81; 11:10 am]

BILLING CODE 6720-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 17, 1981.

TIME AND DATE: 10 a.m., Tuesday, November 24, 1981.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Maben Energy Corporation, WEVA 79-447-R, etc.; Petition for Discretionary Review (Issues include interpretation and application of 30 CFR 77.216).

2. Eastover Mining Company, VA 80-84; (Issues include interpretation and application of 30 CFR 75-507-1(a)).

3. Alabama By-Products Corporation, BARB 76-153, IBMA 76-114; (Issues include whether violation of 30 CFR 75.1725 occurred).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5632.

[S-1751-81 Filed 11-20-81; 2:16 pm]

BILLING CODE 6820-12-M

6

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:00 a.m. Monday, November 30, 1981.

PLACE: 20th Street and Constitution Avenue, NW., Wahington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request by the General Accounting Office for Board comment on a draft report concerning intrastate branch applications.

2. Proposed changes to the Plans administered under the Federal Reserve System's employee benefits program.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. 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 20, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1753-81 Filed 11-20-81; 4:00 pm]

BILLING CODE 6210-01-M

7

NATIONAL COUNCIL ON THE HANDICAPPED

DATE AND TIME:

December 3, 1981: 9:00 a.m. to 5:00 p.m.
December 4, 1981: 10:00 a.m. to 12:30 p.m.

PLACE: Capitol Holiday Inn, Lewis Room, 550 C Street, S.W., Washington, D.C. 20024.

STATUS: Closed/Open.

MATTER TO BE CONSIDERED: One portion of the meeting, on December 3, 1981, from 9:00–11:00 a.m., will be closed. The closed portion of the meeting will pertain to personnel and administrative matters and NIHR priorities for 1983. The remainder of the meeting will open for the public to observe. Matters to be considered are: Status of Regulations Review for Public Law 94–142, Medical and Social Services Components of the Social Security Act, and Reports of NCH Committees. Meetings of NCH committees will be held on December 2, 1981 from 9:00 a.m. to 5:00 p.m. and on December 4, 1981 from 8:00 a.m. to 10:00 a.m. Observers requiring special services should notify NCH staff by November 25, 1981.

CONTACT PERSON FOR MORE INFORMATION: Hilda Gay Legg, National Council on the Handicapped, Staff Assistant; Phone: 202–245–3498.

[S-1750-81 Filed 11-20-81; 2:16 pm]

BILLING CODE 4001-01-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 56537, November 17, 1981.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, November 12, 1981.

CHANGES IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting scheduled for Thursday, November 19, 1981, following the 2:30 p.m. open meeting.

Institution of injunctive action.

Legislative matter bearing enforcement implication.

Chairman Shad and Commissioners Loomis, Evans, Thomas, and Longstreth determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

November 20, 1981.

[S-1749-81 Filed 11-30-81; 1:01 pm]

BILLING CODE 8010-01-M

9

UNITED STATES RAILWAY ASSOCIATION

DATE AND TIME: December 3, 1981; 2 p.m.

PLACE: Board Room, Room 2-500, fifth floor, 955 L'Enfant Plaza North, S.W., Washington D.C.

STATUS: Portions of this meeting will be closed to the public; the rest of the meeting will be open to the public.

MATTERS TO BE CONSIDERED BY THE USRA BOARD OF DIRECTORS:

Portions Closed to the Public (2 P.M.):

1. Internal Personnel Matters.
2. Litigation Report.
3. Review of Conrail Proprietary and Confidential Financial Information.
4. Delaware and Hudson Proprietary and Confidential Financial Information.

Portions Open to the Public (2:30 P.M.):

5. Approval of Minutes of October 29 Meeting.
6. Conrail Request for Waiver of Five-Year Plan.
7. Conrail Request for Waiver of Section 603 of Financing Agreement Requirements for Working Capital.
8. Consideration of Conrail Accounts Receivable Agreement Pursuant to Section 217 of the 3R Act.
9. Consideration of Conrail Request for Approval to Enter Tax Benefit Lease Transactions.
10. Delaware and Hudson Request for Waiver of Principal and Interest Payments under Loan Agreement.
11. Delaware and Hudson Request for Funding of ESOP.
12. Contract Actions.
13. Conrail Monitoring.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow, (202) 426-4250.

[S-1752-81 Filed 11-20-81; 3:17 pm]

BILLING CODE 8240-01-M

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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

Last Listing November 19, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S. 999 / Pub. L. 97-80 To amend the Earthquake Hazards Reduction Act of 1977 and the Federal Fire Prevention and Control Act of 1974 to authorize the appropriation of funds to the Director of the Federal Emergency Management Agency to carry out the earthquake hazards reduction programs and the fire prevention and control program, and for other purposes. (Nov. 20, 1981; 95 Stat. 1081) Price: $1.50.

H.R. 4792 / Pub. L. 97-81 Military Justice Amendments of 1981. (Nov. 20, 1981; 95 Stat. 1085) Price: $1.75.

H.R. 4734 / Pub. L. 97-82 To recognize the organization known as the Italian American War Veterans of the United States. (Nov. 20, 1981; 95 Stat. 1091) Price: $1.50.

S. 195 / Pub. L. 97-83 To recognize the organization known as the United States Submarine Veterans of World War II. (Nov. 20, 1981; 95 Stat. 1094) Price: $1.50.

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