

# Federal Register

OK  
Tuesday  
December 21, 1982

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## Selected Subjects

### **Air Pollution Control**

Environmental Protection Agency

### **Authority Delegations (Government Agencies)**

Federal Emergency Management Agency

### **Conflict of Interests**

Interstate Commerce Commission

### **Crop Insurance**

Federal Crop Insurance Corporation

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Education Department

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Comptroller of Currency

### **Radio**

Federal Communications Commission

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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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Proclamation 5007 of December 17, 1982

The President

Fiorello H. La Guardia Memorial Day

By the President of the United States of America

**A Proclamation**

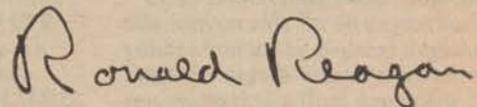
December 11, 1982, marked the one hundredth anniversary of the birth of Fiorello H. La Guardia, affectionately known as The Little Flower, who served with great distinction for twelve years in the United States House of Representatives and then for ten years as Mayor of New York City.

With his vast energy, fiery leadership, and considerable wisdom, Mr. La Guardia contributed greatly to the betterment of the United States and New York City, in the finest tradition of public service. He was first elected to Congress in 1916 and served with distinction in that body from 1917 to 1919 and from 1923 to 1933. In 1933, Mr. La Guardia was elected Mayor of New York City, and he guided the City through the difficult days of the Depression and the early years of World War II. To this day, New York City bears strong testament to the vision and determination that marked Mr. La Guardia's administration.

Mr. La Guardia's many accomplishments, and the honesty and fairness which characterized his work, continue to serve as a benchmark against which other careers in public service are judged, and as an inspiration to all Americans, particularly those who share his Italian heritage.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution of the Congress, do hereby declare December 11, 1982, as "Fiorello H. La Guardia Memorial Day", and I call upon all the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.



January 1952

January 1952

January 1952

The President

By the President of the United States of America

A Proclamation

Whereas it is the policy of the United States to encourage the development of the arts and sciences and to provide for the education of the youth of the United States...

And whereas the National Endowment for the Arts and the National Endowment for the Humanities were established by the Act of August 21, 1949, and the Act of August 21, 1949, respectively, and it is the policy of the United States to encourage the development of the arts and sciences and to provide for the education of the youth of the United States...

And whereas the National Endowment for the Arts and the National Endowment for the Humanities were established by the Act of August 21, 1949, and the Act of August 21, 1949, respectively, and it is the policy of the United States to encourage the development of the arts and sciences and to provide for the education of the youth of the United States...

And whereas the National Endowment for the Arts and the National Endowment for the Humanities were established by the Act of August 21, 1949, and the Act of August 21, 1949, respectively, and it is the policy of the United States to encourage the development of the arts and sciences and to provide for the education of the youth of the United States...

And whereas the National Endowment for the Arts and the National Endowment for the Humanities were established by the Act of August 21, 1949, and the Act of August 21, 1949, respectively, and it is the policy of the United States to encourage the development of the arts and sciences and to provide for the education of the youth of the United States...

*Richard Nixon*

Richard Nixon  
President of the United States

# Rules and Regulations

Federal Register

Vol. 47, No. 245

Tuesday, December 21, 1982

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

### Federal Crop Insurance Corporation

#### 7 CFR Part 421

#### Cotton Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises, and reissues, the Cotton Crop Insurance Regulations (7 CFR Part 421), effective with the 1983 and succeeding crop years, in accordance with the provisions of Secretary's Memorandum No. 1512-1, which requires a periodic review of FCIC's regulations as to need, currency, clarity, and effectiveness. FCIC has revised the regulations to: (1) Provide that the insured be required to file a notice of probable loss when the insured crop is damaged to the extent that a loss is probable and leave intact a representative sample of the unharvested crop, (2) prescribe the interest rate to be charged on any unpaid premium balances, (3) define FCIC's liability in cases of loss by fire when the insured has other insurance against loss by fire, (4) delete a section of the regulations requiring the posting of a list of indemnities paid within a county, (5) delete the reduction in guarantee for unharvested acreage provision, (6) combine the second and third stages and provide for full coverage in both stages, (7) increase the first stage guarantee to 60 percent of the full coverage, (8) provide improved coverage in cases where the producer elects not to have FCIC fire and hail coverage and buys an equal amount of such coverage from private companies, (9) provide a policy that is easy to read and understand, and (10) include an application form that is multicrop

instead of single-crop format to reduce the time and paperwork burden on the applicant. In addition, the regulations have been reviewed and corrected as to language and format. The intended effect of this interim rule is to improve the debt management practices of FCIC, revise the system of reporting damage or loss to insured crops, remove certain restrictions on coverage of insurance in the various stages, reduce the time and paperwork demands on an applicant, and comply with the provisions of Secretary's Memorandum No. 1512-1, as to reviewing the regulations with regard to need, currency, clarity, and effectiveness.

**DATES:** Effective Date: December 16, 1982. Comment Date: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1983, to be sure of consideration.

**ADDRESS:** Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this interim rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Information collection requirements contained in these regulations (7 CFR Part 421) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this

proposed rule applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in Executive Order (E.O.) 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action constitutes a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). The sunset review date established for these regulations is October 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants immediate implementation of this rule without allowing for the normal 60-day comment period prior to implementation because the regulations for insuring cotton provide that any amendments thereto must be placed on file or provided to insureds 15 days before the cancellation date for the crop insured. The cancellation date established for cotton is December 31; therefore, any amendments to the regulations must be placed on file by December 15. There would not be sufficient time to permit a comment period prior to implementation of these regulations and still comply with the regulations with respect to placing these regulations in file by such date.

FCIC is soliciting public comment on this interim rule for 60 days after publication in the Federal Register, and this interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Pursuant to the administrative provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule and such comments made pursuant to this notice will be available

for public inspection in the Office of the manager during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

#### Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends and reissues the Cotton Crop Insurance Regulations (7 CFR Part 421), effective with the 1983 and succeeding crop years, as follows:

#### PART 421—[AMENDED]

1. The Subpart heading is revised to read as follows:

#### Subpart—Regulations for the 1983 and Succeeding Crop Years

2. Sections 421.1–421.7 are revised to read as set forth below:

##### § 421.1 Availability of cotton crop insurance.

Insurance shall be offered under the provisions of this subpart on cotton in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which cotton insurance will be offered.

##### § 421.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for cotton which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall

elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

##### § 421.3 [Reserved]

##### § 421.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefits under the contract except as provided in the policy.

##### § 421.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the cotton insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

##### § 421.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The

contract shall cover the cotton crop as provided in the policy. The contract shall consist of the application, the policy, the appendix, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service office.

##### § 421.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the cotton crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the *Federal Register* upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of cotton contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Cotton Insurance Policy for the 1983 and succeeding crop years, are as follows:

BILLING CODE 3410-08-M





DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cotton—Crop Insurance Policy

[This is a continuous contract. Refer to Section 15]

Agreement to insure: We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the approved Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcano occurring within the insurance period, unless those causes are excepted, excluded, or limited by the actuarial table.

b. We will not insure against any cause of loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good cotton farming practices;

(3) Damages resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be American Upland lint cotton which is grown on insured acreage and for which we provide a guarantee and premium rate on the actuarial table.

b. The acreage insured for each crop year shall be that acreage planted to cotton on insurable acreage as provided for an actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect. The acreage insured of skiprow cotton shall be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured cotton at the time of planting.

d. We do not insure any acreage:

(1) Which is non-irrigated and from which a hay crop was harvested or a small grain crop reached the heading stage in the same calendar year;

(2) Which is new ground acreage;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided for on the actuarial table. [You have the option to insure such acreage by reporting it for insurance as provided in section 3.];

(5) Which is destroyed and we determine it is practical to replant to cotton and such acreage was not replanted;

(6) Initially planted after the final planting date contained in the actuarial table, unless you sign an option form agreeing to coverage reduction; or

(7) planted to a type or variety of cotton not established as adapted to the area or excluded on the actuarial table.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development of production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and where applicable, practice.

You shall report on our form:

a. All the acreage of cotton in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage

that is not insurable. You shall report if you do not have a share in any cotton planted in the county. This report shall be submitted annually before the reporting date. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee.

The stages are:

(1) First Stage—Planting until 50 days after the final planting date or until the shedding of the first blooms, whichever occurs first. We may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton; or

(2) Second Stage—Includes all insured cotton after the first stage.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage.

ANNUAL PREMIUM ADJUSTMENT TABLE <sup>1</sup>

[Percent adjustments for favorable continuous insurance experience]

Loss ratio <sup>2</sup> through previous crop year	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	85	80	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio <sup>2</sup> through previous crop year	Numbers of Loss Years Through Previous Year <sup>3</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.  
<sup>2</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.  
<sup>3</sup> Only the crop years after the 1979 crop year will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

#### 6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies, unless prohibited by law.

7. Insurance period. Insurance attaches when the cotton is planted and ends at the earliest of:

a. Total destruction of the cotton;  
b. Removal of the cotton from the field;  
c. Final adjustment of a loss; or  
d. The date immediately following planting as follows:

(1) Arizona and California—January 31;  
(2) Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas and all Texas counties south thereof—September 30;

(3) All other Texas counties and other states—December 31.

#### 8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:  
(a) During the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit. If probable loss is later determined, immediate notice shall be given and a representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) shall be left for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the cotton which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with

#### 9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our prescribed form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period

b. We shall not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted under section 9d;

(3) Multiplying the remainder by the price election; and

(4) Multiply this result by your share.

If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity will be reduced proportionately.

d. The total production to be counted for a unit shall include all harvested and appraised production but, shall not include any harvested production destroyed due to insurable causes occurring within the insurance period before being removed from the field.

(1) When mature cotton has been damaged solely by insured causes, the production to count shall be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market, as determined by the Corporation, is less than 75 percent of price quotation "B". Price quotation "B" shall be that day's spot market price quotation at the same market for cotton of the grade, staple length, and micronaire reading shown on the actuarial table for this purpose. The pounds of production to be counted shall be determined by multiplying the actual number of pounds of such production by price quotation "A" and dividing the result by 75 percent of price quotation "B".

(2) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another

use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for any acreage which does not qualify for the second stage guarantee.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of cotton becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) The cotton stalks shall not be destroyed on any acreage for which an indemnity is claimed, until consent is given by us. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(5) When you have elected to exclude hail and fire as insured causes of loss and you have obtained at least a like amount of hail and fire insurance and the cotton is damaged by hail or fire, appraisals will be made as follows:

(a) If hail or fire occurs prior to loss caused by any other insured cause and the percent of hail or fire loss determined as an average of the entire unit exceeds the following percentages for the applicable level, there will be an appraisal for uninsured causes as follows:

(i) Level 1. Each percent of loss in excess of 50 percent will result in an appraisal for uninsured causes of 2.00 percent of the guarantee;

(ii) Level 2. Each percent of loss in excess of 35 percent will result in an appraisal for uninsured causes of 1.54 percent of the guarantee; and

(iii) Level 3. Each percent of loss in excess of 25 percent will result in an appraisal for uninsured causes of 1.33 percent of the guarantee.

(b) If hail or fire occurs following a loss caused by any other insured cause and the amount of hail and fire insurance is reduced, an appraisal for uninsured causes will be made as follows:

(i) The hail and fire insurance indemnity will be divided by the original hail and fire insurance liability; and

(ii) This result applied to (a) (i), (ii) or (iii) above, whichever is applicable.

(6) The production of units commingled will be allocated to such units in proportion to the liability on the harvested acreage of each unit.

e. You will not abandon any insured cotton acreage to us.

f. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

g. We will pay the loss within 30 days after we reach agreement with you entry of a final judgment, or the filing of any appraisal award with us. In no event shall we be liable for

interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

i. If you have other fire insurance and fire damage occurs during the insurance period and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount determined by us by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by us from our appraisals.

#### 10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer the right to an indemnity on an approved form. We may collect the premium from either you or your transferee or both. The transferee shall have the same rights and responsibilities provided by the contract.

#### 12. Assignment of indemnity.

On our prescribed form and with our approval, you may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and access to farm.

You shall keep for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all cotton produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us shall have access to such records and the farm for purposes related to the contract.

#### 15. Life of contract: cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and

may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State and County	Cancellation date	Termination date for indebtedness
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas and all Texas counties lying south thereof.	Sept. 30.....	Jan. 31.
All other Texas counties and states.	Dec. 31.....	Mar. 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

#### 16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you will be deemed to have elected. You shall be notified of changes at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of terms.

For the purposes of cotton crop insurance: a. "Actuarial table" means the forms and related material for the crop year approved

by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "Cotton" means only American Upland Cotton.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

d. "Crop year" means the period within which the cotton is normally grown and shall be designated by the calendar year in which the cotton is normally harvested.

e. "Harvest" means the removal of the seed cotton from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

f. "Insurable acreage" means the land classified as insurable by us and shown as such on the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "New ground acreage" in all states except Arizona, California, and New Mexico, means acreage on which it was necessary to remove or deaden timber and remove undergrowth to carry out established cultural practices. Pastureland, other than woodland pasture, cleared of underbrush and brought into cultivation will not be considered new ground acreage. In Arizona, California, and New Mexico, "new ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years, except that acreage in tame hay or rotation pasture during the previous crop year shall not be considered new ground acreage.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR 27.93) pursuant to 28 U.S.C. 4862.

l. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of cotton in the county on the date of planting for the crop year (1) in which you have a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the cotton on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall

determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share reported by or for your spouse or child or any member of your household to be the bona fide share of you or any other person having the bona fide share.

#### 18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

### Appendix B [Redesignated as Appendix A]

#### 3. Appendix B is redesignated as Appendix A.

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516))

Done in Washington, D.C., on December 13, 1982.

Approved by:

Robert H. Sindt,

Deputy Manager.

Dated: December 13, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 82-34338 Filed 12-16-82; 10:40 am]

BILLING CODE 3410-08-M

## 7 CFR Part 431

### Soybean Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective with the 1983 and succeeding crop years, in accordance with the provisions of the Secretary's Memorandum No. 1512-1, which requires periodic review of FCIC's regulations as to need, currency, clarity, and effectiveness. In addition to the review process, FCIC has revised the regulations to: (1) Provide that the insured to the extent that a loss is probable file a notice of probable loss, and leave intact a representative sample of the unharvested crop, (2) prescribe the interest rate to be charged on any unpaid premium balances, (3) define FCIC's liability in cases of loss by fire when the insured has other insurance against loss by fire, (4) change the replanting provision to limit the payment to actual cost of replanting and to simplify the method of deducting and replanting payment from any additional loss, (5) delete the reduction in guarantee for unharvested acreage, (6)

provide improved coverage where the producer elects not to have FCIC fire and hail coverage, and buys an equal amount of such coverage from private companies, and (7) provide a policy that is easy to read and understand. The intended effect of this rule is to revise the system of reporting damage or loss to insured crops, improve the debt management practices of FCIC, reduce the paperwork burden on individuals, simplify the method of deducting the replanting payments from other indemnities, and remove the restriction of the reduction in guarantee for unharvested acreage. FCIC has also made minor corrections to language and format.

**DATES:** Effective date: December 16, 1982.

**Comment date:** Written comments, data, and opinions on this rule must be submitted not later than February 22, 1983, to be sure of consideration.

**ADDRESS:** Written comment on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Information collection requirements contained in these regulations (7 CFR Part 431) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have significant impact specifically upon area and community development; therefore, review as established in Executive

Order (E.O.) No. 12372 (July 14, 1982), was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action constitutes a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). The sunset review date established for these regulations is October 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants immediate implementation of this rule without allowing for the normal 60-day comment period prior to implementation because the regulations for insuring soybeans provide that any amendments must be placed on file or provided to insureds 15 days before the cancellation date for the crop. The cancellation date established for soybeans is December 31; therefore, any amendments must be placed on file by December 15. There would not be sufficient time to permit a comment period prior to implementation of these regulations and still comply with the regulations with respect to placing these regulations in file by such date.

FCIC is soliciting public comment on this interim rule for 60 days after publication in the *Federal Register*, and this interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the *Federal Register* as soon as possible.

Pursuant to the administrative provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule and such comments made pursuant to this notice will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 431

Crop insurance, Soybeans.

#### Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation

hereby amends and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective with the 1983 and succeeding crop years, as follows:

**PART 431—[AMENDED]**

1. The Subpart heading is revised to read:

**Subpart—Regulations for the 1983 and Succeeding Crop Year**

2. Sections 431.1–431.7 are revised to read as follows:

**§ 431.1 Availability of Soybean Insurance.**

Insurance shall be offered under the provisions of this subpart on soybeans in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which soybean insurance will be offered.

**§ 431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels and prices at which indemnities shall be computed for soybeans which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

**§ 431.3 [Reserved]**

**§ 431.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien,

mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

**§ 431.5 Good faith reliance on misrepresentation.**

Notwithstanding another provision of the soybean insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000.00, finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

**§ 431.6 The contract.**

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the soybean crop as provided in the policy. The contract shall consist of the application the policy, the appendix, and the provisions of the county actuarial table. Any

changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service office.

**§ 431.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the soybean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office and publishing a notice in the Federal Register upon the Manager's determination that no selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a soybean contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Soybean Insurance Policy for the 1983 and succeeding crop years are as follows:

BILLING CODE 3410-08-M





DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

[This is a continuous contract. Refer to Section 15]

Agreement to insure: We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the approved Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcano occurring within the insurance period, unless those causes are excepted, excluded, or limited by the actuarial table.

b. We will not insure against any cause of loss of production due to:

- (1) The neglect or malfeasance of you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good soybean farming practices;
- (3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or
- (4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be soybeans which are planted for harvest as beans and which are grown on insured acreage and for which we provide a guarantee and premium rate on the actuarial table.

b. The acreage insured for each crop year shall be that acreage planted to soybeans on insurable acreage as provided for on the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for on the actuarial table. (You have the option to insure such acreage by reporting it for insurance as provided in section 3.);

(3) Which is destroyed and we determine it is practical to replant to soybeans and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you sign an option form agreeing to coverage reduction;

(5) Of volunteer soybeans;

(6) Planted to a type or variety of soybeans not established as adapted to the area or excluded on the actuarial table;

(7) Planted with another crop; or

(8) Of a second soybean crop following a soybean crop harvested in the same calendar year.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good soybean irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good soybean irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Unless otherwise provided on the actuarial table, insurance shall attach only on acreage initially planted in rows far enough apart to permit cultivation, as determined by us; but, if such insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it shall be regarded as insured acreage and not as acreage put to another use.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act

of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and where applicable, practice.

You shall report on our form:

- a. All the acreage of soybeans in the county in which you have a share;
- b. The practice; and
- c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any soybeans planted in the county. This report shall be submitted annually before the reporting date. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. You may change the coverage level and price election before the closing date for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage.

ANNUAL PREMIUM ADJUSTMENT TABLE <sup>1</sup>

[Percent adjustments for favorable continuous insurance experience]

Loss ratio <sup>2</sup> through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Percentage Adjustments Factor For Current Crop Year																
.00 to .20.....	100	95	95	90	90	85	80	75	70	70	65	65	60	55	50	
.21 to .40.....	100	100	95	95	90	90	85	80	80	75	75	70	70	65	60	
.41 to .60.....	100	100	95	95	95	95	95	90	90	85	85	80	80	75	70	
.61 to .80.....	100	100	95	95	95	95	95	90	90	90	90	90	85	85	80	
.81 to 1.09.....	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.

<sup>2</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

ANNUAL PREMIUMS ADJUSTMENT TABLE <sup>1</sup>

[Percent adjustments for unfavorable insurance experience]

Loss ratio through previous crop year	Numbers of loss years through previous year <sup>2</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Percentage Adjustment Factor For Current Crop Year																
1.10 to 1.19.....	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39.....	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69.....	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99.....	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49.....	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24.....	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99.....	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99.....	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99.....	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up.....	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.

<sup>2</sup> Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

<sup>3</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

b. Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies, unless prohibited by law.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;

b. Combining, threshing or removal from the field;

c. Final adjustment of a loss; or

d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia, December 20;

(2) North Dakota, October 31;

(3) All other states, December 10.

8. Notice of damage or loss.

a. In a case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to an insured cause.

[To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.];

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice or probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit. If probable loss is later determined, immediate notice shall be given and a representative sample of unharvested soybeans (at least 10 feet wide and the entire length of the field) shall be left for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an

indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the soybeans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our prescribed form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted under section 9d;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity will be reduced proportionately.

The indemnity will be reduced by the amount of any replanting payment.

d. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature soybeans which grade No. 4 or better shall be reduced .12 percent for each 1 percentage point of moisture in excess of 14.0 percent; and if, due to insurable causes, any soybeans do not grade No. 4 or better in accordance with the Official United States Grain Standards the production shall be adjusted by:

(a) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(b) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No. 2 soybeans shall be the local market price on the earlier of: the day the loss is adjusted or the day such soybeans were sold.

(2) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of soybeans becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) We may determine the amount of production of any unharvested soybeans on the basis of field appraisals immediately after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and you have obtained at least a like amount of hail and fire insurance and the soybeans are damaged by hail or fire, appraisals will be made as follows:

(a) If hail or fire occurs prior to loss caused by any other insured cause and the percent of hail or fire loss determined as an average of the entire unit exceeds the following percentages for the applicable level, there will be an appraisal for uninsured causes as follows:

(i) Level 1. Each percent of loss in excess of 50 percent will result in an appraisal for uninsured causes of 2.00 percent of the guarantee;

(ii) Level 2. Each percent of loss in excess of 35 percent will result in an appraisal for uninsured causes of 1.54 percent of the guarantee; and

(iii) Level 3. Each percent of loss in excess of 25 percent will result in an appraisal for uninsured causes of 1.33 percent of the guarantee.

(b) If hail or fire occurs following a loss caused by any other insured cause and the amount of hail and fire insurance is reduced, an appraisal for uninsured causes will be made as follows:

(i) The hail and fire insurance indemnity will be divided by the original hail and fire insurance liability; and

(ii) This result applied to (a)(i), (ii) or (iii) above, whichever is applicable.

(6) The production of units commingled will be allocated to such units in proportion to the liability on the harvested acreage of each unit.

e. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 3 bushels multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined by us, the replanting payment will be reduced proportionately.

Any replanting payment will be considered as an indemnity.

f. You will not abandon any insured soybean acreage to us.

g. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you, entry of a final judgment, or the filing of any appraisal award with us. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount determined by us by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by us from our appraisals.

#### 10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer the right to an indemnity on an approved form. We may collect the premium from either you or your transferee or both. The transferee shall have the same rights and responsibilities provided by the contract.

#### 12. Assignment of indemnity.

On our prescribed form and with our approval, you may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us,

you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and access to farm.

You shall keep for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all soybeans produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us shall have access to such records and the farm for purposes related to the contract.

#### 15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the December 31 cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

The termination date for the contract is March 31.

d. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint interest.

e. The contract shall terminate if no premium is earned for five consecutive years.

#### 16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you will be deemed to have elected. You shall be notified of changes at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

c. "Crop year" means the period within which the soybeans are normally grown and shall be designated by the calendar year in which the soybeans are normally harvested.

d. "Harvest" means the severance of mature soybeans from the land for combining or threshing.

e. "Insurable acreage" means the land classified as insurable by us and shown as such on the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year (1) in which you have a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share reported by or for your spouse or child or any member of your household to be the bona fide share of you or any other person having the bona fide share.

#### 18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

**Appendix B [Redesignated as Appendix A]****3. Appendix B is redesignated as Appendix A.**

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 72 as amended (7 U.S.C. 1506, 1516))

Done in Washington, D.C., on December 13, 1982.

Dated: December 13, 1982.

**Peter F. Cole,**  
Secretary, Federal Crop Insurance Corporation.

**Robert H. Sindt,**  
Deputy Manager.

[FR Doc. 82-34337 Filed 12-16-82; 10:04 am]

BILLING CODE 3410-06-M

**7 CFR Part 432****Corn Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Corn Crop Insurance Regulations (7 CFR Part 432), effective with the 1983 and succeeding crop years, in accordance with the provisions of Secretary's Memorandum No. 1512-1, which requires a periodic review of FCIC's regulations as to need, currency, clarity, and effectiveness. In addition to the review process, FCIC has revised the regulations to: (1) Include a provision to require the insured to file a notice of probable loss when the crop is damaged to the extent that a loss is probable and leave intact a representative sample of the unharvested crop, (2) prescribe the interest rate to be charged on any unpaid premium balances, (3) add a provision to provide a replanting payment limited to the actual cost of replanting; such payment to be considered as an indemnity payment deducted from any additional loss, (4) define FCIC's liability in cases of loss due to fire when the insured has other insurance against fire, (5) delete a section of the regulations requiring posting of indemnities paid within a county (6) eliminate the provision providing reduction in guarantee for any unharvested acreage, (7) eliminate the provision for substitute crops (8) provide improved coverage in cases where the producer elects not to have FCIC fire and hail coverage and buys an equal amount of such coverage from private companies, (9) provide a policy that is rewritten in clearer, easier to understand language, and (10) include a revised multi-crop application form to replace the former single-crop

application. The intended effect of this interim rule is to revise the system of reporting damage or loss to an insured crop, improve the debt management practices of FCIC, rewrite the policy in clearer language, remove certain restrictions in the policy, and reduce the time and paperwork demands on the applicant, in addition to the review of these regulations in compliance with the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981).

**DATES:**

Effective date: December 16, 1982.

Comment date: Written comments, data, and opinions on this interim rule should be submitted not later than January 20, 1983, to be sure of consideration.

**ADDRESS:** Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this interim rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Information collection requirements contained in these regulations (7 CFR Part 432) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in Executive Order No. 12372 (July 14, 1982), was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the

Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). The sunset review date established for these regulations is October 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants implementation of this proposed rule without allowing for the normal 60-day comment period prior to implementation because the regulations for insuring corn provide that any amendments thereto must be placed on file or provided to insureds 15 days before the cancellation date for the crop insured. The cancellation date established for corn is December 31; therefore, any amendments to the regulations must be placed on file by December 15. There would not be sufficient time to permit a comment period prior to implementation of these regulations and still comply with the regulations with respect to placing these regulations on file by such date.

FCIC is soliciting public comment on this interim rule for 60 days after publication in the *Federal Register*, and this interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the *Federal Register* as soon as possible.

Pursuant to the administrative provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule and such comments made pursuant to this notice will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 432**

Crop insurance, Corn.

**Interim Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends and reissues the Corn Crop Insurance Regulations (7 CFR Part 432), effective with the 1983 and succeeding crop years, as follows.

**PART 432—[AMENDED]**

1. The Subpart heading is revised to read:

**"Subpart—Regulations for the 1983 and Succeeding Crop Years"**

2. Sections 432.1–432.7 are revised to read as set forth below:

**§ 432.1 Availability of corn insurance.**

Insurance shall be offered under the provisions of this subpart on corn in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which corn insurance will be offered.

**§ 432.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for corn which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

**§ 432.3 [Reserved.]**

**§ 432.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest

to any benefit under the contract except as provided in the policy.

**§ 432.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the corn insurance contract, whenever (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of other erroneous action or advice by an agent or employee of the Corporation (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000.00, finds

(1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

**§ 432.6 The contract.**

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the corn crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table.

Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service office.

**§ 432.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and may also, for the same reason, reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office and publishing a notice in the *Federal Register* upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a corn contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Corn Insurance Policy for the 1983 and succeeding crop years are as follows:

BILLING CODE 3410-08-M

UNITED STATES DEPARTMENT OF AGRICULTURE  
 FEDERAL CROP INSURANCE CORPORATION  
 CROP INSURANCE APPLICATION

CONTINUOUS CONTRACT

1. Name of Applicant \_\_\_\_\_  
 6. State \_\_\_\_\_ County \_\_\_\_\_ 7. Contract Number \_\_\_\_\_  
 8. County \_\_\_\_\_ 9. State \_\_\_\_\_  
 10. Identification Number \_\_\_\_\_ 11. SSN--Tax \_\_\_\_\_  
 12. Type of Entity \_\_\_\_\_  
 13. Applicant is over 18: Yes \_\_\_ No \_\_\_  
 If no, Date of Birth \_\_\_\_\_

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted on insurable acreage as shown on the county actuarial table. The applicant elects from the actuarial table the coverage level, and where applicable, a price election or plan of insurance. THE PREMIUM RATE AND APPLICABLE PRODUCTION GUARANTEE OR AMOUNT OF INSURANCE PER ACRE SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE SERVICE OFFICE FOR EACH CROP YEAR.

Effective Crop Year	Crop	Type, Class Plan of Ins.	16.	17.	18.	19.	20. 21. 22.	
							Alpha Election	Price Election
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

23. N S I O T - F U R

8. This application is hereby accepted by the Corporation except that the Corporation may reject the application on the basis that (1) the Corporation has determined that the risk is excessive under the provisions of paragraph 7(b) of the individual crop insurance regulations; (2) any material fact is concealed or misrepresented or fraud occurs in the application, or submission of the application; (3) the applicant is indebted to any United States Government Agency and that indebtedness is delinquent; (4) the applicant previously had crop insurance terminated for violation of the terms of the contract or the regulations, or for failure to pay the applicant's indebtedness; (5) the applicant is debarred by any United States Government Agency; or (6) the applicant has failed to provide complete and accurate information to material requests in this application. Rejection shall be accomplished by depositing notification thereof in the United States Mail, Postage Paid, to the above address. Unless rejection as provided above or the time for filing applications has passed at the time this application is filed, the contract shall be in effect for the crops and crop years specified. AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the insurance policies, the applicable appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage, coverage levels, premium rates, and wherever applicable, the production guarantees, amounts of insurance, or plan of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

25. [ ] Applicant does not have other like insurance on any of the above crops.  
 26. [ ] Previous Carrier \_\_\_\_\_ 27. Policy Number \_\_\_\_\_

24. [ ] Crop(s) NOT insured the first year: \_\_\_\_\_



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Corn Crop Insurance Policy

[This is a continuous contract. Refer to section 15.]

Agreement to insure: We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the approved Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, or volcano occurring within the insurance period, unless those causes are excepted, excluded, or limited by the actuarial table.

b. We will not insure against any cause of loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good corn farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be field corn ("corn") which is planted for harvest as grain or silage and which is grown on insured acreage and for which we provide a guarantee and premium rate on the actuarial table.

b. The acreage insured for each crop year shall be that acreage planted to corn on insurable acreage as provided for on the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured corn at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for on the actuarial table. (You have the option to insure such acreage by reporting it for insurance as provided in section 3.);

(3) Which is destroyed and we determine it is practical to replant to corn and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you sign an option form agreeing to coverage reduction;

(5) Of volunteer corn;

(6) Planted to a type or variety of corn not established as adapted to the area or excluded on the actuarial table; or

(7) Planted with another crop.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good corn irrigation practice at the time of planting; and

(2) any loss of production caused by failure to carry out a good corn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and where applicable, practice.

You shall report on our form:

a. All the acreage of corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any corn planted in the county. This report shall be submitted annually before the reporting date. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. You may change the coverage level and price election before the closing date for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage.

ANNUAL PREMIUM ADJUSTMENT TABLE <sup>1</sup>

[Percent adjustments for favorable continuous insurance experience]

Loss ratio <sup>2</sup> through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
.00 to .20	100	85	85	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	85	80	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.

<sup>2</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

ANNUAL PREMIUM ADJUSTMENT TABLE <sup>1</sup>

[Percent adjustments for unfavorable insurance experience]

Loss ratio <sup>2</sup> through previous crop year	Numbers of loss years through previous year <sup>2</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 to up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.

<sup>2</sup> Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

<sup>3</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

b. Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of

previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

**6. Deductions for debt.**

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies, unless prohibited by law.

**7. Insurance period.**

Insurance attaches when the corn is planted and ends at the earliest of:

- a. Total destruction of the corn;
- b. Harvest;
- c. Final adjustment of a loss;
- d. The date immediately following planting as follows:

- (1) North Dakota, October 31;
- (2) Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmitt Counties, Texas and all Texas counties south thereof, September 30;
- (3) All other Texas counties and other states, December 10, or
- e. September 30 where our actuarial table shows:

- (1) Only a silage guarantee; or
- (2) Both a grain and a silage guarantee and the corn is to be harvested for silage.

**8. Notice of damage or loss.**

**a. In case of damage or probable loss:**

**(1) You must give us written notice if:**

(a) You want our consent to replant corn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit. If probable loss is later determined, immediate notice shall be given and a representative sample of unharvested corn (at least 10 feet wide and the entire length of the field) shall be left for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

- (a) Total destruction of the corn on the unit;
- (b) Harvest of the unit; or
- (c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the corn on which a replanting payment will be claimed until we give consent.

c. You must be given written consent by us before you destroy any of the corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

**9. Claim for indemnity.**

a. Any claim for indemnity on a unit shall be submitted to us on our prescribed form not later than 60 days after the earliest of:

- (1) Total destruction of the corn on the unit;
- (2) Harvest of the unit; or
- (3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of corn and/or silage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted under section 9d by the price election; and

(4) Multiplying this result by your share.

Where a unit contains acreage to which both a grain and a silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted shall be determined separately for each portion and then added together to determine the total amount for the unit.

If the information reported by you results in a lower premium than the actual premium determined by us, the indemnity will be reduced proportionately.

The indemnity will be reduced by the amount of any replanting payment.

d. The total production to be counted for a unit shall include all harvested and appraised production.

(1) When the actuarial table shows only a grain guarantee, all production and appraisals shall be determined in bushels. When the actuarial table shows only a silage guarantee, all production and appraisals shall be in tons. When the actuarial table shows both a grain and silage guarantee, the production and appraisals shall be determined in bushels for any unharvested acreage and in bushels or tons for any harvested acreage, depending upon whether the acreage is harvested for grain or silage.

(2) Mature grain production shall be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; and if, due to insurable causes, the moisture is over 40 percent, or the kernel damage is more than 15 percent as determined by a licensed grain grader, or the test weight is below 40 pounds per bushel, the production shall be adjusted by:

(a) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(b) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn shall be the local market price on the earlier of: the day the loss is adjusted or the day such corn was sold. The quality adjustment shall not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(3) Where the actuarial table shows both a grain and silage guarantee and the corn is harvested as silage, if a grain appraisal is made concurrently with a silage appraisal and the grain appraisal is less than 4.5 bushels per ton, the production shall be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. There shall be no reduction allowed for harvested silage production if a representative sample of unharvested corn (one sample at least 10 feet wide and the entire length of the field for each 25 acres of corn harvested as silage) is not left until appraised by us.

(4) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered as production unless such acreage:

(a) Is not put to another use before harvest of corn becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested corn on the basis of field appraisals immediately after the end of the insurance period.

(7) Where the actuarial table shows a silage guarantee or both a grain and silage guarantee and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(8) Where the actuarial table shows only a silage guarantee, we may convert bushels of grain to tons of silage, and increase all production harvested after the normal silage harvesting period to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(9) When you have elected to exclude hail and fire as insured causes of loss and you have obtained at least a like amount of hail and fire insurance and the corn is damaged by hail or fire, appraisals will be made as follows:

(a) If hail or fire occurs prior to loss caused by any other insured cause and the percent of hail or fire loss determined as an average of the entire unit exceeds the following percentages for the applicable level, there

will be an appraisal for uninsured causes as follows:

(i) Level 1. Each percent of loss in excess of 50 percent will result in an appraisal for uninsured causes of 2.00 percent of the guarantee;

(ii) Level 2. Each percent of loss in excess of 35 percent will result in an appraisal for uninsured causes of 1.54 percent of the guarantee; and

(iii) Level 3. Each percent of loss in excess of 25 percent will result in an appraisal for uninsured causes of 1.33 percent of the guarantee.

(b) If hail or fire occurs following a loss caused by any other insured cause and the amount of hail and fire insurance is reduced, an appraisal for uninsured cause will be made as follows:

(i) The hail and fire insurance indemnity will be divided by the original hail and fire insurance liability; and

(ii) This result applied to (a)(i), (ii) or (iii) above, whichever is applicable.

(10) The production of units commingled will be allocated to such units in proportion to the liability on the harvested acreage of each unit.

e. A replanting payment may be made on any insured corn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting except that:

(a) Where the actuarial table shows a grain guarantee only or both a grain and silage guarantee, the payment shall not exceed 8 bushels multiplied by the price election times your share; or

(b) Where the actuarial table shows only a silage guarantee, the payment shall not exceed 1 ton multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined by us, the replanting payment will be reduced proportionately.

Any replanting payment will be considered as an indemnity.

f. You will not abandon any insured corn acreage to us.

g. You cannot bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you, entry of a final judgment, or the filing of any appraisal award with us. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially

declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount as determined by us by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by us from our appraisals.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer the right to an indemnity on an approved form. We may collect the premium from either you or your transferee or both. The transferee shall have the same rights and responsibilities provided by the contract.

12. Assignment of indemnity.

On our prescribed form and with our approval, you may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You shall keep for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless

canceled or terminated as provided for in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crops year if any amount due us on this or any other contract with you is not paid on or before the termination date for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas and all Texas counties lying south thereof.	Sept. 30.....	Jan. 31.
All other Texas counties and all other states.	Dec. 31.....	Mar. 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for live consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you will be deemed to have elected. You shall be notified of changes at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

c. "Crop year" means the period within which the corn is normally grown and shall be designated by the calendar year in which the corn is normally harvested.

d. "Harvest" means removing the grain from the stalk either by hand or machine or cutting the corn for the purpose of livestock feed.

e. "Insurable acreage" means the land classified as insurable by us and shown as such on the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to corn.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

k. "Tenant" means a person who rents land from another person for a share of the corn or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of corn in the county on the date of planting for the crop year (1) in which you have a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share reported by or for your spouse or child or any member of your household to be the bona fide share of you or any other person having the bona fide share.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

**Appendix B—[Redesignated as Appendix A]**

3. Appendix B, counties designated for Corn Crop Insurance is redesignated as Appendix A.

(Secs. 506, 516, Pub. L 75-430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516))

Done in Washington, D.C., on December 13, 1982.

Dated: December 13, 1982.

**Peter F. Cole,**  
*Secretary, Federal Crop Insurance Corporation.*

**Robert H. Sindt,**  
*Deputy Manager.*

[FR Doc. 82-34339 Filed 12-16-82; 10:04 am]

**BILLING CODE 3410-08-M**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 200**

[Release Nos. 33-6443; 34-19326; 35-22772; 39-785; IC-12894; IA-833]

**Approved Information Collections; Current OMB Expiration Dates**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending Subpart N of Part 200 to reflect current OMB expiration dates for approved information collections.

**EFFECTIVE DATE:** December 21, 1982.

**FOR FURTHER INFORMATION CONTACT:** Kenneth A. Fogash, Deputy Executive Director, SEC, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272-2142.

**SUPPLEMENTARY INFORMATION:** The Commission will amend Subpart N periodically to reflect current information.

**List of Subject in 17 CFR Part 200**

Administrative practice and procedure, Freedom of information, Privacy, Securities.

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

**Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Nos. and Expiration Dates**

Part 200 of 17 CFR Chapter II is amended by removing Rule 242 and Forms 146, 240 and 242; by adding Rule 17f-5 and Rule 2A-7 (proposed); and revising certain expiration dates in paragraph (b) of § 200.800 as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) Display.

Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Regulation S-K	Part 229	3235-0071	Dec. 31, 1982.
Regulation A...	§§ 230.251 thru 230.264.	3235-0096	Do.
Regulation C...	§§ 230.400 thru 230.494.	3235-0074	Sept. 30, 1985.
Regulation D...	§§ 203.501 thru 230.506.	3235-0076	Dec. 31, 1984
Form S-1	§ 239.11	3235-0065	Sept. 30, 1985.
Form S-2	§ 239.12	3235-0072	Do.
Form S-3	§ 239.13	3235-0073	Do.
Form S-6	§ 239.16	3235-0184	May 31, 1985.
Form S-8	§ 239.16b	3235-0066	Sept. 30, 1985.
Form S-11	§ 239.18	3235-0067	Do.
Form S-18	§ 239.28	3235-0098	May 31, 1985.
Form 1-A	§ 239.90	3235-0096	Dec. 31, 1982.
Form 2-A	§ 239.91	3235-0096	Do.
Form 3-A	§ 239.92	3235-0096	Do.
Form 4-A	§ 239.93	3235-0096	Do.
Form 5-A	§ 239.94	3235-0096	Do.
Form 6-A	§ 239.95	3235-0096	Do.
Form 7-A	§ 239.96	3235-0096	Do.
Form D	§ 239.500	3235-0076	Do.
Rule 6a-2	§ 240.6a-2	3235-0022	Sept. 30, 1985
Rule 10b-7	§ 240.10b-7	3235-0201	Nov. 30, 1983
Regulation 13D/G.	§§ 240.13d-1 thru 240.13d-7.	3235-0145	Oct. 31, 1985.
Schedule 13D.	§ 240.13d-101.	3235-0145	Do.
Schedule 13G.	§ 240.13d-102.	3235-0145	Do.
Rule 13e-4	§ 240.13e-4	3235-0203	Sept. 30, 1985.
Schedule 13E-4.	§ 240.13e-101.	3235-0203	Do.
Rule 15b10-6.	§ 240.15b10-6.	3235-0188	Dec. 31, 1982.
Rule 17a-2	§ 240.17a-2	3235-0201	Nov. 30, 1983
Rule 17a-4	§ 240.17a-4	3235-0197	Dec. 31, 1982.
Rule 17a-5(c).	§ 240.17a-5(c).	3235-0199	Sept. 30, 1985.
Rule 17Ad-6.	§ 240.17Ad-6.	3235-0137	Dec. 31, 1982.
Rule 17f-1(b).	§ 240.17f-1(b).	3235-0032	Do.
Rule 17f-1(g).	§ 240.17f-1(g).	3235-0036	Do.
Form 1	§ 249.1	3235-0017	Sept. 30, 1985.
Form 1-A	§ 249.1a	3235-0022	Do.
Form 4	§ 249.104	3235-0103	Dec. 31, 1982.
Form 8-B	§ 249.208b	3235-0068	Oct. 31, 1985.
Form 10	§ 249.210	3235-0064	Sept. 30, 1985.
Form 10-Q	§ 249.308a	3235-0070	Sept. 30, 1983.
Form 10-K	§ 249.310	3235-0063	Dec. 31, 1982.
Form X-17A-1.	§ 249.717	3235-0201	Nov. 30, 1983.
Rule 17f-2	§ 270.17f-2	3235-0223	Oct. 31, 1985.
Rule 20a-1(b).	§ 270.20a-1(b).	3235-0158	Sept. 30, 1985.
Rule 20a-2	§ 270.20a-2	3235-0158	Do.
Rule 20a-3	§ 270.20a-3	3235-0158	Do.
Rule 23c-1	§ 270.23c-1	3235-0260	Mar. 31, 1982.

Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 23c-2	§ 270.23c-2	3235-0260	Do.
Rule 31a-1	§ 270.31a-1	3235-0178	June 30, 1983.
Rule 31a-2	§ 270.31a-2	3235-0179	Sept. 30, 1985.
Form N-8B-2	§ 274.12	3235-0186	Aug. 31 1982.
Form N-1R	§ 274.101	3235-0227	Oct. 31, 1985.
Form N-1Q	§ 274.106	3235-0246	Do.
Form N-27E-1	§ 274.127e-1	3235-0255	Sept. 30, 1985.
Form N-27F-1	§ 274.127f-1	3235-0253	Do.
Rule 204.2	§ 275.204.2	3235-0244	Dec. 31, 1982.
1933 Act Guides 30, 55, 57, 60, 61, and 1934 Act Guide 3.	Guidelines for Disclosures by Certain Industries Under the 1933 and 1934 Acts.	3235-0069	Sept. 30, 1985.
Questionnaire. Add:	Research Forum.	3235-0271	Jan. 31, 1983.
Rule 171-5	§ 240.171-5	3235-0269	July 31, 1985.
Rule 2A-7 (proposed).	§ 270.2a-7	3235-0268	July 31, 1984.
Remove the following:			
Rule 242	§ 230.242	3235-0099	Nov. 30, 1984.
Form 146	§ 239.146	3235-0005	Aug. 31, 1983.
Form 240	§ 239.240	3235-0100	Nov. 30, 1984.
Form 242	§ 239.242	3235-0099	Do.

The Commission finds that this amendment, concerning the display of the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act, pertains only to procedural matter; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq., requiring advance notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register**.

(44 U.S.C. 3507(f)).

By the Commission.

Dated: December 13, 1982.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 82-34558 Filed 12-20-82; 8:45 am]  
BILLING CODE 8010-01-M

#### 17 CFR Parts 210 and 270

[Release Nos. 33-6442; 34-19300; IC-12871; FR-8; File No. S7-918]

#### Financial Statement Requirements for Registered Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission announces the adoption of final rules which amend Article 6 of Regulation S-X regarding financial statements filed by registered investment companies. The amendments to Article 6 are being adopted to: (1) Eliminate rules which are duplicative of generally accepted accounting principles ("GAAP"), (2) effect changes which recognize current industry practices, and (3) integrate and simplify the rules to improve financial reporting. In addition, financial statement requirements for employee stock purchase, savings and similar plans are also being amended and transferred to a separate Article 6A. These amendments are part of the Commission's comprehensive reexamination of its requirements for financial statements in connection with its efforts to simplify and improve the current disclosure system.

**EFFECTIVE DATE:** Effective for companies and plans with fiscal years ended after June 15, 1983, with earlier implementation encouraged. Where comparative financial statements are presented, all reported periods shall conform with the rules being adopted.

**FOR FURTHER INFORMATION CONTACT:** Clarence M. Staubs, John W. Albert or Lawrence S. Jones, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2130).

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is adopting final rules which amend Article 6 of Regulation S-X (17 CFR Part 210) regarding financial statements filed for registered investment companies and employee stock purchase, savings and similar plans. The amendments to Article 6 are being adopted to: (1) Eliminate rules which are duplicative of GAAP, (2) effect changes which recognize current industry practices, and (3) integrate and simplify the rules to improve financial reporting. The rules integrate certain common reporting requirements of management investment companies, unit investment trusts, and face-amount certificate companies (referred to collectively as registered investment companies) in a revised Article 6. Financial statement requirements for employee stock purchase, savings and similar plans are also amended to change requirements for valuation of investments and to transfer the rules to a separate Article 6A.

The final rules require management investment companies to present an all-inclusive statement of operations rather than the separate statements of income and expense, realized gain or loss on investments, and unrealized

appreciation or depreciation of investments currently being furnished. The results of these operations will be captioned "net increase (decrease) in net assets resulting from operations." In addition, a reporting format is being prescribed for the presentation of a statement of net assets and a revised format adopted for the statement of changes in net assets. Finally, the requirements regarding the basis used to value certain assets in the balance sheets of closed-end management investment companies are being amended.

In connection with an ongoing review of Regulation S-X, the Commission established a project to review the requirements for financial statements filed by registered investment companies set forth in Article 6 of Regulation S-X. In a release issued on January 11, 1982,<sup>1</sup> the Commission invited public comment on proposed rules which would revise the financial statement requirements for these companies. A total of 19 letters were received during the comment period ended May 30, 1982.<sup>2</sup> Although the number of commentators was relatively few, the letters were generally very substantive. Accordingly, the comments included in these letters have been considered and appropriate changes made in the final rules adopted by the Commission.

#### Statement of Operations

The introduction of an all-inclusive statement of operations to replace the separate statements of income and expense, realized gain or loss on investments, and unrealized appreciation or depreciation of investments currently required represented the most significant proposed change and accordingly was addressed by many commentators. Views of the commentators were virtually evenly divided on this issue. Supportive commentators indicated that the adoption of an income statement results in a more meaningful presentation, and is consistent with the "total return" concept utilized by many investment companies. In addition, commentators supported the all-inclusive income statement as consistent with the concept of comprehensive income cited in the proposing release. Opposing views

<sup>1</sup> Securities Act Release 6374 (47 FR 2776).

<sup>2</sup> Representation among the commentators was virtually evenly divided between accounting firms or groups (9) and industry and related groups (8). Comments were also received from 2 law firms or groups. The comment period was extended 30 days from its original deadline of April 30, 1982.

generally focused on the inclusion of unrealized appreciation or depreciation in determining net income, arguing that income recognition is premature since the earnings process has not been completed. Other commentators argued that the all-inclusive income statement ignores the varying objectives of different investment companies.

The Commission believes that it is appropriate to report all changes in net assets resulting from investment activities in a basic statement and accordingly is adopting the requirement for an all-inclusive statement of operations. Since an open-end management investment company continuously trades its shares on the basis of its underlying net assets stated at value<sup>3</sup>, the Commission believes that it is consistent for such investment companies to report changes in net assets resulting from all investment activities in the determination of operating results. Although a close-end management investment company does not stand ready to redeem its shares on a continuous basis, the market price at which such shares are traded correlates with the company's net asset value.

In adopting the requirements for a statement of operations, the Commission has considered the views of commentators who, while supportive of the income statement concept, opposed labeling the net result as "net income." These commentators cautioned that readers could confuse net income with the subcaption "investment income-net" also presented in the statement of operations or infer that net income represents amounts totally available for distribution. The Commission finds merit in these views and accordingly has adopted a reporting format under which the results of the income statement are captioned, "net increase (decrease) in net assets resulting from operations."

#### Statement of Net Assets

Rather than present a conventional balance sheet, management investment companies often substitute a statement of net assets. Since the major asset of any management investment company is its investment portfolio, the statement of net assets is comprised basically of a detailed listing of its securities portfolio similar to the schedule requirements for

investment companies prescribed in Regulation S-X (§ 210.12-12). All other assets and total liabilities are often netted for presentation in the statement, and a balance captioned as net assets is presented, together with the number of outstanding shares and value per share.

Since the statement of net assets is fully informative only in situations in which an investment company's securities portfolio represents virtually all of its net assets, the Commission proposed rules which would establish conditions to restrict the use of this statement to such a situation. These proposed conditions were that (1) The amount of investment in securities (excluding investments in affiliated issuers) represent a least 95 percent of total assets, (2) liabilities not be significant (defined as not exceeding 5 percent of total assets), and (3) only one class of equity securities be outstanding. In addition, investment companies would not be permitted to use a statement of net assets if, as of the balance sheet date, there were outstanding balances with related parties representing amounts other than those arising from the conduct of regular investment advisory or management services or there were balances with respect to securities transactions involving short sales, open option contracts, or deposits on securities loaned.

Most commentators opposed the proposal to establish criteria for the use of the statement of net assets. In their view, failure to meet all of the proposed conditions should not result in forfeiture of the right to use the statement. These commentators suggested that additional disclosure requirements be imposed instead.

The Commission finds merit in this argument. As a consequence, the rules being adopted prohibit the presentation of a statement of net assets only in circumstances where the amount of investments in securities (other than investments in affiliated issuers) represents less than 95 percent of total assets. A reporting format for the statement of net assets is also being adopted to require that balances resulting from transactions with related parties, with certain limited exceptions, be presented on the face of the statement and that balances of other specified liabilities, including amounts related to short sales and open option contracts, be disclosed in the footnotes. Where the related party transaction occurs in the ordinary course of business, is subject to the usual trade terms, and involves noncontrolled

affiliates, presentation on the face of the statement would not be required.

#### Valuation of Assets

Although the existing rules permit an option to state all assets at either cost or value, virtually all closed-end management investment companies currently reflect their investment securities at value. The final rules recognize current industry practice and require that closed-end companies state investments in securities at value.

Section 28(b) of the Investment Company Act of 1940 requires investment companies which issue face-amount certificates to value their "qualified assets" in accordance with certain provisions of the Code of the District of Columbia. Unlike management investment companies whose assets are largely comprised of investments in marketable securities, issuers of face-amount certificates often hold more diverse investments, such as real estate. Issuers of face-amount certificates will continue to value all investments pursuant to the statutory requirements.

#### Statement of Changes in Net Assets

In its January release, the Commission proposed certain revisions to its existing requirements for the content of the statement of changes in net assets presented by management investment companies. The revisions were intended to simplify the content of this statement by eliminating the presentation of certain information already reported in other statements and by restricting the presentation of other information to supplemental or footnote status. Commentators generally disagreed with the reporting format proposed by the Commission and offered specific suggestions for its improvement. The Commission finds merit in many of the suggestions and accordingly has adopted the following revised format for reporting changes in net assets:

#### Increase (decrease) in Net Assets

##### Operations:

Investment income-net  
Realized gain (loss) on investments-net  
Increase (decrease) in unrealized appreciation or depreciation-net  
Net increase (decrease) in net assets resulting from operations

##### Net equalization credits

##### Dividends to shareholders from:

Investment income-net  
Realized gain from investment transactions-net

##### Capital share transactions (net increase or decrease)

Total increase (decrease)

<sup>3</sup> Management investment companies are classified as either "open-end" or "closed-end" companies. An open-end management investment company stands ready to redeem its outstanding shares at current net asset value, and generally offers its shares to the public on a continuous basis. A closed-end management investment company, however, does not stand ready to redeem its outstanding shares; its shares are traded in a manner similar to those of other public companies.

**Net assets**

Beginning of year

End of year (including parenthetical disclosure of amounts of undistributed net investment income as of end of each year presented)

**Materiality Thresholds**

Many commentators opposed the proposed requirement to separately present the amount of any liability which exceeds five percent of total liabilities, suggesting that since total liabilities are often insignificant to investment companies, separate presentation of amounts representing five-percent of this caption would not be meaningful. These commentators suggested that the reporting of separate liability accounts be triggered by a more significant benchmark, such as their relationship to total assets. In adopting final rules on this issue, the Commission has deleted any reference to numerical tests in determining when separate presentation of a particular asset or liability account is appropriate. Persons are referred instead to the general standards of significance set forth in Rule 6-03(1) of Regulation S-X which permits the omission of separate captions where the items and conditions are not present, or the amounts involved not significant. The only exception to this general standard applies to amounts involving related parties which are required to be set forth regardless of amount.

**Series Companies**

A few commentators questioned the proposed requirement that financial information for series companies be provided on a comparative basis. This view is premised on the fact that a shareholder of one series company generally has no direct financial interest in the other series, and that comparative information on the other series is not meaningful. Commentators pointed out that assets, liabilities and results of operations are accounted for separately for each series, and that it is only for Federal income tax purposes that the series are ever combined and treated as a separate entity. For example, in the event that a series has a capital loss, the net capital loss may be used to offset any net capital gain from another series. The Commission finds merit in this argument and accordingly has deleted the requirement for comparative data of other series companies from the final rules and will require instead footnote disclosure of the income tax consequences and any contingencies arising from the relationship between related series issuers where appropriate.

**Schedules**

Although much of the proposed schedule information was carried forward from existing rules, the proposing release solicited public comment as to the usefulness of the proposed schedule requirements. As a result of the input provided by these commentators, the Commission is adopting certain significant revisions to its schedule requirements. These revisions include the elimination of schedules furnished pursuant to Rules 12-19 and 12-20 titled, "Investments in Securities," and "Trust Shares," respectively and which are applicable to unit investment trusts only. Instead of presenting the information on investments in securities called for in Rule 12-19, unit investment trusts would provide the information currently required for management investment companies under Rule 12-12 titled, "Investments in Securities of Unaffiliated Issuers." This change responds to the views expressed by commentators that the operations of unit investment trusts are not significantly different from those of management investment companies and that detailed information on investment activity during the period required under Rule 12-19 but not under Rule 12-12 is unnecessary. Finally, Rule 12-20 has been deleted because the information is generally duplicative of that provided in the statement of changes in net assets.

In addition to the changes affecting unit investment trusts, the requirements to provide detailed information as to investment activity have been deleted from the schedule furnished pursuant to Rule 12-13, "Investments other than Securities." In response to comments opposing the proposed requirements to provide detailed information on each separate securities issue, instructions to Rule 12-12 have been revised to permit grouping of short-term debt securities. In order to provide information to enable investors to assess the possible income tax consequences of unrealized gains or losses, the schedule requirements under Rules 12-12 and 12-13 have been expanded to require disclosure of the amounts of the aggregate unrealized appreciation or depreciation of securities based on the relationship between value and cost as determined for Federal income tax purposes. In addition, the requirement to disclose the basis for determining value where stock exchange prices are not used has been deleted from Rule 12-12 since such disclosure is already required in footnotes.

**Other Changes**

The final rules reflect certain other changes which eliminate additional rules identified by commentators as being duplicative of GAAP. Examples of these deletions from the proposed rules include, but are not limited to, portions of the general guidance on income recognition under Rule 6-03(g) and provisions for Federal income taxes under Rule 6-03(h). In addition, other proposed requirements, such as disclosure of the gross amounts of unrealized appreciation and depreciation of investment securities on the basis of historical cost, have been deleted based on commentators' concerns that they are contrary to GAAP.

In other instances, the final rules reflect changes to conform the requirements of Article 6 with other sections of Regulation S-X. For example, the requirements to present receivable balances under Rules 6-04.6 and 6-06.3 have been expanded to provide for separate disclosure of notes receivable balances to conform with similar provisions under Article 5 of Regulation S-X. In addition, the requirement to present net asset amounts in balance sheets of registered investment companies has been expanded to include per share data conforming to the requirements under Rule 6-05.4 for statements of net assets. Further, since the requirements for a statement of changes in net assets permit disclosure of the number of authorized and outstanding capital shares to be provided in a footnote, the requirements of Rule 6-04.16 relating to balance sheet presentation have been revised to permit presentation of this information either on the face of the balance sheet or in footnotes.

A few commentators suggested that certain of the proposed requirements, such as disclosures of restricted securities and the basis and method of compensating directors, called for information which is not generally appropriate for footnote presentation. Although the Commission finds merit in these arguments, it regards the information as meaningful. Accordingly, these disclosure requirements are included in the final rules being adopted. The Commission will reconsider these requirements at the time of any future project to transfer these type disclosure requirements from the financial statements to other sections of the prospectus and annual report.

Finally, technical amendments are being adopted to conform the references

to specific provisions of Article 6 contained in other rules and regulations of the Commission with the amended rules.

#### FASB Extraction Project

As discussed in an earlier section of this release, the revisions to Article 6 are being adopted to, among other things, eliminate rules which are duplicative of GAAP. In this connection, the Commission recognizes that the Financial Accounting Standards Board ("FASB") has begun a project to extract the specialized accounting and reporting principles and practices from the industry audit guide, "Audits of Investment Companies," issued by the American Institute of Certified Public Accountants.<sup>4</sup> Upon completion of this project, the Commission will reexamine the rules being adopted in this release with the intent of eliminating any rules which become duplicative.

#### List of Subjects in 17 CFR Parts 210 and 270

Accounting, Reporting and recordkeeping requirements, Securities.

Parts 210 and 270 of Chapter II Title 17 of the Code of Federal Regulations are amended as follows:

#### PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising the introductory text of paragraph (a) and paragraph (a) (2) and (3) of § 210.3-18 to read as follows:

**§ 210.3-18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.**

(a) For filings by registered management investment companies, the following financial statements shall be filed:

(2) An audited statement of operations for the most recent fiscal year conforming to the requirements of § 210.6-07.

<sup>4</sup> At present, the principles and practices embodied in industry audit guides are considered preferable accounting but are not enforceable standards to be adhered to under Rule 3-02 of the AICPA's Code of Professional Ethics. In Statement of Financial Accounting Standards No. 32, the FASB announced a project to extract the specialized accounting and reporting principles and practices from the AICPA Guides and Statements of Position.

(3) Audited statements of changes in net assets conforming to the requirements of § 210.6-09 for the two most recent fiscal years.

2. By revising paragraph (a) of § 210.5-01 to read as follows:

#### § 210.5-01 Application of §§ 210.5-01 to 210.5-04.

(a) Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed by all persons except—(1) registered investment companies (see §§ 210.6-01 to 210.6-10).

(2) Employee stock purchase, savings and similar plans (see §§ 210.6A-01 to 210.6A-05).

(3) Insurance companies (see §§ 210.7-01 to 210.7-05).

(4) Committees issuing certificates of deposit (see §§ 210.8-01 to 210.8-03).

(5) Bank holding companies and banks (see §§ 210.9-01 to 210.9-05).

(6) Brokers and dealers when filing Form X-17A-5 (§ 249.617) (see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

3. By removing §§ 210.6-01 to 210.6-24 and the center headings for those sections and adding new §§ 210.6-01 to 210.6-10 and a new center heading preceding § 210.6-01 as follows:

#### Registered Investment Companies

Sec.

210.6-01 Application of §§ 210.6-01 to 210.6-10.

210.6-02 Definition of certain terms.

210.6-03 Special rules of general application to registered companies.

210.6-04 Balance sheets.

210.6-05 Statements of net assets.

210.6-06 Special rules applicable to the balance sheets of issuers of face-amount certificates.

210.6-07 Statements of operations.

210.6-08 Special provisions applicable to the statements of operations of issuers of face-amount certificates.

210.6-09 Statements of changes in net assets.

210.6-10 What schedules are to be filed.

#### Registered Investment Companies

##### § 210.6-01 Application of §§ 210.6-01 to 210.6-10.

Sections 210.6-01 to 210.6-10 shall be applicable to financial statements filed for registered investment companies.

##### § 210.6-02 Definition of certain terms.

The following terms shall have the meaning indicated in this rule unless the context otherwise requires. (Also see § 210.1-02 of this part.)

(a) *Affiliate.* The term "affiliate" means an "affiliated person" as defined in section 2(a)(3) of the Investment

Company Act of 1940 unless otherwise indicated. The term "control" has the meaning in section 2(a)(9) of that Act.

(b) *Value.* As used in §§ 210.6-01 to 210.6-10, the term "value" shall have the meaning given in section 2(a)(41)(B) of the Investment Company Act of 1940.

(c) *Balance sheets; statements of net assets.* As used in §§ 210.6-01 to 210.6-10, the term "balance sheets" shall include statements of assets and liabilities as well as statements of net assets unless the context clearly indicates the contrary.

(c) *Qualified assets.* (1) For companies issuing face-amount certificates subsequent to December 31, 1940 under the provisions of section 28 of the Investment Company Act of 1940, the term "qualified assets" means qualified investments as that term is defined in section 28(b) of the Act. A statement to that effect shall be made in the balance sheet.

(2) For other companies, the term "qualified assets" means cash and investments which such companies do maintain or are required, by applicable governing legal instruments, to maintain in respect of outstanding face-amount certificates.

(3) Loans to certificate holders may be included as qualified assets in an amount not in excess of certificate reserves carried on the books of account in respect of each individual certificate upon which the loans were made.

##### § 210.6-03 Special rules of general application to registered investment companies.

The financial statements filed for persons to which §§ 210.6-01 to 210.6-10 are applicable shall be prepared in accordance with the following special rules in addition to the general rules in §§ 210.1-01 to 210.4-10 (Articles 1, 2, 3, and 4). Where the requirements of a special rule differ from those prescribed in a general rule, the requirements of the special rule shall be met.

(a) *Content of financial statements.* The financial statements shall be prepared in accordance with the requirements of this part (Regulation S-X) notwithstanding any provision of the articles of incorporation, trust indenture or other governing legal instruments specifying certain accounting procedures inconsistent with those required in §§ 210.6-01 to 210.6-10.

(b) *Audited financial statements.* Where, under Article 3 of this part, financial statements are required to be audited, the independent accountant shall have been selected and ratified in accordance with section 32 of the Investment Company Act of 1940.

(c) *Consolidated and combined statements.* (1) Consolidated and combined statements filed for registered investment companies shall be prepared in accordance with §§ 210.3A-01 to 210.3A-05 (Article 3A) except that (i) statements of the registrant may be consolidated only with the statements of subsidiaries which are investment companies; (ii) a consolidated statement of the registrant and any of its investment company subsidiaries shall not be filed unless accompanied by a consolidating statement which sets forth the individual statements of each significant subsidiary included in the consolidated statement; *Provided, however,* That a consolidating statement need not be filed if all included subsidiaries are totally held; and (iii) consolidated or combined statements filed for subsidiaries not consolidated with the registrant shall not include any investment companies unless accompanied by consolidating or combining statements which set forth the individual statements of each included investment company which is a significant subsidiary.

(2) If consolidating or combining statements are filed, the amounts included under each caption in which financial data pertaining to affiliates is required to be furnished shall be subdivided to show separately the amounts: (i) Eliminated in consolidation; and (ii) not eliminated in consolidation.

(d) *Valuation of assets.* The balance sheets of registered investment companies, other than issuers of face-amount certificates, shall reflect all investments at value, with the aggregate cost of each category of investment reported under §§ 210.6-04.1, 6-04.2 and 6-04.3 and of the total investments reported under § 210.6-04.4 or § 210.6-05.1 shown parenthetically. State in a note the methods used in determining value of investments. As required by section 28(b) of the Investment Company Act of 1940, "qualified" assets of face-amount certificate companies shall be valued in accordance with certain provisions of the Code of the District of Columbia. For guidance as to valuation of securities, see §§ 404.03 to 404.05 of the Codification of Financial Reporting Policies.

(e) *Qualified assets.* State in a note the nature of any investments and other assets maintained or required to be maintained, by applicable legal instruments, in respect of outstanding face-amount certificates. If the nature of the qualifying assets and amount thereof are not subject to the provisions of section 28 of the Investment Company

Act of 1940, a statement to that effect shall be made.

(f) *Restricted securities.* State in a note unless disclosed elsewhere the following information as to investment securities which cannot be offered for public sale without first being registered under the Securities Act of 1933 (restricted securities):

(1) The policy of the person with regard to acquisition of restricted securities.

(2) The policy of the person with regard to valuation of restricted securities. Specific comments shall be given as to the valuation of an investment in one or more issues of securities of a company or group of affiliated companies if any part of such investment is restricted and the aggregate value of the investment in all issues of such company or affiliated group exceeds five percent of the value of total assets. (As used in this paragraph, the term "affiliated" shall have the meaning given in § 210.6-02(a) of this part.)

(3) A description of the person's rights with regard to demanding registration of any restricted securities held at the date of the latest balance sheet.

(g) *Income recognition.* Dividends shall be included in income on the ex-dividend date; interest shall be accrued on a daily basis. Dividends declared on short positions existing on the record date shall be recorded on the ex-dividend date and included as an expense of the period.

(h) *Federal income taxes.* The company's status as a "regulated investment company" as defined in Subtitle A, Chapter 1, Subchapter M of the Internal Revenue Code, as amended, shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal assumptions on which the company relied in making or not making provisions for income taxes. However, a company which retains realized capital gains and designates such gains as a distribution to shareholders in accordance with section 852(b)(3)(D) of the Internal Revenue Code shall, on the last day of its taxable year (and not earlier), make provision for taxes on such undistributed capital gains realized during such year.

(i) *Issuance and repurchase by a registered investment company of its own securities.* Disclose for each class of the company's securities:

(1) The number of shares, units, or principal amount of bonds sold during the period of report, the amount received therefor, and, in the case of shares sold by closed-end management

investment companies, the difference, if any, between the amount received and the net asset value or preference in involuntary liquidation (whichever is appropriate) of securities of the same class prior to such sale; and

(2) The number of shares, units, or principal amount of bonds repurchased during the period of report and the cost thereof. Closed-end management investment companies shall furnish the following additional information as to securities repurchased during the period of report:

(i) As to bonds and preferred shares, the aggregate difference between cost and the face amount or preference in involuntary liquidation and, if applicable net assets taken at value as of the date of repurchase were less than such face amount or preference, the aggregate difference between cost and such net asset value;

(ii) As to common shares, the weighted average discount per share, expressed as a percentage, between cost of repurchase and the net asset value applicable to such shares at the date of repurchases.

The information required by paragraphs (h)(i)(2) (i) and (ii) of this section may be based on reasonable estimates if it is impracticable to determine the exact amounts involved.

(j) *Series companies.* (1) The information required by this part shall, in the case of a person which in essence is comprised of more than one separate investment company, be given as if each class or series of such investment company were a separate investment company; this shall not prevent the inclusion, at the option of such person, of information applicable to other classes or series of such person on a comparative basis, except as to footnotes which need not be comparative.

(2) If the particular class or series for which information is provided may be affected by other classes or series of such investment company, such as by the offset of realized gains in one series with realized losses in another, or through contingent liabilities, such situation shall be disclosed.

(k) *Certificate reserves.* (1) For companies issuing face-amount certificates subsequent to December 31, 1940 under the provisions of section 28 of the Investment Company Act of 1940, balance sheets shall reflect reserves for outstanding certificates computed in accordance with the provisions of section 28(a) of the Act.

(2) For other companies, balance sheets shall reflect reserves for

outstanding certificates determined as follows:

(i) For certificates of the installment type, such amount which, together with the lesser of future payments by certificate holders as and when accumulated at a rate not to exceed 3½ per centum per annum (or such other rate as may be appropriate under the circumstances of a particular case) compounded annually, shall provide the minimum maturity or face amount of the certificate when due.

(ii) For certificates of the fully-paid type, such amount which, as and when accumulated at a rate not to exceed 3½ per centum per annum (or such other rate as may be appropriate under the circumstances of a particular case) compounded annually, shall provide the amount or amounts payable when due.

(iii) Such amount or accrual therefor, as shall have been credited to the account of any certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity or face amount specified in the certificate, plus any accumulations on any amount so credited or accrued at rates required under the terms of the certificate.

(iv) An amount equal to all advance payments made by certificate holders, plus any accumulations thereon at rates required under the terms of the certificate.

(v) Amounts for other appropriate contingency reserves, for death and disability benefits or for reinstatement rights on any certificate providing for such benefits or rights.

(l) *Inapplicable captions.* Attention is directed to the provisions of §§ 210.4-02 and 210.4-03 which permit the omission of separate captions in financial statements as to which the items and conditions are not present, or the amounts involved not significant. However, amounts involving directors, officers, and affiliates shall nevertheless be separately set forth except as otherwise specifically permitted under a particular caption.

#### § 210.6-04 Balance sheets.

This rule is applicable to balance sheets filed by registered investment companies except for persons who substitute a statement of net assets in accordance with the requirements specified in § 210.6-05, and issuers of face-amount certificates which are subject to the special provisions of § 210.6-06 of this part. Balance sheets filed under this rule shall comply with the following provisions:

#### Assets

1. *Investments in securities of unaffiliated issuers.*

2. *Investments in and advances to affiliates.* State separately investments in and advances to: (a) Controlled companies and (b) other affiliates.

3. *Investments—other than securities.* State separately each major category.

4. *Total investments.*

5. *Cash.* Include under this caption cash on hand and demand deposits. Provide in a note to the financial statements the information required under § 210.5-02.1 regarding restrictions and compensating balances.

6. *Receivables.* (a) State separately amounts receivable from (1) sales of investments; (2) subscriptions to capital shares; (3) dividends and interest; (4) directors and officers; and (5) others.

(b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately, in the balance sheet or in a note thereto, for accounts receivable and notes receivable.

7. *Deposits for securities sold short and open option contracts.* State separately amounts held by others in connection with: (a) Short sales and (b) open option contracts.

8. *Other assets.* State separately (a) prepaid and deferred expenses; (b) pension and other special funds; (c) organization expenses; and (d) any other significant item not properly classified in another asset caption.

9. *Total assets.*

#### Liabilities

10. *Accounts payable and accrued liabilities.* State separately amounts payable for: (a) Securities sold short; (b) open option contracts written; (c) other purchases of securities; (d) capital shares redeemed; (e) dividends or other distributions on capital shares; and (f) others. State separately the amount of any other liabilities which are material. Securities sold short and open option contracts written shall be stated at value.

11. *Deposits for securities loaned.* State the value of securities loaned and indicate the nature of the collateral received as security for the loan, including the amount of any cash received.

12. *Other liabilities.* State separately (a) amounts payable for investment advisory, management and service fees; and (b) the total amount payable to: (1) Officers and directors; (2) controlled companies; and (3) other affiliates, excluding any amounts owing to noncontrolled affiliates which arose in the ordinary course of business and which are subject to usual trade terms.

13. *Notes payable, bonds and similar debt.* (a) State separately amounts payable to: (1) Banks or other financial institutions for borrowings; (2) controlled companies; (3) other affiliates; and (4) others, showing for each category amounts payable within one year and amounts payable after one year.

(b) Provide in a note the information required under § 210.5-02.19(b) regarding unused lines of credit for short-term financing and § 210.5-02.22(b) regarding unused

commitments for long-term financing arrangements.

14. *Total liabilities.*

15. *Commitments and contingent liabilities.*

#### Net Assets

16. *Units of capital.* (a) Disclose the title of each class of capital shares or other capital units, the number authorized, the number outstanding, and the dollar amount thereof.

(b) Unit investment trusts, including those which are issuers of periodic payment plan certificates, also shall state in a note to the financial statements: (1) The total cost to the investors of each class of units or shares; (2) the adjustment for market depreciation or appreciation; (3) other deductions from the total cost to the investors for fees, loads and other charges, including an explanation of such deductions; and (4) the net amount applicable to the investors.

17. *Accumulated undistributed income (loss).* Disclose:

(a) The accumulated undistributed investment income-net.

(b) accumulated undistributed net realized gains (losses) on investment transactions, and (c) net unrealized appreciation (depreciation) in value of investments at the balance sheet date.

18. *Other elements of capital.* Disclose any other elements of capital or residual interests appropriate to the capital structure of the reporting entity.

19. *Net assets applicable to outstanding units of capital.* State the net asset value per share.

#### § 210.6-05 Statements of net assets.

In lieu of the balance sheet otherwise required by § 210.6-04 of this part, persons may substitute a statement of net assets if at least 95 percent of the amount of the person's total assets are represented by investments in securities of unaffiliated issuers. If presented in such instances, a statement of net assets shall consist of the following:

#### Statements of Net Assets

1. A schedule of investments in securities of unaffiliated issuers as prescribed in § 210.12-12.

2. The excess (or deficiency) of other assets over (under) total liabilities stated in one amount, except that any amounts due from or to officers, directors, controlled persons, or other affiliates, excluding any amounts owing to noncontrolled affiliates which arose in the ordinary course of business and which are subject to usual trade terms, shall be stated separately.

3. Disclosure shall be provided in the notes to the financial statements for any item required under §§ 210.6-04.10 to 210.6-04.13.

4. The balance of the amounts captioned as *net assets*. The number of outstanding shares and net asset value per share shall be shown parenthetically.

5. The information required by (i) § 210.6-04.16, (ii) § 210.6-04.17 and (iii) § 210.6-04.18 shall be furnished in a note to the financial statements.

**§ 210.6-06 Special provisions applicable to the balance sheets of issuers of face-amount certificates.**

Balance sheets filed by issuers of face-amount certificates shall comply with the following provisions:

**Assets**

1. *Investments.* State separately each major category: such as, real estate owned, first mortgage loans on real estate, other mortgage loans on real estate, investments in securities of unaffiliated issuers, and investments in and advances to affiliates.

2. *Cash.* Include under this caption cash on hand and demand deposits. Provide in a note to the financial statements the information required under § 210.5-02.1 regarding restrictions and compensating balances.

3. *Receivables.* (a) State separately amounts receivable from (1) sales of investments; (2) dividends and interest; (3) directors and officers; and (4) others.

(b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately, in the balance sheet or in a note thereto, for accounts receivable and notes receivable.

4. *Total qualified assets.* State in a note to the financial statements the amount of qualified assets on deposit classified as to general categories of assets and as to general types of depositories, such as banks and states, together with a statement as to the purpose of the deposits.

5. *Other assets.* State separately: (a) Investments in securities of unaffiliated issuers not included in qualifying assets in item 1 above; (b) investments in and advances to affiliates not included in qualifying assets in item 1 above; and (c) any other significant item not properly classified in another asset caption.

6. *Total assets.*

**Liabilities**

7. *Certificate reserves.* Issuers of face-amount certificates shall state separately reserves for: (a) Certificates of the installment type; (b) certificates of the fully-paid type; (c) advance payments; (d) additional amounts accrued for or credited to the account of certificate holders in the form of any credit, dividend, or interest in addition to the minimum amount specified in the certificate; and (e) other certificate reserves. State in an appropriate manner the basis used in determining the reserves, including the rates of interest of accumulation.

8. *Notes payable, bonds and similar debt.* (a) State separately amounts payable to: (1) Banks or other financial institutions for borrowings; (2) controlled companies; (3) other affiliates; and (4) others, showing for each category amounts payable within one year and amounts payable after one year.

(b) Provide in a note the information required under § 210.5-02.19(b) regarding unused lines of credit for short-term financing and § 210.5-02.22(b) regarding unused commitments for long-term financing arrangements.

9. *Accounts payable and accrued liabilities.* State separately (a) amounts payable for investment advisory,

management and service fees; and (b) the total amount payable to: (1) Officers and directors; (2) controlled companies; and (3) other affiliates, excluding any amounts owing to noncontrolled affiliates which arose in the ordinary course of business and which are subject to usual trade terms. State separately the amount of any other liabilities which are material.

10. *Total liabilities.*

11. *Commitments and contingent liabilities.*

**Stockholders' Equity**

12. *Capital shares.* Disclose the title of each class of capital shares or other capital units, the number authorized, the number outstanding and the dollar amount thereof. Show also the dollar amount of any capital shares subscribed but unissued, and show the deduction for subscriptions receivable therefrom.

13. *Other elements of capital.* (a) Disclose any other elements of capital or residual interests appropriate to the capital structure of the reporting entity.

(b) A summary of each account under this caption setting forth the information prescribed in § 210.3-04 shall be given in a note or separate statement for each period in which a statement of operations is presented.

14. *Total liabilities and stockholders' equity.*

**§ 210.6-07 Statements of operations.**

Statements of operations filed by registered investment companies, other than issuers of face-amount certificates subject to the special provisions of § 210.6-08 of this part, shall comply with the following provisions:

*Statements of Operations*

1. *Investment income.* State separately income from: (a) dividends; (b) interest on securities; and (c) other income. If income from investments in or indebtedness of affiliates is included hereunder, such income shall be segregated under an appropriate caption subdivided to show separately income from: (1) Controlled companies; and (2) other affiliates. If non-cash dividends are included in income, the bases of recognition and measurement used in respect to such amounts shall be disclosed. Any other category of income which exceeds five percent of the total shown under this caption shall be stated separately.

2. *Expenses.* (a) State separately the total amount of investment advisory, management and service fees, and expenses in connection with research, selection, supervision, and custody of investments. Amounts of expenses incurred from transactions with affiliated persons shall be disclosed together with the identity of and related amount applicable to each such person accounting for five percent or more of the total expenses shown under this caption together with a description of the nature of the affiliation. Expenses incurred within the person's own organization in connection with research, selection and supervision of investments shall be stated separately. Reductions or reimbursements of management or service fees shall be shown as a negative amount or as a reduction of total expenses shown under this caption.

(b) State separately any other expense item the amount of which exceeds five percent of the total expenses shown under this caption.

(c) A note to the financial statements shall include information concerning management and service fees, the rate of fee, and the base and method of computation. State separately the amount and a description of any fee reductions or reimbursements representing:

(1) Expense limitation agreements or commitments; and (2) offsets received from broker-dealers showing separately for each amount received or due from (i) unaffiliated persons; and (ii) affiliated persons. If no management or service fees were incurred for a period, state the reason therefor.

(d) If any expenses were paid otherwise than in cash, state the details in a note.

(e) State in a note to the financial statements the amount of brokerage commissions (including dealer markups) paid to affiliated broker-dealers in connection with purchase and sale of investment securities. Open-end management companies shall state in a note the net amounts of sales charges deducted from the proceeds of sale of capital shares which were retained by any affiliated principal underwriter or other affiliated broker-dealer.

3. *Interest and amortization of debt discount and expense.*

4. *Investment income before income tax expense.*

5. *Income tax expense.* Include under this caption only taxes based on income.

6. *Investment income-net.*

7. *Realized and unrealized gain (loss) on investments-net.* (a) State separately the net realized gain or loss on transactions in: (1) Investment securities of unaffiliated issuers, (2) investment securities of affiliated issuers, and (3) investments other than securities.

(b) Distributions of realized gains by other investment companies shall be shown separately under this caption.

(c) State separately: (1) The gain or loss from expiration or closing of option contracts written, (2) the gain or loss on closed short positions in securities, and (3) other realized gain or loss. Disclose in a note to the financial statements the number and associated dollar amounts as to option contracts written: (i) At the beginning of the period; (ii) during the period; (iii) expired during the period; (iv) closed during the period; (v) exercised during the period; (vi) balance at end of the period.

(d) State separately the amount of the net increase or decrease during the period in the unrealized appreciation or depreciation in the value of investment securities and other investments held at the end of the period.

(e) State separately any: (1) Federal income taxes and (2) other income taxes applicable to realized and unrealized gain (loss) on investments, distinguishing taxes payable currently from deferred income taxes.

8. *Net gain (loss) on investments.*

9. *Net increase (decrease) in net assets resulting from operations.*

**§ 210.6-08 Special provisions applicable to the statements of operations of issuers of face-amount certificates.**

Statements of operations filed by issuers of face-amount certificates shall comply with the following provisions:

*Statements of Operations*

1. *Investment income.* State separately income from: (a) Interest on mortgages; (b) interest on securities; (c) dividends; (d) rental income; and (e) other investment income. If income from investments in or indebtedness of affiliates is included hereunder, such income shall be segregated under an appropriate caption subdivided to show separately income from: (1) Controlled companies; and (2) other affiliates. If non-cash dividends are included in income, the bases of recognition and measurement used in respect to such amounts shall be disclosed. Any other category of income which exceeds five percent of the total shown under this caption shall be stated separately.

2. *Investment expenses.* (a) State separately the total amount of investment advisory, management and service fees, and expenses in connection with research, selection, supervision, and custody of investments. Amounts of expenses incurred from transactions with affiliated persons shall be disclosed together with the identity of and related amount applicable to each such person accounting for five percent or more of the total expenses shown under this caption together with a description of the nature of the affiliation. Expenses incurred within the person's own organization in connection with research, selection and supervision of investments shall be stated separately. Reductions or reimbursements of management or service fees shall be shown as a negative amount or as a reduction of total expenses shown under this caption.

(b) State separately any other expense item the amount of which exceeds five percent of the total expenses shown under this caption.

(c) A note to the financial statements shall include information concerning management and service fees, the rate of fee, and the base and method of computation. State separately the amount and a description of any fee reductions or reimbursements representing: (1) Expense limitation agreements or commitments; and (2) offsets received from broker-dealers showing separately for each amount received or due from: (i) Unaffiliated persons; and (ii) affiliated persons. If no management or service fees were incurred for a period, state the reason therefor.

(d) If any expenses were paid otherwise than in cash, state the details in a note.

(e) State in a note to the financial statements the amount of brokerage commissions (including dealer markups) paid to affiliated broker-dealers in connection with purchase and sale of investment securities.

3. *Interest and amortization of debt discount and expense.*

4. *Provision for certificate reserves.* State separately any provision for additional credits, or dividends, or interests, in addition to the minimum maturity or face amount specified in the certificates. State also in an

appropriate manner reserve recoveries from surrenders or other causes.

5. *Investment income before income tax expense.*

6. *Income tax expense.* Include under this caption only taxes based on income.

7. *Investment income-net.*

8. *Realized gain (loss) on investments-net.*  
(a) State separately the net realized gain or loss on transactions in: (1) Investment securities of unaffiliated issuers, (2) investment securities of affiliated issuers, and (3) other investments.

(b) Distributions of capital gains by other investment companies shall be shown separately under this caption.

(c) State separately any: (1) Federal income taxes and (2) other income taxes applicable to realized gain (loss) on investments, distinguishing taxes payable currently from deferred income taxes.

9. *Net income or loss.*

**§ 210.6-09 Statements of changes in net assets.**

Statements of changes in net assets filed for persons to whom this article is applicable shall comply with the following provisions:

*Statements of Changes in Net Assets*

1. *Operations.* State separately: (a) Investment income-net as shown by § 210.6-07.6; (b) realized gain (loss) on investments-net of any Federal or other income taxes applicable to such amounts; (c) increase (decrease) in unrealized appreciation or depreciation-net of any Federal or other income taxes applicable to such amounts; and (d) net increase (decrease) in net assets resulting from operations as shown by § 210.6-07.9.

2. *Net equalization charges and credits.* State the net amount of accrued undivided earnings separately identified in the price of capital shares issued and repurchased.

3. *Distributions to shareholders.* State separately distributions to shareholders from: (a) Investment income-net; (b) realized gain from investment transactions-net; and (c) other sources.

4. *Capital share transactions.* (a) State the increase or decrease in net assets derived from the net change in the number of outstanding shares or units.

(b) Disclose in the body of the statements or in the notes, for each class of the person's shares, the number and value of shares issued in reinvestment of dividends as well as the number of dollar amounts received for shares sold and paid for shares redeemed.

5. *Total increase (decrease).*

6. *Net assets at the beginning of the period.*

7. *Net assets at the end of the period.* Disclose parenthetically the balance of undistributed net investment income included in net assets at the end of the period.

**§ 210.6-10 What schedules are to be filed.**

(a) When information is required in schedules for both the person and its subsidiaries consolidated, it may be presented in the form of a single schedule, provided that items pertaining to the registrant are separately shown and that such single schedule affords a properly

summarized presentation of the facts. If the information required by any schedule (including the notes thereto) is shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(b) The schedules shall be examined by an independent accountant if the related financial statements are so examined.

(c) *Management investment companies.* Except as otherwise provided in the applicable form: (1) The schedules specified below in this rule shall be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

*Schedule I—Investments in securities of unaffiliated issuers.* The schedule prescribed by § 210.12-12 shall be filed in support of caption 1 of each balance sheet.

*Schedule II—Investments—other than securities.* The schedule prescribed by § 210.12-13 shall be filed in support of caption 3 of each balance sheet. This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than one percent of the value of total investments (§ 210.6-04.4).

*Schedule III—Investments in and advances to affiliates.* The schedule prescribed by § 210.12-14 shall be filed in support of caption 2 of each balance sheet.

*Schedule IV—Amounts due from directors and officers.* The schedule prescribed by § 210.12-03 shall be filed with respect to each person among the directors and officers from whom any amount was owed at any time during the period for which related statements of changes in net assets are required to be filed.

*Schedule V—Investments—securities sold short.* The schedule prescribed by § 210.12-12A shall be filed in support of caption 10(a) of each balance sheet.

*Schedule VI—Open option contracts written.* The schedule prescribed by § 210.12-12B shall be filed in support of caption 10(b) of each balance sheet.

*Schedule VII—Short-term borrowings.* The schedule prescribed by § 210.12-10 shall be filed in support of any amounts included in caption 13 of each balance sheet which are payable within one year to banks for borrowings; factors and other financial institutions for borrowings; and holders of any short-term notes.

(d) *Unit investment trusts.* Except as otherwise provided in the applicable form: (1) Schedules I and II, specified below in this section, shall be filed for unit investment trusts as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

(2) Schedule III, specified below in this section, shall be filed for unit investment trusts for each period for which a statement of operations is required to be filed for each person or group.

*Schedule I—Investment in securities.* The schedule prescribed by § 210.12-12 shall be

filed in support of caption 1 of each balance sheet (§ 210.6-04).

**Schedule II—Allocation of trust assets to series of trust shares.** If the trust assets are specifically allocated to different series of trust shares, and if such allocation is not shown in the balance sheet in columnar form or by the filing of separate statements for each series of trust shares, a schedule shall be filed showing the amount of trust assets, indicated by each balance sheet filed, which is applicable to each series of trust shares.

**Schedule III—Allocation of trust income and distributable funds to series of trust shares.** If the trust income and distributable funds are specifically allocated to different series of trust shares and if such allocation is not shown in the statement of operations in columnar form or by the filing of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of income and distributable funds, indicated by each statement of operations filed, which is applicable to each series of trust shares.

(e) **Face-amount certificate investment companies.** Except as otherwise provided in the applicable form:

(1) Schedules I, V and X, specified below, shall be filed for face-amount certificate investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

(2) All other schedules specified below in this section shall be filed for face-amount certificate investment companies for each period for which a statement of operations is filed, except as indicated for Schedules III and IV.

**Schedule I—Investment in securities of unaffiliated issuers.** The schedule prescribed by § 210.12-21 shall be filed in support of caption 1 and, if applicable, caption 5(a) of each balance sheet. Separate schedules shall be furnished in support of each caption, if applicable.

**Schedule II—Investments in and advances to affiliates and income thereon.** The schedule prescribed by § 210.12-22 shall be filed in support of captions 1 and 5(b) of each balance sheet and caption 1 of each statement of operations. Separate schedules shall be furnished in support of each caption, if applicable.

**Schedule III—Mortgage loans on real estate and interest earned on mortgages.** The schedule prescribed by § 210.12-23 shall be filed in support of captions 1 and 5(c) of each balance sheet and caption 1 of each statement of operations, except that only the information required by column G and note 8 of the schedule need be furnished in support of statements of operations for years for which related balance sheets are not required.

**Schedule IV—Real estate owned and rental income.** The schedule prescribed by § 210.12-24 shall be filed in support of captions 1 and 5(a) of each balance sheet and caption 1 of each statement of operations for rental income included therein, except that only the information required by columns H, I and J, and item "Rent from properties sold during the period" and note 4 of the schedule need be furnished in support of statements of

operations for years for which related balance sheets are not required.

**Schedule V—Qualified assets on deposit.** The schedule prescribed by § 210.12-27 shall be filed in support of the information required by caption 4 of § 210.6-06 as to total amount of qualified assets on deposit.

**Schedule VI—Amounts due from officers and directors.** The schedule prescribed by § 210.12-03 shall be filed with respect to each director, officer, or employee from whom any amount was owed at any time during the period for which related statements of operation are filed. State if an exemption has been granted by the Commission with respect to amounts included in this schedule.

**Schedule VII—Short-term borrowings.** The schedule prescribed by § 210.12-10 shall be filed in support of any amounts included in caption 8 of each balance sheet which are payable within one year to banks for borrowings; factors and other financial institutions for borrowings; and holders of any short-term notes.

**Schedule VIII—Indebtedness to affiliates—not current.** The schedule prescribed by § 210.12-05 shall be filed in support of any amounts included in caption 9 of each balance sheet. This schedule and Schedule II may be combined.

**Schedule IX—Supplementary profit and loss information.** The schedule prescribed by § 210.12-25 shall be filed in support of each statement of operations.

**Schedule X—Guarantees of securities of other issuers.** The schedule prescribed by § 210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

**Schedule XI—Certificate reserves.** The schedule prescribed by § 210.12-26 shall be filed in support of caption 7 of each balance sheet.

**Schedule XII—Valuation and qualifying accounts.** The schedule prescribed by § 210.12-09 shall be filed in support of all other reserves included in the balance sheet.

#### § 210.6-30 [Removed]

4. By removing § 210.6-30 and adding a new § 210.6A-01 as follows:

#### Employee Stock Purchase, Savings and Similar Plans

#### § 210.6A-01 Application of §§ 210.6A-01 to 210.6A-05.

(a) Sections 210.6A-01 to 210.6A-05 shall be applicable to financial statements filed for employee stock purchase, savings and similar plans.

#### § 210.6-31 [Removed]

5. By removing § 210.6-31 and adding a new § 210.6A-02 as follows:

#### § 210.6A-02 Special rules applicable to employee stock purchase, savings and similar plans.

The financial statements filed for persons to which this article is applicable shall be prepared in accordance with the following special rules in addition to the general rules in §§ 210.1-01 to 210.4-10. Where the

requirements of a special rule differ from those prescribed in a general rule, the requirements of the special rule shall be met.

(a) **Investment programs.** If the participating employees have an option as to the manner in which their deposits and contributions may be invested, a description of each investment program shall be given in a footnote or otherwise. The number of employees under each investment program shall be stated.

(b) **Net asset value per unit.** Where appropriate, the number of units and the net asset value per unit shall be given by footnote or otherwise.

(c) **Federal income taxes.** (1) If the plan is not subject to Federal income taxes, a note shall so state indicating briefly the principal assumptions on which the plan relied in not making provision for such taxes.

(2) State the Federal income tax status of the employee with respect to the plan.

(d) **Valuation of assets.** The statement of financial condition shall reflect all investments at value, showing cost parenthetically. For purposes of this rule, the term "value" shall mean (1) market value for those securities having readily available market quotations and (2) fair value as determined in good faith by the trustee(s) for the plan (or by the person or persons who exercise similar responsibilities) with respect to other securities and assets.

#### § 210.6-32—210.6-34 [Redesignated as §§ 210.6A-03—210.6A-05]

6. By redesignating §§ 210.6-32, 210.6-33, and 210.6-34 as §§ 210.6A-03, 210.6A-04, and 210.6A-05, respectively.

7. By revising § 210.12-01 to read as follows:

#### § 210.12-01 Application of §§ 210.12-01 to 210.12-27.

These sections prescribe the form and content of the schedules required by §§ 210.5-04, 210.6-10, 210.6A-05, 210.7-05 and 210.9-05.

8. By revising § 210.12-12 and adding new §§ 210.12-12A and 210.12-12B to read as follows:

#### § 210.12-12 Investments in securities of unaffiliated issuers.

Col. A	Col. B	Col. C
Name of issuer and title of issue <sup>1</sup> and <sup>2</sup> .	Balance held at close of period. Number of shares—principal amount of bonds and notes <sup>3</sup> .	Value of each item at close of period. <sup>3,4,5,6</sup>

<sup>1</sup> Each issue shall be listed separately. *Provided*, however, that an amount not exceeding five percent of the total of Column C may be listed in one amount as "Miscellaneous securities," provided the securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously

been reported by name to the shareholders of the person for which the schedule is filed or to any exchange, or set forth in any registration statement, application, or annual report or otherwise made available to the public.

<sup>1</sup>List separately: (a) Common shares; (b) preferred shares; (c) bonds and notes; (d) time deposits; and (e) put and call options purchased. Within each of these subdivisions, classify in an appropriate manner according to type of business; e.g., aerospace, banking, chemicals, machinery and machine tools, petroleum, utilities, etc.; or according to type of instrument; e.g., commercial paper, bankers' acceptances, certificates of deposit. Short-term debt instruments of the same issuer may be aggregated, in which case the range of interest rates and maturity dates shall be indicated. For issuers of periodic payment plan certificates and unit investment trusts, list separately: (i) Trust shares in trusts created or serviced by the depositor or sponsor of the trust; (ii) trust shares in other trusts; and (iii) securities of other investment companies. Restricted securities shall not be combined with unrestricted securities of the same issuer. Repurchase agreements shall be stated separately showing for each the name of the party or parties to the agreement, the date of the agreement, the total amount to be received upon repurchase, the repurchase date and description of securities subject to the repurchase agreements.

<sup>2</sup>The subtotals for each category of investments, subdivided by business grouping or instrument type, shall be shown together with their percentage value compared to net assets (§§ 210.6-04.19 or 210.6-05.4).

<sup>3</sup>Column C shall be totaled. The total of column C shall agree with the correlative amounts shown on the related balance sheet.

<sup>4</sup>Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

<sup>5</sup>Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) As to each such issue: (1) Acquisition date, (2) carrying value per unit of investment at date of related balance sheet, e.g., a percentage of current market value of unrestricted securities of the same issuer, etc., and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) The day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

<sup>6</sup>Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts or loans for short sales.

<sup>7</sup>State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

**§ 210.12-12A Investments—securities sold short.**

[For management investment companies only]

Col. A	Col. B	Col. C
Name of issuer and title of issue. <sup>1</sup>	Balance of short position at close of period. (number of shares).	Value of each open short position. <sup>2</sup>

<sup>1</sup>Each issue shall be listed separately.

<sup>2</sup>Column C shall be totaled. The total of column C shall agree with the correlative amounts shown on the related balance sheet.

**§ 210.12-12B Open option contracts written.**

[For management investment companies only]

Col. A	Col. B	Col. C	Col. D	Col. E
Name of issuer. <sup>1,2</sup>	Number of contracts. <sup>3</sup>	Exercise price.	Expiration date.	Value. <sup>4</sup>

<sup>1</sup>Information as to put options shall be shown separately from information as to call options.

<sup>2</sup>Options of an issuer where exercise prices or expiration dates differ shall be listed separately.

<sup>3</sup>If the number of shares subject to option is substituted for number of contracts, the column name shall reflect that change.

<sup>4</sup>Column E shall be totaled and shall agree with the correlative amount shown on the related balance sheet.

**9. By revising § 210.12-13 as follows:**

**§ 210.12-13 Investments other than securities.**

[For management investment companies only]

Col. A	Col. B	Col. C
Description. <sup>1</sup>	Balance held at close of period—quantity. <sup>2,3,4</sup>	Value of each item at close of period. <sup>1,6,7</sup>

[For management investment companies only]

Col. A	Col. B	Col. C	Col. D	Col. E
Name of issuer and title of issue or nature of indebtedness. <sup>1</sup>	Number of shares—principal amount of bonds, notes and other indebtedness held at close of period.	Amount of equity in net profit and loss for the period. <sup>2,6</sup>	Amount of dividends or interest. <sup>2,8</sup>	Value of each item at close of period. <sup>2,3,4,5</sup>
			(1) Credited to income .....	
			(2) Other.....	

<sup>1</sup>(a) List each issue separately and group (1) investments in majority-owned subsidiaries, segregating subsidiaries consolidated; (2) other controlled companies; and (3) other affiliates. (b) If during the period there has been any increase or decrease in the amount of investment in and advance to any affiliate, state in a footnote (or if there have been changes to numerous affiliates, in a supplementary schedule) (1) name of each issuer and title of issue or nature of indebtedness; (2) balance at beginning of period; (3) gross additions; (4) gross reductions; (5) balance at close of period as shown in Column E. Include in the footnote or schedule comparable information as to affiliates in which there was an investment at any time during the period even though there was no investment at the close of the period of report.

<sup>2</sup>Give totals for each group. If operations of any controlled companies are different in character from those of the company, group such affiliates (1) within divisions and (2) by type of activities.

<sup>3</sup>Columns C, D and E shall be totaled. The totals of Column E shall agree with the correlative amount shown on the related balance sheet.

<sup>4</sup>(a) Indicate by an appropriate symbol each issue of restricted securities. The information required by instruction 5 of § 210.12-12 shall be given in a footnote. (b) Indicate by an appropriate symbol each issue of securities subject to option. The information required by instruction 5 of § 210.12-13 shall be given in a footnote.

<sup>5</sup>(a) Include in Column D (1) as to each issue held at the close of the period, the dividends or interest included in caption 1 of the statement of operations. In addition, show as the final item in column D (1) the aggregate of dividends and interest included in the statement of operations in respect of investments in affiliates not held at the close of the period. The total of this column shall agree with the correlative amount shown on the related statement of operations.

(b) Include in Column D (2) all other dividends and interest. Explain in an appropriate footnote the treatment accorded each item.

(c) Indicate by an appropriate symbol all non-cash dividends and explain the circumstances in a footnote.

(d) Indicate by an appropriate symbol each issue of securities which is non-income producing.

<sup>6</sup>The information required by column C shall be furnished only as to controlled companies.

**§§ 210.12-19 and 210.12-20 [Removed]**

**11. By removing §§ 210.12-19 and 210.12-20.**

**PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

**12. By revising paragraph (a)(4) and the introductory text of paragraph (a) of § 270.2a-4 to read as follows:**

<sup>1</sup>List each major category of investments by descriptive title.

<sup>2</sup>If practicable, indicate the quantity or measure in appropriate units.

<sup>3</sup>Indicate by an appropriate symbol each investment which is non-income producing.

<sup>4</sup>Indicate by an appropriate symbol each investment not readily marketable. The term "investment not readily marketable" shall include investments for which there is no independent publicly quoted market and investments which cannot be sold because of restrictions or conditions applicable to the investment or the company.

<sup>5</sup>Indicate by an appropriate symbol each investment subject to option. State in a footnote: (a) The quantity subject to option, (b) nature of option contract, (c) option price, and (d) dates within which options may be exercised.

<sup>6</sup>Column C shall be totaled and shall agree with the correlative amount shown on the related balance sheet.

<sup>7</sup>State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

**10. By revising § 210.12-14 as follows:**

**§ 210.12-14 Investments in and advances to affiliates.**

**§ 270.2a-4 Definition of "current net asset value" for use in computing periodically the current price of redeemable security.**

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with

estimates used where necessary or appropriate.

(4) Expenses, including any investment advisory fees, shall be included to date of calculation. Appropriate provision shall be made for Federal income taxes if required. Investment companies which retain realized capital gains designated as a distribution to shareholders shall comply with paragraph (h) of §210.6-03 of Regulation S-X.

(Secs. 7, 8, and 19(a) of the Securities Act of 1933 (15 U.S.C. 77g, 77h, and 77s(a)); secs. 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78m, 78o(d), 78w); and secs. 8, 30(d), 31(c), and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-29(d), 80a-30(c), and 80a-37(a)))

Dated: December 6, 1982.

By the Commission.

Shirley E. Hollis,  
Assistant Secretary.

#### Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the rules adopted in Securities Act Release No. 6442 which revise the financial statement requirements for registered investment companies will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that it is anticipated that the effects of the final rules will not be significant for any class of registrants for the following reasons. First, the compliance burden is not being significantly changed. In addition, the required information is readily available from existing accounting records or otherwise readily available to the affected companies at little or no cost. Finally, the disclosure of such information, both in form and content, would not impose significant competitive advantages or disadvantages or other significant costs.

Dated: December 6, 1982.

John S. R. Shad,  
Chairman.

[FR Doc. 82-33847 Filed 12-20-82; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 145

[Docket No. 78N-0138]

#### Canned Pears; Standard of Quality; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provisions of the amended standard of quality for canned pears.

**DATES:** Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun November 22, 1982.

#### FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-245-1164.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 21, 1982 (45 FR 41526), FDA issued a final regulation amending the standard of quality for canned pears (21 CFR 145.175(b)) in consideration of the quality provisions of the Recommended International Standard for Canned Pears developed by the Codex Alimentarius Commission and requests by the Canners League of California and the United States Department of Agriculture. Any person who would be adversely affected by the regulation could have, at any time on or before October 21, 1982, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

#### List of Subjects in 21 CFR Part 145

Canned fruit, Food standards; Fruits.

#### PART 145—[AMENDED]

##### § 145.175 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 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), notice is given that the effective date for compliance with paragraph (b) of the standard of quality for canned pears (§ 145.175 *Canned pears* (21 CFR 145.175(b))) as amended in the Federal Register of September 21, 1982 (47 FR 41526) is July 1, 1985. Voluntary compliance may have begun November 22, 1982.

Dated: December 15, 1982.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 82-34522 Filed 12-20-82; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 176

[Docket No. 81F-0209]

#### Indirect Food Additives; Paper and Paperboard Components

##### Correction

In FR Doc. 82-28712 beginning on page 46495 in the issue of Tuesday, October 19, 1982, make the following correction:

On page 46495, third column, § 176.210 (d)(3), fourth line, "esters butyl" should read "esters, butyl".

BILLING CODE 1505-01-M

## ENVIRONMENTAL PROTECTION AGENCY

#### 21 CFR Part 193

[FAP 1H5309/R120; PH-FRL-2260-6]

#### Tolerances for Pesticides in Food; 2,2-Dichlorovinyl Dimethyl Phosphate

##### Correction

In FR Doc. 82-33398 beginning on page 55214 in the issue of Wednesday, December 8, 1982, make the following correction:

On page 55214, third column, tenth line from the bottom "process" should read "processed."

BILLING CODE 1505-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 510 and 522

#### Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Iron Dextran Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fisons Corp. providing for safe and effective use of an iron dextran injection for prevention or treatment of baby pig anemia due to iron deficiency and to add the sponsor to the list of sponsors of approved NADA's.

**EFFECTIVE DATE:** December 21, 1982.

#### FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-443-4317.

**SUPPLEMENTARY INFORMATION:** Fisons Corp., Two Preston Ct., Bedford, MA

01730, filed an NADA (99-667) providing for intramuscular use of an iron dextran injection for baby pigs for prevention and treatment of baby pig anemia due to iron deficiency. Approval is based on the fact that the drug is identical to products which were reviewed by the National Academy of Sciences/National Research Council (NAS/NRC), found effective for prevention or treatment of baby pig anemia due to iron deficiency, and codified in 21 CFR 522.1183. The NAS/NRC notice was published in the *Federal Register* of February 14, 1969 (34 FR 2211). Based on the data and information in the NAS/NRC reviews and the information from published scientific literature, the NADA is approved and the regulations are amended to reflect the approval. In addition, the list of sponsors of approved NADA's in 21 CFR 510.600(c) is amended to add this new sponsor.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (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 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 will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iii)) may be seen in the Dockets Management Branch (address above).

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.

#### List of Subjects

##### 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

##### 21 CFR Part 522

Animal drugs, Injectable.  
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) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

#### PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

Firm name and address		Drug labeler code
Fisons Corp., 2 Preston Ct., Bedford, MA, 01730		000585
(c) * * *		
(1) * * *		
(2) * * *		
Drug Labeler code	Firm name and address	
000585	Fisons Corp., 2 Preston Ct., Bedford, MA, 01730	

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, § 522.1182 is amended by revising paragraph (b)(3) to read as follows:

§ 522.1182 Iron dextran complex injection.

(b) \* \* \*  
(3) See Nos. 000585 and 000845 in § 510.600(c) of this chapter for use as provided by paragraph (c) (5) and (6) of this section.

Effective date, December 21, 1982.  
(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))  
Dated: December 13, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-34384 Filed 12-20-82; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Lasalocid Sodium Roxarsone and Bacitracin Zinc

##### Correction

In FR Doc. 82-28500 beginning on page 46496 in the issue of Tuesday, October 19, 1982 make the following correction:

On page 46496, middle column, fifteenth line from the bottom "21 CFR 556.37" should read "21 CFR 556.347"

BILLING CODE 1505-01-M

#### 21 CFR Part 866

[Docket No. 78N-2113]

#### Immunology and Microbiology Devices; General Provisions and Classification of 162 Devices

##### Correction

In FR Doc. 82-30449 beginning on page 50814 in the issue of Tuesday, November 9, 1982, make the following corrections:

1. On page 50829, first column, in the 10th line from the top of the page, in paragraph (b) of § 866.3220, "Class I" should have read "Class II".

2. On page 30836, third column, in § 866.5360, in the second line of paragraph (a), "immunological system" should have read "immunological test system".

3. On page 50839, first column, 10th line, the section now designated "§ 866.5640" should have been designated "§ 866.5640".

BILLING CODE 1505-01-M

#### DEPARTMENT OF JUSTICE

#### Parole Commission

#### 28 CFR Part 2

#### Paroling, Recommitting and Supervising Federal Prisoners

##### Correction

In FR Doc. 82-33881 beginning on page 56334, in the issue of Thursday, December 16, 1982, make the following correction.

On page 56341, third column, the section heading reading "2.39 Rescission guidelines." should read "§ 2.36 Rescission guidelines."

BILLING CODE 1505-01-M

**DEPARTMENT OF LABOR****Office of Pension and Welfare Benefit Programs****29 CFR Part 2510****Definitions and Coverage Under the Employee Retirement Income Security Act of 1974; Correction**

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a numbering error in a final regulation relating to supplemental payments under the Employee Retirement Income Security Act of 1974 (ERISA) as amended by the Multiemployer Pension Plan Amendments Act of 1980. In the final regulation published November 5, 1982 (47 FR 50237), on page 50241, in the third column, in the 20th line, "(5)" is corrected to read "(4)."

**FOR FURTHER INFORMATION CONTACT:** Patricia Nitchie, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C., telephone (202) 523-8521. This is not a toll-free number.

**PART 2510—[CORRECTED]**

Accordingly, the Office of Pension and Welfare Benefit Programs is correcting 29 CFR 2510.3-2(g) to read as follows:

**§ 2510.3-2 Employee pension benefit plan.**

\* \* \* \* \*

(g) \* \* \*

(4) *Examples.*

\* \* \* \* \*

(29 U.S.C. 1002(2), 1135)

Signed at Washington, D.C., this 8th day of December 1982.

Jeffrey N. Clayton,

*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 82-34540 Filed 12-20-82; 8:45 am]

**BILLING CODE 4510-29-M**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 166****Defense Contracting: Reporting Procedures on Defense Related Employment**

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Amendment of final rule.

**SUMMARY:** This rule is the fiscal year 1982 update of the section listing DOD contractors receiving negotiated contract awards of \$10 million or more.

The regulation is published to comply with the provisions of Section 410, Pub. L. 91-121, November 19, 1969.

**EFFECTIVE DATE:** September 30, 1982.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cynthia V. Springer, Office of the Director for Information Operations and Reports, Washington Headquarters Services, The Pentagon, Washington, DC 20301. Telephone (202) 694-5614.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 70-15846 appearing in the *Federal Register* on November 25, 1970 (35 FR 18040), the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring contracting within the Department of Defense. Subsequently, paragraphs (a) and (d) of § 166.11, which constitute the list of DOD contractors receiving negotiated contract awards for \$10 million or more, were updated for fiscal years 1971 (36 FR 18464); 1972 (37 FR 18727); 1973 (38 FR 25990); 1974 (39 FR 32985); 1975 (40 FR 44135); 1976 (41 FR 20466); 1977 (43 FR 1617); 1978 (44 FR 3049); 1979 (44 FR 75631); 1980 (45 FR 83486); and 1981 (46 FR 60821).

**List of Subjects in 32 CFR Part 166**

Armed forces, Government employees, Government procurement, Information requirements.

**PART 166—[AMENDED]**

Accordingly, § 166.11 of this part is revised to read as follows:

**§ 166.11 Department of Defense contractors receiving negotiated contract awards of \$10 million or more.**

Fiscal Year 1982:

A A I Corp.  
A M F Inc.  
A M General Corp.  
Abbott Products, Inc.  
Abex Corp.  
Acadian Marine Service, Inc.  
Accudyne Corp.  
Action Mfg. Co.  
Advanced Technology, Inc.  
Aerojet General Corp.  
Aerojet Liquid Rocket Co.  
Aerojet Ordnance & Mfg. Co.  
Aerojet Tactical Systems Co.  
Aeroquip Corp.  
Aerospace Corp.  
Alabama Power Co.  
Alascom, Inc.  
Allied Materials Corp.  
Alpha Industries, Inc.  
Amerada Hess Corp.  
American Air Filter Co., Inc.  
American Airlines, Inc.  
American Development Corp.  
American Electronic Laboratories, Inc.  
American Home Products Corp.  
American Mfg. Co. of Texas  
American President Lines, Ltd.

American Telephone & Telegraph Co.  
Ametek, Inc.  
Amex Systems, Inc.  
Amoco Oil Co.  
Ampex Corp.  
Amron Corp.  
Analysis & Technology, Inc.  
Andrews & Parrish Co.  
Angus Fire Armour Corp.  
Apex International Mgt. Services, Inc.  
Arcata Associates, Inc.  
Arco Petroleum Co.  
Arinc Research Corp.  
Arkla, Inc.  
Arrow Airways, Inc.  
Ashland Petroleum Co.  
Atlantic Research Corp.  
Atlantic Richfield Co.  
Atlas Processing Co.  
Automation Industries, Inc.  
Avco Corp.  
Avco Everett Research Laboratory  
Aviation Contractor Employees, Inc.  
Avondale Shipyards, Inc.  
Aydin Corp.  
Ayer N W ABH International, Inc.  
B D M Corp.  
B E I Electronics, Inc.  
Baltimore Gas & Electric Co.  
Bath Iron Works Corp.  
Battelle Memorial Institute  
Bay City Marine, Inc.  
Beacon Oil Co.  
Beech Aerospace Services, Inc.  
Beech Aircraft Corp.  
Belcher Oil Co.  
Bell & Howell Co.  
Bendix Corp.  
Bendix Field Engineering Corp.  
Berry Petroleum Co.  
Beta Systems, Inc.  
Blue Shield of California  
Boeing Co.  
Boeing Computer Services, Inc.  
Boeing Services International, Inc.  
Boeing Vertol Co.  
Bolt Beranek & Newman, Inc.  
Booz Allen & Hamilton, Inc.  
Borg Warner Corp.  
Braswell Shipyards, Inc.  
Brown & Williamson Tobacco Corp.  
Brunswick Corp.  
Bulova Watch Co., Inc.  
Bunker Ramo Corp.  
Burnside Ott Aviation Training Center  
Burroughs Corp.  
C D I Corp.  
C P I Refining, Inc.  
C Three, Inc.  
CACI, Inc. Federal  
Cal State Patrol Service, Inc.  
Calcasieu Refining  
California Microwave, Inc.  
California, University of  
Calspan Corp.  
Caltex Oil Products Co.  
Camel Mfg. Co.  
Campbell Soup Co.  
Cardion Corp.  
Carnation Co.  
Carnegie Mellon University  
Carolina Power & Light Co.  
Caterpillar Tractor Co.  
Central Gulf Lines, Inc.  
Centre Mfg. Co.

- Cerberonics, Inc.  
 Chamberlain Mfg. Corp.  
 Chance, A B Co.  
 Chaparral Industries, Inc.  
 Charles Stark Draper Laboratories, Inc.  
 Chesapeake & Potomac Telephone Co.  
 Chesapeake & Potomac Telephone Co. of Va.  
 Chevron U S A, Inc.  
 Chromalloy American Corp.  
 Chrysler Corp.  
 Cibro Petroleum Products, Inc.  
 Cincinnati Electronics Corp.  
 Cities Service Co.  
 Cities Service Oil Co.  
 Cleveland Pneumatic Co.  
 Coastal States Marketing, Inc.  
 Colt Industries, Inc.  
 Colt Industries, Operating Corp.  
 Command Control & Communication Communications Satellite Corp.  
 Computer Sciences Corp.  
 Comtech Telecommunications Corp.  
 Condec Corp.  
 Conoco, Inc.  
 Conrac Corp.  
 Control Data Corp.  
 Copano Refining Co.  
 Coral Petroleum, Ltd.  
 Corsair, Inc.  
 Craig Systems Corp.  
 Crane Co.  
 Cubic Corp.  
 Cummins Engine Co., Inc.  
 Curtiss Wright Corp.  
 Data Design Laboratories  
 Dataproducts New England, Inc.  
 Day & Zimmerman, Inc.  
 Day & Zimmerman, Inc. & Basil FE JV  
 Dayron Corp.  
 Dayton, University of  
 Del Mfg. Co.  
 Del Monte Corp.  
 Delta Refining Co.  
 Derby & Co., Inc.  
 Devils Lake Sioux Mfg. Corp.  
 Digital Equipment Corp.  
 Donaldson Co., Inc.  
 Douglas Oil Co. of California  
 Dupont E I De Nemours & Co.  
 Dynallectron Corp.  
 Dynamics Research Corp.  
 E D S Federal Corp.  
 E G & G, Inc.  
 E S L, Inc.  
 E Systems, Inc.  
 Eastman Kodak Co.  
 Eaton Corp.  
 Ebony Oil Corp.  
 Edo Corp.  
 Educational Computer Corp.  
 El Paso, City of  
 El Paso Electric Co.  
 Electrospace Systems, Inc.  
 Emco, Inc.  
 Emerson Electric Co.  
 Engineered Air Systems, Inc.  
 Engineering Research, Inc.  
 Environmental Elements Corp.  
 Ex Cell O Corp.  
 Exxon Co. U.S.A.  
 Exxon Corp.  
 F M C Corp.  
 F N Mfg., Inc.  
 Fairchild Camera & Instrument Corp.  
 Fairchild Industries, Inc.  
 Fairchild Weston Systems, Inc.  
 Fancy Industries, Inc.  
 Farrell Lines, Inc.  
 Federal Electric Corp.  
 Felec Services, Inc.  
 Ferrulmatic, Inc.  
 Figgie International, Inc.  
 Fletcher Oil & Refining Co.  
 Florida Power & Light Co.  
 Ford Aerospace & Communications  
 G & M Oil Co., Inc.  
 G T E Products Corp.  
 Garrett Corp.  
 General Defense Corp.  
 General Dynamics Corp.  
 General Electric Co.  
 General Foods Corp.  
 General Instrument Corp.  
 General Mills, Inc.  
 General Motors Corp.  
 General Research Corp.  
 General Ship Engine Works  
 General Signal Corp.  
 Georgia Technical Research Institute  
 Getty Oil Co.  
 Getty Refining & Marketing Co.  
 Gibbs & Cox, Inc.  
 Gibraltar Industries, Inc.  
 Giga Tronics  
 Cladieux Refinery, Inc.  
 Global Associates  
 Golden Eagle Oil Refinery, Inc.  
 Goodrich B F Co.  
 Goodyear Aerospace Corp.  
 Goodyear Tire & Rubber Co.  
 Gould, Inc.  
 Great Western Development Corp.  
 Grey Advertising, Inc.  
 Grimes Oil Co., Inc.  
 Grumman Aerospace Corp.  
 Guam Oil & Refining Co., Inc.  
 Gulf Apparel Corp.  
 Gulf Oil Corp.  
 Gulf Power Co.  
 Gulf States Oil & Refining Co.  
 H & S Corp.  
 H R B Singer, Inc.  
 Halifax Engineering, Inc.  
 Hamilton Technology, Inc.  
 Harris Corp.  
 Harsco Corp.  
 Hawaiian Electric Co., Ltd.  
 Hawaiian Independent Refinery, Inc.  
 Hawaiian Telephone Co.  
 Hayes International Corp.  
 Hazeltine Corp.  
 Hercules Construction Corp.  
 Hercules, Inc.  
 Hess Oil Virgin Island Corp.  
 Hewlett Packard Co.  
 Holloway Corp.  
 Holston Defense Corp.  
 Honeywell, Inc.  
 Honeywell Information Systems, Inc.  
 Hudson Waterways Corp.  
 Hughes Aircraft Co.  
 Hughes Communication Services  
 Hughes Helicopters, Inc.  
 Hunter Mfg. Co.  
 Hycor, Inc.  
 Hydroscience, Inc.  
 Hydrotronics, Inc.  
 I C I Americas, Inc.  
 I T T & Westinghouse JV  
 I T T Gilfillan, Inc.  
 I T T World Communications, Inc.  
 Illinois Institute of Technology  
 Industrial Design Laboratory  
 Industrial Fuel & Asphalt of Indiana  
 Ingersoll Rand Co.  
 Institute for Defense Analysis  
 Intercontinental Mfg. Co.  
 International Business Machines Co.  
 International Laser Systems, Inc.  
 International Telephone & Telegraph Corp.  
 Interstate Electronics Corp.  
 Itek Corp.  
 J W M Corp.  
 J W T Group, Inc.  
 Jackson Oil Co.  
 Jacksonville Shipyards, Inc.  
 Jaycor  
 Jersey Central Power & Light Co.  
 Johns Hopkins University  
 Jonathan Corp.  
 K D I Precision Products, Inc.  
 Kaiser Aerospace & Electronics Co.  
 Kaman Aerospace Corp.  
 Kaman Corp.  
 Kaman Sciences Corp.  
 Kansas Power & Light Co., Inc.  
 Keco Industries, Inc.  
 Kellogg Sales Co.  
 Kelsey Hayes Co., Inc.  
 Kentron International, Inc.  
 Kidde, Inc.  
 Kings Point Mfg. Co.  
 Kisco Co., Inc.  
 Koch Refining Co.  
 Kollmorgen Corp.  
 Kovatch Corp.  
 Kraft, Inc.  
 Lake Charles Refining, Inc.  
 Laketon Asphalt Refining, Inc.  
 Lansdowne Steel & Iron Co.  
 Lanson Industries, Inc.  
 Lear Siegler, Inc.  
 Libby Welding Co.  
 Listo Energy, Inc.  
 Little Arthur D., Inc.  
 Litton Industrial Products, Inc.  
 Litton Industries, Inc.  
 Litton Systems, Inc.  
 Lockheed Corp.  
 Lockheed Electronics Co., Inc.  
 Lockheed Missiles & Space Co., Inc.  
 Lockheed Shipbuilding & Construction  
 Loggins Meat Co.  
 Logicon, Inc.  
 Loral Corp.  
 Luis J Sportswear  
 Louisville Gas & Electric Co., Inc.  
 Lummus Co.  
 Lykes Bros. Steamship Co., Inc.  
 Magnavox Advanced Products & Systems Co.  
 Magnavox Co.  
 Magnavox Government & Industrial Electronics Co.  
 Management & Technical Services Co.  
 Mantech International Corp.  
 Marconi Avionics, Inc.  
 Maremont Corp.  
 Marlex Oil & Refining  
 Marquardt Co.  
 Martin Marietta Aluminum Sales, Inc.  
 Martin Marietta Corp.  
 Maryland, University of

- Mason & Hanger Silas Mason Co.  
 Mason Chamberlain, Inc.  
 Massachusetts Institute of Technology.  
 Maxwell Laboratories, Inc.  
 Mayer Oscar & Co., Inc.  
 McDonnell Douglas Corp.  
 McGraw Edison Co.  
 McLaughlin Research Corp.  
 McMillin Construction Co.  
 McMullen John J Associates, Inc.  
 Menasco, Inc.  
 Merck & Co., Inc.  
 Metal Trades, Inc.  
 Metric Systems Corp.  
 Microwave Associates, Inc.  
 Midland Ross Corp.  
 Mine Safety Appliances Co.  
 Mission Research Corp.  
 Mitre Corp.  
 Mobil Oil Corp.  
 Monroe Wire & Cable Corp.  
 Morrison Knudsen Co., Inc.  
 Morton Thiokol, Inc.  
 Motorola, Inc.  
 Mountain States Tel & Tel Co.  
 Nabisco Brands, Inc.  
 National Academy of Sciences  
 National Steel & Shipbuilding Co.  
 Navajo Refining Co.  
 Needham, Inc.  
 Nestle Co., Inc.  
 New Mexico State University  
 New York Telephone Co.  
 Newport News Shipbuilding & Dry Dock  
 Co.  
 Norden Systems, Inc.  
 Norfolk Shipbuilding & Dry Dock Corp.  
 Norris Industries, Inc.  
 North Pole Refining Co.  
 Northern Telecom, Ltd.  
 Northrop Corp.  
 Northrop Worldwide Aircraft Services, Inc.  
 Northwest Airlines, Inc.  
 Northwest Marine Iron Works  
 Nuclear Metals, Inc.  
 O R I, Inc.  
 Ocean Tankship Corp.  
 Ocean Technology, Inc.  
 Offshore Express, Inc.  
 Okmulgee Refining Co.  
 Olin Corp.  
 Oshkosh Truck Corp.  
 Pacific Telephone & Telegraph Co.  
 Pan American World Airways, Inc.  
 Parker Hannifin Corp.  
 Pennsylvania Shipbuilding Co., Inc.  
 Pennsylvania State University  
 Perkin Elmer Corp.  
 Peterson Builders, Inc.  
 Pettibone Corp.  
 Phillip Morris, Inc.  
 Phillips Petroleum Co.  
 Physics International Co.  
 Pioneer Refining Co.  
 Planning Research Corp.  
 Pneumo Corp.  
 Polote Builders, Inc.  
 Potomac Electric Power Co.  
 Powerine Oil Co.  
 Pride Refining, Inc.  
 Procter & Gamble Distributing Co.  
 Propper International, Inc.  
 Public Service Co. of New Mexico  
 Q E D, Inc.  
 R & D Associates  
 RCA Corp  
 RCA Global Communications, Inc.  
 Rand Corp.  
 Raytheon Co.  
 Raytheon Service Co.  
 Recon Optical, Inc.  
 Reelfoot Packing Co.  
 Refinery Associates, Inc.  
 Reflectone, Inc.  
 Rel, Inc.  
 Remington Arms Co.  
 Reynolds R J Tobacco Co.  
 Right Away Foods Corp.  
 Roarda, Inc.  
 Rochester, University of  
 Rockwell International Corp.  
 Rohr Industries, Inc.  
 Rosemount, Inc.  
 Rosenblatt M Son, Inc.  
 Ryan Walsh Stevedoring Co., Inc.  
 S C I Systems, Inc.  
 S R I International  
 S W L, Inc.  
 San Francisco Welding & Steel Fabricating  
 Sanders Associates, Inc.  
 Santa Barbara Research Center  
 Sargent Fletcher Co.  
 Sargent Industries, Inc.  
 Science Applications, Inc.  
 Sea Land Industries USA, Inc.  
 Sea Land Service, Inc.  
 Sealol Corp.  
 Seatrain Lines, Inc.  
 Selby John R., Inc.  
 Selma Apparel Corp.  
 Serv Air, Inc.  
 Shell Oil Co.  
 Sierra Research Corp.  
 Simmonds Precision Products  
 Simplex Wire & Cable Co.  
 Singer Co.  
 Smith L H Oil Corp.  
 Smithkline Beckman Corp.  
 Softech, Inc.  
 Solar Turbines International  
 Soncraft, Inc.  
 Southern Bell Telephone & Telegraph  
 Southern California Edison Co.  
 Southern California, University of  
 Southern Packaging & Storage Co.  
 Southern Union Refining Co.  
 Southwest Marine, Inc.  
 Southwest Research Institute  
 Southwest Truck Body Co.  
 Southwestern Bell Telephone  
 Sparton Corp.  
 Sperry Corp.  
 Standard Container Co.  
 Standard Mfg. Co.  
 Stanford University  
 Stewart Warner Corp.  
 Summa Corp.  
 Sun Chemical Corp.  
 Sun Co., Inc.  
 Sun Refining & Marketing Co.  
 Sundstrand Corp.  
 Superior Welding, Inc.  
 Support Systems Associates, Inc.  
 Supreme Beef Co., Inc.  
 Sverdrup Technology, Inc.  
 Swift & Co.  
 Syscon Corp.  
 System Development Corp.  
 Systems & Applied Sciences Corp.  
 Systems Consultants, Inc.  
 Systems Research Laboratories, Inc.  
 T A D Communications Co.  
 T R W Colorado Electronics, Inc.  
 T R W, Inc.  
 T W Oil (Houston), Inc.  
 Talley Industries, Inc.  
 Tan Tex Industries, Inc.  
 Taylor T H, Inc.  
 Technical Publications Consultants  
 Technology Service Corp.  
 Tektronix, Inc.  
 Teledyne Brown Engineering  
 Teledyne C A E  
 Teledyne Electronics  
 Teledyne, Inc.  
 Teledyne Industries, Inc.  
 Teledyne M E C  
 Teledyne McCormick Selph  
 Teleport Oil Co.  
 Teletype Corp.  
 Tennessee Apparel Corp.  
 Tennier Industries, Inc.  
 Tesoro Alaskan Petroleum Corp.  
 Texaco, Inc.  
 Texaco International Trader, Inc.  
 Texas Instruments, Inc.  
 Texas, University of  
 Textron, Inc.  
 Tierney Mfg. Co.  
 Tiger International, Inc.  
 Todd Shipyards Corp.  
 Tracor, Inc.  
 Tradax Petroleum, Ltd.  
 Trans International Airlines, Inc.  
 Transamerica Delaval, Inc.  
 Transtechnology Corp.  
 Treadwell Corp.  
 Ultramar Trident, Ltd.  
 Uniflite, Inc.  
 Union Carbide Corp.  
 Union Oil Co. of California  
 Uniroyal, Inc.  
 United Beef Co.  
 United States & South American  
 Enterprises  
 United States Lines Co.  
 United Technologies Corp.  
 United Terminals, Inc.  
 Universal Maritime Services Corp.  
 Univox California Co.  
 V S E Corp.  
 Valleydale Packers, Inc.  
 Valmac Industries, Inc.  
 Vanguard Oil & Service Co.  
 Varian Associates  
 Varo, Inc.  
 Veda, Inc.  
 Vemo Co.  
 Vought Corp.  
 Wardoco, Inc.  
 Washington, University of  
 Watkins Johnson Co.  
 Welbilt Electronic Die Corp.  
 Wells Marine, Inc.  
 Western Electric Co., Inc.  
 Western Gear Corp.  
 Western Union International, Inc.  
 Western Union Telegraph Co.  
 Westinghouse Electric Corp.  
 White Engines, Inc.  
 Whittaker Corp.  
 Williams International Corp.  
 Winfield Mfg. Co., Inc.  
 Winston Refining Co.  
 Wisconsin Physicians Service

Woods Hole Oceanographic Institute  
World Airways, Inc.  
Wyman Gordon Co.  
Wyoming Refining Co.  
X Tyl International  
Xerox Corp.  
Xerox Electro Optical Systems, Inc.  
Youngdale J R Construction Co., Inc.  
Zantop International Airlines, Inc.  
Dated: December 14, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 82-34551 Filed 12-20-82; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 716

[OPTS-84003C; TSH-FRL 2250-8]

#### Toxic Substances Control Act; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

##### Correction

In FR Doc. 82-32843 beginning on page 54624 in the issue of Friday, December 3, 1982, make the following correction:

On page 54624, middle column, in the list under "Economic Impact," the entry for Corporate Rule Review now reading "\$61,000" should have read "\$8,000".

BILLING CODE 1505-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 2

[Docket FEMA-GEN-2A]

#### Organization, Functions, and Delegations of Authority

AGENCY: Federal Emergency  
Management Agency.

ACTION: Final rule

**SUMMARY:** This rule adds to the delegations of authority to implement the Coastal Barrier Resources Act. It delegates to the Associate Director, State and Local Programs and Support, and to the Federal Insurance Administrator, responsibilities assigned to FEMA under the Act which limits Federal financial assistance to undeveloped coastal barriers.

**EFFECTIVE DATE:** December 21, 1982.

**FOR FURTHER INFORMATION CONTACT:** William L. Harding, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0377.

#### SUPPLEMENTARY INFORMATION:

This regulation adds to the delegations of authority of the Federal Emergency Management Agency (FEMA) in order to implement the Coastal Barrier Resources Act (Pub. L. 97-348). As the document relates to agency management, FEMA has not engaged in notice and public comment rule making and has made the regulations effective immediately.

#### List of Subjects in 44 CFR Part 2

Authority delegations (Government Agencies), Organization and functions (Government Agencies).

#### PART 2—[AMENDED]

Accordingly, Part 2 is amended as follows:

#### Subpart B—Delegations

1. Section 2.61 is amended by adding a new paragraph (m) as follows:

##### § 2.61 Associate Director, State and Local Programs and Support.

\* \* \* \* \*

(m) Exercise the following authorities under the Coastal Barrier Resources Act:

(1) Apply the Coastal Barrier Resources Act (Pub. L. 97-348) to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(2) Determine those areas which are included in the Department of Interior's (DOI's) designation of the Coastal Barrier Resources System, transpose DOI's designations onto FEMA's floodplain maps, and perform all other actions necessary to interpret DOI's maps.

(3) Determine, with the advice of the FIA, the meaning of the terms "new construction" and "substantial improvements" as used in the Coastal Barrier Resources Act.

(4) Issue the regulations necessary to implement this § 2.61.

2. Section 2.64 is amended by adding a new paragraph (d)(14) and a new paragraph (e).

##### § 2.64 Federal Insurance Administrator.

\* \* \* \* \*

(d) \* \* \*

(14) Exercise the authority set out at § 2.61(m) of this subpart.

(e) The Federal Insurance Administrator is authorized to perform the functions necessary to make flood insurance unavailable pursuant to the Coastal Barrier Resources Act (Pub. L. 97-348). The Administrator is also authorized to define the term "new flood insurance coverage" as used in the Coastal Barrier Resources Act, and to

issue any regulations necessary to implement this § 2.64(e).

(5 U.S.C. 552; Sec. 106, Reorganization Plan No. 3 of 1978; E.O. 12127 of March 31, 1979; E.O. 12148 of July 10, 1979, as amended; Coastal Barrier Resources Act (Pub. L. 97-348).)

Dated: December 14, 1982.

Louis O. Giuffrida,

Director.

[FR Doc. 82-34383 Filed 12-20-82; 8:45 am]

BILLING CODE 6718-01-M

## 44 CFR PART 64

[Docket No. FEMA 6460]

#### List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

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 3429, Bethesda, Maryland, 20034, Phone: (800) 638-6620.

**FOR FURTHER INFORMATION CONTACT** Mr. Richard E. Sanderson, Chief, 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.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

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	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard area identified
Tennessee: Sullivan	Unincorporated areas	470181B	Mar. 6, 1979, emergency; Sept. 30, 1982, regular; Sept. 30, 1982, suspended; Nov. 3, 1982, reinstated.	Dec. 30, 1977.
Virginia: Accomack	Tangier, town of	510004A	Mar. 28, 1975, emergency; Oct. 15, 1982, regular; Oct. 15, 1982, suspended; Nov. 3, 1982, reinstated.	May 31, 1974.
Florida: Polk	Lakes Wales, city of	120390	Nov. 4, 1982, emergency	Oct. 17, 1975.
Iowa: Plymouth	Remsen, city of	190480	do	Mar. 19, 1976.
Michigan: Berrien	Berrien, township of	260733-New	do	
Texas:				
Brown	Bangs, city of	480718	Nov. 9, 1982, emergency	Aug. 6, 1976.
Hansford	Gruver, city of	481104	do	Nov. 5, 1976.
Tennessee: Washington	Unincorporated areas	470181B	Oct. 16, 1979, emergency; Sept. 30, 1982, regular; Sept. 30, 1982, suspended; Nov. 9, 1982, reinstated.	Mar. 25, 1977.
Iowa: Polk	Altoona, city of	190546	Nov. 10, 1982, emergency; Nov. 10, 1982, regular.	NSFHA
New Jersey: Monmouth	Holmdel, township of	340300C	Apr. 14, 1975, emergency; Mar. 1, 1982, regular; Mar. 1, 1982, suspended; Nov. 10, 1982, reinstated.	Feb. 1, 1974, Oct. 17, 1975 and Apr. 16, 1976.
California: Riverside	Cathedral City, city of	060704	Nov. 12, emergency; Nov. 12, 1982, regular	Mar. 23, 1979.
Tennessee: Jackson	Unincorporated areas	470370A	Nov. 26, 1982, emergency	June 28, 1974 and Feb. 6, 1976.
California: Tulare	Dinuba, city of	060403B	Nov. 3, 1982, suspension withdrawn	May 24, 1974 and Mar. 21, 1976.
Colorado: Fremont	Canon City, city of	080068B	do	Jan. 17, 1975 and Mar. 20, 1977.
Illinois: Lake	Unincorporated areas	170357B	do	Dec. 7, 1973 and June 11, 1976.
Indiana: Rush	Rushville, city of	180223B	do	Nov. 12, 1976.
Michigan: Monroe	Berlin, township of	260143A	do	July 23, 1976.
Minnesota: Ramsey	Little Canada, city of	270377A	do	Jan. 9, 1974 and Oct. 15, 1976.
Missouri: Franklin	Washington, city of	290138B	do	Mar. 22, 1974 and Aug. 6, 1976.
New Jersey: Gloucester	Mantua, township of	340207B	do	
New York:				
Montgomery	Canajoharie, village of	360443B	do	Feb. 22, 1974 and June 11, 1976.
Montgomery	Fort Plain, village of	360448B	do	Apr. 12, 1974 and May 28, 1976.
Suffolk	Patchogue, village of	360803C	do	July 16, 1976, June 3, 1977 and June 28, 1974.
Ohio: Stark	North Canton, city of	390521B	do	May 17, 1974 and May 21, 1976.
Oklahoma: Oklahoma, Canadian, Cleveland, McClain and Pottawatomie.	Oklahoma City, city of	405378D	do	July 14, 1972, July 1, 1974 and Feb. 2, 1979.
Pennsylvania:				
Dauphin	Halifax, township of	421592B	do	Nov. 15, 1974.
York	Windsor, borough of	420942B	do	Jan. 23, 1974 and Jan. 16, 1976.
Washington:				
Whatcom	Lenden, city of	530202B	do	May 17, 1974 and Apr. 2, 1976.
Walla Walla	Waitsburg, city of	530196B	do	Apr. 12, 1974 and Jan. 9, 1976.
Wisconsin: Washington	West Bend, city of	550475B	do	Dec. 28, 1973 and Apr. 30, 1976.
New Jersey:				
Sussex	Andover, borough of	340542B	do	Feb. 25, 1977.
Do	Branchville, borough of	340448A	do	May 10, 1974.
Atlantic	Buena, borough of	340004A	do	June 28, 1974.
Gloucester	Clayton, borough of	340198A	do	Aug. 31, 1973.
Bergen	Edgewater, borough of	340029B	do	Aug. 2, 1974.
Salem	Elmer, borough of	340414A	do	June 28, 1974.
Sussex	Fredon, township of	340558	do	Feb. 28, 1975.
Cumberland	Greenwich, township of	340169	do	Nov. 5, 1976.
Gloucester	Harrison, township of	340205A	do	July 26, 1974.
Sussex	Hopatcong, borough of	340452A	do	June 28, 1974.
Do	Lafayette, township of	340532B	do	Dec. 20, 1974.
Bergen	Moonachie, borough of	340053A	do	June 28, 1974.
Warren	Oxford, township of	340492C	do	June 21, 1974.
Salem	Pijesgrove, township of	340420	do	Nov. 14, 1975.
Gloucester	Pitman, borough of	340211A	do	Mar. 15, 1975.
Cumberland	Upper Deerfield, township of	340175A	do	Aug. 2, 1974.
California: Orange	Fountain Valley, city of	060218C	Nov. 17, 1982, suspension withdrawn	Mar. 29, 1974, May 28, 1976 and Oct. 1, 1976.
Connecticut: Fairfield	Darien, town of	090005D	do	July 26, 1974, May 17, 1977.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard area identified
Iowa:				
Black Hawk	Unincorporated areas	190535B	.do	Oct. 25, 1977.
Linn	Palo, city of	190442A	.do	Sept. 19, 1975.
Illinois:				
Boone	Unincorporated areas	170807B	.do	Apr. 29, 1977.
Will	Lockport, city of	170703B	.do	Mar. 8, 1974, June 11, 1976.
Do	Plainfield, village of	170771C	.do	Nov. 29, 1974, Jan. 9, 1976 and Jan. 1, 1982.
Stephenson	Winslow, village of	170644B	.do	Mar. 15, 1974, July 2, 1976.
Maryland: Cecil	Charlestown, town of	240021B	.do	Sept. 20, 1974, Dec. 19, 1975.
Michigan: Wayne Co	Lincoln Park, city of	260234B	.do	May 3, 1974, June 27, 1975.
Missouri: Lincoln	Winfield, city of	290213B	.do	Dec. 28, 1973, May 7, 1976.
New Jersey:				
Gloucester	Deptford, township of	340199B	.do	Aug. 9, 1974, July 23, 1976.
Hudson	Hoboken, city of	340222B	.do	June 28, 1974, Apr. 30, 1976.
Sussex	Stanhope, borough of	340456B	.do	May 17, 1974, June 18, 1976.
Gloucester	Washington, township of	340213B	.do	May 31, 1974, June 11, 1976.
New York:				
Nassau	Great Neck, village of	361519B	.do	July 26, 1974, May 28, 1976.
Nassau	Russell Gardens, village	361583A	.do	Nov. 17, 1982.
Ohio: Shelby	Sidney, city of	390507B	.do	May 24, 1974, July 23, 1976.
Pennsylvania:				
Snyder	Union, township of	422040A	.do	July 18, 1975.
Do	Selinsgrove, borough of	425387B	.do	May 4, 1973, Oct. 31, 1975.
Adams	York Springs, borough of	421239B	.do	Nov. 15, 1975, June 1, 1979.
Texas: Tarrant, Dallas	Grapevine, city of	480598B	.do	June 28, 1974, June 18, 1976.
West Virginia: Brooke	Wellsburg, city of	540015B	.do	May 17, 1974, Apr. 25, 1975.

<sup>1</sup>This is a newly incorporated community which was formally contained entirely in Riverside County, CA. Since this area was part of a Regular Program community, the City is being entered directly in the Regular Program and will use Riverside County's map in the interim for insurance and flood plain management purposes. (Community Number 060245, Effective FIRM 4-15-80.)

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: December 3, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-34295 Filed 12-20-82 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

[FCC 82-445]

#### Commission Organization; Amendment To Establish the Mass Media Bureau; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an erroneous reference to a rule section amended in this proceeding regarding the establishment of the Mass Media Bureau.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Goodfriend, Office of Managing Director, (202) 632-7513.

**SUPPLEMENTARY INFORMATION:**

#### Erratum

Released: November 23, 1982.

In the Matter of Amendment of Part 0 of the Commission's Rules to establish the Mass Media Bureau (10-28-82, 47 FR 47828).

On September 14, 1982, the Commission adopted an Order (FCC 82-445, released October 13, 1982) in the

above captioned proceeding. The reference to § 0.281 in § 0.284(a) is corrected to read: § 0.283.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-34650 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Parts 2 and 87

[Gen. Docket No. 82-182; FCC 82-506]

#### Amendment To Remove Station Log Requirements and To Provide for Additional Utilization of Specific MHz Frequencies in the Aviation Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the rules: (1) To eliminate the requirement for stations in the Aviation Services to maintain logs, (2) to permit the frequency 122.050 MHz to be used by air carrier aircraft as well as private aircraft for en route flight advisory service, and (3) to make the frequencies 122.775 and 122.850 MHz available for communications between aircraft on the ramp area of an airport and aviation service organizations at the airport.

These actions result from an informal request from the Federal Aviation Administration and FCC review of its rules. These amendments are intended to eliminate unnecessary regulations and provide service to the aviation public in a more efficient, expeditious manner.

**EFFECTIVE DATE:** January 17, 1983.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554, (202) 632-7175.

**FOR FURTHER INFORMATION CONTACT:** Robert H. McNamara, Private Radio Bureau.

**SUPPLEMENTARY INFORMATION:**

List of Subjects

47 CFR Part 2

Radio, Treaties.

47 CFR Part 87

Aeronautical stations, General aviation, Radio.

Report and Order

(Proceeding Terminated)

Adopted: November 18, 1982.

Released: December 17, 1982.

In the matter of Amendment of Parts 2 and 87 of the rules to remove station log requirements and to provide for

additional utilization of the frequencies 122.050, 122.775 and 122.850 MHz in the Aviation Services. General Docket No. 82-182; FCC 82-506.

1. In this Report and Order we are: (1) Removing the requirements for most stations in the Aviation Services to maintain logs; (2) making the frequency 122.050 MHz available to air carrier aircraft stations as well as private aircraft stations for en route flight advisory service; and (3) making the frequencies 122.775 and 122.850 MHz available for communications between stationary aircraft on the apron (ramp) area of an airport<sup>1</sup> and aeronautical utility mobile stations operating on the airport.

#### Station Log Requirements

2. Currently stations at fixed locations in the Aviation Services are required to maintain logs showing hours of operation, frequencies used, and hours of duty and signature of the operator(s) on duty. Where applicable, information concerning distress and emergency situations and antenna illumination must be recorded. Generally, logs in the Aviation Services may be destroyed after 30 days.

3. As part of our regulatory review program we examined the necessity and usefulness of these station log requirements. As to the logs of station operation, we found that, typically, logs of subject stations in the Aviation Services merely contain a daily entry of the hours of operation and the signature of the operator. As to records of distress or emergency situations, we learned of no instances where subject station logs containing a record of distress or emergency communications were used for any purpose. Regarding antenna illumination records, we observed that it is extremely rare that an antenna in this service would be large enough to require illumination. Even if antenna illumination is required in a given case, Section 17.49 of the Commission's rules provides for recordation of the required information elsewhere.<sup>2</sup> Therefore, we proposed in the Notice of Proposed Rule Making<sup>3</sup> in this proceeding to delete the

requirement to maintain station logs in the Aviation Services.

#### Comments

4. In response to the Notice of Proposed Rule Making (hereafter NPRM) comments were filed by:

- Aircraft Owners and Pilots Association (AOPA) representing more than 260,000 aircraft owners and pilots;
- National Business Aircraft Association, Inc. (NBAA) representing 2,638 members;
- Lee L. Robbins (Robbins);
- Aeronautical Radio, Inc. (ARINC) a communications intermediary for the air transport industry, which is the principal licensee of ground stations in the aeronautical en route service;
- Aerospace and Flight Test Radio Coordinating Council (AFTRCC) which represents entities in the aerospace manufacturing industry that are the primary licensees of aeronautical flight test stations; and
- Minneapolis-St. Paul Metropolitan Airports Commission (Minneapolis).

AOPA, NBAA, Robbins, AFTRCC and Minneapolis support the proposed removal of station log requirements in the Aviation Services. They concur that such recordkeeping requirements no longer serve a useful purpose. ARINC, although not opposing the deletion of the requirement for station logs, notes that paragraph 3.5, Volume II, Annex 10 to the Convention of International Civil Aviation requires the maintenance of certain records for stations in the International Aeronautical Telecommunications Service. ARINC interprets this requirement as applying only to aeronautical stations in the international mobile service and not applicable to stations in the domestic service. ARINC suggests that the Commission may wish to reflect in the rules the requirement for stations at fixed locations in the international aeronautical mobile service to maintain either written or automatic logs (the Convention permits automatic logs) for compliance with Annex 10 of the Convention.

#### Conclusion

5. For the reasons indicated in the NPRM, and in view of the strong support of the aviation community, we conclude that, except for en route stations providing international service, it is in the public interest to delete the rules requiring stations in the Aviation Services to maintain radio station logs. As suggested by ARINC, we believe the rules should reflect the requirement

contained in Annex 10 of the Convention for stations at fixed locations in the international aeronautical mobile service to maintain either a written or automatic log of messages. This requirement only affects the relatively few aeronautical stations which are authorized to provide international VHF or HF en route service. Therefore, except for stations providing international services in accordance with the provisions of Annex 10 to the Convention on International Civil Aviation, we are removing the requirement for stations in the Aviation Services to maintain a log.

#### Air Carrier Aircraft Use of 122.050 MHz

6. Several years ago the Federal Aviation Administration (FAA) instituted en route flight advisory service (EFAS). This service allows aircraft in flight to communicate directly with a meteorologist at an FAA flight service station. The frequency 122.0 MHz, which is available for use by both air carrier and private aircraft, has been utilized for EFAS. The FAA indicates that the EFAS program has been so successful that a second frequency is needed to avoid interference problems.

7. The FAA informally requested that the Commission's rules be amended to provide for such use of the frequency 122.050 MHz by both air carrier and private aircraft. Presently the rules make this frequency available only to private aircraft. The FAA indicates that this frequency would be very helpful in relieving congestion on the single assigned EFAS frequency. Accordingly, in the NPRM we proposed to amend the rules as requested by the FAA to make the frequency 122.050 MHz available to both air carrier aircraft and private aircraft for en route flight advisory service.

#### Comments

8. AOPA, NBAA, Robbins, and ARINC favor the proposed change in the utilization of the frequency 122.050 MHz. AFTRCC and Minneapolis did not comment on this issue.

#### Conclusion

9. In light of the benefits noted in the NPRM and the support received for the amendment requested by the FAA, we conclude it is in the public interest to amend the rules as proposed. Therefore, we are revising the rules to make the frequency 122.050 MHz available to both air carrier and private aircraft.

<sup>1</sup> The Federal Aviation Administration's Pilot/Controller Glossary describes the apron/ramp as a defined area, on a land airport, intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, or maintenance. (With regard to seaplanes, a ramp is used for access to the apron from the water.)

<sup>2</sup> If applicable the licensee of any type of radio station must maintain a record of tower light inspections as specified in Section 17.49 of the rules.

<sup>3</sup> Gen. Docket No. 82-182, released April 15, 1982. FCC 82-149, 47 FR 17309.

### Airport Ground Communications

10. In recent years general aviation<sup>4</sup> interests have indicated a need for a frequency in the VHF voice aeronautical band (118-136 MHz) to be made available for direct communications between aircraft on the ground and various aviation service entities, e.g., fuel trucks, avionics repair personnel and the like. Currently the rules do not provide a frequency which is generally available for direct communications between aircraft and mobile ground units operated by aviation service organizations. Typically, the use of an aeronautical advisory frequency assigned at an airport is requested for such purposes. However, since aeronautical advisory (unicom) frequencies are primarily utilized for safety-related communications, and are very heavily loaded in most regions of the United States, their additional use by numerous mobile units and service organizations is not considered a viable option. Further, unicom frequencies are used primarily at uncontrolled airports (i.e., airports without a control tower) for pilots to report their position in and near the airport traffic pattern. This critical air safety use should not be diluted by ground communications.

11. A frequency dedicated for such airport ground communications, although not essential for safety purposes, would undoubtedly contribute to more efficient and convenient aircraft operations. In the NPRM we proposed to make the frequency 122.775 MHz available on a primary basis for communications between stationary aircraft located on the apron/ramp area of an airport and aeronautical utility mobile stations operating on the airport. Any aviation service organization<sup>5</sup> operating on an airport would be eligible for an aeronautical utility mobile station authorization for such ground communications.

12. The frequency 122.775 MHz is the last of the unassigned 25 kHz VHF frequencies that were set aside for future assignment in the Aviation

Services in Docket No. 20123.<sup>6</sup> Although almost all new aircraft radio equipment has 25 kHz channelization, we recognize that many general aviation aircraft have older radio equipment with 50 kHz channelization (i.e., they have 360 channels available rather than 720 channels). Therefore, we also proposed to make the frequency 122.850 MHz available on a secondary noninterference basis for such ground communications. This frequency is one of the three frequencies currently assigned for communications between aircraft and aeronautical multicom stations.<sup>7</sup> We believed the use of 122.850 MHz for the proposed ground communications would be compatible with multicom usage. However, to protect multicom assignments should harmful interference result, we proposed to make 122.850 MHz available on a secondary basis.

### Comments

13. AOPA, NBAA, Robbins, Minneapolis and ARINC support the proposal to make the frequencies 122.775 and 122.850 MHz available for communications between aircraft on the ramp area of an airport and aviation service organizations on the airport. AFTRCC's comments did not address this proposal.

14. Although AOPA supports the proposal and in fact argues that such service is desperately needed, it expresses concern over the designation of a 25 kHz-spaced channel as the primary frequency. AOPA observes that a 1979 FAA report indicated that only 35% of general aviation aircraft were able to utilize 25 kHz spaced channels, while 86% were able to use 50 kHz spaced channels. Thus, AOPA submits that it would be preferable to designate a 50 kHz channel as the primary channel for the proposed ground communications.

15. NBAA indicates that it believes the proposal would not only improve and expedite aircraft servicing but would also increase safety. Minneapolis suggests, however, the limitation that aircraft be located on the airport ramp area be deleted. It feels aviation service organizations would prefer to be able to communicate with aircraft while they

are still airborne. It also questions the enforceability of such a limitation.

16. ARINC notes that the proposal would primarily provide relief for general aviation aircraft at uncontrolled airports. The availability of 122.725 and 122.850 MHz would not provide spectrum for such use by scheduled air carriers at the larger commercial airports.<sup>8</sup> However, other aircraft operators would be provided with needed operating flexibility.

### Conclusion

17. As we indicated in the NPRM, we recognize that although almost all new aircraft radio equipment has 25 kHz channelization, many general aviation aircraft have older equipment with 50 kHz channelization. We proposed to make 122.775 MHz available because it is the last of the unassigned VHF aeronautical frequencies. All the other VHF voice frequencies in the band are assigned for one or more uses. We proposed to make 122.850 MHz available on a secondary basis in order to alleviate the problem with older aircraft radios and because we felt that the proposed use for ground communications would be compatible with most multicom operations. However, we also sought to protect multicom assignments on 122.850 MHz if harmful interference develops at a given airport.

18. We still believe the proposed frequency assignments represent the best solution. There is little doubt that 25 kHz channelization is a necessary part of the future of aviation communications in the VHF band. The frequency 122.775 MHz is currently the only unassigned frequency in the band and, thus, a logical and convenient place to provide for the proposed ground communications. Additionally, with each passing year the number of aircraft equipped with 720 channel radios continues to grow. The availability of 122.850 MHz should accommodate the near term problem with the number of older 360 channel radios in use. The effect of making 122.850 MHz available on a secondary basis is to protect multicom assignments if harmful interference develops in a given location. We expect that this will be the exception. Thus, as a practical matter, at most airports 122.850 MHz would be available as the "primary" frequency for the proposed ground communications.

19. Additionally, we feel that the proposed limitation on the use of the

<sup>4</sup>General aviation encompasses all facets of civil aviation except certificated air carriers and large commercial aircraft operator. For example, corporate jets, light single engine aircraft and sailplanes are all considered within the "General Aviation" Classification.

<sup>5</sup>For the purposes of Part 87, an aviation service organization means any business firm which maintains facilities at a landing area for the purpose of one or more of the following general aviation activities: (1) Aircraft fueling; (2) aircraft services (e.g., parking, storage, tie-downs); (3) aircraft maintenance and/or sales; (4) avionics equipment maintenance; (5) aircraft rentals, air taxi service and/or flight instruction; and (6) baggage and cargo handling, and other passenger/freight services.

<sup>6</sup>Report and Order, adopted April 5, 1977, 64 FCC 2d 573, 42 FR 40469.

<sup>7</sup>Essentially, multicom communications pertain to activities of a temporary, seasonal or emergency nature which depend upon aircraft in flight for the successful or safe conduct of the activity. Such communications are limited to the directing of ground activities from the air, the directing of aerial activities from the ground, and related air-to-air communications.

<sup>8</sup>Air carrier ground crews employ UHF frequencies in the Business Radio Service to coordinate the servicing of aircraft at airport terminal areas.

subject frequencies for communications with aircraft on the ground must be retained. This proposal was initiated to satisfy a requirement for direct communications between aviation service organizations and aircraft on airport ramp areas. Other frequencies are available for necessary air-ground communications. Enforcement of this limitation does not pose a significant problem. First, the aviation community is highly self-disciplined and can be expected to cooperate in the use of these frequencies for the purpose designated. Second, should enforcement problems arise, it is relatively easy to determine if an aircraft is on the airport ramp area or not.

20. Further, as ARINC noted, it is not practical or desirable that these two frequencies be routinely utilized by scheduled air carriers at large commercial airports. The general aviation community is the intended beneficiary of the subject frequency usage.

21. For the reasons indicated above, including the strong support received from the aviation community, we believe it is in the public interest to make the frequencies 12.775 and 122.850 MHz available for communications between aircraft on the airport ramp area and aviation service organizations. Accordingly, we are amending the rules as proposed.

#### Summary of Actions

22. In summary, we are: (1) Revising § 87.99 and deleting §§ 87.103, 87.105, 87.107, and 87.109 to eliminate station logs in the Aviation Services, except where required by treaty; (2) amending § 87.195(e) to permit air carrier aircraft to utilize the frequency 122.050 MHz for enroute flight advisory service; and (3) revising §§ 87.183, 87.431, 87.432 and 87.433 to make the frequencies 122.775 and 122.850 MHz available for communications between aircraft on the ramp area of an airport and aviation service organizations on the airport. We are also amending U.S. footnote 31 in § 2.106 (Table of Frequency Allocations) to reflect these new frequency uses.

23. The rule amendments proposed in this proceeding, while expected to benefit the aviation public as described above, will not result in a significant economic impact on any person or entity. Therefore, the Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) do not apply to this rule making proceeding, because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

24. Regarding questions on matters covered in this document contact Robert H. McNamara (202) 632-7175.

25. Accordingly, it is ordered, That under the authority contained in Sections 4(i) and 303(b), (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(b), (c) and (r), the Commission's rules are amended as set forth in the attached Appendix, effective January 17, 1983.

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

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

#### Appendix

Parts 2 and 87 of chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

#### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

In § 2.106 footnote US31, the third, fourth and fifth paragraphs are revised to read as follows:

##### § 2.106 Table of frequency allocations.

\* \* \* \* \*

US31 \* \* \*

The frequencies 122.850, 122.900 and 122.925 MHz may be assigned to aeronautical multicom stations. In addition, 122.850 MHz may be assigned on a secondary noninterference basis to aeronautical utility mobile stations. In case of 122.925 MHz, US213 applies.

Air carrier aircraft stations may use 122.000 and 122.050 MHz for communication with aeronautical stations of the Federal Aviation Administration and 122.700, 122.800, 122.900 and 123.000 MHz for communications with aeronautical stations pertaining to safety of flight with and in the vicinity of landing areas not served by a control tower.

Frequencies in the band 121.9375-122.8875 MHz may be used by aeronautical stations of the Federal Aviation Administration for communication with private aircraft stations only, except that 122.000 and 122.050 MHz may also be used for communication with air carrier aircraft stations concerning weather information.

\* \* \* \* \*

#### PART 87—AVIATION SERVICES

1. Section 87.99 is revised to read as follows:

##### § 87.99 Station Logs.

Stations at fixed locations in the international aeronautical mobile service (aeronautical enroute stations licensed to provide international VHF or HF service) shall maintain a written or automatic log in accordance with the

provisions of Paragraph 3.5, Volume II, Annex 10 to the Convention on International Civil Aviation.

##### § 87.103 [Amended]

2. Part 87 is amended by removing § 87.103.

##### § 87.105 [Amended]

3. Part 87 is amended by removing § 87.105.

##### § 87.107 [Amended]

4. Part 87 is amended by removing § 87.107.

##### § 87.109 [Amended]

5. Part 87 is amended by removing § 87.109.

6. In § 87.183 paragraph (h) is revised to read as follows:

##### § 87.183 Frequencies available.

\* \* \* \* \*

(h) The frequencies 121.600 through 121.925 MHz listed in 87.401(a) may be used by aircraft on the ground for airport utility communications. In addition, the frequency 122.775 MHz and, on a secondary noninterference basis to aeronautical multicom stations, the frequency 122.850 MHz may be used by stationary aircraft on the apron/ramp area of an airport for utility communications in accordance with § 87.431 of this part.

\* \* \* \* \*

7. In § 87.195 paragraph (e) is revised to read as follows:

##### § 87.195 Frequencies available.

\* \* \* \* \*

(e) The frequencies 122.000 and 122.050 MHz are available to air carrier aircraft stations for enroute flight advisory service (EFAS) provided by the Federal Aviation Administration

\* \* \* \* \*

8. In § 87.201 paragraph (b) is amended by adding a note at the end of the table to read as follows:

##### § 87.201 Frequencies available.

\* \* \* \* \*

(b) \* \* \*

Note.—The frequencies 122.000 and 122.050 MHz are available to private aircraft stations for enroute flight advisory service (EFAS) provided by the Federal Aviation Administration.

\* \* \* \* \*

9. In § 87.431, new paragraph (d) is added to read as follows:

##### § 87.431 Frequencies available.

\* \* \* \* \*

(d) Additionally the frequency 122.775 MHz and, on a secondary noninterference basis to aeronautical

multicom stations, the frequency 122.850 MHz are available for communications between aeronautical utility mobile stations and stationary aircraft on the apron/ramp area of an airport.

10. In § 87.432, new paragraph (c) is added to read as follows:

§ 87.432 Eligibility.

(c) Authorization to operate an aeronautical utility mobile station on the frequencies 122.775 and 122.850 MHz will be issued to airport operators and aviation service organizations<sup>1</sup> located at a landing area.

11. In § 87.433, new paragraph (c) is added to read as follows:

§ 87.433 Scope of service.

(c) The frequencies 122.775 and 122.850 MHz may be used by aeronautical utility mobile stations for communications with stationary aircraft on the airport apron/ramp area concerning the safe and efficient portal-to-portal transit of the aircraft, such as the types of fuel and ground services available at the airport. These frequencies shall not be used for air traffic control purposes, to communicate with aircraft moving on the ground, or to transmit information pertaining to runway, wind or weather conditions.

[FR Doc. 82-34546 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 22

[General Docket 80-183; FCC 82-503]

**Public Mobile Radio Services; Allocate Spectrum in the 928-941 MHz Band and To Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service; Correction**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The *Memorandum Opinion and Order on Reconsideration (Part 1)*, in General Docket 80-183, FCC 82-503, released November 16, 1982 and published at 47 FR 53380, November 26, 1982, pertaining to allocation of

<sup>1</sup>For the purpose of this subpart, an aviation service organization means any business firm which maintains facilities at a landing area for the purposes of one or more of the following general aviation activities: (i) Aircraft fueling; (ii) aircraft services (e.g., parking, storage, tiedowns); (iii) aircraft maintenance and/or sales; (iv) avionics equipment maintenance and/or sales; (v) aircraft rental, air taxi service and/or flight instruction; and (vi) baggage and cargo handling, and other passenger/freight services.

spectrum for common carrier one-way paging systems in the 900 MHz band, contains inaccurate rule citations. The rule citations in paragraphs 20, 25 and 26 are hereby corrected.

**FOR FURTHER INFORMATION CONTACT:** Lisa Wershaw, Common Carrier Bureau, (202) 632-6450.

**SUPPLEMENTARY INFORMATION:**

Released: December 13, 1982.

In the matter of amendments of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service; General Docket No. 80-183, RM-2365, RM-2750, RM-3047 and RM-3068.

The *Memorandum Opinion and Order on Reconsideration (part 1)*, in the captioned proceeding, General Docket 80-183, FCC 82-503, released November 16, 1982, (47 FR 53380, November 26, 1982) should be corrected as set forth below.

1. In paragraph 20 on page 53380, we waived the submission of topographic maps with 900 MHz common carrier paging applications. In this paragraph the rule citation for topographic maps should be corrected to read § 22.15 (j)(8), instead of § 22.115(j)(8).

2. Paragraph 26 on page 53383 should read as follows:

26. It is further ordered, That the topographic maps required by 47 CFR 22.15(j)(8) and the profile graphs required by 47 CFR 22.115 are hereby waived for a one-way paging applicant requesting a 900 MHz one-way paging frequency.

3. Finally, in paragraph 25 on page 53382, the reference to Part 2 of the Commission's Rules should be deleted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-34948 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**50 CFR Parts 11 and 12**

**Civil Procedures, Seizure and Forfeiture Procedures; Implementation of Lacey Act Amendments of 1981**

**AGENCY:** Office of the Solicitor, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Solicitor of the Department of the Interior is issuing a final rule to implement recent amendments to the Lacey Act. This rule amends current procedural regulations

governing civil procedures for the assessment of civil monetary penalties and the administrative forfeiture of items seized for alleged violations of various Federal wildlife laws, including the Lacey Act. This rule reflects new amendments to the Lacey Act which provide for the administrative forfeiture and strict liability forfeiture for items seized under the Act, in addition to provisions for assessment of civil monetary penalties for violations of various Federal and State wildlife laws. Further, in order to alleviate the confusion that has arisen regarding civil monetary penalty and administrative forfeiture procedures under the Lacey Act Amendments, and to effectuate clear Congressional intent which mandates these new regulations, this rule is effective immediately.

**EFFECTIVE DATE:** December 21, 1982.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Young, Attorney-Advisor, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240 (202) 343-2172.

**SUPPLEMENTARY INFORMATION:** Recently, Congress amended various provisions of, and recodified the Lacey Act, formerly found at 18 U.S.C. 42-44 by Pub. L. 97-79, known as the Lacey Act Amendments of 1981 (hereinafter "the Act" or "the amendments"). The amendments modified, among other things, the procedures for the forfeiture of fish, wildlife and plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of the Act or regulations implementing the Act. 16 U.S.C. 3374. These amendments altered pre-existing forfeiture procedures in the following ways:

1. The Lacey Act previously authorized only judicial forfeiture. The amendments now authorize administrative forfeiture in the case of property having a value not greater than \$10,000. 16 U.S.C. 3374(b). See H.R. Rep. No. 97-276, 97th Cong., 1st Sess. 23 (1981).

2. The Lacey Act previously authorized forfeiture only after a criminal conviction or the assessment of a civil penalty. The amendments provide that all fish, wildlife and plants imported, exported, transported, sold, received, acquired or purchased contrary to 16 U.S.C. 3372 (except subsection 3372(b)), or implementing regulations, are subject to forfeiture, without regard for any additional evidence of culpability as required for a civil penalty assessment or criminal conviction. 16 U.S.C. 3374(a). That is,

forfeiture proceedings may now be brought prior to the initiation of civil penalty or criminal proceedings and even in cases where no civil penalty or criminal proceeding will be brought. See H.R. Rep. No. 97-276, *supra* at 22.

3. The Lacey Act did not previously authorize the assessment of costs, such as storage costs, associated with seizure and forfeiture of fish, wildlife and plants. The amendments provide that any person who is convicted or assessed a civil penalty for a violation of the Act is liable for costs incurred by the Government in storing, caring for, and maintaining any fish, wildlife, or plant seized in connection with the violation. 16 U.S.C. 3374(c).

In amending the Lacey Act in the above ways, Congress recognized that efficient forfeiture procedures are a prerequisite for an effective conservation program for protected fish, wildlife and plants. See H.R. Rep. No. 97-276, *supra* at 22-23. These regulations facilitate this effort by implementing the changes in Lacey Act forfeiture procedures directed by the recent amendments.

Current regulations found at 50 CFR Part 12 govern seizure and forfeiture of contraband under various Federal conservation statutes such as the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, the Eagle Protection Act, 16 U.S.C. 668 *et seq.*, the Airborne Hunting Act, 16 U.S.C. 742j-1, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* All of these statutes, with the exception of the Marine Mammal Protection Act, authorize administrative forfeiture and forfeiture without regard to culpability. In addition, the Endangered Species Act authorizes the assessment of costs connected with storage of contraband seized pursuant to that Act. As a result, existing provisions of 50 CFR Part 12 provide procedures for administrative forfeiture, forfeiture without culpability, and the assessment of costs for violations under that above statutes. The effect of the amendments to the Lacey Act is to authorize administrative forfeiture under that Act corresponding to that authorized by the above statutes and the implementing regulations in 50 CFR Part 12. This rule applies the pre-existing forfeiture procedures of current regulations to forfeitures under the amended Lacey Act. A discussion of the specific provisions of 50 CFR Part 12 which are affected by this rule follows.

#### Recodification of Lacey Act Citations

Pub. L. 97-79 recodified those portions of the Lacey Act formerly appearing at 18 U.S.C. 43-44 as 16 U.S.C. 3371 *et seq.* Technical amendments to the following

provisions of 50 CFR Part 12 are made to add the new citation to the Lacey Act as amended: The Authority Citation; Scope of regulations, § 12.2(j); Bonded release, § 12.6(a); Civil actions to obtain forfeiture, § 12.22; and Transfer in settlement of civil penalty claims, § 12.25.

In addition, Lacey Act citations appear in 50 CFR Part 11 which governs civil penalty proceedings under the Lacey Act as well as other conservation laws. Although the amendments to the Lacey Act did not modify provisions relating to civil penalty procedures, amendment of Part 11 is also necessary to reflect the citation to the Lacey Act Amendments. Accordingly, technical amendments are made to the authority citation for Part 11 and to section 11.2, scope of regulations. No other changes to Part 11 are made by this rule.

This rule adds the citation to the Lacey Act Amendments of 1981 and does not replace the citation to the pre-existing Lacey Act in the above-referenced sections in 50 CFR Parts 11 and 12. This addition makes clear that proceedings can still be brought for alleged violations which occurred prior to the amendment of the Lacey Act. As a result, procedures and remedies available under the pre-existing Lacey Act can still be pursued for actions occurring prior to the amendment of the Lacey Act.

#### Administrative Forfeiture

As previously stated, the Lacey Act Amendments of 1981 now authorize administrative forfeiture proceedings. The following provisions of 50 CFR Part 12, which currently apply to administrative forfeiture pursuant to other wildlife laws, are amended to reflect this new authorization under the Lacey Act Amendments: Appraisalment, § 12.12; Administrative forfeiture proceedings, § 12.23(a); Petition for remission, § 12.24(a); Petition for restoration of proceeds, § 12.41(a).

Pursuant to these regulatory amendments, when property is seized under the Lacey Act Amendments of 1981, its value must first be determined before forfeiture proceedings may be initiated. If the value of the property is not greater than \$10,000, the property is subject to administrative forfeiture under pre-existing agency procedures set forth in 50 CFR Part 12. These procedures include the opportunity for property owners to petition the Department for remission and, in certain cases when the property has already been sold, for restoration of proceeds. The availability of petitions for remission and restoration of proceeds is in conformance with a discussion in the

legislative history of the Lacey Act Amendments. See H.R. Rep. No. 97-276, *supra* at 22. This discussion recognized that in certain cases, forfeiture, while required as a matter of law, may nevertheless be unnecessarily harsh. Therefore, the Secretary has the discretion to remit or mitigate a forfeiture based upon the equities of a given case.

The provisions of 50 CFR Part 12 have also been changed to allow for any person claiming an interest in seized property to move for a temporary stay of administrative forfeiture proceedings during the pendency of existing federal criminal proceedings against the claimant for alleged violations of the law related to the seized property. Such a stay may be granted upon the satisfaction of certain conditions. First, the motion must contain the claimant's verified statement showing that he or she holds an absolute, undivided title to the seized property and that there are no liens, encumbrances, or other third-party security interests on the items. Second, the claimant moving for a stay must agree to pay in advance all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property during the stay of the administrative forfeiture proceedings. A suitable bond may be required to secure the payment of these reasonable storage costs. This procedure will apply to all future administrative forfeiture proceedings brought under the various federal wildlife statutes.

#### Strict Liability Forfeiture

The Act now authorizes forfeiture independent of criminal convictions or the assessment of civil penalties. To reflect this amendment, 50 CFR 12.22 is amended to authorize the Solicitor to request the Attorney General to file a civil action to obtain forfeiture of items over \$10,000 in value or for contested administrative forfeitures under the Lacey Act Amendments of 1981. A criminal conviction or the assessment of a civil penalty is not necessary for such an action to be filed.

#### Recovery of Storage Costs

The Lacey Act Amendments of 1981 authorize the recovery of certain costs associated with the storage of property seized in conjunction with a violation of the Act. Section 12.42 of 50 CFR is amended to reflect this new authority.

Furthermore, § 12.42 has also been amended to provide for an appeals procedure whereby the past owner of the forfeited property could promptly raise objections to the reasonableness of the assessed storage costs. Although

informal contacts with the Fish and Wildlife Service to resolve objections concerning the reasonableness of bills for storage costs are strongly encouraged, it is recognized that a more formal review procedure might be advantageous. Under the new procedure adopted by this rule, the recipient of a bill may file written objections including a statement of facts upon which the reasonableness of assessed costs is being challenged, within 30 days of the date of the bill with the Regional Director of the Fish and Wildlife Service for the Region in which the seizure and forfeiture occurred. The Regional Director will promptly review any written objections presented by a party and shall mail his response to the party within 30 days of receipt of the written objections. In all cases, the Regional Director's decision on these written objections to the Service's assessed costs will constitute the final administrative decision of the agency. This procedure will apply to cases under the Endangered Species Act as well as under the Lacey Act Amendments of 1981.

#### Analysis of Comments Received

The proposed rulemaking was published on pages 40670-40673 of the *Federal Register* of September 15, 1982, and invited comments for 15 days ending September 30, 1982. Comments were received in a timely fashion from 3 sources: Safari Club International, the American Fur Industry, Inc., and a private individual. The following summarizes the comments, suggestions and actions taken.

Safari Club International (SCI) expressed four major concerns with the proposed rulemaking. First, SCI stated that the administrative and strict liability forfeiture provisions pose constitutional concerns, in that no provision exists to guarantee an individual that statements he might make in contesting administrative forfeiture proceedings under the Lacey Act Amendments can not be used against him in any subsequent criminal proceeding. Second, SCI suggested that these regulations be amended to provide an individual with the opportunity to move for a stay of administrative forfeiture proceedings until disposition of any criminal charges through court action or running of the applicable statute of limitations. Third, the guidelines for determining storage costs were criticized by SCI as being "insufficient and loose," and an amendment was proposed to provide an individual with an opportunity to contest the alleged "reasonableness" of these costs. Finally, SCI objected to the

appraisal procedure for property seized in accordance with 50 CFR Part 12. In particular, SCI stated that an appraisal should be conducted by independent appraisers (not employed by the United States Government, and restricted to a maximum number of appraisals annually so as to preclude the alleged possibility of conflict of interest) and that the standard for value should be the value "at the time and place of seizure"—not the time and place of appraisal standard found in 50 CFR 12.3(a)(2) and 12.12.

Some of the comments made by SCI reflected general criticisms of the existing seizure and forfeiture procedures in 50 CFR Part 12. Insofar as SCI desires a general amendment to 50 CFR Part 12, it is strongly encouraged to file an original petition for rulemaking under 43 CFR Part 14. To the extent that the Department deemed it possible, however, some of the general comments of SCI have already been incorporated into this rulemaking.

To begin with, SCI's comments regarding the need to immunize any statements made by an individual while contesting administrative forfeiture are at odds with the actual nature of administrative forfeiture proceedings under 50 CFR Part 12. No hearing is held before the agency during administrative forfeiture proceedings: the individual "contests" forfeiture by filing a claim and bond under 50 CFR 12.23(b)(2) setting forth his or her interest in the property. If the claim and bond is filed within 30 days after the date of first publication or posting of the notice of proposed forfeiture, these documents are transmitted to the Attorney General for the institution of forfeiture proceedings in United States District Court. 50 CFR 12.23(b)(3). At this point in the proceedings control over the matter transfers to the Justice Department. Therefore, it would be beyond the jurisdiction and authority of the Interior Department to incorporate the "immunization" recommendation of SCI in this rulemaking.

SCI's advocacy of a "motion for stay" procedure could operate to indefinitely delay forfeiture proceedings, thereby creating problems instead of solving them, in cases involving multiple-party ownership or security interests. However, whole due process would mandate the swift prosecution of forfeiture proceedings in each instance where third-party interests in the seized property are involved, the same would not be true in the case of an owner who holds absolute, fee simple title in seized property, free of all liens and encumbrances, who voluntarily and

knowingly requests a stay of administrative forfeiture proceedings during the pendency of actual criminal proceedings against him relating to the property. In the absence of third-party interests, the owner's motion for a stay—a voluntary action on his part—would constitute a knowing written waiver of his due process right to a swift resolution of the forfeiture process. The final rule contains a new motion for stay procedure as described earlier in the preamble. As stated previously, this new procedure will apply to all administrative forfeiture proceedings initiated under 50 CFR Part 12.

The Lacey Act Amendments of 1981 also provide that "[a]ny person convicted of an offense, or assessed a civil penalty, under (16 U.S.C. 3373) shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned." 16 U.S.C. 3374(c). The determination of liability for storage costs is made in accordance with 50 CFR 12.42, which provides for a standard of a "reasonable fee for expenses." This standard is in keeping with the Lacey Act Amendments and can be properly administered. Although any determination of liability under this procedure would be subject to review when the Service seeks the recovery of these costs through judicial collection remedies, it has been determined that an initial appeals process on assessment of costs will be adopted. This new administrative review procedure is contained in the final rule, and its features were described earlier in the preamble. It will apply to assessment of costs submitted under both the Endangered Species Act and the Lacey Act Amendments of 1981.

Finally, regarding SCI's comments suggesting changes in the appraisal procedure set out in 50 CFR Part 12, the current procedure predates the Lacey Act Amendments and has been used as a uniform procedure in all seizure and forfeiture cases. In fact, the Department's appraisal procedure is patterned after that followed by the Customs Service under the Tariff Act of 1930, 19 U.S.C. 1606. See 19 CFR 162.43(a). The present rulemaking thus provides for continued uniformity for seizure and forfeiture procedures. At this point, therefore, the Department questions the need for changing the appraisal system since the present system is functional, an adequate review mechanism exists, an independent appraisal system would involve great expense, and a referral to

independent appraisers would entail unaffordable delays.

A private individual commented that the 15-day public comment period was not practical and was contrary to the public interest. He further stated that this rule will have a significant economic impact on a substantial number of small entities due to civil penalty assessments. He also raised various other procedural questions regarding the proposed rule.

As stated in the proposed rulemaking, it was necessary to limit the public comment period to 15 days for this rule because actions on many wildlife violation cases are pending which urgently require the clarification of procedures provided by this rule. Further delays might have caused due process problems in pending forfeiture cases. The public interest, as expressed by Congress, is best served by the prompt implementation of the Lacey Act Amendments of 1981.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities. Although assessments of civil penalties, where appropriate, will occur for violations of the Lacey Act Amendments under these procedures, "these regulations will only impact those individual members of the general public involved in violations of state and federal wildlife laws," and "it is highly unlikely that entire small business entities as a group would be affected unless they were involved in a conspiracy to violate the law." Determination of Effects of Rule at page 4.

In further response to this individual's general comments, 16 U.S.C. 3374(b) makes the customs laws applicable to Lacey Act forfeiture proceedings. Under this provision, administrative forfeiture can be had on seized property having a value not exceeding \$10,000; seized property having a value exceeding \$10,000 must be referred to the Attorney General for institution of judicial forfeiture proceedings. This individual's argument that "[e]vidence of culpability should be required when considering forfeiture" has been rejected by Congress with regard to fish, wildlife, or plants, 16 U.S.C. 3374(a)(1). However, procedures exist for the remission of forfeitures or the restoration of proceeds in appropriate cases. See 50 CFR 12.24, 12.41.

Finally, this individual's protest against the use of existing Lacey Act procedures and remedies to seek penalties and forfeiture for violations which preceded the passage of the Lacey Act Amendments of 1981

misinterprets the effect of this rule. Although violations of the former Lacey Act, 18 U.S.C. 43-44, can still be the subject of civil penalty and forfeiture proceedings, those proceedings must conform to the procedures and remedies available under the pre-existing law.

The American Fur Industry, Inc. (AFI) requested an amendment to the proposed rulemaking to require the Fish and Wildlife Service to store seized articles in proper facilities to avoid needless loss (deterioration). AFI stated that instances occur where seized articles are later returned to the owner due to a mistake on the Service's part or due to the furnishing of appropriate documentation, and yet the owner incurs damage because his property has deteriorated due to alleged improper storage. AFI's comment goes beyond the scope of the proposed rulemaking, which deals solely with the Solicitor's Office procedural responsibilities for processing civil penalty and forfeiture cases under the Lacey Act Amendments of 1981. The final rule, therefore, will not be amended to address storage facility requirements. It is suggested instead that the AFI raise the issue of adequacy of storage procedures directly with the United States Fish and Wildlife Service.

#### Regulation Promulgation

These amendments are being published as a final rule effective immediately. This rule implements changes to the Lacey Act which are technical in nature and which require only slight modifications to existing procedural regulations regarding administrative forfeiture and assessment of civil monetary penalties. Because actions on a large and growing number of wildlife violations which have occurred since the amendments to the Lacey Act have been held in abeyance pending clarification of the correct administrative procedure to follow, there is an urgent need to resolve this confusion. To alleviate this confusion and effectuate clear Congressional intent with regard to civil penalty and forfeitures under the Lacey Act as amended and to facilitate persons who have been alleged to have violated the law in obtaining prompt resolution of issues pertaining to the alleged violations, it has been determined by the Department that these regulations should be adopted and become effective as soon as practicable. Thus, failure to place this rule in immediate effect would be impracticable, unnecessary and contrary to the public interest. As explained above, good cause exists for placing this rule in immediate effect.

**Primary Author:** The primary author of this document is W. Michael Young, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior.

**Note.**—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result of this rule, violations of the Lacey Act involving fish, wildlife or plants which are not deemed to be of criminal culpability can continue to be processed efficiently through civil penalty proceedings. Persons whose conduct is alleged to be violative of the law are able to obtain prompt administrative hearings of the issues under administrative procedures. The administrative forfeiture of contraband fish, wildlife or plants whose value is not greater than \$10,000 is also more efficient because disposition of the items will not only reduce the overall cost to the government by reducing the number of more time-consuming and expensive judicial forfeitures to be sought, but may also generate a similar reduction in legal costs to members of the public whose property is involved in expedited administrative forfeiture proceedings. In addition, although the overall number of forfeitures is expected to rise due to the simplification of the forfeiture process, the current rate of property relinquishment is such that the change will probably not have a significant impact on any type of group or organization. These are merely procedural enforcement regulations that will be applied to individuals alleged to have violated the law, and it is unlikely that entire organizations or entities would be affected by these regulations absent a conspiracy to violate the law.

The revisions to the regulations contain no information collection or record-keeping requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

In accordance with Appendix 1.4 of Chapter 516 of the Departmental Manual, these proposed regulations concern law enforcement and legal transactions and are therefore categorically excluded from preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969.

#### List of Subjects

##### 50 CFR Part 11

Exports, Fish, Imports, Penalties, Wildlife, Administrative practice and procedure.

##### 50 CFR Part 12

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants (agriculture), Seizures and forfeitures, Surety bond, Wildlife.

**Amendment of Existing Regulation**

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

**PART 11—CIVIL PROCEDURES**

1. The Authority citation for Part 11 is revised to read as follows:

**Authority:** Lacey Act, 83 Stat. 279-281, 18 U.S.C. 42-44; Lacey Act Amendments of 1981, 95 Stat. 1073-1080, 16 U.S.C. 3371 *et seq.*; Bald Eagle Protection Act, sec. 2, 54 Stat. 251, 16 U.S.C. 668a; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, 16 U.S.C. 1540(f); Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042, 16 U.S.C. 1382.

2. Section 11.2 is revised to read as follows:

**§ 11.2 Scope of regulations.**

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

Lacey Act, 18 U.S.C. 43;  
Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;  
Bald Eagle Protection Act, 16 U.S.C. 668-668d;  
Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*; and Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1384 and 1401-1407.

**PART 12—SEIZURE AND FORFEITURE PROCEDURES**

3. The Authority citation for Part 12 is revised to read as follows:

**Authority:** Act of September 6, 1966, 5 U.S.C. 301; Bald and Golden Eagles Protection Act, 16 U.S.C. 668-668b; National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd(e)-(f); Migratory Bird Treaty Act, 16 U.S.C. 704, 706-707, 712; Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718f-718g; Fish and Wildlife Act of 1956 [Airborne Hunting Amendments], 16 U.S.C. 742j-(d)-(f); Black Bass Act, 16 U.S.C. 852d-853; Marine Mammal Protection Act of 1972, 16 U.S.C. 1375-1377, 1382; Endangered Species Act of 1973, 16 U.S.C. 1540; Lacey Act, 18 U.S.C. 43, 44; Lacey Act Amendments of 1981, 95 Stat. 1073-1080, 16 U.S.C. 3371 *et seq.*; Tariff Act of 1930, 19 U.S.C. 1602-1624; Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 7421; Exotic Organisms, E.O. 11987, 42 FR 26949; American Indian Religious Freedom Act, 42 U.S.C. 1996.

4. Amend § 12.2 by adding a new paragraph (j) to read as follows:

**§ 12.2 Scope of regulations.**

(j) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*

5. Amend § 12.6 by revising paragraph (a) to read as follows:

**§ 12.6 Bonded release.**

(a) Subject to the conditions set forth in paragraphs (b) and (c) of this section, and to such additional conditions as may be appropriate, the Service, in its discretion, may accept an appearance bond or other security (including, but not limited to, payment of the value as determined under § 12.12) in place of any property seized under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Lacey Act, 18 U.S.C. 43; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; or Eagle Protection Act, 16 U.S.C. 668 *et seq.*

6. Revise § 12.12 to read as follows:

**§ 12.12 Appraisal.**

The Service shall determine the value of any cargo, of a vessel or other conveyance employed in unlawful taking, seized under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, and the value of any property seized under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1, *et seq.*; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.* If the seized property may lawfully be sold in the United States, its domestic value shall be determined in accordance with § 12.3. If the seized property may not lawfully be sold in the United States, its value shall be determined by other reasonable means.

7. Revise § 12.22 to read as follows:

**§ 12.22 Civil actions to obtain forfeiture.**

The Solicitor may request the Attorney General to file a civil action to obtain forfeiture of any property subject to forfeiture under the Airborne Hunting Act, 16 U.S.C. 742j-1; Lacey Act, 18 U.S.C. 43-44; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*; Black Bass Act, 16 U.S.C. 851 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*; Migratory Bird Hunting Stamp Act, 16 U.S.C. 718 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Endangered Species Act, 16 U.S.C. 1531 *et seq.* Before any such action is filed against property subject to forfeiture under the Lacey Act, 18 U.S.C. 43, or against property, other than the cargo of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, a civil penalty must first be assessed in accordance with the statute and applicable regulations, and no such action may be filed more than

30 days after the conclusion of civil penalty assessment proceedings.

8. Amend § 12.23 by revising paragraph (a) and by adding paragraph (b)(4) to read as follows:

**§ 12.23 Administrative forfeiture proceedings.**

(a) *When authorized.* Whenever any property subject to forfeiture under the Eagle Protection Act, 16 U.S.C. 668 *et seq.*, or Airborne Hunting Act, 16 U.S.C. 742j-1, or any wildlife or plant subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, or any fish, wildlife or plant subject to forfeiture under the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, is determined under § 12.12 to have a value not greater than \$10,000, the Solicitor may obtain forfeiture of such property in accordance with this section.

(b) \* \* \*

(4) *Motion for stay.* Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's regional or field office indicated in the notice a motion to stay administrative forfeiture proceedings. Any motion for stay must be filed within 30 days after the date of first publication or posting of the notice of the proposed forfeiture. Each motion must contain: (i) The claimant's verified statement showing that he or she holds absolute, fee simple title to the seized property, free and clear of all liens, encumbrances, security interests, or other third-party interests, contingent or vested; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property for which administrative forfeiture is sought. Where a stay of administrative forfeiture proceedings would not injure or impair the rights of any third parties and where the claimant has agreed to pay in advance anticipated, reasonable storage costs associated with the granting of a stay, the Regional or Field Solicitor as appropriate may, in his discretion, grant the motion for stay and specify reasonable and prudent conditions therefor, including but not limited to the duration of the stay, a description of the factors which would automatically terminate the stay, and any requirement for a bond (including amount) to secure the payment of storage and other maintenance costs. If a motion for stay is denied, or if a stay is terminated for any reason, the claimant must file, if he or she has not already done so, a claim and bond in accordance with paragraph (b)(2) of this section not later than 30 days after receipt of the Solicitor's

Office denial or termination order. Failure to file the claim and bond within 30 days will result in summary forfeiture under paragraph (c) of this section.

9. Amend § 12.24 by revising paragraph (a) to read as follows:

**§ 12.24 Petition for remission of forfeiture.**

(a) Any person who has an interest in cargo, of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, or any person who has an interest in any property subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, or any person who has incurred or is alleged to have incurred a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in United States District Court, the Attorney General, a petition for remission of forfeiture.

10. Revise § 12.25 to read as follows:

**§ 12.25 Transfers in settlement of civil penalty claims.**

In the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Lacey Act, 16 U.S.C. 43; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, may be given an opportunity to completely or partially settle the civil

penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a United States Customs Form 4607 or a similar compromise transfer of property instrument provided by the Department.

11. Amend § 12.41 by revising paragraph (a) to read as follows:

**§ 12.41 Petition for restoration of proceeds.**

(a) Any person claiming any property or interest therein which has been forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, and sold according to law, or any person claiming cargo or an interest therein, of a vessel or other conveyance employed in unlawful taking which has been forfeited under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, and sold according to law, may file with the Solicitor or, where forfeiture proceedings have been brought in United States District Court, the Attorney General, a petition for restoration of proceeds.

12. Revise § 12.42 to read as follows:

**§ 12.42 Recovery of certain storage costs.**

If any wildlife, plant, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for

expenses to the United States connected with the transfer, board, handling, or storage of such property. If any fish, wildlife or plant is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371, *et seq.*, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Service shall send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill shall contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment. Payment shall be made in accordance with the bill. The recipient of any assessment of costs under this section who has an objection to the reasonableness of the costs described in the bill may, within 30 days of the date on which he received the bill, file written objections with the Regional Director of the Fish and Wildlife Service for the Region in which the seizure occurred. Upon receipt of the written objections, the appropriate Regional Director will promptly review them and within 30 days mail his final decision to the party who filed objections. In all cases, the Regional Director's decision shall constitute final administrative action on the matter.

Dated: November 26, 1982.

William H. Coldiron,  
Solicitor.

[FR Doc. 82-34581 Filed 12-20-82; 9:45 am]

BILLING CODE 4310-17-M

# Proposed Rules

Federal Register

Vol. 47, No. 245

Tuesday, December 21, 1982

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 THE TREASURY

### Comptroller of the Currency

#### 12 CFR Parts 3, 6, 7, and 32

[Docket No. 82-25]

#### National Bank Lending Limits

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency proposes to amend the regulations and interpretive rulings regarding national bank lending limits to reflect amendments of R.S. 5200 (12 U.S.C. 84) made by Congress in Section 401(a) of Pub. L. 97-320 (Oct. 15, 1982). The proposed amendments to the regulations and interpretive rulings would generally: (1) Clarify the manner in which the lending limits and exceptions thereto apply; (2) set forth rules under which loans made to one person are to be combined with loans made to other persons for purposes of the lending limits; and (3) define and further define terms used in the amended statute. These amendments will be of substantial interest to the banking industry. Interested persons are invited to submit written data, views, or arguments regarding the proposed amendments for a period of 45 days.

**DATE:** Comments must be received by February 4, 1983.

**ADDRESSES:** Please send comments to Docket No. 82-25, Communications Division, Third Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219. Attn: C. Christine Jones ((202) 447-1768). All Comments received will be made available for public inspection.

**FOR FURTHER INFORMATION CONTACT:**

Carol M. Beaumier, Manager, International Examinations ((202) 447-1747); Howard J. Finkelstein, Attorney, Legal Advisory Services Division ((202) 447-1880); Claire Owen, National Bank

Examiner, Commercial Examinations ((202) 447-1164).

**SUPPLEMENTARY INFORMATION:** Section 401(a) of Pub. L. 97-320 (Oct. 15, 1982) made a number of substantive changes to R.S. 5200 (12 U.S.C. 84), including the following:

(a) The lending limit generally applicable to national banks was changed from 10 percent of capital and surplus to 15 percent.

(b) A new exception to the lending limits was created by which national banks could lend an additional 10 percent of their capital and surplus if such loan was fully secured by "readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding \* \* \*"

(c) The term "loan and extension of credit" was substituted for "obligation" and the term was defined for the first time.

(d) The term "person" was defined for the first time. Explicitly included in the definition were sovereign governments, their agencies, subdivisions, and instrumentalities.

(e) The existing fourteen exceptions were modified and simplified; some were eliminated.

(f) An additional exception was added governing loans or extensions of credit secured by deposits in the lending bank.

(g) Rules regarding combining loans to individual borrowers were eliminated from the statute. Instead, the Comptroller was explicitly empowered to make these determinations.

(h) The Comptroller was granted explicit rulemaking and interpretive authority in determining when a commitment by a national bank to advance funds is to be considered a loan or extension of credit subject to the lending limits.

(i) The Comptroller was granted authority to "prescribe rules and regulations to administer and carry out the purposes of [section 84], including rules or regulations to define or further define terms used in [section 84] and to establish limits or requirements other than those specified in [section 84] for particular classes or categories of loans or extensions of credit."

These statutory changes made it necessary for the Comptroller to amend the Office's existing regulations under Section 84 and, in addition, to

promulgate new regulations to carry out the intention of the statute. In order to simplify the existing regulations from a structural viewpoint, all current and new regulations and interpretations in this area will be incorporated in a new Part 32 of 12 CFR. It is believed that this change will make it easier to reference the laws governing national banks' lending limits.

Generally, the new Part 32 retains many of the Comptroller's Interpretive Rulings now found in Part 7. In addition, new regulations have been proposed in a number of areas. The public is invited to comment on all aspects of the proposed regulation.

The following are among the significant matters addressed by the proposal:

1. *Definition of "loan and extension of credit."* The proposed definition follows the definition found in section 84(b)(1).

The Office considered including in the regulation a listing of specific transactions which come within the definition of "loan and extension of credit" and a listing of transactions which will not be considered "loan and extension of credit." It was felt, however, that specific transactions were best dealt with in interpretations or on a case-by-case basis. Comment is specifically solicited on whether the definition in the Regulation should be expanded and on whether various transactions should be dealt with specifically.

2. *Definition of "person".* The proposed definition quotes verbatim from subsection (b)(2) of the revised Section 84.

3. *Definition of "unimpaired capital and unimpaired surplus."* The proposed regulation refers to the Office's generally applicable definition of this term. It should be noted that the Office is in the process of revising that definition. A proposed regulation was published on August 10, 1981 (46 FR 40520), and it is expected that the regulation will be adopted in final prior to the effective date of the revised Section 84 (April 14, 1983).

4. *Definition of "contractual commitment to advance funds."* The revised statute gives the Comptroller the authority to determine when a contractual commitment to advance funds would be included in a person's liability under 12 U.S.C. 84. The Office's position has generally been that a

liability on the part of the borrower is not created until funds are advanced, with the exception of standby letters of credit and guarantees. The Office has held that when the bank has obligated itself to make payment to a third party on behalf of a customer in the event of the customer's default, the obligation is subject to the customer's lending limit. Thus, the proposed regulation includes standby letters of credit and guarantees, to the extent permitted by law, as "loan and extension of credit" under Section 84. The Office would appreciate comments on the following questions related to commitments:

(a) Should fee paid commitments to lend or undisbursed loan funds be considered loans or extensions of credit subject to section 84's limits?

(b) Are there other third-party type commitments that should be included in a borrower's liability under section 84 limits, but do not meet the definition of § 32.2(f)?

5. *General limitation.* Proposed section 3(a) of the proposed regulation would restate the general rule of section 84. In preparing the regulation, the Office considered inserting a provision stating that the limitations of section 84 are applicable to loans made by a national bank's foreign subsidiaries, Edge Act Corporations, and Agreement Corporations. The Office would appreciate comments on the effects this type of provision would have on worldwide lending by national banks and on their ability to compete with other lenders abroad. The Office is also interested on the interplay between this type of provision and the lending limits contained in the Federal Reserve Board's Regulation K (12 CFR Part 211).

6. *Loans fully secured by readily marketable collateral.* Proposed § 32.4 would set forth rules for compliance with the newly created additional limitation for "loans fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding \* \* \*." In formulating the regulation, the Office dealt with the following significant issues:

a. *Eligible collateral.* The proposed regulation would limit the collateral eligible under this limitation to certain financial instruments. In arriving at this definition, the Office attempted to define classes of collateral which shared a number of characteristics, such as: (i) Fungibility; (ii) easily traded; (iii) reliable price quotations available on a daily basis; (iv) traded through a regulated market. While these were not the only criteria used, they are

significant ones. The Office believes that the basis for the additional 10 percent is the fact that loans secured by certain types of collateral are inherently less risky than other loans. It would therefore be unwise to permit, under this limitation, loans collateralized by items upon which the bank cannot almost immediately avoid loss by foreclosure and disposal of the collateral. Therefore, collateral such as lettered stock, which must be registered before it is sold, or a controlling share of a stock issuance, which cannot be disposed of easily, would not be eligible. The Office does solicit the views of the public as to other classes of collateral which might meet the above criteria.

b. *Margin requirements.* Under the terms of section 84(a)(2), loans eligible for the additional limitation must be "fully secured" at all times. Since market value for any type of collateral must fluctuate, the proposed regulation would require that, at the inception of the loan, collateral will have a market value of 115 percent of the loan. Banks would be required to make good-faith, reasonable efforts to maintain this margin throughout the life of the loan. This should be done through the establishment of internal procedures for monitoring both the value of the collateral and its relationship to the amount outstanding on the loan. In addition, if the value of the collateral falls below 115 percent of the outstanding loan for more than a short period of time, the bank would be obligated to take actions to restore the margin to the 115 percent level.

This is not to say, however, that the loan would be considered to be in violation of Section 84 whenever the collateral-to-loan ratio drops below 115 percent. The proposed regulation provides that the Office will generally consider the loan to be in violation of Section 84 only when the ratio drops below 100 percent. The proposed regulation would provide that once the value of the collateral falls to or below 100 percent of the amount of the loan outstanding the bank must, within a reasonable period of time (but in no case longer than five business days), take action to either obtain additional collateral, require reduction of the loan, or liquidate the collateral in its entirety. A bank failing to do so with respect to a loan that had previously qualified under section 84(a)(2) will be considered to have been in violation of its lending limits from the date the collateral-to-loan ratio fell to 100 percent.

It should also be noted that the 115 percent margin requirement is not especially burdensome or unreasonable. If, for example, a bank's capital was \$1

million, it could, under the revised section 84, loan \$250,000 to one individual [\$150,000 under 84(a)(1) and \$100,000 under (a)(2)] secured by only \$115,000 of collateral eligible under section 84(a)(2). It is believed that the 115 percent ratio will provide banks with some margin of safety.

7. *Combining loans to separate borrowers.* Before its revision, 12 U.S.C. 84 required that loans to partnerships be combined with loans to members thereof and that loans to corporations be combined with loans to subsidiaries thereof. The Comptroller's Interpretive Rulings clarified these general rules and, in carrying out Congress's intent, defined certain relationships among borrowers which indicated that certain loans should be combined. These characteristics, referred to here as factors indicating a "common enterprise," dictated that loans to separate entities be combined when: (i) The bank is looking to a single source for repayment, (ii) a loan to one party is made for the accommodation of another, (iii) the borrowers are in reality merely departments of a single enterprise, or (iv) the borrowers are engaged in a common enterprise. Thus, Interpretive Ruling 7.1310, 12 CFR 7.1310, added that loans to subsidiaries of a common parent will be combined even where the parent has not borrowed when certain factors indicating a common enterprise are found to exist. Interpretive Ruling 7.1320, 12 CFR 7.1320, added that loans to any person engaged in a common enterprise in any form whatsoever will be combined. Finally, Interpretive Ruling 7.1330, 12 CFR 7.1330, was adopted in 1979 in response to the growth in national bank lending to foreign governments and instrumentalities thereof. It set forth two tests ("means" and "purpose") to judge when loans to foreign sovereigns and instrumentalities were to be combined. In addition to these Rulings, the Comptroller's Office issued numerous interpretive letters over the years addressing whether and when loans should be combined in a wide variety of circumstances.

The revised section 84 does not deal with combining loans to separate borrowers, except to grant the Comptroller authority to determine when such loans are to be combined. Section 5 of the proposed regulation sets forth these rules. In general, the section deviates from the law currently applicable only in a few instances. Insofar as it embodies positions of the Office not previously codified, it is believed that the regulation will provide more certainty than exists at the present time.

a. *General rule.* Paragraph (b)(1) of the proposed § 32.5 sets forth the general rule that loans to separate borrowers will be combined if the proceeds are to be used for the benefit of the other person or if a "common enterprise" is deemed to exist. The general rule would apply to all cases not covered in paragraphs (c), (d), and (e) of § 32.5. It is thus intended that the general rule will apply to a wide variety of circumstances where the legal relationships among the parties do not fit the special characteristics set forth in paragraphs (c), (d), and (e).

It is important to note that the defined characteristics of "common enterprise" will not be applied rigidly. The tests set forth in § 35.5(b)(2) are codifications of factors which arise frequently in fact situations reviewed by the Office's examiners and attorneys. As courts construing Section 84 have recognized, it is impossible to deal with the issue of combination of loans by *per se* rules which would cover all cases. Thus, there will be instances where logic and public policy dictate that certain loans should be combined even where the specific factors set forth in proposed § 35.5(b)(2) do not exist.

b. *Loans to corporations.* The proposed regulation for loans to corporations would require combination of loans to a corporation with loans to any person which owns a controlling interest in such corporation. In addition, loans to corporations would be combined with loans to any corporations controlled by the same legal entity. This subsection would expand on existing law in a number of ways:

(i) Under current law, absent a common enterprise, loans to corporations are not combined with loans to persons, other than corporations, which own a controlling interest therein. Under the proposed regulation, loans to a corporation will be combined with loans to individuals, partnerships, or other entities which own controlling interests in such corporations. This change is based upon the premise that, viewing Section 84 as a risk diversification device, there is no reason to distinguish a corporation owned by another corporation from a corporation owned by any other entity.

(ii) Under current law, loans to separate corporations which are subsidiaries of a common parent are not combined, absent a common enterprise, if the parent is not borrowing from the bank. The proposal would alter this rule and require combination regardless of whether the parent is borrowing. Once again, it is believed that this change will remove a distinction which, in terms of

risk diversification, is needless and artificial.

The regulation would also clarify that a corporation is considered a subsidiary of a legal entity even where the person's ownership of the corporation is indirect. Thus, loans to a corporation will be combined with loans to its second- and third-tier subsidiaries.

c. *Loans to partnerships, joint ventures, and associations.* The proposed regulation would require combination of loans to partnerships, joint ventures, and associations with loans to members of such entities. This rule would also apply to persons who control majority interests in other legal entities, such as partnerships and corporations, where those legal entities are members of partnerships. The rationale for this rule is that members of partnerships, joint ventures, and associations are generally liable for the debts of such entities. The mandatory combination rules would not, however, be applicable to persons who own limited partnership interests; loans to these persons and partnerships would only be combined under the general rule of proposed § 32.5. The proposed regulation would bring a great deal of clarity to an area of the law which has become confused in recent years.

d. *Loans to foreign governments, their agencies and instrumentalities.* The proposed regulation sets forth the tests currently found in Interpretive Ruling 7.1330, 12 CFR 7.1330. The Comptroller does not recommend any change in these tests at the present time.

8. *Exceptions to the lending limits.* Before its revision, 12 U.S.C. 84 contained fourteen exceptions to the lending limits. The revised statute eliminates exceptions 1, 3, 4, 11, and 12, to the extent they are not covered by other exceptions. In addition, an exception has been added for loans secured by deposits in the lending bank. The proposed regulations generally follow the Office's current Interpretive Rulings on the individual exceptions.

The only major change would affect the valuation of United States obligations held as collateral. The current regulation, 12 CFR 6.2, allows these obligations to be valued at face or par. The proposed regulation would require that these obligations be valued at market value.

9. *Transitional rules.* Proposed § 32.7 sets forth transitional rules for loans made prior to the effective date of the revised Section 84. These rules are necessary to deal with: (a) Loans that violate the current Section 84 but would be permissible under the revision and (b) loans which were not in violation of the current Section 84 but will violate

the revised Section 84 due to the elimination of one or more of the statutory exceptions, changes in the rules for combining loans to separate borrowers or other changes in applicable law.

Loans or extensions of credit which were previously in violation of 12 U.S.C. 84 would, under the proposal, be considered to remain in violation regardless of whether or not the loans or extensions of credit would be conforming under this Part. These violations would be subject to directors' liability and civil money penalties until they are paid in full. However, additional legal advances to these borrowers would, to the extent permitted under the proposal, be permissible.

Loans or extensions of credit which were previously conforming, but become nonconforming under the new statute, would not generally be considered violations of law. However, this Office believes that these loans should be brought into conforming status as soon as practicable. Whether the bank has made a reasonable effort to do so will be left to the discretion of the examiners. If examiners determine that a reasonable effort has not been made, the loans will be cited as violations of law subject to directors' liability and civil money penalties. Additional advances may not be made if they would themselves create a violation of Section 84, regardless of whether a commitment to lend was entered into prior to the enactment of this Part.

The Office would appreciate comments on the question of whether irrevocable commitments to lend should be considered legal if they are conforming at the time they are entered into, although nonconforming at the time funds are advanced. In addition, the Office requests comments on whether there are other transitional problems not covered by the proposed rules.

10. *Interpretations.* The proposal contains eleven proposed Interpretations, all of which would adopt existing Interpretive Rulings. The following lists the source of the proposed Interpretations:

	New	Old
Sec.		Sec.
32.101		7.1125(c)
32.102		7.1130
32.103		7.1131
32.104		7.1160
32.105		7.1161
32.106		7.1120
32.107		7.1135
32.108		7.1150
32.109		7.1185
32.110		7.1181
32.111		7.1180

All changes from the originals reflect existing policies of the Office in the implementation of its Interpretive Rulings.

**Regulatory Impact Analysis.** Pursuant to section 3(g) (1) of Executive Order 12291 of February 17, 1981, it has been determined that the proposed regulations do not constitute a "major rule" within the meaning of section 1(b) of the Executive Order. The amendment would not have an effect on the economy or \$100 million or more, would not affect costs or prices for consumers, individual industries, government agencies, or geographic regions, and would not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based industries to compete with foreign based enterprises in domestic or export markets.

**Regulatory Flexibility Act Analysis.** Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*) the Secretary of the Treasury has certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

12 CFR Parts 3, 6 and 32

National banks, Lending limits.

12 CFR Part 7

National banks, Management, and ownership rights, Other powers.

Accordingly, pursuant to authority under 12 U.S.C. 84 and 93a, the Comptroller of the Currency hereby proposes to amend Title 12 of the Code of Federal Regulations by removing Parts 3 and 6, by amending Part 7 and adding new Part 32 to read as follows:

#### PART 3—NATIONAL BANK LOANS SECURED OR COVERED BY GOVERNMENTAL GUARANTIES [RESERVED]

1. The authority for Part 3 is:

Authority: R. S. 5200; 12 U.S.C. 84(10).

2. Removing and reserving Part 3 in its entirety.

#### PART 6—LOANS MADE BY NATIONAL BANKS SECURED BY OBLIGATIONS OF THE UNITED STATES [RESERVED]

3. The authority for Part 6 is:

Authority: R.S. 5200; as amended 12 U.S.C. 84(8)).

4. By Removing and reserving Part 6 in its entirety.

#### PART 7—INTERPRETIVE RULINGS

5. The authority for Part 7 is:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et seq.*

#### §§ 7.1110 through 7.1630 [Removed]

6. By removing §§ 7.1110 through and including 7.1630.

7. By establishing a new Part 32 to read as follows:

#### PART 32—LENDING LIMITS

Sec.

32.1 Authority, purpose, and scope.

32.2 Definitions.

32.3 General limitation.

32.4 Additional general limitation: Loans fully secured by readily marketable collateral.

32.5 Combining loans to separate borrowers.

32.6 Exceptions to the lending limits.

32.7 Transitional rules.

#### Interpretations

32.101 Obligations of accommodation parties.

32.102 Sale of Federal Reserve funds.

32.103 Purchase of securities subject to repurchase agreement.

32.104 Standby letters of credit.

32.105 Overdrafts.

32.106 Loans charged off in whole or in part.

32.107 Sale of loan participations.

32.108 Interest or discount on loans.

32.109 Loans to or guaranteed by general obligations of a State or political subdivision.

32.110 Loans to industrial development authorities.

32.111 Separate limitations for 12 U.S.C. 84 and 12 U.S.C. 24.

Authority: R.S. 5200(b)(1), (d)(1), and (d)(2); (12 U.S.C. 84(b)(1), (d)(1), and (d)(2)) and R.S. 5239A; (12 U.S.C. 93a).

#### § 32.1 Authority, purpose, and scope.

(a) *Authority.* This Part is issued pursuant to authority granted in R.S. 5200(b)(1), (d)(1), and (d)(2); (12 U.S.C. 84(b)(1), (d)(1), and (d)(2)) and R.S. 5239A; (12 U.S.C. 93a).

(b) *Purpose and scope.* R.S. 5200 (12 U.S.C. 84) is intended to prevent one individual, or a relatively small group, from borrowing an unduly large amount of the bank's funds. It is also intended to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business. This Part applies to loans and extensions of credit made by national banks.

#### § 32.2 Definitions.

For purposes of this Part:

(a) "Loans and extensions of credit" means any direct or indirect advance of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual

commitment to advance funds" as that term is defined in this section.

(b) "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) "Unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 7.1100.

(d) "Contractual commitment to advance funds" means: (1) An obligation on the part of the bank to make payments (directly or indirectly) to a designated third party contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or (2) an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes, but is not limited to, standby letters of credit (as defined and limited in 12 CFR 32.104), guarantees, and letters of indemnity. For purposes of this Part, undisbursed loan funds and loan commitments not yet drawn upon are not considered a "contractual commitment to advance funds."

#### § 32.3 General limitation.

12 U.S.C. 84(a)(1) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

#### § 32.4 Additional general limitation: loans fully secured by readily marketable collateral

(a) *Law.* 12 U.S.C. 84(a)(2) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) *Compliance with Section 84(a)(2).* Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least 15 percent greater than the amount of

the loan or extension of credit at the time the loan or extension of credit is made. "Current market value" means the closing price listed for an item in a regularly published listing or an electronic reporting service. The bank must make every effort to maintain a collateral margin of 115 percent. However, since collateral values may fluctuate, the current market value of the collateral may, for short periods of time, fall below the 115 percent coverage required. At no time, however, may current market value of the collateral be less than 10 percent of the funds outstanding except as provided in paragraph (e) of this section.

(c) For purposes of this Part, "readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value based on continuously available daily bid and ask price quotations. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), and negotiable certificates of deposit.

(d) Collateral must be repriced at least monthly or more frequently as necessary to ensure that margin requirements are maintained. Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the collateral must be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(e) Each bank must monitor the current market value of collateral held for purposes of compliance with section 84(a)(2). If collateral values fall to or below 100 percent of the outstanding loan, the bank must, within a reasonable period of time: (1) Obtain additional collateral in an amount sufficient to provide 115 percent coverage, (2) require reduction of the loan or extension of credit, or (3) sell the collateral and liquidate the debt. Generally, a reasonable period of time is considered no longer than five business days. During this period, the loan or extension of credit will be considered nonconforming. Failure to comply with one of these alternatives will result in a violation of law.

#### § 32.5 Combining loans to separate borrowers.

(a) *Authority.* 12 U.S.C. 84(d)(2).

(b)(1) *General rule.* Loans or extensions of credit to one person shall, for purposes of this Part, include loans made to other persons when (i) the

proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person of (ii) the persons are engaged in a "common enterprise."

(2) "*Common enterprise.*" For purposes of this Part, one or more of the following circumstances is evidence that two or more persons are engaged in a "common enterprise":

(i) The persons are engaged in interdependent business and, as such, there is a substantial volume of transactions between the persons. Generally, when 50 percent or more of the persons' gross revenues or gross expenditures are attributable to each other, a "common enterprise" will be deemed to exist.

(ii) The expected source of repayment for each loan or extension of credit is the same for each person.

(iii) Each person intends or expects to use the proceeds of the loan or extension of credit for identical or related purposes.

(iv) Other facts and circumstances (including, but not limited to, interlocking directors and/or management) exist which indicate that the persons are operated as a common enterprise.

(c) *Special rules for corporations.* (1) Loans or extensions of credit to a corporation will be combined with loans or extensions of credit to any person of which such corporation is a subsidiary.

(2) Loans or extensions of credit to a subsidiary of one person will be combined with all loans or extensions of credit to other subsidiaries of that person.

(3) For purposes of the rule set forth in this subsection, a corporation is a "subsidiary" of any person which owns or beneficially owns or controls a majority interest in the corporation, such ownership need not be direct.

(d) *Special rules for partnerships, joint ventures, and associations.* (1) Loans or extensions of credit to each member of a partnership, joint venture, or association shall be combined with loans or extensions of credit to all partnerships, joint ventures, or associations of which such person is a member.

(2) Loans or extensions of credit to a partnership, joint venture, or association shall be combined with direct loans or extensions of credit to all members thereof.

(3) For purposes of the rules set forth in this subsection, a member of a partnership, joint venture, or association includes any person who owns or beneficially owns or controls an interest in such partnership, joint venture, or association.

(4) The rules set forth in this subsection are not applicable to limited partners in limited partnerships. Loans to limited partners will be combined with one another or with loans to the limited partnership only if the criteria set forth in paragraph (b)(1) of this section are met.

(e) *Loans to Foreign governments, their agencies, and instrumentalities.* (1) Notwithstanding paragraphs (b), (c), and (d) of this section, loans or extensions of credit to foreign governments, their agencies, and instrumentalities will be combined with one another under Section 84 only if they fail to meet either of the following tests at the time the loan or extension of credit is made:

(i) The borrower has resources or revenue of its own sufficient over time to service its debt obligations ("means" test);

(ii) The purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business ("purpose" test).

(2) In order to show that the "means" and "purpose" tests have been satisfied, a bank shall, at a minimum, assemble and retain in its files the following items:

(i) A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity.

(ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year less than three that the borrowing entity has been in existence.

(iii) Financial statements for each year the loan or extension of credit is outstanding.

(iv) The bank's assessments of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government. If the government's support exceeds the borrower's annual revenues from other sources, it will be presumed that the "means" test has not been satisfied. No such presumption will be made, however, because of a guarantee by the central government of the borrower's debt.

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written

representation will ordinarily constitute sufficient evidence that the "purpose" test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

#### § 32.6 Exceptions to the lending limits.

(a) *Discount of commercial or business paper.* (1) Law. 12 U.S.C. 84(c)(1) provides:

Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the persons negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) This exception applies to: (i) Negotiable paper given in payment of the purchase price of commodities purchased for resale or to be used in connection with fabrication of a product, or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper; and (ii) negotiable paper given in payment of the purchase price of commodities in export transactions. Loans or extensions of credit arising from the discount of paper of the kind described in paragraph (a)(2)(i) of this section must bear the full recourse endorsement of the owner. Loans or extensions of credit arising from the discount of paper of the kind described in paragraph (a)(2)(ii) of this section may bear either the full or limited recourse endorsement of the owner. If endorsed without full recourse, however, the paper must be supported by an assignment of appropriate insurance covering the political credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(3) Renewal of negotiable paper is permitted when the renewal is consistent with the conditions described above.

(4) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by

reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made within the limits of 12 U.S.C. 84.

(b) *Banker's acceptances.* (1) Law. 12 U.S.C. 84(c)(2) provides:

The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(2) This exception permits the purchase by a national bank without limitation of bankers' acceptances created by other banks, provided that such acceptances are of the kind described in 12 U.S.C. 372 and 373 (eligible acceptances). Acceptances other than those described in sections 372 and 373 must be included within the purchasing bank's lending limit to each acceptor bank.

(3) The limits under which a national bank may itself accept drafts eligible for rediscount are contained in sections 372 and 373. These limits are distinct from the limits under section 84. Acceptances by a national bank of "ineligible" drafts, *i.e.*, time drafts which do not meet the requirements for discount with a Federal Reserve bank, are subject to the limitations of section 84.

(4) During any period within which a national bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered, for purposes of this Part, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance (rather than the acceptance itself) is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of section 84.

(c) *Loans secured by shipping documents or warehouse receipts covering readily marketable staples.* (1) Law. 12 U.S.C. 84(c)(3) provides:

Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(2) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to the make: (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral.

(3) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(4) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for: (i) Not more than 10 months if secured by nonperishable staples; and (ii) not more than six months if secured by refrigerated or frozen staples.

(5) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation.

(6) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is

maintained on the commodity owner's premise.

(7) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(d) *Loans secured by U.S. obligations.* (1) *Law. 12 U.S.C. 84(c)(4)* provides:

Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(e) *Loans to or guaranteed by a federal agency.* (1) *Law. 12 U.S.C. 84(c)(5)* provides:

Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(3) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(4) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(f) *Loans secured by segregated deposit accounts.* (1) *Law. 12 U.S.C. 84(c)(6)* provides:

Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(2) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(3) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures must be revaluated at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. If foreign exchange rates fluctuate so that the market value of the collateral is less than the outstanding loan, the bank must, within five business days, (i) obtain the pledge of additional deposits, (ii) require reduction of the loan or extension of credit, or (iii) offset the loan against the deposit and thereby liquidate the debt. During this period, the loan or extension of credit will be considered nonconforming. Failure to comply with one of these alternatives will result in a violation of law.

(g) *Loans to financial institutions with the approval of the Comptroller.* (1) *Law. 12 U.S.C. 84(c)(7)* provides:

Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(2) For purpose of this subsection, "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

(h) *Discount of installment consumer paper.* (1) *Law. 12 U.S.C. 84(c)(8)* provides:

(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement

or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(2) This exception allows a national bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(3) Where a bank purchases third party paper subject to an agreement that the seller will repurchase the paper at the end of a stated period, the seller's obligation to repurchase is subject to 12 U.S.C. 84 and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans or extensions of credit, for the purpose of 12 U.S.C. 84 are measured by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to the seller's account as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans or extensions of credit do not constitute loans or extensions of credit to the seller subject to the limitations of section 84.

(4) For purposes of this subsection, "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases product or commodities for the purpose of resale or for fabrication into goods for sale.

(5) For purposes of this subsection, "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(6) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or

extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where: (i) Through the bank's files or the knowledge of its officers, it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the Board of Directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(i) *Loans secured by livestock or dairy cattle.* (1) *Loans secured by livestock.*

(i) Law. 12 U.S.C. 84(c)(9)(A) provides:

Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 percent of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to maximum limitation equal to 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 10 percent of its capital and surplus, (in addition to the 15 percent permitted by section 84(a)(1)), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115 percent of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least annually, or more frequently as deemed prudent.

(iii) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan: (A) Is assigned to the bank by a recordable instrument; and (B) is protected against being defeated by some other lien or

claim, by payment to a person other than the bank, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(2) *Loans secured by dairy cattle.* (i) Law. 12 U.S.C. 84 (c)(9)(B) provides:

Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to discount paper of one person given in payment for dairy cattle in an amount equal to 10 percent of its capital and surplus (in addition to the general limitations of section 84 (a)(1)). The discounted paper must carry the full recourse endorsement or unconditional guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in the form of recorded chattel mortgages, bills of sale, or any other form which provides security substantially equivalent to that afforded by a recorded chattel mortgage.

(3) The exceptions for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper for the purchase of dairy cattle. Therefore, a national bank may make loans or extensions of credit to one person secured by each type of collateral in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted under section 84(a)(1)).

(j) *Loans to Student Loan Marketing Association.* 12 U.S.C. 84(c)(10) provides:

Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

#### § 32.7 Transitional rules

(a) Loans or extensions of credit which were in violation of 12 U.S.C. 84 prior to April 14, 1983, will be considered to remain in violation of section 84 and subject to remedial actions under 12 U.S.C. 93 and 1818 after

that date until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this Part. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(b) A national bank which has outstanding loans or extensions of credit to a person in violation of section 84 as of April 14, 1983, may make additional advances to such person after that date if the additional advances are permitted under this Part.

(c) Loans or extensions of credit which were in conformance with section 84 on April 14, 1983, but are in nonconformance with the rules established in this Part due to the elimination of certain exceptions or the change in methods for combining loans will generally not be considered to be violations of law. However, every effort should be made to bring the loans or extensions of credit into conformity with the rules established in this Part. Renewals or extensions of such loans or extensions of credit which are not in conformance with the rules set forth in this Part will be considered violations of law. Additional advances which do not conform with the rules set forth in this Part will be considered violations of law regardless of whether a commitment to make a loan or extension of credit was approved prior to the enactment of this Part.

#### Interpretations

##### § 32.101 Obligations of accommodation parties.

The liability of a drawer, endorser, or guarantor who does not directly receive any of the proceeds of the loan or extension of credit is not a loan or extension of credit to such person for purposes of this Part unless one of the tests set forth in 12 CFR 32.5(b)(1) is satisfied.

##### § 32.102 Sale of Federal Reserve funds.

(a) Definition. "Sale of Federal Reserve funds" means, for purposes of this Section, any transaction among depository institutions involving the disposal of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(b) Sales of Federal Reserve funds with a maturity of one business day or under a continuing contract are not "loans or extensions of credit" for purposes of this Part. However, sales of Federal Reserve funds with a maturity

of more than one business day are subject to the lending limits.

**§ 32.103 Purchase of securities subject to repurchase agreement.**

The purchase of "Type I securities" within the meaning of 12 CFR 1.3(c) subject to an agreement that the seller will repurchase at the end of a stated period is not a "loan or extension of credit" for purposes of this Part.

**§ 32.104 Standby letters of credit.**

(a) *Definition.* A "standby letter of credit" is any letter of credit, or similar arrangement however named or described, which represents an obligation to the beneficiary on the part of the issuer: (1) To repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any indebtedness undertaken by the account party or (3) to make payment on account of any default by the account party in the performance of an obligation. As defined in this paragraph (a), the term "standby letter of credit" does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party.

(b) *Subject to lending limits.* A standby letter of credit is subject to the limitations of Section 84 and must be combined with any other nonexpected loans to the account party by the issuing bank for the purposes of applying section 84. Where the standby letter of credit is subject to a nonrecourse participation agreement with another bank or banks, this subsection shall apply to the issuer and each participant in the same manner as in the case of a participated loan.

(c) *Exceptions.* All standby letters of credit shall be subject to the provisions of this Section except where:

(1) Prior to or at the time of issuance, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(2) Prior to or at the time of issuance, the issuing bank has set aside sufficient funds in a segregated deposit account, clearly earmarked for that purpose, to cover the bank's maximum liability under the standby letter of credit; or

(3) The Comptroller of the Currency has found that a particular standby letter of credit or class of standby letters

of credit will not expose the issuer to a similar risk of loss as would a loan to the account party.

**§ 32.105 Overdrafts.**

Overdrafts, whether or not prearranged, are "loans or extensions of credit" for purposes of this Part.

**§ 32.106 Loans charged off in whole or in part.**

The lending limits apply to all existing loans or extensions of credit to a person by the bank, including loans or extensions of credit which have been charged off on the books of the bank in whole or in part. Obligations which have become unenforceable by reason of discharge in bankruptcy are not "loans or extensions of credit" for purposes of this Part.

**§ 32.107 Sale of loan participations.**

When a bank sells a participation in a loan or extension of credit, including the discount of a bank's own acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending limits. This is so even where the participation agreement provides that repayment must first be applied to the shares sold. As a matter of prudent banking practices, the agreement should also provide that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the occurrence of the event.

**§ 32.108 Interest or discount on loans.**

The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest, unless such interest is past due. Past due interest must be taken into consideration in applying the limitations to additional extensions of credit.

**§ 32.109 Loans to or guaranteed by general obligations of a State or political subdivision.**

(a) A loan or extension of credit to a bank customer which is guaranteed or fully secured by a "general obligation" of any State or political subdivision thereof, within the meaning of 12 CFR 1.3(g), is not considered an obligation of the customer for purposes of 12 U.S.C. 84. The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(b) A loan or extension of credit to a State or political subdivision thereof is

not subject to any limitation based on capital or surplus if the loan or extension of credit constitutes a "general obligation" of the State or political subdivision within the meaning of 12 CFR 1.3(g). The lending bank should obtain the opinion of competent counsel that the loan or extension of credit is a valid and enforceable obligation of the borrower.

**§ 32.110 Loans to industrial development authorities.**

A loan or extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan or extension of credit to the authority for the purposes of 12 U.S.C. 84 if: (a) The bank relies on the credit of the industrial occupant in making the loan; (b) the authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility; (c) the authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and (d) the industrial occupant's lease rentals are assigned and paid directly to the bank. A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee and will be combined with other obligations of the lessee for purposes of Section 84.

**§ 32.111 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.**

The lending limits prescribed by 12 U.S.C. 84 are separate and distinct from the investment limits prescribed by 12 U.S.C. 24. Accordingly, a national bank may make loans or extensions of credit to one borrower up to the full amount permitted by 12 U.S.C. 84 and also hold eligible investment securities of the same obligor up to the full amount permitted by 12 U.S.C. 24. In order for a security to be an "investment security" it must be eligible for investment by a national bank in accordance with the standards set forth in 12 CFR Part 1.

Dated: November 26, 1982.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 82-34445 Filed 12-20-82; 8:45 am]

BILLING CODE 4810-33-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Food and Drug Administration**
**21 CFR Part 184**

[Docket No. 80N-0245]

**Nickel; Proposed Affirmation of GRAS Status**
*Correction*

In FR Doc. 82-28722 beginning on page 46545 in this issue of Tuesday, October 19, 1982 make the following correction:

On page 46545, third column, "SUPPLEMENTARY INFORMATION," line seven, "(38 FR 2040)" should read "(FR 20040)."

BILLING CODE 1505-01-M

**21 CFR Part 314**

[Docket No. 82N-0293]

**New Drug and Antibiotic Regulations**
*Correction*

In FR Doc. 82-28617 beginning on page 46622 in the issue of Tuesday, October 19, 1982 make the following corrections:

1. On page 46654, third column, tenth line from the bottom, "not" should appear between "need" and "await."

2. On page 46656, third column, third paragraph, eleventh line, "trails" should read "trials."

3. On page 46656, third column, fourth paragraph, sixth line, "trails" should read "trials"

4. On page 46657, third column, third paragraph, third line, "reportedly" should read "repeatedly."

5. On page 46659, middle column, thirty-eight line, "each" should appear between "how" and "study."

BILLING CODE 1505-01-M

**21 CFR Part 357**

[Docket No. 82N-0166]

**Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food for Over-the-Counter Human Use; Establishment of a Monograph**
*Correction*

In FR Doc. 82-27054, beginning at page 43540, in the issue of Friday, October 1, 1982, make the following changes:

(1) On page 43540, in the third column, the eighth line from the bottom, "delegated" should read "deleted".

(2) On page 43554, in the middle column under "C. Category II Conditions", paragraph a. (1), line 1,

should read "For the prevention of inebriation."

BILLING CODE 1505-01-M

**DEPARTMENT OF THE INTERIOR**
**Minerals Management Service**
**30 CFR Parts 221 and 250**
**Proposed Guideline and Request for Comments on How To Value Oil for Royalty Purposes From Federal and Indian Onshore and Offshore Leases**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Extension of comment period on proposed guideline.

**SUMMARY:** In response to requests for an extension of time to comment on the proposed guideline for valuing oil for royalty purposes as published in the Federal Register of November 29, 1982 (47 FR 53822), a 15-day extension is hereby granted. This extension will give the public more time to study and comment on the proposed guideline.

**DATE:** Written comments on this proposed guideline must be received in Royalty Standards and Measurements, Denver Federal Center, Denver, Colorado by 3:30 p.m., m.s.t., January 14, 1983.

**ADDRESSES:** Comments may be mailed to Mr. William H. Feldmiller, Chief, Royalty Standards and Measurements, Denver Federal Center, Denver, CO 80225, or delivered to Room F 211, in Building 85, Denver Federal Center.

**FOR FURTHER INFORMATION CONTACT:** Mr. William H. Feldmiller, (303) 231-3184, (FTS) 326-3184, or Mr. Thomas J. Blair, (303) 231-3153, FTS 326-3153.

Dated: December 17, 1982.

Robert E. Boldt,

Associate Director for Royalty Management, Minerals Management Services.

[FR Doc. 82-34663 Filed 12-20-82; 8:45 am]

BILLING CODE 4310-MR-M

**DEPARTMENT OF EDUCATION**
**National Foundation on the Arts and the Humanities**
**Institute of Museum Services**
**34 CFR Part 64**
**45 CFR Part 1180**
**Grants to Museums**

**AGENCY:** Institute of Museum Services, Education Department, and National Foundation on the Arts and the Humanities.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Institute of Museum Services proposes regulations governing a program of Federal financial assistance in the form of grants to museums. The regulations implement the Museum Services Act. They state eligibility conditions, application requirements, funding criteria and other rules for the administration of the grants program.

**DATES:** Comments must be received on or before February 22, 1983.

**ADDRESSES:** Comments should be addressed to: Mrs. Lilla Tower, Director, Institute of Museum Services, Room 4006, 330 C Street, S.W., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Sara E. Traut, Institute of Museum Services, Room 4006, 330 C Street, S.W., Washington, D.C. 20202.

**SUPPLEMENTARY INFORMATION:**

1. *Nature of program.* The Museum Services Act ("the Act") which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980.

The purpose of the Act is stated in Section 202 as follows:

"It is the purpose of [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public."

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens, of the curatorial, educational and cultural resources of the United States, and of the general public. In addition to the members appointed by the President, the following serve as members of the Board: the Chairman of the National Endowment for the Arts, the Chairman

of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Secretary of Education. The Board has the responsibility for establishing the general policies of the Institute.

The Director of the Institute is appointed by the President with the advice and consent of the Senate. The Director has responsibility for the general administration of the Institute and is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation) (Pub. L. 97-100, December 23, 1981).

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. Other activities are designed to aid museums in developing and maintaining professionally trained staff; carrying out certain conservation activities; developing and carrying out specialized museum programs for specific segments of the public; and cooperating with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan.

For the Federal fiscal year ending September 30, 1982, \$10.2 million was awarded for grants under the Act. The Administration has requested no funds for grants for fiscal year 1983.

Public Law 97-276 (October 2, 1982) makes continuing appropriations for the Federal Government for fiscal year 1983. Sections 101(b) and 102 of Pub. L. 97-276 provide, under a continuing resolution, an appropriation for IMS for fiscal year 1983 only through December 17, 1982 or the enactment of either an appropriation for the program or the applicable appropriation act without a funding provision for the program, whichever first occurs.

Public Law 97-257, the Supplemental Appropriations Act, 1982 makes available through Fiscal Year 1983 \$720,000 appropriated for the IMS in Fiscal Year 1982. Accompanying report language indicates that at least \$645,000 of this amount is intended for Special Project Grants.

Sen. Rept. No. 97-516, 97th Cong. 2d Sess. 117 (1982).

2. *Need for regulations.* Certain rules are needed for the proper administration

of a federally funded grant program. These rules relate to such matters as the types of institutions eligible to apply for grants, the types of assistance available, the information which must be put in applications, and the criteria used to judge competitive applications, among others.

Rules governing the award of grants by IMS were published in the *Federal Register* in 1978 following a period of public comment under the procedures in 5 U.S.C. 553 and were codified in the Code of Federal Regulations (CFR). These regulations were revised on August 11, 1980, again following a period of public comment, and were last codified in 34 CFR Part 64 (1981). In view of the transfer of IMS as an independent agency to the National Foundation on the Arts and the Humanities effected by Pub. L. 97-100 in December of 1981, it is appropriate that these regulations be transferred to that part of the Code of Federal Regulations that contains the regulations of the National Foundation on the Arts and the Humanities.

Moreover, as a result of the transfer of IMS to the National Foundation, certain administrative regulations of the Education Department are no longer pertinent and therefore should no longer legally be applicable to IMS grants. It is therefore necessary and appropriate that IMS regulations be adopted in a revised and simplified form appropriate to its needs and functions as an independent agency.

Accordingly, at its meetings of October 23, and December 3, 1982, the National Museum Services Board extensively considered revisions in these regulations and adopted them for publication in the *Federal Register* as proposed regulations. The proposed regulations are set forth in the form of a new Part 1180 of Subchapter E of Chapter XI of the Title 45 CFR. Public comment on these regulations is invited by this document.

The paragraphs set forth below briefly describe changes in the current regulations made by these proposed regulations.

*Sections 1180.3 and 1180.4—Definitions:* The definition of "museum" in § 1180.3(a) of the proposed regulations is based on the statutory definition. Under the definition in § 1180.3(a) a museum is a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, whether animate or inanimate, cares for these objects, and exhibits them to the general public on a regular basis. The proposed

regulations would clarify current regulations by use of the term "general public". The proposed regulations also make clear that the term "museum" includes aquariums and zoological parks; botanical gardens and arboretums; nature centers, museums relating to art, history, natural history, science and technology; and planetariums. With the exception of "nature centers" all these terms are found in current regulations.

To provide greater certainty and efficiency in the administration of the Act and to make maximum use of resources, the proposed regulations also clarify certain aspects of the definition of "museum". An institution would be deemed to meet the requirement that it exhibits objects to the general public on a regular basis if it exhibits objects to the general public for at least 120 days a year (§ 1180.3(a)(3)). This new provision should also serve to clarify eligibility and thus direct resources to institutions which provide a substantial level of service without excluding institutions which operate on a seasonal basis. The status of museums which exhibit objects by appointment would also be made more certain by language added to § 1180.3(a)(3). Clarification of certain other terms used in the definition of "museum" is found in other provisions of § 1180.3.

A number of terms (other than "museum") used in the regulations are defined in § 1180.4. The proposed regulations would shorten this section by eliminating several definitions which have had little or no practical effect.

*Section 1180.5—Eligibility.* Current regulations provide lower priority to museums which have been providing museum services for less than two years. In practice, such institutions have not been reached for funding and the two-year provision has had the effect of an eligibility requirement, albeit unclear. The proposed regulations would make this requirement explicit (§ 1180.5(2)). Similarly, the proposed regulations would state more clearly the ineligibility of museums operated by Federal departments or agencies (§ 1180.5(4)). These museums receive their operating funds from other Federal appropriations which may not be augmented by funds under the Museum Services Act.

The proposed regulations would add new provisions in (§ 1180.5(5)-(7)) which are designed to address congressional and other concerns that the maximum number of museums share in limited resources; to avoid the possibility that museums receiving funds under the Act will become dependent on Federal support; and to achieve coordination

with activities of other Federal funding agencies, an objective set forth in the Museum Services Act. These provisions would render a museum ineligible to apply for both General Operating and Special Project support in a single year; would limit the eligibility of a museum for assistance under the Act to only three years in any succeeding five year period (quinquennium); and would preclude a museum from applying for or receiving IMS assistance if it has received or will receive a Challenge Grant from another Federal agency in the same fiscal year.

*Sections 1180.7, 1180.8, and 1180.9—General Operating Support: Special Project Support; Size of Grants, and Allocation of Funds.* Section 1180.7 of the proposed regulations (General Operating Support) would not be substantially changed. It provides for grants to assist museums to meet their administrative, staff and operating costs. Section 1180.8 (Special Project Support) would be revised to follow more closely statutory language with respect to those activities described in the regulations which are set forth in the Museum Services Act. However, it is emphasized that the list of possible activities in § 1180.8 is not exclusive. In particular, the statutory language specifying the specific segments of the public to be served by a specialized program (§ 1180.8(a)(5)) should not be read to exclude such segments of the public as the senior citizens or the handicapped, for example.

IMS regulations have set forth a maximum amount which it was anticipated that a museum could receive if appropriations were made available. In the current regulations the figure was \$35,000. The increase in this amount from the \$35,000 set forth in current regulations is associated with § 1180.5(6) of the proposed regulations (beginning with fiscal year 1983, a Museum is ineligible to receive funding for more than three years under the Act in any succeeding quinquennium). The proposed regulations would not set forth a fixed percentage of any appropriations to be reserved for General Operating Support but would provide for the determination of that reservation by the Director, subject to the policy direction of the Board.

*Section 1180.10—Allowable costs.* In the case of a General Operating Support grant, IMS funds cover a portion of the overall operating costs of a grantee to the extent that these costs are allowable under applicable cost principles contained in OMB circulars. To

determine whether a particular cost is allowable under a grant, a museum must consult OMB circulars referred to in the regulations. These circulars set forth rules about the allowability or unallowability of particular costs such as compensation for personal services and fringe benefits, meetings and conferences, professional service costs, advertising costs, bidding or proposal costs, preaward costs, rental costs, and transportation costs.

*Section 1180.11—Basic requirements which a museum must meet.* Application requirements in § 1180.11 have been substantially clarified. The necessity of submitting a complete and timely application is emphasized in § 1180.11(a). If the applicant is a private, nonprofit agency, it must, as is now required in current regulations, submit a copy of the letter from the Internal Revenue Service indicating its nonprofit status under the applicable provision of the Internal Revenue Code of 1954 (§ 1180.11(b)).

In order to respond to the need of museums for further guidance, the requirement for submission of a financial statement would be emphasized and amplified in § 1180.11(c)—

—By indicating the time period to which such statement must relate;

—By indicating the types of documents which a financial statement must include;

—By providing further information on the preparation and content of an audited financial statement; and

—By clarifying the type of financial information which may, with the approval of the Director, be submitted in lieu of a separate audited financial statement by museums which do not receive audits separate from those of their parent organizations.

The requirements in the current regulations for a long-range plan and an assurance regarding maintenance of fiscal effort are revised and the latter is clarified (§§ 1180.11 (d) and (e)).

*Section 1180.12—Priorities.* For fiscal year 1983, priorities applicable to Special Project grants would focus on projects involving innovative fund raising and financial development activities and projects involving cooperative endeavors among groups of museums. To simplify the administration of the Act and focus staff resources on processing General Operating Support and Special Project grants, authority for emergency grants would be deleted. It is believed that certain legal and administrative difficulties to which the

emergency grant authority has given rise, together with the fact that relatively few grants have been awarded under the emergency grant provisions, and the fact that the regular General Operating Support program can be used to meet operating needs of museums arising from the types of events specified in § 1180.12(d) of the current regulations, are factors that justify this change.

*Sections 1180.13 and 1180.14—Funding criteria.* Criteria for judging competing applications and reaching funding determinations are contained in these sections. The criteria for GOS (§ 1180.13) have been revised to address concerns of IMS field readers in assessing under the same criteria an applicant's situation both with and without assistance under the Act. The criteria, as amplified, are similar to those applied in prior years.

The proposed regulations would indicate the factors, among others, which IMS considers in applying certain criteria. Applicants should address these factors in preparing applications. These factors are not intended to be exclusive. An applicant which believes that other factors are relevant to a criterion is free to address them in the application.

A criterion which attempts to measure the impact of General Operating Support assistance on the museum's ability to increase its base of non-Federal support has been added as § 1180.13(h).

Criteria for judging applications for Special Projects under § 1180.8, as proposed, would evaluate the degree to which the project is of general benefit to museums, is of unique benefit to the general public, would involve a model or exemplary benefit, or may foster innovative methods to increase private support or limit costs of operations.

*Section 1180.16—Cost sharing.* Section 206(c) of the Museum Services Act, as amended, provides that grants under the Act for any fiscal year may not exceed 50 percent of the cost of the program for which the grant or financial assistance is made, except that not more than 20 percent of the funds available for grants under the Act for any fiscal year may be available for grants or financial assistance in such fiscal year without regard to the 50 percent limitation. (20 U.S.C. § 965(c)). This statutory provision, of course, applies to grants for General Operating and Special Project support. It is anticipated that in applying the exception in Section 206(c) priority will be given to Special Project grants.

In implementing this provision, based

upon the policy direction of the Board, IMS has not made grants under the Act in excess of 10 percent of a museum's actual operating budget. This policy direction has previously been set forth in program announcements of the Institute published in the *Federal Register*. The proposed regulations would restate it in § 1180.16(b) and would also clarify that, for purposes of applying the 10 percent limitation, the proposed regulations would provide that a museum's operating budget may be increased by an amount reflecting the reasonable and conservative value of volunteer services contributed in the most recently completed fiscal year.

In order to make maximum use of limited Federal resources and to emphasize that primary reliance should be placed on non-Federal support, language is proposed which would authorize the Board to determine, for a particular fiscal year, for one or more programs, that an amount equal to the amount to be awarded in any given fiscal year (or a percentage thereof) to applicants under the Act must consist of non-Federal funds contributed to the museum in excess of the non-Federal funds contributed to the museum for its immediately preceding fiscal year (§ 1180.16(c)). Finally, under proposed § 1180.16(d) language would be added which would require a museum to maintain a restricted account for funds received under the Act. The purpose of this is to assure proper accounting of grant funds and to assist museums in the event that they must respond to possible audits under the Act.

Subparts B and C of the proposed regulation would provide for general administrative provisions specifically tailored to the needs of the IMS program which greatly reduce the number of regulatory provisions which have in the past been applicable to the IMS program under the Education Department General Administrative Regulations.

Sections 1180.11 and 1180.55 of these proposed regulations contain information collection requirements. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980, IMS is submitting to the Office of Management and Budget, for its review, these information collection requirements. Comments can be submitted in accordance with the instructions in this notice of proposed rulemaking.

*Executive Order 12291:* These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for

major regulations established in the order.

*Regulatory Flexibility Act Certification:* The Director certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, the regulations will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

*Invitation to Comment:* Written comments and recommendations may be sent to the person listed at the beginning of this preamble as ADDRESSEE. All comments received on or before February 22, 1983, will be considered in developing the final regulations.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4006, 330 C Street, S.W., Washington, D.C. 20202 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday of each week, except Federal holidays.

Comments specifically on the information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, D.C. 20503.

#### List of Subjects in 45 CFR Part 1180

Museums, National boards.

Dated: December 3, 1982.

Lilla Tower,

Director, Institute of Museum Services.

Dated: December 3, 1982.

Douglas Dillon,

Chairman, National Museum Services Board.  
(Catalog of Federal Domestic Assistance No. 84.115, Museum Services Program)

The Education Department proposes to remove Part 64 of Title 34 of the Code of Federal Regulations upon adoption of these proposed rules as final.

The Institute of Museum Services proposes to add a new Subchapter E to Chapter XI of Title 45 of the Code of Federal Regulations as follows:

## SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

### PART 1180—PROGRAM REGULATIONS

#### Subpart A—General Operating Support and Special Project Support

Sec.

- 1180.1 Purpose of museum services program.
- 1180.2 Scope of this document.
- 1180.3 Definition of museum.
- 1180.4 Other definitions.
- 1180.5 Eligibility and burden of proof—Who may apply.
- 1180.6 Related institutions.
- 1180.7 General Operating Support.
- 1180.8 Special Project Support.
- 1180.9 Likely size of grants and allocation of funds among activities.
- 1180.10 Allowable costs.
- 1180.11 Basic requirements which a museum must meet to be considered for funding.
- 1180.12 How applications are judged; priorities.
- 1180.13 Criteria for evaluation of applications for General Operating Support.
- 1180.14 Criteria for evaluation of applications for Special Project support.
- 1180.15 Duration of grant.
- 1180.16 IMS share of the cost of a proposal.
- 1180.17 Reports.

#### Subpart B—General Application, Selection and Award Procedures

##### Applications

- 1180.30 Publication of an application notice; content of the notice.
- 1180.31 Information in the application notice.
- 1180.32 Deadline date for applications.
- 1180.33 Applicants must meet procedural rules.
- 1180.34 Number of copies.
- 1180.35 Special Project Grant: Group applications.

##### Selection and Award Procedures

- 1180.36 Rejection of an application.
- 1180.37 How grants are processed.
- 1180.38 Applications not selected for funding.
- 1180.39 How the Institute makes a Special Project grant.
- 1180.40 The cost analysis; basis for Special Project grant amount.
- 1180.41 The notification of grant award.
- 1180.42 Effect of the grant.

#### Subpart C—General Conditions Which Must be Met by a Grantee

##### Nondiscrimination

- 1180.43 Federal statutes and regulations on nondiscrimination.
- 1180.44 Use of consultants in Special Projects.

##### Evaluation

- 1180.45 Evaluation by the grantee.
- 1180.46 Federal evaluation—cooperation by a grantee.

**Publication and Copyrights**

- Sec.  
 1180.47 General conditions on publications.  
 1180.48 Copyright policy for grantees.  
 1180.49 Definition of "Special Project materials."

**General Administrative Responsibilities**

- 1180.50 Compliance with statutes, regulations, and its approved Grant Application.  
 1180.51 The grantee administers or supervises the Grant.  
 1180.52 Fiscal control and fund accounting procedures.  
 1180.53 Obligation of funds during the grant period.  
 1180.54 Prohibition of subgrants.

**Records**

- 1180.55 Records related to grant funds.  
 1180.56 Records related to compliance.  
 1180.57 Records related to Special Project performance.  
 1180.58 Applicability  
 Authority: Museum Services Act (20 U.S.C. 961-68), as amended, and Pub. L. 97-100, 95 Stat. 1414.

**Subpart A—General Operating Support and Special Project Support****§ 1180.1 Purpose of museum services program.**

The purpose of this program of Federal financial assistance is to ease the financial burden borne by museums as a result of their increasing use by the public and to encourage and assist them to carry out their educational and conservation roles as well as other functions and to modernize their methods and facilities.

**§ 1180.2 Scope of this document.**

This document establishes rules for the award of grants to museums from funds appropriated under the Museum Services Act including rules governing the eligibility of applicant institutions, the type of assistance which may be provided, requirements which applicants must meet and criteria to be used in judging applications.

**§ 1180.3 Definition of museum.**

For the purpose of this part:

- (a) "Museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:
- (1) Owns or uses tangible objects, either animate or inanimate;
  - (2) Cares for these objects; and
  - (3) Exhibits them to the general public on a regular basis.
- (i) An institution which exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution which exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) "Museum" includes (but is not limited to) the following institutions if they satisfy the provisions of this section:

- (1) Aquariums and zoological parks;
- (2) Botanical gardens and arboretums;
- (3) Nature Centers;
- (4) Museums relating to art, history (including historic buildings), natural history, science and technology; and
- (5) Planetariums.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the full-time equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d) An institution does not exhibit objects to the general public for the purposes of this section if the display or use of the objects is secondary to its overall purpose.

(e) For the purposes of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

**§ 1180.4 Other definitions.**

The following other definitions apply in this document:

"Act" means the Museum Services Act, Title II of the Arts, Humanities and Cultural Affairs Act of 1976, Pub. L. 94-462, (20 U.S.C. 961-968).

"Board" means the National Museum Services Board established under Section 204 of the Act.

"Collection" includes objects owned, used or loaned by a museum as well as these literary, archival and documentary resources specifically required for the study and interpretation of these objects.

"Foundation" means the National Foundation on the Arts and the Humanities.

"Director" means the Director of the Institute of Museum Services.

"Grantee" means the recipient of a grant under the Act.

"Institute" means the Institute of Museum Services ("IMS") established under Section 203 of the Act.

"Museum services" means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its

collections, and providing educational and other programs to the public through the use of its collections and other resources.

**§ 1180.5 Eligibility and burden of proof—Who may apply.**

(a) A museum located in the fifty States of the Union, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Guam, or the District of Columbia may apply for a grant under the Act.

(b) No museum is eligible to apply for funding available under the Act unless it has provided museum services including exhibiting objects to the general public on a regular basis for at least two years prior to application.

(c) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(d) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(e) A museum is ineligible to apply for or receive funding in any year for both Special Project and General Operating Support.

(f) Beginning with fiscal year 1983, a museum is ineligible to receive funding for more than three years in any succeeding quinquennium.

(g) A museum is ineligible to apply for or receive funds available under the Act (for General Operating or Special Project support) if it has received, or has been awarded a grant under which it will receive, from any other agency of the United States, Challenge Grant funds in the same Fiscal Year (in which funds would be received under a grant from IMS). For the purposes of the preceding sentence "Challenge Grant funds" means funds paid under any grant awarded by any agency pursuant to a program such as the Challenge Grant programs authorized by sections 5(1) and 7(h) of the National Foundation on the Arts and the Humanities Act of 1965, as amended. (20 U.S.C. 954(1) and 956(h).

(h) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

**§ 1180.6 Related institutions.**

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are

separate museums for the purposes of establishing eligibility for assistance under these regulations. See §§ 1180.5; 1180.9.

(b) IMS regards the following factors, among others, as showing that a related institution is a separate museum:

- (1) The institution has its own governing body;
- (2) The institution has budgetary autonomy; and
- (3) The institution has administrative autonomy.

#### § 1180.7 General operating support.

In order to maintain, increase or improve museum services, a museum may apply for a grant under the Act to meet administrative, staff and operating costs, except as otherwise provided in these regulations.

#### § 1180.8 Special project support.

(a) In order to increase or improve museum services through exemplary projects which are additional to its operating program, a museum may apply for a grant to:

- (1) Provide a General, Unique, Model or Financial Benefit to museums as set forth in § 1180.14 (e), (f), (g), or (h);
- (2) Develop and maintain professionally trained or otherwise experienced staff to meet its needs;
- (3) Obtain expert assistance to carry out its functions or provide expert assistance to other museums;
- (4) Conserve artifacts, objects, plants and animals;
- (5) Develop and carry out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions;
- (6) Develop and carry out educational programs;
- (7) Cooperate with other museums in developing traveling exhibitions, meeting transportation costs for these exhibitions, and identifying and locating collections available for loan.

(b) By notice published in the **Federal Register** and applicable to a particular fiscal year, IMS may limit the types of activities to be funded under this section.

#### § 1180.9 Likely size of grants and allocation of funds among activities.

(a) In view of limited funds, it is anticipated that no museum will receive more than \$50,000 under the Act for fiscal year 1983 and that most museums which are funded will receive a smaller amount. For future fiscal years, a different figure may be specified by notice published in the **Federal Register**.

(b) The Director, subject to the policy direction of the the Board, determines

the percent of the funds available under the Act for grants in any fiscal year which shall be reserved for § 1180.7 General Operating Support grants.

#### § 1180.10 Allowable costs.

(a) Determination of costs allowable under a grant is made in accordance with government-wide cost principles in applicable OMB circulars. (OMB Circular A-21 (educational institutions) February 26, 1979, published in 44 FR 12368 (March 6, 1979); OMB Circular A-87 (State and local governments) January 15, 1981 published in 46 FR 9548 (January 28, 1981); and OMB Circular A-122 (Nonprofit organizations) June 27, 1980, published in 45 FR 46022 (July 8, 1980)).

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material, specifically required for a designated activity under a grant under the Act.

#### § 1180.11 Basic requirements which a museum must meet to be considered funding.

(a) *Application.* To apply for a grant, a museum must submit the designated application form containing the information requested in the form. Failure to submit the information required by the application at the time of filing can subject an applicant to rejection of the application without consideration on its merits.

(b) *IRS letter.* A museum applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

(c) *Financial statements.* (1) Each applicant museum must submit, with its application at the time of filing, *its* financial statements for the two fiscal years immediately preceding the fiscal year for which application is made or, if not available, for the second and third immediately preceding years. Each financial statement must include a statement of financial operations and balance sheet such as described in the Museum Accounting Guidelines of the Association of Science-Technology Centers (1976) or in the Museum Accounting Handbook of the American Association of Museums (1978).

(2) Every applicant which has previously received an IMS award must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year, prepared by an

individual or organization meeting the qualifications of the Comptroller General of the United States for individuals or organizations conducting Government audits. Reference is made to GAO, *Standards for Audit of Governmental Organizations, Programs and Functions* (1981 revision). The individual or organization performing the audit must certify that the financial statement of the museum presents fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles.

(3) If a museum is part of an organization such as a university, State or municipality and does not receive audits separate from those of the organization of which it is a part, it may submit its financial statement as drawn from and containing only audited figures of the organization of which the museum is a part. This financial statement must clearly indicate that it has been so prepared and the Director may, upon written request filed at the time of the application, waive the requirement of a separate audit and proceed to process the application of its merits.

(d) *Long-range plan.* Each applicant museum must include long-range plans for program and financial development.

(e) *Maintenance of effort.* Each museum applicant must be able to show that it has maintained a continuing and successful fiscal effort of its own for the provision of funds for museum services. An applicant complies with this requirement if its aggregate expenditures for museum services (exclusive of Federal assistance) for the grant period are at least equal to those expenditures for the equivalent preceding period. Any applicant unable to furnish proof of the successful discharge of this requirement may be held ineligible to apply for funding.

(f) *Special Project Grant: schedule of completion.* An application for a Special Project grant shall establish a schedule for completing the project. An application shall describe when, during the term of the grant, the applicant plans to complete each objective or phase of the project.

#### § 1180.12 How applications are judged; priorities.

(a) To select grantees and determine the amount of their awards, IMS rates applications under the applicable criteria stated in §§ 1180.13 and 1180.14. Normally, these applications are first evaluated by readers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) In the case of Special Project applications, priority is given to applications for (1) projects involving innovative fund raising and financial development activities, and (2) projects involving innovative cooperative endeavors among groups of museums.

(c) To achieve diversity in the distribution of assistance, the Institute may consider the location, size and discipline of the applicant in addition to the criteria in §§ 1180.13 and 1180.14.

**§ 1180.13 Criteria for evaluation of applications for General Operating Support.**

The following criteria apply to the evaluation of all applications for General Operating Support. In applying these criteria, the total operation of the applicant museum is assessed, including the museum's operation as it would be if the General Operating Support is granted. This assessment is based primarily on the information supplied in the museum's application.

(a) *Museum services.* Are the applicant's museum services of high quality? IMS considers factors such as:

(1) The quality of the museum's educational and interpretive services and their relevance to the collections and audience including the special constituencies which the museum serves;

(2) The quality of the museum's physical facilities and the manner in which space is allocated to various museum activities; and

(3) The qualifications of the professional staff (both full-time and part-time; paid and volunteer) and the quality of the opportunities for professional staff development and in-service training afforded by the museum.

(b) *Collections and exhibits.* Are the museum's collections and exhibits of high quality and significance? IMS takes into account such factors as:

(1) The intrinsic value of the collections and exhibits;

(2) The significance of the museum's collections to the community; and

(3) The quality of the care and conservation of the collections; the quality of exhibit designs.

(c) *Accessibility.* How accessible to the general public are the museum's services, collections and exhibits? IMS considers such factors as:

(1) The percentage of the museum's collections on view to the general public on a regular basis; the extent of the museum's regular program for outreach, loans, and other means of exhibiting its collections to the public;

(2) The annual schedule of open hours for the museum; and

(3) The appropriateness of this schedule to the museum's audience.

(d) *Population served.* To what extent does the museum serve a general public which otherwise would have limited access to the type of museum services which it provides or to museum services of any type? To what extent does the public seek access to the museum's services? IMS considers such factors as:

(1) The characteristics of the audience and the community which the museum serves;

(2) The availability of other museums (or types of museums) which serve this audience and this community; and

(3) The museum's annual attendance by calendar quarters.

(e) *Financial Management.* What is the quality of the financial management of the museum? In how many of the last five years has the museum shown an excess of revenues over expenditures? IMS considers such factors as:

(1) The financial condition of the museum as reflected in its financial statements;

(2) The quality of the museum's plans for remedying any financial weaknesses in the museum's operations; and

(3) The qualifications of the museum staff assigned to financial management activities.

(f) *Long-range plans.* What is the quality of the museum's long-range plans for financial and program development? What are the museum's plans for the expenditure of the grant funds? IMS considers such factors as:

(1) The quality of the museum's long-range plans; how the museum proposes to implement them; how practical are the steps the museum plans to take to implement them?

(2) The probability that the General Operating Support grant, if awarded, will assist the museum in carrying out its long-range plans;

(3) In what manner will this grant, if awarded, contribute to maintaining, increasing or improving the museum's services?

(g) *Community commitment.* How committed to the museum are its users and supporters? Does the museum have a substantial base of non-Federal support? Does it have a strong volunteer program? IMS considers such factors as:

(1) The quality and extent of the financial support that the museum receives from the private sector and other non-Federal sources and the extent to which this support is stable, broad-based and indicative of continuing community commitment;

(2) The quality of the museum's volunteer program and its program of in-kind contributions and their importance to the museum's annual operations; and

(3) The commitment of its users to the museum as evidenced by such factors as participation in membership and docent programs, fund raising and other supportive activities.

(h) *Non-Federal support.* To what extent, if any, will the General Operating Support requested enable the museum to increase its base of State, local and private funding in the year for which assistance is requested and beyond?

(i) *Past use of IMS funds (when applicable).* Has the museum used its IMS funds effectively? How and in what amounts and in what manner have they been used?

**§ 1180.14 Criteria for evaluation of applications for Special Project Support.**

The following criteria apply to the evaluation of all applications for Special Project support:

(a) *Plan of operation.* What is the quality of the proposed project? In applying this criterion, IMS looks for information that shows:

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project.

(b) *Quality of key personnel.* What is the quality of the key personnel the applicant plans to use on the project? In applying this criterion, IMS looks for information that shows:

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel used in the project; and

(3) The time that each person referred to above is obligated to commit to the project.

(c) *Budget and cost effectiveness.* Does the project have an adequate budget to achieve its purpose? In applying this criterion, IMS looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* Does the applicant plan to devote adequate resources to the project?

(e) *General Benefit.* To what extent will the project, if successful, be of general benefit to museums or address a problem which is general to a number of museums but has not been adequately addressed?

(f) *Unique Benefit.* To what extent will the project provide a unique benefit to the general public?

(g) *Model or Exemplary Benefit.* To what extent does the project represent a model or exemplary approach and solution to the problem addressed?

(h) *Financial Benefit: Private support; cost control.* Is the project likely to produce innovative methods for (1) increasing museums' base of private support and/or (2) limiting a museum's cost of operation?

(i) *Other support.* Does the applicant lack alternative sources of support for the project?

(j) *Dissemination.* Has the applicant made satisfactory provision for disseminating the results of the project to other museums and the general public through the media?

#### § 1180.15 Duration of Grant.

Grants under the Act normally permit the grantee to use the funds for a period of up to 12 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If, in the case of a Special Project grant, the grantee needs additional time to complete the grant project, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

#### § 1180.16 IMS share of the cost of a proposal.

(a) Section 206(c) of the Museum Services Act provides that grants under this section [Section 206] for any fiscal year may not exceed 50 per centum of the cost of the program for which the grant is made, except that no more than 20 per centum of the funds available under this section for any fiscal year may be available for grants in such fiscal year without regard to such limitation. In applying the exception in Section 206(c), priority will be given to Special Project grants.

(b) Subject to § 1180.9(a), IMS normally does not make grants for more than 10 percent of a museum's most recently completed fiscal year's actual operating budget. For future fiscal years a different figure may be specified by notice published in the *Federal Register*. An operating budget may be increased by an amount reflecting the reasonable and conservative value of volunteer services contributed in the most recently completed fiscal year.

(c) For a particular fiscal year, and for one or more programs, the Board may determine that an amount equal to the amount to be awarded (or a percentage thereof) to an applicant under the Act must consist of non-Federal funds contributed to the museum in excess of

the non-Federal funds contributed to the museum for its immediately preceding fiscal year.

(d) A museum shall maintain a restricted account for funds received under the Act.

#### § 1180.17 Reports.

In its final report a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its Special Project application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.14.

### Subpart B—General Application, Selection and Award Procedures

#### Applications

#### § 1180.30 Publication of an application notice; content of the notice.

Each fiscal year the Director publishes application notices in the *Federal Register* that explain what kind of assistance is available that fiscal year under the Act.

#### § 1180.31 Information in the application notice.

(a) The application notice usually includes:

(1) How an applicant can get an application packet containing detailed information about the program including an application form;

(2) Where an applicant must send its application;

(3) The amount of funds available for grants;

(4) The approximate number of grants the Institute expects to make under the program;

(5) The expected cap on grant(s) that may be applied for;

(6) Any priorities established by the Institute for that year;

(7) A reference to the applicable regulations.

(b) [Reserved]

#### § 1180.32 Deadline date for applications.

(a) The application notice sets deadline date for applications to be postmarked or hand delivered to the Institute. The applicant shall:

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on deadline date.

(b) An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not date-cancelled by the U.S. Postal Service.

#### § 1180.33 Applicants must meet procedural rules.

The Director is authorized to make a grant only to an eligible applicant that submits a complete application, including attachments, on or before the deadline.

#### § 1180.34 Number of copies.

Each applicant shall submit an original and four copies of its application to the Institute.

#### § 1180.35 Special Project Grant: Group applications.

(a) Eligible museums may apply as a group for a Special Project grant.

(b) If a group of museums applies for a Special Project grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

(c) The members of the group, or entity, shall enter into an agreement that:

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(d) The applicant shall submit the agreement together with its application.

(e) If the Director makes a grant to a group of eligible museums, the applicant for the group is the grantee and is legally responsible for:

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with applicable Federal laws, regulations, and requirements.

(f) Each member of the group is legally responsible for:

(1) Carrying out the activities it agrees to perform; and

(2) Using the funds it receives under the agreement in accordance with

applicable Federal laws, regulations, and requirements.

#### Selection and Award Procedures

##### § 1180.36 Rejection of an application.

(a) The Director rejects an application if:

- (1) The applicant is not eligible;
- (2) The applicant fails to comply with procedural rules that govern the submission of the application;
- (3) The application does not contain the information required;
- (4) The application cannot be funded under the authorizing statute or implementing regulations.

(b) If the Director rejects an application under this section, the Director informs the applicant and explains why the application was rejected.

##### § 1180.37 How grants are processed.

(a)(1) The Director may use one or more groups of experts or readers to evaluate eligible applications.

(2) Each group consists of three or more qualified persons.

(3) In each group there must be at least one person who is not an employee of the Federal Government.

(4) A person may not serve as a member of a group of experts or readers if the person is an employee of the Institute who is regularly involved in grants processing; however, the Director may sign a waiver for such person and that person may serve as a member of a group of experts or readers.

(b) When the Director uses a group of experts or readers, the group of experts or readers uses the applicable evaluation criteria set forth in the Regulations to evaluate each application.

(c) After the groups of experts or readers have evaluated the applications, a rank ordering of the applications is prepared. The rank ordering of the eligible applications is based solely on the valuations of the applications by the groups of experts.

(d) Subject to § 1180.12, the Director, in consultation with the Board, then determines the order in which applications will be selected. The Director makes these determinations on the basis of the evaluation criteria and any priorities or other program requirements that have been published in the Federal Register. The Director may consider the following in making these determinations:

- (1) The Application.
- (2) The rank ordering of the applications.
- (3) Any other information relevant to applicable criteria, priorities, or any

other applicable information or requirements.

(Cross reference. See § 1180.12)

##### § 1180.38 Applications not selected for funding.

If an application is not selected for funding the Director informs the applicant.

##### § 1180.39 How the Institute makes a Special Project grant.

The Director follows the procedures in §§ 1180.40–1180.41 to set the amount and determine the conditions of a Special Project grant.

##### § 1180.40 The cost analysis; basis for Special Project grant amount.

(a) Before the Director sets the amount of a Special Project grant, a cost analysis of the project is made which involves an examination of:

- (1) The cost data in the detailed budget for the project;
- (2) Specific elements of costs; and
- (3) The necessity, reasonableness, and allowability under applicable statutes and regulations.

(b) [Reserved]

##### § 1180.41 The notification of grant award.

(a) The Director furnishes a notification of grant award to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

##### § 1180.42 Effect of the grant.

The grant obligates both the Federal Government and the grantee to all of the requirements, regulations and statutes that apply to the grant.

#### Subpart C—General Conditions Which Must Be Met by a Grantee.

##### Nondiscrimination

##### § 1180.43 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes:

Subject	Statute
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 20000d-4).
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 et seq.).

##### § 1180.44 Use of consultant in Special Projects.

(a) Subject to Federal statutes and regulations, a Special Project grantee

shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the Special Project staff.

(b) The grantee may not use its grant to pay a consultant unless:

- (1) There is a need in the project for the services of that consultant; and
- (2) The grantee cannot meet that need through using an employee rather than a consultant.

##### Evaluation

##### § 1180.45 Evaluation by the grantee.

A grantee shall evaluate at least semi-annually:

(a) The grantee's progress in achieving the objectives set forth in its approved application; and

(b) The contribution of the grant toward meeting the purposes of the Act.

##### § 1180.46 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation by the Director of the particular grant program in which grantee has participated.

##### Publications and Copyrights

##### § 1180.47 General conditions on publications.

(a) *Content of materials.* Subject to any specific requirements that apply to its Special Project grant, a Special Project grantee may decide the format and content of Special Project materials that it publishes or arranges to have published.

(b) *Required Statement.* The grantee shall ensure that any publication that contains Special Project materials also contains the following statement:

"The contents of this (insert type of publication, e.g., book, report, film.) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed."

##### § 1180.48 Copyright policy for grantees.

A grantee may copyright Special Project materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

##### § 1180.49 Definition of "Special Project materials."

As used in §§ 1180.47–1180.48, "Special Project materials" means a copy-rightable work developed in whole or in part with funds from a Special Project grant from the Institute.

**General Administrative Responsibilities****§ 1180.50 Compliance with statutes, regulations, and its approved Grant Application.**

(a) A grantee shall comply with applicable statutes, regulations, and the approved grant application, and shall use Federal funds in accordance therewith.

(b) No official, agent, or employee of the Institute may waive any regulation unless the regulation specifically provides for waiver.

(c) No act or failure to act by an official, agent, or employee of the Institute can affect the authority of the Director to enforce regulations.

(d) In any circumstance for which waiver is provided, the determination of the Director shall be final.

**§ 1180.51 The grantee administers or supervises the Grant.**

A grantee shall directly administer or supervise the administration of the grant and be answerable therefore.

**§ 1180.52 Fiscal control and fund accounting procedures.**

A grantee shall exert fiscal control and employ fund accounting procedures that ensure proper disbursement of and accounting for Federal funds in accordance with OMB circulars A-102 and A-110.

**§ 1180.53 Obligation of funds during the grant period.**

A grantee may use grant funds for obligations it makes only during the grant period.

**§ 1180.54 Prohibition of subgrants.**

(a) A grantee may not make a subgrant.

(b) A grantee may contract for supplies, equipment, and services subject to § 1180.44(a).

**Records****§ 1180.55 Records related to grant funds.**

A grantee shall, in accordance with OMB circular A-102 and A-110, keep records that show accurately and in full:

(a) The amount of funds awarded under the grant;

(b) The exact uses of the funds;

(c) The total amount expended under the grant;

(d) The amount expended under the grant, during the grant period provided from non-Federal sources; and

(e) Other records necessary to facilitate an effective audit.

**§ 1180.56 Records related to compliance.**

A grantee shall, in accordance with OMB circulars A-102 and A-110, keep accurate and full records to show its

compliance with specific program requirements set forth in the regulations, published notices, or contained in the grant award documents.

**§ 1180.57 Records related to Special Project performance.**

(a) A Special Project grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing Special Project Objectives; and

(2) Revise those objectives, if necessary and authorized under the grant.

**§ 1180.58 Applicability.**

(a) Subparts B and C (§§ 1180.30-1180.57) apply to General Operating Support and Special Project assistance, except as otherwise provided in these regulations.

(b) The Education Department General Administrative Regulations (34 CFR Parts 75-78) do not apply to programs of the Institute of Museum Services.

[FR Doc. 82-34645 Filed 12-20-82; 8:45 am]

BILLING CODE 4000-01-M

**VETERANS ADMINISTRATION****38 CFR Part 3****Allowance in Lieu of Government-Furnished Headstone or Marker**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulation change.

**SUMMARY:** The Veterans Administration is proposing to increase the monetary allowance payable in lieu of a Government/furnished headstone or marker from \$63 to \$67. The need for this action results from the fact that the actual cost of a Government-furnished headstone or marker increased from \$63 to \$67. The effect of this proposed amendment would be to permit payment of up to \$67 in lieu of a Government-furnished headstone or marker.

**DATES:** Comments must be received on or before January 20, 1983. We propose to make this change effective October 1, 1982.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W. Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours

of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 31, 1983. Any person visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

**FOR FURTHER INFORMATION CONTACT:**

C. A. Wheeler, 202-389-3005.

**SUPPLEMENTARY INFORMATION:** Under 38 CFR 3.1612 the Veterans Administration is authorized to pay a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of 38 CFR 1.631(a)(2) and (b). The amount of the allowance is the lesser of the actual cost of acquiring a non-government headstone or marker (or adding identifying information to an existing marker) or the average actual cost of a Government-furnished headstone or marker for the fiscal year preceding the fiscal year in which the non-Government-furnished headstone or marker was furnished (or identifying information added). (38 CFR 3.1612(e)(2))

The average actual cost to the Veterans Administration of headstones and markers furnished at Government expense for fiscal year 1982 (October 1, 1981 through September 30, 1982) is \$67. Consequently, we are amending § 3.1612 to include this information.

The Administrator hereby certifies this proposed rule, if promulgated, will not have a significant economic impact, in terms of compliance costs, paperwork and recordkeeping, or any other regulatory burden 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 this regulation affects individual claimants only. It will have no significant impact on small entities in terms of compliance costs, recordkeeping requirements, or effects on competition.

The Veterans Administration has determined that this regulation is nonmajor in accordance with Executive Order 12291 because it simply implements statutory requirements and would have little or no economic impact, in itself.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: December 1, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

**PART 3—ADJUDICATION**

It is proposed to amend 38 CFR Part 3 as follows:

In § 3.1612, paragraph (e)(2)(ii) is revised as follows:

**§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.**

(e) *Payment and amount of the allowance.* \* \* \*

(2) The amount of the allowance payable is the lesser of the following:

(ii) The average actual cost, as determined by the Veterans Administration, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government-furnished headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1981 (October 1, 1980 through September 30, 1981) is \$63 and \$67 for fiscal year 1982 (October 1, 1981 through September 30, 1982).

[FR Doc. 82-34567 Filed 12-20-82; 8:45 am]

BILLING CODE 8320-01-M

**38 CFR Part 3****Veterans Benefits; Definition of Nursing Home**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulation amendment.

**SUMMARY:** The Veterans Administration is proposing to amend its adjudication regulations to establish a definition of the term "nursing home." The General Counsel recently advised the Department of Veterans Benefits that a regulatory definition of "nursing home" was necessary to determine the scope of the term as used in the adjudication of claims. This new definition specifies the standards to be used in determining whether an extended care facility

qualifies as a nursing home for the purposes of establishing entitlement to aid and attendance benefits and certain other benefit determinations.

**DATES:** Comments must be received on or before January 20, 1983. We propose to make this change effective the date of final approval.

**ADDRESSES:** 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, N.W., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 31, 1983. Any person visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, 202-389-3005.

**SUPPLEMENTARY INFORMATION:** Under current provisions of law entitlement to increased benefits may be established by certain beneficiaries on the basis of being a patient in a nursing home (38 U.S.C. 315(1)(I), 322(b), 411(c), 415(g), and 502(b)). Nursing home patient status creates a presumption that an individual is so disabled as to require the regular aid and attendance of another person in performing the normal activities of daily living or for protection against the hazards of daily living (38 CFR 3.351(c)). This presumption allows the granting of increased benefits without requiring a formal rating decision as to the claimant's actual level of disability.

Nursing home patient status also affects computation of income for purposes of pension and parents' dependency and indemnity compensation (DIC) awards. Under the provisions of 38 CFR 3.262(1) and 3.272(g) unusual medical expenses may be deducted when computing countable income and they may be deducted prospectively if there is a clear and reasonable expectation that will be realized. It is the policy of the Veterans Administration to consider all expenses in connection with nursing home care as medical expenses and to allow their deduction from income prospectively.

A recent review of awards granting aid and attendance benefits based on nursing home patient status revealed that

some beneficiaries were residing in facilities which did not provide a substantial level of nursing care or related services and, in some instances, no such care or services. These facilities were not licensed as nursing homes by the State in which they were located and, therefore, the presumption of need for regular aid and attendance should not have applied. Similarly, the cost of residing at these facilities, which essentially amounted to room and board, should not have been considered as medical expenses. It is considered necessary that a regulatory definition of the term "nursing home" be established to provide specific standards for determining whether an extended care facility could be considered a nursing home for benefit purposes.

The Veterans Administration is, therefore, proposing to amend 38 CFR 3.1 by adding paragraph (z) defining the term "nursing home." The proposed regulation will not impose on States or nursing homes additional standards or alteration of procedures. It will simply make State licensure the standard by which the Veterans Administration recognizes private institutions as qualifying under the terminology "nursing home" for Veterans Administration purposes.

The level of care provided by the nursing home must be such that any Veterans Administration beneficiary admitted to the facility may be presumed to require the regular aid and attendance of another person because of physical or mental disability. A review of Veterans Administration Nursing Home Care Unit requirements for admission, the requirements of community nursing homes with which the Veterans Administration contracts for extended patient care, and the Medicaid certification requirements in Title 42, Code of Federal Regulations clearly indicates that only those extended care facilities that provide skilled or intermediate-level nursing care would qualify as providers of sufficient care to create the presumption of a beneficiary's need for aid and attendance. The provision of skilled or intermediate-level nursing care would also create the presumption that expenses incurred in connection with admission to such a facility were medical in nature. Accordingly, the proposed definition requires that skilled or intermediate-level nursing care be provided. It is not required that nursing homes be Medicaid certified in order to qualify under this definition, however such a certification would clearly meet the standards of the proposed definition.

States are not required to license the nursing home care units at veterans' homes which they operate. Neither do States license the Nursing Home Care Units operated by the Veterans Administration as part of its hospital system. However, Veterans Administration Nursing Home Care Units do provide the level of care necessary to meet the requirements of the proposed definition, and nursing home care units in State veterans' homes which are approved for payment under 38 U.S.C. 642 also meet the proposed standards for level of care. They are, therefore, being specifically included in the definition since they would not otherwise meet the State licensure requirement.

Veterans Administration beneficiaries in extended care facilities which do not meet the requirements of the proposed definition or which are licensed by foreign jurisdictions will not be eligible for aid and attendance benefits on a presumptive basis. Neither will the cost of their care automatically be considered as a medical expense deduction. These beneficiaries will be required to submit medical evidence sufficient to justify a grant of aid and attendance benefits by formal rating decision, and they will be required to itemize all claimed medical expense deductions.

The Administrator hereby certifies that this proposed rule, 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. The reason for this certification is that the proposed regulatory definition would not directly affect any small entities.

Only Veterans Administration beneficiaries could be directly affected. A small number of extended care facilities may be indirectly affected, if they do not come within the definition, because some of the Veterans Administration beneficiaries who reside there would not be presumptively entitled to increased benefits. Preliminary Veterans Administration data indicate that less than 1 percent of the approximately 170,000 Veterans Administration beneficiaries currently receiving aid and attendance benefits would be affected by this regulatory change. Moreover, even this small number of beneficiaries may still be able to establish entitlement to aid and attendance benefits and medical expense deductions, on a factual basis, by submitting appropriate evidence. Since the definition refers to State licensure of a nursing home, and since

that license is needed for nursing home operation in any event, no additional compliance costs, paperwork, recordkeeping, or other regulatory burden on nursing homes would result from this proposed regulation. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed regulation change is nonmajor for the following reasons:

- (1) It will not have an effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.102, 64.104, 64.105, 64.109 and 64.110)

Approved: December 1, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,  
Deputy Administrator.

#### PART 3—ADJUDICATION

The Veterans Administration proposes to amend 38 CFR Part 3 as follows:

In § 3.1, paragraph (z) is added as follows:

##### § 3.1 Definitions.

\* \* \* \* \*

(z) "Nursing home" means

(1) Any extended care facility which is licensed by a State to provide skilled or intermediate-level nursing care,

(2) A nursing home care unit in a State veterans' home which is approved for payment under 38 U.S.C. 642, or

(3) A Veterans Administration Nursing Home Care Unit.

[FR Doc. 82-34566 Filed 12-20-82; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KY-001; A-4-FRL 2161-6]

#### Approval and Promulgation of State Implementation Plans; Kentucky; State Regulations for Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This notice proposes to approve Kentucky's request to revise its State Implementation Plan (SIP) to include the State regulation for Prevention of Significant Deterioration (PSD). The Kentucky Department for Natural Resources and Environmental Protection (DNREP) developed the regulation according to EPA's PSD regulations (45 FR 52676, August 7, 1980) and related EPA guidance. EPA approval of the Kentucky PSD regulation will give the DNREP full authority to implement and enforce the PSD program in Kentucky according to the State regulations.

**DATE:** To be considered, comments must be submitted on or before January 20, 1983.

**ADDRESSES:** Written comments should be addressed to Melvin Russell of EPA, Region IV's Air Management Branch (see EPA, Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

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

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

**FOR FURTHER INFORMATION CONTACT:** Melvin Russell of the EPA Region IV Air Management Branch at the above address, telephone 404/881-3286. (FTS 257-3286).

**SUPPLEMENTARY INFORMATION:** The Commonwealth of Kentucky's Department for Natural Resources and Environmental Protection (DNREP) has submitted to EPA proposed State regulation for Prevention of Significant Deterioration (PSD). The DNREP regulation was submitted to EPA on March 19, 1982. The regulation was

considered at a public hearing held in Frankfort, Kentucky on April 29, 1982.

EPA is proposing approval of the regulation before adoption at the State level. This procedure is intended to expedite the approval process, and aid the State in its effort to adopt a final regulation that reflect EPA's recommendations and respond to comments in this proposal notice. The Kentucky regulations will be State-effective after approval by the State Legislative Research Commission.

On December 5, 1974, EPA published regulations for PSD under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the national ambient air quality standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain immediately effective changes to EPA's PSD regulations, the new Clean Air Act, in sections 160-169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by States into their implementation plans.

On June 19, 1978 (43 FR 26380), EPA promulgated further guidance. On August 7, 1980 (45 FR 52676), EPA promulgated the latest guidance to assist States in preparing State Implementation Plans (SIP) revisions meeting the new requirements.

The Kentucky regulation for PSD (401 KAR 51:017) is consistent with EPA's PSD regulations (45 FR 52676, August 7, 1980) and related EPA guidance. EPA delegated to Kentucky authority to implement and enforce all portions of the PSD program on May 19, 1980. The State has demonstrated the ability to implement and enforce all aspects of the PSD program.

By letter of May 14, 1982, EPA provided Kentucky with comments on the State's draft regulations for PSD (401 KAR 51:017), including the following:

#### PSD Regulation—401 KAR 51:017

##### 1. Section 1(1) regarding Applicability:

*EPA Comment:* The State regulation indicates that "the provisions of this regulation are applicable to any major stationary source or any major modification which:

(a) Is constructed after the effective date of this regulation;"

The term "is constructed" should be "commence construction", so that the regulation will be clear as to when the State regulation takes over from the Federal regulation. Construction can occur over a period of time, but is commenced only at one point in time.

*EPA Comment:* The regulation should provide for the assessment of 401 KAR 51:017 on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated.

3. Section 2(3)(d) regarding "net emission increase."

*EPA Comment:* Section 2(3)(d), reference to "401 KAR 51:015, 401 KAR 51:016E, or 40 CFR 52.21" should be deleted. Only permits issued under EPA-approved State PSD regulations exclude increases and decreases from counting. Kentucky regulations 401 KAR 51:015 and 401 KAR 51:016E have not been approved by EPA.

EPA's review of Kentucky's PSD regulation revealed no major deficiencies. EPA is therefore proposing to approve the regulation, based upon the understanding that Kentucky will consider all comments received during the State and EPA comment periods and make all necessary changes in the regulation before EPA takes final action on this proposal.

Under 5 U.S.C. Section 605(B), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 and 161 of the Clean Air Act (42 U.S.C. 7410 and 7471))

Dated: June 23, 1982.

Charles R. Jeter,  
Regional Administrator.

[FR Doc. 82-34577 Filed 12-20-82; 6:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 65

[A-3-FRL 2225-7]

**State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to InterRoyal Corp.**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; invitation for public comment.

**SUMMARY:** EPA has proposed to approve an administrative order issued by the Pennsylvania Department of Environmental Resources to InterRoyal Corporation. The order requires the company to bring air emissions from its storage shelving manufacturing facility in Warren, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

**DATE:** Written comments must be received on or before January 20, 1983.

**ADDRESSES:** Comments should be submitted to Director, Air & Waste Management Division, EPA Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Patrick M. McManus, Environmental Engineer, General Air Compliance Section (3AW22), Air & Waste Management Division, U.S. EPA Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-9893.

**SUPPLEMENTARY INFORMATION:** InterRoyal Corporation operates a storage shelving manufacturing facility at Warren, Pennsylvania. The order under consideration addresses emissions from the surface coating processes at the facility, which are subject to §129.52 of Title 25 of the Pennsylvania Code. The regulation limits the emissions of volatile organic compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The order requires final compliance with the regulation by

April 9, 1985 through the use of low solvent coatings.

Because this order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act, (the Act). EPA has reviewed the order and has found that the order does satisfy the requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under Section 120 (a)(B) or (C).

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the *Federal Register* the Agency's final action on the order in 40 CFR Part 65.

#### List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413, 7601)

Dated: September 29, 1982.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 82-34576 Filed 12-20-82; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 158

[OPP-30063; PH-FRL 2147-4]

#### Pesticides Registration; Proposed Data Requirements

##### Correction

In FR Doc. 82-31904 beginning on page 53192 in the issue of Wednesday, November 24, 1982, make the following correction:

On page 53192, first column, under "DATE:", substitute the comment due date of "February 22, 1983" in the lines now reading "(insert date 90 days after

date of publication in the *Federal Register*)".

BILLING CODE: 1505-01-M

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

#### 44 CFR Part 67

[Docket No. FEMA-6469]

#### Proposed Base Flood Elevation and Zone Designation Determinations For the City of Pratt, Pratt County, Kansas Under National Flood Insurance Program

**AGENCY:** Federal Emergency Management Agency.

**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 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:** 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 Municipal Building, Third and Jackson, Pratt, Kansas.

Send comments to: Honorable Paul Hayse, Mayor, City of Pratt, Third and Jackson, P.O. Box 807, Pratt, Kansas 67124.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

**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 Pratt, Kansas 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 (zone)
South Fork Ninescaw River:		
At the downstream limit of detailed study.	1831	A4.
At a point located approximately 350 feet downstream of the confluence with Valley View Ditch.	1835	A4.
At a point located approximately 500 feet downstream of Haskell Street extended.	1840	A4.
At a point located approximately 200 feet upstream of Taylor Street extended.	1851	A4.
At a point located just downstream of County Road.	1866	A4.
At the upstream limit of detailed study.	1890	A4.
Valley View Ditch:		
At a point located approximately 600 feet upstream of First Street.	1853	A12.
At a point located approximately 500 feet downstream of Maple Street extended.	1854	A3.
At North Street .....	1876	A3.

The proposed special flood hazard areas, identified as Zone A, have been added along the South Fork Ninescaw River, Valley View Ditch, East Fork Big Ditch, and various unnamed streams throughout the extraterritorial limits. The remaining portions of the extraterritorial limits have been identified as Zones B and C.

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.

#### List of Subjects in 44 CFR Part 67

##### Flood insurance, Flood plains.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 29, 1982.

**Dave McLoughlin,**

*Acting Associate Director, State and Local Programs and Support.*

[FR Doc. 82-34361 Filed 12-20-82; 8:45 am]

BILLING CODE 6718-03-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1000

[Ex Parte No. 440]

#### Canons of Conduct

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission proposes to amend its Canons of Conduct relating to reports to the Commission, reimbursement for travel expenses, conflicts of interest and filing of confidential statements of employment and financial interest. These proposals are meant to update and clarify existing Canons and guidelines based on recommendations of the General Counsel. Additional Canons are proposed regarding agency policy prohibiting sexual harassment (Canon 30), and implementation of administrative enforcement procedures for post-employment conflicts of interest under the Ethics in Government Act.

**DATE:** Interested persons may submit written comments on the proposed rules and guidelines on or before January 20, 1983.

**ADDRESS:** Comments should be submitted to: Secretary, Interstate Commerce Commission, Room 2203, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Lawrence H. Richmond, 202-275-1857.

#### SUPPLEMENTARY INFORMATION:

1. *Canon 12* requires the Commission's

General Counsel to report to the Commission on January 1 and June 30 of each year on the operation of the Canons. Although this semi-annual reporting requirement served a useful purpose when the Canons underwent major revision in 1979, we believe under the present circumstances an annual report (on June 30) will suffice. The Canons are now well established and any revisions are more easily managed on an annual basis.

2. *Canon 15* presently does not address whether members and employees are permitted to receive reimbursement for travel and subsistence expenses when they attend seminars or other functions. The Commission proposes to clarify the scope of reimbursement permitted in certain situations.

The Comptroller General has ruled that acceptance of a donation covering travel and subsistence expenses of a federal employee traveling on official business, whether such donation is in cash or in kind, constitutes an improper augmentation of the appropriations of the employing agency unless the employing agency has authority to accept gifts. 46 Comp. Gen. 689 (1967); see 18 U.S.C. 209. Inasmuch as the Commission has no statutory authority to accept gifts, travel and subsistence expenses of members and employees on official business may not be reimbursed.

This general prohibition concerning the agency's (and thus its members' or employees') ability to accept reimbursement, does not apply to (1) acceptance of reimbursement when the employee is on leave or otherwise in a non-official duty status at the time of the meeting or function on account of which the donation is made, or (2) payments from tax-exempt organizations (as described by 26 U.S.C. 501(c)(3)) for travel incident to attendance at meetings even if the employee is on official duty status. 5 U.S.C. 4111(a). Of course reimbursement must be consistent with other provisions of Canon 15. Therefore acceptance of reimbursement from individuals or organizations which otherwise would represent a conflict of interest is prohibited.

3. *Canon 17* prohibits members or employees from participating in outside employment or other activity which might reasonably result in or appear to be a conflict of interest. Section (c), however, which precludes compensation of personnel for activities devoted substantially to the responsibilities of the Commission presently applies only to members. This provision was also intended to include employees, but they

were inadvertently omitted. Therefore, the Commission proposes to amend Section (c) to include employees.

4. *Canon 18* prohibits a member or employee who "entertains a proposal for future employment by any entity subject to regulation by the Commission, or by associations or representatives of such entities," from participating in the decision or disposition of any matter in which the entity making the employment proposal has a substantial interest. Canon 18 does not, however, specify when an employee is deemed to be "entertaining a proposal." In particular, when a regulated entity contacts an employee to inquire whether he or she is interested in employment, when does Canon 18's prohibition come into play?

Whether an employee is "entertaining" a proposal for future employment depends upon the nature and substantiality of the contact by the regulated entity. It seems clear that if the employee listens to the initial contact, and then immediately responds negatively, the employee has not "entertained" the proposal because there has been no mutual expression of interest. When the contact is more substantial, the question becomes more difficult. Recognizing that no statement can address every circumstance and that each case must ultimately turn upon its own facts, the Commission proposes to adopt guidelines to Canon 18 to clarify its intended scope.

Under our proposed guidelines "entertaining a proposal" would include either: (1) Negotiations, (2) solicitation of employment by an agency or employee, or (3) situations where the Commission member or employee does not promptly reject an unsolicited offer of employment.

We believe the guidelines should distinguish between contact initiated by potential employers and contact initiated by agency members or employees. In the latter instance, the public's confidence in the agency's integrity and impartiality might be diminished if members or employees decided matters involving parties before whom they had employment applications pending. Certainly such a practice, if permitted, would give the appearance of impropriety. Mindful of the public trust which we hold and the high standards that trust entails, see Canon 11, we believe members or employees should refrain from participating in the decision or disposition of any matter in which the party who has been contacted about employment is known to have a direct or substantial interest. It should be noted that this bar on participation in

particular matters is effective for six months after negotiations have ceased.

5. *Canon 26.* This canon requires employees listed in Appendix I of Subpart B to submit confidential statements of employment and financial interests. Because of frequent organizational changes and changing responsibilities of various positions, the list contained in the Code of Federal Regulations is virtually never accurate. A current list of employees required to file is maintained and updated by the agency's Personnel Office pursuant to criteria set forth in 5 CFR Part 403.

Because the list published in the regulations is of little use, and current lists are obtainable from the agency's Personnel Office we propose to delete Appendix I from the canons. Authority to designate those employees required to file statements of employment and financial interests will be delegated from the Chairman to the Director of Personnel and the Managing Director pursuant to 49 CFR 1011.4(c)(9). The Director of Personnel will make initial decisions on grievances by employees who do not believe they should be required to file statements. Appeals will be decided by the Managing Director.

6. *Canon 30.* Under section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-2, discrimination on the basis of sex is unlawful. The Commission opposes sexual harassment in any form. Indeed, in a recent policy statement we noted that sexual harassment will be subject to strong disciplinary action. We propose to adopt a new Canon<sup>1</sup> in order to insure that all agency personnel have notice of this agency policy as well as the particular actions that constitute sexual harassment and the procedures for filing complaints.

7. *Miscellaneous Matters.* Appendix II to 49 CFR Part 1000, Subpart B, lists miscellaneous statutory provisions. Paragraph 4 of that Appendix restates the post-employment conflict of interest law, 18 U.S.C. 207. This section has been a constant source of inquiries from current or former members and employees. Therefore, we believe an expanded and detailed explanation of the provisions is warranted.

8. *Subpart D.* The Commission proposes to adopt regulations to implement administrative application of restrictions on post-employment activity of former officers and employees as established by Title V of the Ethics in Government Act of 1978. See 18 U.S.C.

207(j). The proposed regulations have been drafted in consultation with the Office of Government Ethics. The regulations, as adopted, will be designated as Subpart D to 49 CFR Part 1000.

Accordingly, the Commission proposes to adopt the following amendments and additions to its Canons of Conduct as set forth in the appendix below. This action is taken under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

#### List of Subjects in 49 CFR Part 1000

Conflicts of interest, Seals and insignias.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,  
Secretary.

#### Appendix

#### PART 1000—[AMENDED]

Title 49 CFR Part 1000 is proposed to be amended as follows:

##### § 1000.735-12 [Amended]

1. Section 1000.735-12 would be amended by removing the words "January 1 and" from line 1 of paragraph (b).

2. (a) In § 1000.735-15 a new paragraph (e) would be added to read as follows:

##### § 1000.735-15 Gifts, entertainment and favors.

(e) Neither this section nor § 100.735-17 precludes a member or employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow a member or employee to be reimbursed or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a member or employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

(b) In § 1000.735-15, the Guidelines would be amended by redesignating paragraphs (7) and (8) as paragraphs (8) and (9) respectively, and by adding a new paragraph (7) which would read as follows:

##### § 1000.735-15 Gifts, entertainment and favors.

\* \* \* \* \*

**Guidelines** \* \* \* \* \*

(7) Paragraph (e) of this section does not allow for reimbursement of travel and subsistence expenses when members or employees travel on official business. The agency has no authority to accept gifts and acceptance of reimbursement would constitute an improper augmentation of the agency's appropriations. Payments from tax exempt organizations (as described by 26 U.S.C. 501(c)(3)) for travel incident to attendance at meetings is permitted.

Examples of the types of organizations described in 26 U.S.C. 501(c)(3) include, *inter alia*, corporations, any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and that otherwise meet the criteria outlined in the statute.

Acceptance of reimbursement from individuals or organizations which would otherwise represent a conflict of interest is prohibited except as provided in Guideline (2) of this section.

\* \* \* \* \*

##### § 1000.735-17 [Amended]

3. In § 1000.735-17, paragraph (c) would be amended by adding "and employees" to follow the word "Members."

4. The following Guidelines would be added to § 1000.735-18:

##### § 1000.735-18 Future employment.

\* \* \* \* \*

##### Guidelines

Members and employees are considered to be entertaining a proposal if they: (1) Are engaged in negotiations; (2) solicit employment by submitting a resume or otherwise contacting a prospective employer about employment; or (3) do not promptly reject an unsolicited offer of employment.

##### § 1000.735-26 [Amended]

5(a). In paragraph (a) of § 1000.735-26 the first sentence would be amended by removing "in Appendix I of this subpart," and adding in its place "by the Director of Personnel in accordance with 5 CFR 735.403."

b. Paragraph (a) of § 1000.735-26 would be further amended by adding the following sentences to the end of that paragraph "Grievances shall be decided by the Director of Personnel. Appeals of initial decisions shall be decided by the Managing Director."

##### § 1000.735-30 [Redesignated as § 1000.735-31]

6. Section 1000.735-30 would be redesignated as § 1000.735-31

7. A new § 1000.735-30 would be added to Part 1000 to read as follows:

<sup>1</sup> This Canon will be designated as Canon 30, the present Canon 30 which sets forth disciplinary action for violations of the Canons of Conduct will be renumbered as Canon 31.

**§ 1000.735-30 Sexual harassment.**

(a) Members and employees shall not engage in harassment on the basis of sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, offensive or unpleasant working environment.

(b) Employees and applicants may follow the standard equal employment opportunities complaint process if they believe they have a work related sexual harassment problem. This requires that the employee or applicant contact an EEO Counselor within 20 days of the alleged harassment, or, if a personnel action is involved within 30 days of its effective date.

**Appendix I [Removed]**

8. Appendix I to Subpart B of Part 1000 would be removed.

**Appendix II [Amended]**

9. Appendix II to Subpart B of Part 1000 would be redesignated as "Appendix," and paragraph (4) would be revised to read as follows:

4. *Post employment conflict of interest* (18 U.S.C. 207).

**I. General**

A. The Ethics in Government Act (Pub. L. 95-521) (the Act) broadened and added new restrictions to the existing provisions of 18 U.S.C. 207, which generally prohibit a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government. Criminal penalties or fines of not more than \$10,000 and imprisonment for not more than two years, as well as administrative sanctions are provided for violation of the Act.

1. *Post-Employment Generally.* It is important to note that nothing in the Act requires a former employee to decline employment with any organization regardless of dealings with that organization while a Government employee.

2. *Required Nexus.* With the exception of the 207(c) bar, what is prohibited depends upon the former employee's degree of involvement in the matter while with the Government and whether he or she was one of a specified group of high-ranking employees ("Senior Employees")

**II. General Restrictions Applicable to all Former Employees**

A. *Permanent Bar.* (18 U.S.C. 207(a); 5 CFR 737.5) After leaving Government employment, a former employee may not serve as another person's representative to the Government on a case contractual matter or other similar application or proceeding, formal or informal, in which he or she participated personally and substantially while a Government employee.

1. There are two important limitations to this prohibition which attacks "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (i) a "particular matter involving specific parties" and (ii) is the same matter in which he or she now attempts to represent another before the Government. Thus, where an employee's prior involvement was limited to, say, the design of program policy, general rulemaking, or technical concepts, he or she is not restricted by this prohibition as to any specific matters which may involve his or her prior work. Second, this bar requires that the employee has been personally involved in the matter in a substantial way.

2. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representation.

B. *Two-Year Bar.* (18 U.S.C. 207(b)(1); 5 CFR 737.7) This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employee's "official responsibility" in his or her last year of Government service. An employee's official responsibility is usually defined by statute, regulation, written delegation of authority or job description.

1. There may be times when a former employee is in doubt as to whether a matter was under his or her official responsibility, whether it is the same "particular matter" as that with which he or she was involved or whether the United States still has an interest in the matter. His or her former agency has an obligation to advise promptly on those questions as provided in the regulations issued by the Office of Personnel Management (5 CFR Part 737)

**III. Restrictions Applicable Only to Senior Employees**

A. *Two-Year Bar on Assisting in Representing.* (18 U.S.C. 207(b)(2); 5 CFR 737.9) For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she could not act as the person's actual representative because of his or her substantial personal participation in the matter while in Government.

1. It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he or she participated while in Government but only from assisting "in representing" while

personally present at a formal or informal appearance. Thus, such employee could work on a contract with which he or she was involved while in Government and could manage a company, institution or university where such former employee's decisions determine the manner in which his or her organization will perform under a Government contract or grant.

B. *One-Year Bar on Attempts to Influence Former Agency.* (18 U.S.C. 207(c); 5 CFR 737.11) For one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his or her former agency on a matter before, or of substantial interest to such agency.

1. This "revolving door" provision is different from the previous restrictions in the following ways:

a. It does not require that the former employee have had any prior involvement in the matter.

b. The matters covered are broader; they need not involve specific parties, so the former employee could not, for example, attempt to influence rulemaking or policy formation.

c. It is limited to contact with his or her former agency; he or she may appear before, or act to influence, any other part of the Government in regard to a matter not otherwise covered.

d. The matter must be pending before, or of substantial interest to, his or her former agency.

e. The restriction covers the former employee's self-representation except for those matters outlined in subsection 2 below.

2. There are a number of matters to which the restriction does not apply, among these are:

a. Purely social or informational communications.

b. Transmission of filings which do not require Governmental action.

c. Personal matters.

d. Representing oneself in any judicial or administrative proceeding.

e. Any expression of personal views where the former employee has no pecuniary interest.

f. Response to the former agency's request for information.

g. Participation as the principal researcher under Government grants.

**IV. What Is a Senior Employee? (18 U.S.C. 207(d); 5 CFR 737.25)**

A. There are four groups of Senior Employees, two are named automatically by statute: (i) Civilians paid at the Executive Level and (ii) active duty uniformed service officers serving in grade O-9 and above. Two other groups, (iii) civilians at or equivalent to GS-17 or above and (iv) uniformed service officers in grades O-7 and O-8, having significant decision-making or supervisory responsibility, must first be designated by the Director of the Office of Government Ethics before they are chargeable as Senior Employees.

1. Those automatically covered by the statute were made subject to the Act's

special restrictions on Senior Employees as of July, 1979.

2. Those designated by the Director, OGE, were covered as of February 28, 1980.

#### PART 1000—[AMENDED]

10. Part 1000 would be amended by adding a new Subpart D to read as follows:

##### Subpart D—Administrative Enforcement of Improper Post-Employment Activity

Sec.

- 1000.737-1 General.
- 1000.737-2 Initiation of enforcement action.
- 1000.737-3 Review and investigation.
- 1000.737-4 Notice of proceeding and opportunity for a hearing.
- 1000.737-5 Presiding official.
- 1000.737-6 Time, date, and place of hearing.
- 1000.737-7 Hearing rights.
- 1000.737-8 Burden of proof.
- 1000.737-9 Hearing decision.
- 1000.737-10 Administrative sanctions.
- 1000.737-11 Judicial review.

Authority: 18 U.S.C. 207(j), 49 U.S.C. 10321 and 5 U.S.C. 553.

##### Subpart D—Administrative Enforcement of Improper Post-Employment Activity

###### § 1000.737-1 General.

A violation of 18 U.S.C. 207 (See 49 CFR Part 1000 Subpart B, Appendix, paragraph (4)) or the regulations set forth in 5 CFR Part 737 may be cause for appropriate administrative action which may be in addition to any penalty prescribed by law. This subpart is established pursuant to the provisions of 18 U.S.C. 207(j) and 5 CFR 737.27 to implement agency procedures for administrative enforcement of post-employment restrictions.

###### § 1000.737-2 Initiation of enforcement action.

Information regarding a possible violation of 18 U.S.C. 207 by a former Commissioner or former Commission employee may be brought to the attention of the Commission by filing such information with the Ethics Counselor.

###### § 1000.737-3 Review and investigation.

(a) Upon receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears non-frivolous, the Ethics Counselor shall forward the information to the Commission with any recommendations he or she may wish to make on administrative action; the Counselor shall also expeditiously provide such information, along with any comments or Commission regulations, to the Director of the Office of Government Ethics and to the Criminal Division, Department of

Justice. The Commission shall coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution.

(b) Whenever the Commission has determined after appropriate review that there is reasonable cause to believe that a former Commissioner or Commission employee has violated 18 U.S.C. 207, it may designate the matter for an administrative disciplinary proceeding.

###### § 1000.737-4 Notice of proceeding and opportunity for a hearing

(a) Upon designating such matter for an administrative disciplinary proceeding, the Commission shall provide the former Commissioner or former Commission employee with notice of an intention to institute a proceeding and an opportunity for a hearing. Such notice shall include:

(1) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former government employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If such former Commissioner or Commission employee fails to request a hearing within ten (10) calendar days of receipt of the notice or has waived the opportunity for a hearing, the Commission may take such administrative action as outlined in § 1000.737-10, of this subpart. The former employee shall submit a written request for a hearing to the Chairman, Interstate Commerce Commission, 12th & Constitution Ave., NW, Washington, D.C. 20423.

###### § 1000.737-5 Presiding official.

(a) The presiding official at proceedings under this section shall be the Chairman or an individual designated by the Chairman to make an initial decision. This person shall be called the examiner.

(b) The examiner at such proceeding must be a Commissioner, a member of a Review Board, an Administrative Law Judge or an attorney employed by the Commission. An employee selected and appointed as an examiner shall be authorized, in writing, by the Chairman to administer oaths or affirmations under 5 U.S.C. 2903(b)(2). The examiner shall be provided with appropriate administrative and secretarial support.

(c) The examiner shall be impartial. No individual who has participated in

any manner in the decision to initiate the proceedings may serve as the examiner in those proceedings.

###### § 1000.737-6 Time, date, and place of hearing.

(a) The hearing shall be conducted at a reasonable time, date, and place. In setting a hearing date, the examiner shall give due regard to the former government employee's need for adequate time to prepare a defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(b) Official notice of the time, date and place shall be sent by registered mail, return receipt requested, to the former employee. The mailing shall include a copy of these procedures.

(c) Hearings will be closed unless an open hearing is requested by the former employee. A request for an open hearing shall be made at least ten (10) days prior to the hearing date.

###### § 1000.737-7 Hearing rights.

The hearing shall include, at a minimum the following rights for all parties:

(a) To represent oneself or to be represented by counsel;

(b) To introduce and examine witnesses and to submit physical evidence;

(c) To confront and cross-examine adverse witnesses and to submit physical evidence;

(d) To present oral argument; and

(e) To a transcript or recording of proceedings, on request.

###### § 1000.737-8 Burden of proof.

In any hearing under this subpart, the Commission shall have the burden of proof and must establish substantial evidence of a violation.

###### § 1000.737-9 Hearing decision.

(a) The examiner shall make a determination based exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue. Copies of the decision shall be furnished promptly to the former employee and his or her counsel.

(b) Within 30 days after the initial decision either party to the proceeding may appeal the decision to the Commission. Unless the Commission orders otherwise, other parties to the proceeding may file comments within 20 days after such appeal is filed, and the party that filed such appeal may file a reply within 10 days after the period for filing comments has expired. The Commission shall base its decision on

such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(c) If the Commission modifies or reverses the initial decision, it shall specify such findings of fact and conclusions of law as are different from those of the presiding official. The Commission's decision to uphold, modify, or reverse the examiner's initial decision shall be the final agency decision on the matter.

**§ 1000.737-10 Administrative sanctions.**

The Commission may take appropriate action in the case of any

individual found in violation of 18 U.S.C. 207 (a), (b) or (c) after a final administrative decision, or in the case of any individual who failed to request a hearing, after having received adequate notice. Appropriate action may include:

(a) Prohibiting the individual from making on behalf of any other person except the United States, any formal or informal appearance before, or with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to

participate in any such communication; or

(b) Taking other appropriate disciplinary action.

**§ 1000.737-11 Judicial review.**

Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) may seek judicial review of the administrative determination in an appropriate United States District Court.

[FR Doc. 82-34397 Filed 12-20-82; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register

Vol. 47, No. 245

Tuesday, December 21, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Vasquez Peak Wilderness Study Area; Hearing Notice

Notice is hereby given that public hearings will be held on the proposed future management of the Vasquez Peak Wilderness Study Area.

The Vasquez Peak Wilderness Study Area is comprised of approximately 12,800 acres within the Arapaho National Forest in the County of Grand in the State of Colorado. This portion of the Arapaho National Forest is administered by the Forest Supervisor of the Rout National Forest.

Hearings will be held as follows:

Tuesday, January 18, 1983, 7:00-10:00 p.m., West Portal Station Building at Winter Park Ski Area, Denver, Colorado

Wednesday, January 19, 1983, 7:00-10:00 p.m., Botanical Gardens, Denver, Colorado

A brochure containing a map and information about the proposal may be obtained from the District Ranger's Offices at Walden, Yampa, Steamboat Springs, Craig, Kremmling, and Granby, Colorado, as well as at the Supervisor's Office, 137 10th Street, Steamboat Springs, Colorado 80477.

Individuals and organizations may express their views by appearing at these hearings or may submit written comments for inclusion in the official record to the Forest Supervisor at the above address. The time available to each speaker will be limited depending on the number of people who wish to speak. To be included in the official record, written comments must be received by March 25, 1983.

Dated: December 16, 1982.

F. Dale Robertson,  
Associate Chief.

[FR Doc. 82-34565 Filed 12-20-82; 8:45 am]

BILLING CODE 3410-11-M

### Soil Conservation Service

#### Camp Joy Flood Prevention and Land Drainage RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: 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 Camp Joy Flood Prevention and Land Drainage RC&D Measure, Tazewell County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, P.O. Box 10026, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: 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. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for drainage and flood prevention on the grounds of Camp Joy. The planned work will include grading and shaping about 0.2 acres, excavation of a waterway with associated mechanical drainage and vegetative measures will be installed. Curbing around the parking area and a concrete wingwall to divert water from a building is planned. About 350 feet of interceptor tile with a gravel filter will be installed. The planned works of improvement include seeding and mulching.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 10, 1982.

Manly S. Wilder,  
State Conservationist.

[FR Doc. 82-34457 Filed 12-20-82; 8:45 am]

BILLING CODE 3410-16-M

### Statistical Reporting Service

#### Changes in Grain Stocks Surveys

The statistical Reporting Service (SRS) proposes to move the October 1 Grain Stocks survey to September 1 starting in 1983. SRS is currently conducting a soybean stocks survey as of September 1, while the fall quarter stocks survey for other crops is conducted as of October 1. Many respondents to the two surveys are the same, and single fall stocks survey covering all crops would lessen respondent burden and result in cost savings. Furthermore, an earlier survey date for corn and sorghum would reduce the problem of new crop grain being erroneously reported in old crop (carryover) totals. The Statistical Reporting Service will work with the Economic Research Service to adjust 10 years of historic October 1 stocks data for all crops to a September 1 base and these data will be published.

SRS also proposed to estimate sunflower seed stocks by quarters rather than estimate rye and flaxseed stocks. Rye and flaxseed stocks estimates would be continued through June 1983 and the new series on sunflower seed

stocks would begin September 1, 1983. Sunflower production has become increasingly important while rye and flaxseed production has declined.

Comments on the above proposals should be addressed to Robert L. Schulte, Chief, Crops Branch, Estimates Division, Room 5175-S, USDA/SRS, Washington, D.C. 20250. The comment period will close February 1, 1983.

Done at Washington, D.C., this 16th day of December 1982.

W. E. Kibler,  
Administrator.

[FR Doc. 82-34566 Filed 12-20-82; 8:45 am]

BILLING CODE 3410-20-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Arizona State University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00256. Applicant: Arizona State University, Tempe, Arizona 85287. Instrument: BAF 400D Freeze Etching System & Accessories. Manufacturer: Balzers Aktiengesellschaft, Liechtenstein. Intended use of instrument: See Notice on page 32181 in the *Federal Register* of July 26, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is an integrated system with: (1) Automatic vacuum and temperature control, (2) a microtome with motors for cutting motion and knife advance and (3) control of shadowing angle and coating thickness. The Department of Health and Human Services advises in its memorandum dated October 12, 1982

that: (1) The capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-34571 Filed 12-20-82; 8:45 am]

BILLING CODE 3510-25-M

#### Duke University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00253. Applicant: Duke University, Durham, NC 27706. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Photochemical Research Associated, Incorporated, Canada. Intended use of instrument: See Notice on page 33527 in the *Federal Register* of August 3, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides pulsed excitation capable of showing more than two decay components. The National Bureau of Standards advises in its memorandum dated November 2, 1982 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-34572 Filed 12-20-82; 8:45 am]

BILLING CODE 3510-25-M

#### Georgia Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00260. Applicant: Georgia Institute of Technology, Engineering Experiment Station, 225 North Avenue, NW, Atlanta, GA 30322. Instrument: Extended Interaction Oscillator. Manufacturer: Varian/Canada, Canada. Intended use of instrument: See Notice on page 32182 in the *Federal Register* of July 26, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 81-00355 which was denied without prejudice to resubmission on March 26, 1982 for informational deficiencies. The foreign instrument provides a center frequency of 95 gigahertz. The National Bureau of Standards advises in its memorandum dated October 25, 1982 that: (1) The capability of the foreign instrument described above is pertinent

to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Richard M. Seppa,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 82-34570 Filed 12-20-82; 8:45 am]

**BILLING CODE 3510-25-M**

#### **University of Hawaii at Manoa; Decision on Application for Duty-Free Entry of Scientific Instrument**

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00163. Applicant: University of Hawaii at Manoa, Procurement and Property Management Office, Bachman Hall Annex No. 3, 2444 Dole Street, Honolulu, Hawaii 96822. Instrument: Ship Motion Meter. Manufacturer: Osaka Design Model Kabushiki Kaisha, Japan. Intended use of instrument: See Notice on page 21905 in the *Federal Register* of May 20, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a decoupled output of its motion sensors which is needed for *in situ* studies and data analysis. The National Bureau of Standards advises in its memorandum dated November 10, 1982 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended

purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Richard M. Seppa,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 82-34573 Filed 12-20-82; 8:45 am]

**BILLING CODE 3510-25-M**

#### **Yale University; Decision on Application for Duty-Free Entry of Scientific Instrument**

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00124. Applicant: Yale University, 272 Whitney Avenue, P.O. Box 6666, New Haven, CT 06511. Instrument: Large-Solid-Angle Split-Pole Magnetic Spectrograph. Manufacturer: ANAC, Incorporated, New Zealand. Intended use of instrument: See Notice on page 30537 in the *Federal Register* of July 14, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a full solid angle equal to 12 milli-steradians over the range of radii from 51.1 centimeters to 92.0 centimeters. The National Bureau of Standards advised in its memorandum dated October 25, 1982 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Richard M. Seppa,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 82-34569 Filed 12-20-82; 8:45 am]

**BILLING CODE 3510-25-M**

#### **DEPARTMENT OF ENERGY**

#### **National Petroleum Council, Coordinating Subcommittee of the Committee on Enhanced Oil Recovery; Meeting**

Notice is hereby given that the Coordinating Subcommittee of the Committee on Enhanced Oil Recovery will meet in March 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its sixth meeting on Tuesday, March 22, 1983, starting at 10:00 a.m. in the Rayburn I Room, Stouffer's Greenway Plaza Hotel, Six Greenway Plaza East, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Coordinating Subcommittee task group study assignments.
3. Review progress of the task group study assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his

judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas, and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 15, 1982.

**Donald L. Bauer,**

*Principal Deputy Assistant Secretary for Fossil Energy.*

[FR Doc. 82-34543 Filed 12-20-82; 8:45 am]

BILLING CODE 6450-01-M

**National Petroleum Council,  
Coordinating Subcommittee of the  
Committee on Enhanced Oil Recovery;  
Meeting**

Notice is hereby given that the Coordinating Subcommittee of the Committee on Enhanced Oil Recovery will meet in February 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its fifth meeting on Thursday, February 17, 1983, starting at 10:00 a.m. in the Azalea Room, Stouffer's Greenway Plaza Hotel, Six Greenway Plaza East, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Coordinating Subcommittee task group study assignments.

3. Review progress of the task group study assignments.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas, and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on December 15, 1982.

**Donald L. Bauer,**

*Principal Deputy Assistant Secretary for Fossil Energy.*

[FR Doc. 82-34544 Filed 12-20-82; 8:45 am]

BILLING CODE 6450-01-M

**National Petroleum Council,  
Coordinating Subcommittee of the  
Committee on Enhanced Oil Recovery;  
Meeting**

Notice is hereby given that the Coordinating Subcommittee of the Committee on Enhanced Oil Recovery will meet in January 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its fourth meeting on Tuesday, January 18, 1983, starting at 10:00 a.m. in the Plaza I Room, Stouffer's Greenway

Plaza Hotel, Six Greenway Plaza East, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Coordinating Subcommittee task group study assignments.
3. Review progress of the task group study assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas, and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 15, 1982.

**Donald L. Bauer,**

*Principal Deputy Assistant Secretary for Fossil Energy.*

[FR Doc. 82-34545 Filed 12-20-82; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory  
Commission**

[Docket No. CP80-435-005]

**Alaskan Northwest Natural Gas  
Transportation Co.; Amendment to  
Application**

December 15, 1982.

Take notice that on November 4, 1982, Alaskan Northwest Natural Gas Transportation Company (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP80-435-005 pursuant to Section 7(c) of the Natural Gas Act and Section 9 of the Alaska Natural Gas Transportation Act an amendment to its application for a certificate of public convenience and necessity authorizing the construction

and operation of the Alaskan segments of the Alaska Natural Gas Transportation System (ANGTS). Copies of Volume I of the amendment, which this notice addresses, are on file with the Commission and are open to public inspection.<sup>1</sup>

Applicant states that this filing supplements the previous filings which were submitted in this proceeding on July 1, 1980, as supplemented on October 27, 1980, November 30, 1981, and amended on December 31, 1981. Applicant states that the instant filing supplements the previous application regarding the ANGTS Alaska Gas Conditioning Facility (AGCF).

Applicant states that the instant filing reflects certain revisions to the design and cost estimate of the AGCF resulting from engineering optimization studies and design refinement completed subsequent to the December 31, 1981, amendment. This adjustment results in a net decrease of \$168 million in the prior estimate, for a total AGCF cost estimate of \$3.83 billion in June 1981 dollars. The specific changes comprising the \$168 million reduction are as follows:

Optimization and Design Development Adjustments (\$1,000):	
(1) Centralization.....	(\$105,218)
(2) NGL Extraction/CO <sub>2</sub> Removal Trains Design Changes.....	(3,581)
(3) Pipeline Compressor Reduction.....	(20,581)
(4) Refrigeration Design Changes.....	(47,867)
(5) NGL Fractionation and Storage Facilities Design Changes.....	(18,479)
(6) Vacuum Compression Chillers Addition.....	2,379
(7) Dehydration-System Addition.....	2,496
(8) Engineering Contractor Cost Adjustment.....	887
(9) Vibration-Monitoring System Increase.....	999
(10) Communication System Design Changes.....	(616)
(11) Additional Warehousing Requirement.....	6,824
(12) Utilities Plant and Power Generation Design Changes.....	(5,002)
(13) Flare System Design Changes.....	30,891
(14) Gravel Program Modifications.....	(1,779)
(15) Offsite Pipeline Modifications.....	(3,518)
(16) Temporary Facilities Cost Adjustments.....	3,821
(17) Fabrication, Logistics, and North Slope Service Adjustments.....	23,466
(18) Tax and Insurance Adjustments.....	(5,534)
Total Other Adjustments.....	(140,412)
Contingency Adjustments.....	(27,998)
Total Cost Estimate Adjustment.....	(168,410)

Applicant states that the purpose of the instant filing is to update the AGCF design and cost estimate to reflect the current design as of March 31, 1982, and

<sup>1</sup> Volume II of the amendment is said to contain proprietary information regarding the SELEXOL process and has been tendered for filing on a confidential basis. It is indicated that on March 17, 1982, the Commission issued a Protective Order which set out procedures for preserving the confidentiality of information concerning the Allied Corporation SELEXOL Solvent Process and that such order pertained to Applicant's December 31, 1981, filing in Docket No. CP80-435-003. Applicant asserts that the March 17, 1982, Protective Order should also cover supplements or amendments to this December 31, 1981, filing.

should be processed in conjunction with the proceeding to be established for processing the December 31, 1981, AGCF filing. Proceedings with respect to the December 31, 1981, AGCF filing in Docket No. CP80-435-003 are currently being held in abeyance.<sup>2</sup>

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34483 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Docket No. QF83-47-000]

#### Alpha Farm Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 14, 1982.

On November 9, 1982, Alpha Farm Inc., P.O. Box 187, Hackensack, New Jersey 07602, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The wind system will be located in Allentown, New Jersey. The electric power production capacity of the facility will be 40 kilowatts. Applicant does not own or operate any other small power production facility using wind as the primary energy source that is located

<sup>2</sup> On February 12, 1982 the Secretary of the Commission notified Applicant of deficiencies with regard to Exhibits A, B, C, D, I, J, L, and N in its December 31, 1981, filing and stated that the filing would be accorded expedited treatment when and as the required information has been filed. On May 27, 1982, pursuant to Applicant's recommendation, the Presiding Administrative Law Judge, held in abeyance the proceeding to process the December 31, 1981, filing pending certain additional certificate filings including Applicant's financing plan.

within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant 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. 82-34484 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

#### [Docket No. CP83-99-000]

#### Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Application

December 15, 1982.

Take notice that on November 22, 1982, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP83-99-000 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 taps on certain jurisdictional gas pipelines and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate taps on the lines identified below for service to the following:

Line	Home or commercial establishment
AM-44	P. M. Adkins, McNeil, Ark.
O	Craig Cope, Hartshorne, Okla.
AD	Marion Posey, McAlester, Okla.
8-A	Lowell Files, Sayre, Okla.
JM-24	Jesse McDermott, Earle, Ark.
SM-24	Coca-Cola Bottling Company of South Ark., Camden, Ark.
KM-19	Great Lakes Chemical Corp., El Dorado, Ark.
AM-148	Fiber Resources, Inc., Pine Bluff, Ark.
9-6	Carlton H. Barry, Cement, Okla.
AD	Samuel Jefferson, Weatherford, Okla.

Applicant states that the estimated cost of the proposed tap facilities is \$105,525 which cost would be financed from funds on hand.

It is stated that the gas supply for these customers would be from general system supply with impact on Applicant's supply being negligible.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion 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 motion 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 motion 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. 82-34465 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. EF81-2021-002 and E-9563]

### Bonneville Power Administration; Filing

December 13, 1982.

Take notice that the Bonneville Power Administration (BPA) on November 29, 1982, filed with the Commission a

Petition for Extension of Transmission Rates until January 1, 1984.

On June 24, 1981, effective July 1, 1981, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy placed BPA's 1981 transmission rates into effect on an interim basis and filed the rates with the Commission requesting that they be granted final confirmation and approval. 46 FR 33542 (1981). On June 22, 1982, in Docket No. EF81-2021, the Commission granted an extension of these interim rates until January 1, 1983. 19 F.E.R.C. section 61,281. BPA requests a twelve month extension, until January 1, 1984, of interim approval of the transmission rates schedules contained in Docket No. EF81-2021: (1) FPT-2 (Formula Power Transmission), (2) UFT-2 (Use-of-Facilities Transmission), (3) ET-2 (Energy Transmission), and (4) IR-1 (Integration of Resources). BPA also requests a twelve month extension of Set A and Set B of its General Transmission Rate Schedule Provisions, which are incorporated by reference in these four schedules.

On August 3, 1982, in Docket No. E-9563-, the Commission granted final confirmation and approval of BPA's 1976 transmission rates. 20 F.E.R.C. section 61,142. In that Order the Commission approved the FPT-1, UFT-1 and ET-1 transmission rate schedules for the period from June 10, 1977, until June 30, 1981. On July 1, 1981, BPA's 1981 rates went into effect. Some of BPA's transmission contracts, however, did not permit rates to be adjusted on July 1, 1981. Hence BPA has continued to collect under the FPT-1, UFT-1 and ET-1 schedules for these contracts. BPA therefore requests that the Commission also extend the effectiveness of the FPT-1, UFT-1 and ET-1 schedules until January 1, 1984.

In support of its request for extension, BPA indicates that it is in the process of developing a comprehensive transmission policy, which isn't expected to be finalized until January 1983. After such time BPA intends to develop new transmission rates consistent with this policy, and conduct a hearing and issue a decision on the new rates, all of which will not be completed until late 1983.

BPA also requests this extension in order to be allowed the time necessary to begin the process of complying with the commission's August 3, 1981 Order in Docket No. E-9563 before adjusting transmission rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 22, 1982. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 82-34507 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 5874-001]

### James O. Boyd; Surrender of Preliminary Permit

December 13, 1982.

Take notice that James O. Boyd, Permittee for the proposed Burney Creek Power Project No. 5874, has requested that his preliminary permit be terminated. The permit was issued on September 9, 1982, and would have expired on March 31, 1984. The project would have been located on Burney Creek near Burney, in Shasta County, California. The Permittee states that, because of fisheries release requirements and low power purchase prices, the proposed project would not be economically feasible.

The Permittee filed his request on November 17, 1982, and the surrender of his permit for Project No. 5874 is deemed effective as of the date of this notice.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 82-34508 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 4448-001]

### Chasm Hydro, Inc.; Surrender of Preliminary Permit

December 13, 1982.

Take notice that Chasm Hydro, Inc., Permittee for the proposed Forge Dam Project No. 4448, has requested that its preliminary permit be terminated. The permit was issued on April 7, 1982, and would have expired on October 1, 1983. The project would have been located on the Chateaugay River in Franklin and Clinton Counties, New York.

The Permittee filed its request on November 3, 1982. The surrender of the preliminary permit for Project No. 4448

is deemed accepted as of the date of this notice.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-34509 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-82-000]

**Consolidated Gas Supply Corp;  
Application**

December 15, 1982.

Take notice that on November 12, 1982, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-82-000 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 facilities to upgrade existing compressor engine at the Cornwell Compressor Station, Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to install a Cooper-Bessemer centrifugal blower kits on three existing compressor engine at its Cornwell Station. Applicant states that the modification is expected to increase the fuel efficiency of its station and incidentally increase the horsepower of each engine by 23 percent.

Applicant further states that the estimated cost of the proposed construction is \$570,000 and that this cost would be financed from funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company, from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion 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 motion 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 motion 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. 82-34486 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-87-000]

**Consolidated Gas Supply Corp.;  
Application**

December 15, 1982.

Take notice that on November 15, 1982, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-87-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 7,153 feet of 12½-inch pipeline and related facilities located in Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated states that the pipeline to be abandoned, Line No. TL-293, is no longer needed because it connects Tennessee Gas Pipeline Company, a Division of Tenneco Inc.'s (Tennessee), facilities with Consolidated's Line No. TL-249 and that this interconnection has not been used for two years. It is submitted that Consolidated can receive its entitlement from Tennessee under its Rate Schedule CD-3 at higher pressures at the nearby Cornwell point of receipt where Tennessee interconnects with Consolidated's main line. Consolidated would also abandon an odorization plant because it is located on Line No. TL-293.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1983, file with the Federal Energy

Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion 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. 82-34487 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3356-001]

**Continental Hydro Corp.; Surrender of  
Preliminary Permit**

December 13, 1982.

Take notice that Continental Hydro Corporation, Permittee for the proposed Wister Dam Project No. 3356, has requested that its preliminary permit be terminated. The permit was issued on September 28, 1981, and would have expired on March 1, 1983. The project would have been located on the Poteau River in LeFlore County, Oklahoma.

Continental Hydro has determined that hydro development at this time would not be economically feasible.

Permittee filed its request on October 29, 1982. The surrender of the preliminary permit for Project No. 3356

is deemed accepted of the date of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34510 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3400-001]

**Continental Hydro Corp.; Surrender of Preliminary Permit**

December 13, 1982.

Take notice that Continental Hydro Corporation, Permittee for the proposed Buckhorn Dam Project No. 3400, has requested that its preliminary permit be terminated. The permit was issued on June 9, 1981, and would have expired on December 31, 1983. The project would have been located on the Middle Fork of the Kentucky River in Perry County, Kentucky.

The Permittee filed its request on October 28, 1982, and the surrender of the preliminary permit for Project No. 3400 is deemed accepted of the date of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34511 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC83-4-000]

**The Detroit Edison Co.; Application**

December 14, 1982.

Take notice that on December 2, 1982, The Detroit Edison Company (Edison), 2000 Second Avenue, Detroit, Michigan 48226, submitted an Application for Authority to Sell Certain Public Utility Facilities which are proposed to be sold and conveyed to the Michigan Public Power Agency (MPPA) and for such further relief as may be appropriate.

Edison's filing states that the facilities consist of certain coal handling facilities serving Edison's St. Clair Power Plant and which will serve Edison's Belle River Power Plant, which is presently under construction. Edison will sell and convey an approximate 8.5 to 10.3% undivided ownership interest in the facilities to MPPA, and Edison and MPPA will, thereafter, jointly own the facilities as tenants in common. The sales price is expected to be between \$3,012,000 and \$3,650,000. MPPA is a public body politic and corporate organized pursuant to Act 448, Public Acts of Michigan 1976 and consists of sixteen municipal electric utility members. MPPA is empowered, among other things, to plan, finance, develop,

own and operate projects to supply electric power and energy for the present and future needs of its members.

The sale and conveyance to MPPA of the facilities is proposed in connection with the establishment of: (1) The respective ownership interests of Edison and MPPA in the Belle River fossil construction in St. Clair County, Michigan, (2) the respective obligations and rights of Edison and MPPA with respect to the construction, operation and maintenance of Belle River, and (3) the terms and conditions under which Edison is willing to make available to MPPA certain back-up electric capacity and energy. Edison requests approval of its Application pursuant to the provisions of Section 203 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1983. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34488 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-72-000]

**El Paso Natural Gas Co.; Application**

December 15, 1982.

Take notice that on November 8, 1982, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP83-72-000 an application pursuant to Section 311 of the Natural Gas Policy Act of 1978 and Section 284.107 of the Commission's Regulations for authorization to continue the transportation of natural gas for Westar Transmission Company, a Division of Pioneer Corporation (Westar), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on January 1, 1979, it entered into an agreement with Westar, as amended, pursuant to which

Applicant would provide transportation service for Westar for a primary term ending December 31, 1984, and thereafter from month to month. Applicant further states that such agreement initially provided for a transportation service in accordance with Section 284.102 of the Commission's Regulations for self-implementing transactions for a two-year period which commenced on January 1, 1979, and was later extended for an additional two-year period to expire on December 31, 1982.

It is submitted that under the terms of such agreement Applicant would transport natural gas received for Westar's account at the Phillips Petroleum Company Dumas Plant located in Moore County, Texas, and would concurrently deliver an equivalent volume, less 5 percent of such volumes received by Applicant, which reduction represents gas lost and unaccounted-for and mainline fuel requirements, to Mobil Oil Corporation's Waha Plant located in Pecos County, Texas, for the account of Westar.

For such service, Applicant proposes to charge Westar for each Mcf of natural gas transported by Applicant for the account of Westar at the rate in effect and reflected from time to time as the "Mainline Transmission Charge—Texas" set forth on Sheet No. 1-D.2 of Applicant's FERC Gas Tariff, Third Revised Volume No. 2, or superseding tariff. Applicant states that its maximum obligation to receive natural gas for transportation is 20,000 Mcf per day.

It is asserted that Westar would continue to use the subject gas for system supply and that without the proposed transportation Westar would be required to construct and operate additional pipeline facilities.

Any person desiring to be heard or to make any protests with reference to said application should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 motion to intervene in

accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34489 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP83-22-000]

**El Paso Natural Gas Co.; Petition for Issuance of Order Determining the Lawfulness of Prices To Be Applied to Certain Natural Gas Production**

December 14, 1982.

Take notice that on November 19, 1982, El Paso Natural Gas Company (El Paso) submitted for filing a petition for issuance of an order under Section 5(a) of the Natural Gas Act (NGA) to determine that the prices to be applied to certain of El Paso's own production are lawful so long as such prices do not exceed statutory maximum lawful prices. Specifically, El Paso requests that the Commission determine: (1) That El Paso may establish prices for its natural gas production (described in the instant petition) at any level not exceeding the applicable maximum lawful price limits established under the Natural Gas Policy Act of 1978 (NGPA), and (2) subject to any applicable limitations established by the NGPA, that such prices are just and reasonable under the NGA, and accordingly may be reflected in El Paso's rates.

El Paso states that this petition, concerning the production that is described in Article V of the Stipulation and Agreement in Docket No. RP79-12 (Further Extension, *et al.*, is filed in response to the Commission's order dated September 30, 1982, in Docket No. TA 82-2-33, holding production at maximum lawful NGPA levels until El Paso has obtained an order so permitting issued under Section 5(a) of the NGA.

El Paso states that it maintains its challenge to the legality of the September 30 order as it pertains to the subject matter in the instant petition so filed and on other grounds; accordingly, by filing the herein referred to petition, El Paso does not concede the lawfulness of the order, and it expressly reserves its rights to contest the legality of such order in further proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed

on or before December 22, 1982. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34498 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP83-9-000]

**Faustina Pipe Line Co.; Application**

December 15, 1982.

Take notice that on October 6, 1982 Faustina Pipe-Line Company (Applicant), P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP83-9-000 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 Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an agreement dated June 10, 1982, Applicant proposes to transport for a term of 20 years, up to 150 billion Btu of natural gas per day for Southern from various points on Applicant's contiguous mainline facilities located in southern Louisiana to any other points located on those same facilities. It is explained that upon reasonable notice to Applicant, Southern would be permitted to tender or receive to or from Applicant each day up to the full contract demand at any point on Applicant's system which Southern would elect in its sole discretion. Such transportation would be performed on a firm basis for the fifteen year primary term of the agreement, and on an interruptible basis thereafter.

Applicant states that pursuant to authorizations recently received from or currently pending before the Louisiana Commissioner of Conservation, Applicant plans to install an additional 121 miles of mainline transmission facilities necessary to effectuate the proposed transportation service. The cost of these facilities is estimated to be \$96 million. Applicant estimates that it would be prepared to commence service under the agreement by January 1, 1984.

For such service, Applicant proposes to charge a commodity rate equal to 28.27 cents per million Btu transported and redelivered. Applicant represents

that such a rate is the result of competitive factors and is less than that which would be cost justified. In addition to the commodity rate, Applicant also proposes a "minimum annual charge" equal to the commodity rate times 80 percent of the applicable contract quantity multiplied by the number of days in the year. Applicant asserts that such a charge is compensatory for the service which Applicant would perform on behalf of Southern.

Applicant currently is exempt from the provisions of the Natural Gas Act pursuant to Section 1(c) thereof.<sup>1</sup> Accordingly Applicant requests that simultaneous with the issuance of the authorization herein sought, the Commission also affirmatively and explicitly declare that the jurisdiction of the Commission under the Natural Gas Act over Applicant and the transactions in which it is engaged would extend solely to the service authorized and that the jurisdiction of the Commission under the Natural Gas Act specifically shall not extend to any transaction which, but for the service authorized to be performed on behalf of Southern, would not be subject to such jurisdiction. Such a declaration would recognize that any sale for resale of gas to or delivery of gas to, or redelivery of gas by, Applicant by or to any intrastate pipeline would not become subject to, nor subject either Applicant or such intrastate pipeline or any other party to the jurisdiction of the Commission under the Natural Gas Act if such jurisdiction would result solely either because of the commingling of such gas with that gas redelivered by Applicant for the account of Southern for ultimate transportation and consumption in another state or because the transaction involved is with Applicant.

As a related matter, Applicant also requests that, simultaneous with the issuance of the authorization herein sought, the Commission further affirmatively authorize the abandonment of the services thus approved effective in the event of any determination by the Commission, a court or competent jurisdiction, or any other tribunal having jurisdiction in the premises that, by reason of the service so authorized, any other transportation or sale of gas by Applicant or by any other person transporting, selling, or purchasing gas through, from or to Applicant, or Applicant or any other person, has or will, if continued, become

<sup>1</sup> See order issued August 12, 1981, in Docket No. CP80-540 (16 FERC ¶61,128).

subject to the jurisdiction of the Commission under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 motion 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 motion 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 motion 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. 82-34490 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-18-005, et. al.]

**Granite State Gas Transmission, Inc., et. al.; Filing of Pipeline Refund Reports and Refund Plans**

December 14, 1982.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 28, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

APPENDIX

Filing date	Company	Docket No.	Type filing
11/30/82	Granite State Gas Transmission, Inc.	RP82-18-005	LFUT Report.
12/ 1/82	Algonquin Gas Transmission Co.	RP82-19-003	Do.
12/ 1/82	Tennessee Gas Pipeline Co.	RP81-54-007	Report.
12/ 1/82	Texas Eastern Transmission Corp.	RP81-121-005	LFUT Report.
12/ 1/82	Transwestern Pipeline Co.	RP82-24-005	Do.
12/ 2/82	East Tennessee Natural Gas Co.	RP82-22-003	Do.
12/ 3/82	Northern Natural Gas Co.	RP78-56-007	Report.
12/ 3/82	Southern Natural Gas Co.	RP81-105-016	LFUT Report.
12/ 6/82	Cities Service Gas Co.	RP81-127-006	Do.
12/ 6/82	Equitable Gas Co.	RP82-40-004	Do.
12/ 6/82	North Penn Gas Co.	RP82-20-003	Do.
12/ 7/82	Natural Gas Pipe Line Company of America	RP72-132-000	Report.

[FR Doc. 82-34491 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT83-7-000]

**Great Lakes Gas Transmission Co.; Proposed Change in FERC Gas Tariff**

December 14, 1982.

Take notice that on November 24, 1982, Great Lakes Gas Transmission Company (Great Lakes) tendered for filing the following tariff sheets:

	Proposed effective date
First Revised Volume No. 1.	
Third Revised Sheet No. 3	Dec. 22, 1982.
Third Revised Sheet No. 116	Dec. 22, 1982.
Original Volume No. 2.	
Seventh Revised Sheet No. 3	Dec. 22, 1982.
Original Sheet No. 370-A	Nov. 1, 1982.

Third Revised Sheet No. 3 of First Revised Volume No. 1 and Seventh Revised Sheet No. 3 of Original Volume

No. 2 contain an updated map of Great Lakes' pipeline system as required under § 154.37 of the Commission's Regulations.

Third Revised Sheet No. 116 of First Revised Volume No. 1 sets forth an updated Index of Purchasers served under Rate Schedules contained in First Revised Volume No. 1.

Original Sheet No. 370-A of Original Volume No. 2 is a title page for Rate Schedule T-12. This page was inadvertently omitted in the initial Rate Schedule T-12 date September 28, 1981.

Copies of this letter were served upon all of Great Lakes' customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.11, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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 application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 82-34499 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC83-3-000]

**Interstate Power Co.; Application**

December 14, 1982.

Take notice that on December 1, 1982, Interstate Power Company (Applicant) of Dubuque, Iowa, filed an Application pursuant to Section 203 of the Federal Power Act seeking authority to sell to Dairyland Power Cooperative certain electric transmission line facilities and real estate located in the Counties of Olmsted and Wabasha, State of Minnesota.

The facilities proposed to be sold by Applicant for a base purchase price of \$16,472.22, consist of approximately 18.83 miles of 34.5KV transmission line.

Applicant represents that after the sale there will be no change in the use of the facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1983. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-34500 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-177-000]

**Kansas Power & Light Co.; Filing**

December 14, 1982.

Take notice that on December 6, 1982, Kansas Power and Light Company (KPL) tendered for filing a supplemental agreement to original contract dated September 21, 1973 with The Kaw Valley Electric Cooperative Company, Inc., Topeka, Kansas for wholesale service to that Cooperative with the proposed effective date of not later than December 31, 1982. KPL states that this supplement permits The Kaw Valley Electric Cooperative Company, Inc. to receive service under rate schedule RCW-81 Revised designated supplement 1 to supplement 9 to R.S. FERC No. 156. The proposed change will delete the two present delivery points of

Watson and Lecompton. A new delivery point of Stull will be added and the Banning Corner delivery point maximum capacity will be lowered. The redistribution of load will allow for greater efficiency by the Cooperative.

Copies of the filing have been mailed to The Kaw Valley Electric Cooperative Company, Inc. and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before December 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-34501 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-97-000]

**MIGC, Inc.; Application**

December 15, 1982.

Take notice that on November 18, 1982 MIGC, Inc. (Applicant), 10880 Wilshire Boulevard, Los Angeles, California 90024, filed in Docket No. CP83-97-000 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 ARCO Oil and Gas Company (ARCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport and exchange up to 2,000 Mcf of natural gas per day with ARCO pursuant to an exchange agreement with ARCO dated October 11, 1982. It is stated natural gas would be delivered by Applicant to ARCO at an existing point of interconnection between the parties near the Recluse facilities of ARCO located in Campbell County, Wyoming. It is further stated ARCO wishes to convert the Recluse facility from a processing operation to compression

operation and perform all processing at its Kitty facility, Campbell County, Wyoming. To do so, it is stated ARCO would need up to 2,000 Mcf of natural gas per day for plant fuel and lease fuel at Recluse. Applicant proposes to deliver to ARCO the proposed volumes at the Recluse facilities from volumes of natural gas which it presently purchases from Montana-Dakota Utilities, Inc. It is asserted Applicant would accept similar volumes from ARCO at the outlet of the Kitty facility.

It is stated the arrangement is mutually beneficial, and, as such, no charge is proposed for the exchange. Applicant avers no construction of facilities is necessary for the exchange and it would not affect the ability of Applicant to serve its existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211), and the Regulations under the National 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 motion 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 motion 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 certificates is required by public convenience and necessity. If a motion 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. 82-34493 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT83-6-000]

**Natural Gas Pipe Line Co. of America;  
Proposed Change in FERC Gas Tariff**

December 14, 1982.

Take notice that on November 24, 1982, Natural Gas Pipeline Company of America (Natural) submitted for filing to be effective January 1, 1982, the following tariff sheets to be part of its FERC Gas Tariff:

*Third Revised Volume No. 1*

Fifth Revised Sheet No. 2

Fifth Revised Sheet No. 2A

Fifth Revised Sheet No. 2B

*Second Revision Volume No. 2*

Eighteenth Revised Sheet No. 1

Fifth Revised Sheet No. 1A

Third Revised Sheet No. 1B.

Natural states that the purpose of the above-mentioned revised sheets is to update the Table of Contents of the Second Revised Volume No. 2 of Natural's FERC Gas Tariff.

Copies of this letter have been mailed to Natural's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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 copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34512 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6841-000]

**Rivanna Water & Sewer Authority;  
Exemption From Licensing**

December 15, 1982.

A notice of exemption from licensing of a small hydroelectric project known

as the South Rivanna Hydropower Project No. 6841, was filed November 12, 1982, by Rivanna Water and Sewer Authority. The proposed hydroelectric project would have an installed capacity of 740 kW and would be located on the South Fork of the Rivanna River near Charlottesville, in Albermarle County, Virginia.

Pursuant to § 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in § 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of December 12, 1982.

Lawrence R. Anderson,

Director, Office of Electric Power Regulation.

[FR Doc. 82-34513 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5328-001]

**L. MacRae Rood; Surrender of  
Preliminary Permit**

December 13, 1982.

Take notice that L. MacRae Rood (LMR) Permittee for the proposed Moretown Project No. 5328 has requested that its preliminary permit be terminated. The preliminary permit was issued on April 16, 1982, and would have expired on September 20, 1983. The proposed project would have utilized an existing dam on the Mad River in the town of Moretown, Washington County, Vermont. LMR was unable to come to a satisfactory purchase agreement with the owner of the property at the dam site and therefore does not wish to pursue the project.

LMR made its request by letter dated November 16, 1982, and the surrender of its permit for Project No. 5328 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34514 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-173-000]

**Metropolitan Edison Co.; Filing**

December 14, 1982.

Take notice that on December 3, 1982, Metropolitan Edison Company (Met-Ed) filed tariff changes increasing its rates for wholesale all requirements, partial requirements and wheeling service. Met-Ed states that the changes, in two phases, reflect an annual increase in revenues of \$1,692,108 (Phase A) and \$1,842,638 (Phase B). Met-Ed request

effective dates of February 1 and February 2, 1982, respectively.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1982. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34492 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-8-000]

**South Georgia Natural Gas Co.;  
Revision to Tariff**

December 14, 1982.

Take notice that on December 6, 1982, South Georgia Natural Gas Company (South Georgia) tendered for filing Twentieth Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed 30 days before the effective date of January 1, 1983, pursuant to the Purchased Gas Adjustment Provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Twentieth Revised Sheet No. 4 reflects increases in the rates of its pipeline supplier, Southern Natural Gas Company as filed to be effective January 1, 1983. This rate change will increase the cost of purchased gas to South Georgia's jurisdictional customers \$8,610,216. Also reflected in Twentieth Revised Sheet No. 4 is a Surcharge Adjustment as provided for by Section 14.3 of the General Terms and Conditions of South Georgia's FPC Gas Tariff. The debit balance in the Unrecovered Purchased Gas Cost Account of \$549,717 will be amortized over the estimated sales for the six-month period commencing January 1, 1983, by a surcharge adjustment rate of 6.93 cents per MMBtu.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with Sections 211 and 214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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. 82-34515 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP83-18-000]

**Texas Eastern Transmission Corp. v. North Alabama Gas District; Complaint and Petition for an Order Declaring Liability and Directing Compliance and for Expedited Consideration**

December 14, 1982.

Take notice that on November 4, 1982, Texas Eastern Transmission Corporation (Texas Eastern) filed a complaint and petition to the Commission for issuance of an order declaring liability and directing North Alabama Gas District (North Alabama), a purchaser from Texas Eastern, to comply with the minimum monthly bill provisions of Texas Eastern's FERC Gas Tariff and for expedited consideration.

Texas Eastern states that its minimum monthly bill provision is an integral part of the rates, terms, provisions, and conditions pursuant to which Texas Eastern sells natural gas to North Alabama. However, for the month of June 1982, when Texas Eastern rendered to North Alabama as a part of its statement of changes for the month a minimum monthly bill charge of \$1,079.394.26, North Alabama refused to pay the amount as rendered, instead, it made payment to Texas Eastern only for gas actually taken by North Alabama during June 1982, those payments being

in the amount of \$1,009,004.13.

North Alabama asserts that alleged events of force majeure occurring in the system of one of its customers excuses North Alabama from making the minimum monthly bill payments. However, Texas Eastern asserts that such events asserted by North Alabama do not constitute events of force majeure excusing performance by North Alabama in compliance with the minimum monthly bill provision of Texas Eastern's Tariff and Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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 application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-34502 Filed 12-20-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. G-12425-000, et al.]

**Texaco Producing Inc. (Successor in Interest to Texaco), et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates<sup>1</sup>**

December 14, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for

<sup>1</sup> This notice does not provide for consolidation for hearing of the several matters covered herein.

authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 30, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions 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 on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
G-12425-000, E. Dec. 3, 1982.....	Texaco Producing Inc. (successor in interest to Texaco, Inc.) P.O. Box 52332, Houston, Texas 77052.	Texas Eastern Transmission Corp., Chapman Ranch Field, Nueces County, Tex.	(?).....	14.65
G-18445-001, D. June 1, 1982.....	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77252.	Florida Gas Transmission Co., Shuteston Field, St. Landry Parish, La.	(?).....	
C169-754-000, C. Nov. 29, 1982....	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001....	Trunkline Gas Co., Vermilion Block 120 Field Off-shore Louisiana.	(?).....	15.025
C169-806-001, Dec. 6, 1982.....	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Trunkline Gas Co., Vermilion Block 120 Field, Off-shore Louisiana.	(?).....	14.73
C181-199-001, C. Nov. 22, 1982....	Shell Offshore Inc., One Shell Plaza, P.O. Box 2463, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Brazos Area Blocks A-19, A-20, and A-23, Offshore Texas.	(?).....	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
C182-437-000 (C171-508), B, July 14, 1982.	Sun Exploration & Production Co., formerly Sun Oil Co., P.O. Box 20, Dallas, Tex 75221.	Cities Service Co., Winchester Field, Woods County, Okla.	( <sup>9</sup> )	
C183-67-000, F, Nov 19, 1982.	Energy Reserves Group, Inc., (partial successor in interest to Edwin L. Cox), Post Office Box 1201, Wichita, Kans. 67201.	Texas Gas Transmission Corp., Ramos Field, St. Mary Parish, La.	( <sup>9</sup> )	14.73
C183-68-000, B, Nov. 22, 1982.	Warren R. Haight or Eldon J. Haight, Agent, Route 3, Box 14, Smithville, W. Va 26178.	Pennzoil Exploration and Production Co., Sheridan District, Calhoun County, W. Va.	( <sup>10</sup> )	
C183-70-000, B, Nov. 22, 1982.	Willard Oil & Gas, Inc. (successor in interest to Earl T. Smith & Associates, Inc.), 1300 S. Cedar, Borger, Texas 79007.	Northern Natural Gas Co., Tarbox #1, Sec. 1014, Blk. 43, H&TC RRC Survey, Ochiltree County, Tex.	( <sup>11</sup> )	
C183-71-000, A, Dec. 2, 1982.	Phillips Petroleum Co., 336 HS&L Building, Bartlesville, Okla. 74004.	West Texas Gathering Co., SW/4 Section 25, Block B-5, PSL Survey, Winkler County, Tex.	( <sup>12</sup> )	14.73
C183-73-000, A, Dec. 3, 1982.	Texaco Inc., P.O. Box 60252, New Orleans, La. 70160.	Tennessee Gas Pipeline Co., Ship Shoal Area Block 181, Offshore Louisiana.	( <sup>13</sup> )	15.025
C183-74-000, B, Dec. 3, 1982.	Har-Ken Oil Co., (successor to Mobil Oil & Gas Co.), P.O. Box 626, Owensboro, Ky. 42302.	Texas Gas Transmission Corp., East Diamond Gas Field, Hopkins County Ky.	( <sup>14</sup> )	
C183-75-000 (C170-163), B Dec. 3, 1982.	Cornell Brothers, 2600 Breckenridge, Owensboro, Ky 42301.	( <sup>14</sup> )		
C183-85-000 (C169-1043), B, Dec 3, 1982.	Glenn H. Brenn, (operator) et al., 525 Audobon Drive, Evansville, Ind. 47715.	Texas Gas Transmission Corp., Dalton Gas Field, Hopkins County, Ky.	( <sup>14</sup> )	
C183-77-000, B, Dec. 3, 1982.	C. B. Ames, d.b.a. Ames Oil & Gas, Suite 1000, 5051 Westheimer Road, Houston, Tex. 77056.	Texas Gas Transmission Corp., Poe Hill Gas Field, Hopkins County, Ky.	( <sup>14</sup> )	
C183-78-000, B, Dec. 3, 1982.	do	Texas Gas Transmission Corp., East Diamond Gas Field, Hopkins County, Ky.	( <sup>14</sup> )	
C183-79-000, A, Dec. 6, 1982.	Mesa Petroleum Co., One Mesa Square, P.O. Box 2009, Amarillo, Tex. 79189.	Northern Natural Gas Co., Gem-Hemphill Field, Hemphill County, Tex.	( <sup>15</sup> )	14.65
C183-80-000, A, Dec 6, 1982.	do	Kansas-Nebraska Natural Gas Co., Inc., Bradshaw Field, Hamilton County, Kans.	( <sup>15</sup> )	14.65
C183-81-000, (G-5891), B, Dec. 7, 1982.	Conoco Inc., P.O. Box 2197, Houston, Tex. 77252.	Tennessee Gas Pipeline Co., Inc., Cold Springs Field, San Jacinto County, Tex.	( <sup>16</sup> )	
C164-686-002, D, Dec. 24, 1982.	Natural Gas Pipeline Company of America (partial successor to Tenneco Oil Co. (operator), et al., Agent for Tema Oil Co.) 122 South Michigan Avenue, Chicago, Ill. 60603.	Arkansas Louisiana Gas Co., Erick Field, Beckham County, Okla.	( <sup>17</sup> )	

<sup>1</sup> Applicant has acquired by assignment the interest of Texaco Inc. Assignor, in certain properties in the Chapman Ranch Field, Nueces County, Texas effective September 1, 1982.

<sup>2</sup> Applicant is filing under Gas Purchase Contract dated February 19, 1957; and Replacement Contract dated July 15, 1977.

<sup>3</sup> By this assignment dated July 29, 1969, Gulf assigned to Sun Oil Company its interest in a lease dated April 30, 1948.

<sup>4</sup> Applicant is filing under Gas Purchase Contract dated December 9, 1968, amended by amendatory agreement dated September 1, 1982.

<sup>5</sup> Applicant is filing under Gas Purchase Contract dated December 23, 1968, amended by amendment dated July 12, 1982.

<sup>6</sup> Applicant is filing under Gas Sale and Purchase Contract dated December 15, 1980, amended by amendment dated September 16, 1982.

<sup>7</sup> Application was erroneously noticed as partial abandonment in Docket No. C171-508-000 on August 19, 1982.

<sup>8</sup> Applicant is requesting that its certificate of public convenience and necessity issued in Docket No. C171-508 be abandoned because of assignment effective January 1, 1982 to Curtis F. Clark and Kathleen T. Clark, dba Exploration.

<sup>9</sup> Applicant is filing under Gas Purchase Contract dated January 2, 1981.

<sup>10</sup> It is no longer economical for the field to be produced for Pennzoil to purchase it.

<sup>11</sup> The well pressure had dropped to the point that we could no longer deliver into Northern Natural Gas Company's line against the 200 PSI line pressure. Neither Northern Natural Gas Company nor Willard Oil & Gas Inc. believed that it is economically feasible to compress the gas so that delivery could be accomplished into the line.

<sup>12</sup> Applicant is filing under Gas Purchase Contract dated November 18, 1977 ratified by Ratification agreement dated December 20, 1977, and amended by agreement dated November 1, 1982.

<sup>13</sup> Applicant is filing under Gas Sales and Purchase Agreement dated November 2, 1982.

<sup>14</sup> Field depleted.

<sup>15</sup> Applicant is filing under Gas Purchase Contract dated December 21, 1973.

<sup>16</sup> All remaining acreage subject to RS No. 78 was conveyed to Ted R. Stalder.

<sup>17</sup> Natural is filing to partially abandon a sale which it states has become uneconomic to continue. The sale was authorized in Docket No. C164-686 pursuant to a contract dated July 24, 1943, as amended, on file as Tenneco's FERC Gas Rate Schedule No. 388. Natural acquired the nine wells here involved from Tenneco effective January 1, 1981 as part of its possible future development of certain underground geological structures in the Erick Field as a gas storage reservoir.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; E—Partial succession.

[FR Doc. 82-34494 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. TA83-1-29-001]

#### Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

December 14, 1982.

Take notice that on November 15, 1982, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Substitute Twenty-fourth Revised Sheet No. 12 and Substitute Twenty-fourth Revised Sheet No. 15 to Second Revised Volume No. 1 and Substitute Thirtieth Revised Sheet No. 121 to Original Volume No. 2 of Transco's FERC Gas Tariff. The proposed effective date on the above-mentioned tariff sheets is November 1, 1982.

Transco states that these substitute tariff sheets, which are being filed in compliance with Ordering paragraph (C) of the Commission's order of October 29, 1982, and also to reduce the demand

charge adjustment increase because of Transco's recent decision not to curtail this winter, are in lieu of the same numbered sheets submitted with the original filing of October 1, 1982, and conditionally accepted by the said October 29 order.

The proposed tariff sheets reflect a 3.7 cents per dekatherm (dth) decrease in the commodity rate or delivery charge of Transco's CD, G, OG, E, PS and S-2 rate schedules from those rates filing of October 1, 1982, in the instant docket; a decrease from such previously filed rates of 1.1 cents per dth in the commodity or delivery charge under the ACO rate schedule; and a decrease of 2.6 cents per dth from these rates in the delivery charge under the K-20 rate schedule.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 82-34516 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-57-007]

**United Gas Pipe Line Co.; Proposed Change in FERC Gas Tariff**

December 14, 1982.

Take notice that on November 30, 1982, United Gas Pipe Line Company (United) tendered for filing Sixtieth Revised Sheet No. 4 to its FERC Gas Tariff, the revised tariff sheet to become effective October 1, 1982, in accordance with the Commission's orders of October 14, 1982 and November 18, 1982, in Docket No. RP82-57.

United states that this revised tariff reflects the following adjustment as described hereinafter. On October 14, 1982, the Federal Energy Regulatory Commission accepted tariff sheets placing rates for FERC Docket No. 82-57 into effect on October 1, 1982. Such acceptance was subject to refund and subject to any orders in Docket Nos. RP82-57 and TA82-2-11. Among the tariff sheets accepted was Revised Fifty-Ninth Revised Sheet No. 4 to FERC Gas Tariff, First Revised Volume No. 1. On November 18, 1982, the Commission issued an order in Docket No. TA82-2-11 accepting Alternate Revised Volume No. 1. This order made Revised Fifty-Eighth Revised Sheet No. 4 moot and of no force and effect. United has therefore recomputed the current adjustment shown on Revised Fifty-Ninth Revised Sheet No. 4. The resulting current adjustment is (1.06 cents) per Mcf.

Copies of this filing were mailed to all parties in this proceeding, all of United's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 22, 1982. 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. 82-34517 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-179-000]

**Vermont Marble Co.; Filing**

December 14, 1982.

Take notice that on December 6, 1982, Vermont Marble Company (VMC) tendered for filing as an initial rate schedule of an exchange agreement (the Agreement) between VMC; and the Connecticut Light and Power Company (CL&P), the Hartford Electric Light Company (HELCO), and Western Massachusetts Electric Company (WMECO) (together, CL&P, HELCO, and WMECO, are called the NU Companies). The agreement dated as of January 19, 1980 provides for VMC to exchange system capacity and associated energy from the VMC system, for gas turbine capacity and associated energy from several gas turbine type electric generating units owned and operated by the NU Companies.

The Agreement provides that the parties will determine daily or weekly during the term of the Agreement whether it is economically advantageous that an exchange shall take place.

VMC states that the NU Companies will pay an hourly Energy Reservation charge to VMC in an amount equal to the kilowatts of capacity exchanged in each hour times \$0.003/kilowatt. The NU Companies will purchase energy from the VMC system at the forecasted cost of providing such energy. VMC will purchase energy from the NU Companies Units at the average cost of providing such energy.

VMC requests an effective date of January 19, 1980, and therefore requests waiver of the Commission's notice requirements.

The Agreement has been executed by the Vermont Marble Company and by the NU Companies and copies have been mailed to each of them.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1982. 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 motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-34495 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No ER83-178-000]

**Washington Water Power Co.; Filing**

December 14, 1982.

Take notice that on December 6, 1982, the Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as a "Letter Agreement" between Washington and the City of Anaheim, which applies to the sale of energy which is surplus from Washington's portion of the Centralia coal-fired steam plant and from purchases made from Potlatch Corporation, a wood products manufacturing plant located in Lewiston, Idaho.

Washington requests an effective date of October 6, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1982. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 82-34496 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No ER83-176-000]

**Western Massachusetts Electric Co.; Filing**

December 14, 1982.

Take notice that on December 6, 1982, the Western Massachusetts Electric Company (WME) tendered for filing Supplement No. 5 to its Resale Service Rate CD-1 with the City of Westfield, Massachusetts.

WME states that the customer under the rate schedule concurs in the filing and supports the proposed effective date. WME further states that the rate schedule amendment provides for increased demand and energy charges which would result in an increase of approximately \$839,000 in test year revenues.

WME indicates that it is in financially weakened condition and the proposed rate increase is essential to maintain its ability to provide service.

WME proposes an effective date of November 1, 1982 and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the affected customer and the Department of Public Utilities of the Commonwealth of Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1982. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 82-34503 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-180.000]

### Western Massachusetts Electric Co.; Filing

December 14, 1982.

Take notice that Western Massachusetts Electric Company (WME) tendered for filing on December 7, 1982 an amendment to its wholesale for resale total requirements service (Rate Schedule No. RS-1), by which it provides firm electric service to: the Town of Chester, Massachusetts; the Town of Russell, Massachusetts; Fletcher Gas and Electric Company; Massachusetts Electric Company and New York State Electric and Gas Company.

WME states that all of the customers under the tariff concur in the filing and

support the proposed effective date. WME further states that the rate schedule amendment provides for increased demand and energy charges which would result in an increase of approximately \$49,000 in test year revenues.

WME indicates that it is in a financially weakened condition and the proposed rate increase is essential to maintain its ability to provide service.

WME request an effective date of November 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon all of the affected customers, the Department of Public Utilities of the Commonwealth of Massachusetts and the Department of Public Utility Control of the State of Connecticut.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 30, 1982. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 82-34504 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-48-000]

### Zond Systems, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 14, 1982.

On November 15, 1982, Zond Systems, Inc., 112 South Curry Street, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility is under construction in Kern County, California. The primary energy source to the facility will be wind. The electric power production capacity of the facility will be 28 megawatts and is being installed in

increments. The facility has a present production capacity of 2 megawatts. There will be no other wind powered small power production facility owned by Zond located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 82-34497 Filed 12-20-82; 8:45 am]

BILLING CODE 6717-01-M

### Western Area Power Administration

#### Falcon Project; Notice of a Rate Order

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of a rate order; Falcon Project.

**SUMMARY:** Notice is given of a Rate Order No. WAPA-16 of the Assistant Secretary for Conservation and Renewable Energy for extending the power rate on an interim basis for Falcon Project (Falcon) power marketed by the Western Area Power Administration (Western).

The current rate of 14 mills/kWh is being extended to cover the interim period from the expiration of the original contract, between the United States and Central Power and Light Company (CPL) which will expire on December 31, 1982, to the date on which the Amistad Powerplant is ready to deliver power.

**EFFECTIVE DATES:** This interim rate will become effective at 12:01 a.m. C.S.T. January 1, 1983, and shall remain in effect until the date on which the Amistad Powerplant is ready to deliver power.

**ADDRESSES:** For further information contact:

Mr. Albert M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5493

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303) 231-1535

Mr. James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, CE-91, Federal Building, Washington, DC 20461, Telephone: (202) 633-8338.

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator of Western, and to confirm, approve, and place in effect such rates on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. Pursuant to regulations promulgated to complement the delegation order, the Assistant Secretary for Conservation and Renewable Energy has the authority to extend, on an interim basis, rates "previously confirmed and approved by . . . the Federal Power Commission." (10 CFR 903.23 (1981)).

On August 30, 1982, a comment period was initiated with an announcement of the proposed rate extension published in the *Federal Register* at 47 FR 38186. Written comments were received through September 30, 1982. An August 30, 1982, press release was also issued.

Public comments received during the comment period have been considered in the preparation of this rate order.

Rate Order No. WAPA-16 confirming and approving the extension of the power rate on an interim basis is hereby issued.

Issued in Washington, D.C., December 13, 1982.

**Joseph J. Tribble,**

*Assistant Secretary, Conservation and Renewable Energy.*

**Department of Energy—Assistant Secretary for Conservation and Renewable Energy**

In the Matter of: Western Area Power Administration—Falcon Project Power Rates. Rate Order No. WAPA-16.

*Order Confirming and Approving Extension of Power Rates on an Interim Basis* (December 13, 1982)

Pursuant to section 302(a) of the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 et seq.), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 372 et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Falcon Project, were transferred to and vested in the Secretary of Energy, by Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), last amended March 19, 1981 (46 FR 25426, May 7, 1981), the Secretary of Energy delegated to the Assistant Secretary, Conservation and Renewable Energy, the authority to develop power and transmission rates, acting by and through the Administrator of the Western Area Power Administration (Western), and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary and the rate adjustment procedures at 45 FR 86983 (December 31, 1980) as corrected at 46 FR 6864 (January 22, 1981) and amended at 46 FR 25426 (May 7, 1981), 10 CFR, Part 903.

#### Background

##### Existing Rates

On August 1, 1977, the Federal Power Commission, pursuant to the Falcon Dam Act of 1954, approved rates contained within the original contract between the Bureau of Reclamation (BuRec) and the Central Power and Light Company (CPL). Said contract remains in effect "until the date on which the Amistad Powerplant is ready to deliver power on December 31, 1982, whichever date occurs first." The rate for power in the contract is 14 mills per kilowatt-hour.

On August 12, 1977, the Federal Power Commission approved a rate formula contained in a contract between the BuRec and two cooperatives. The South Texas Electric Cooperative, Inc. (STEC), and the Medina Electric Cooperative, Inc. (MEC), agreed to purchase the output of the Falcon and Amistad Powerplants for a 50-year period, beginning when initial electric service is available from Amistad. The cooperatives agreed to take all Falcon and Amistad power and to pay the United States the following:

1. The amount necessary to amortize the remaining investment costs of the power facilities at Amistad over a 50-year period;

2. The amount necessary to amortize the remaining investment costs of the power facilities at Falcon; and

3. The annual projects' operation, maintenance, replacement costs, and the administrative costs of the International Boundary and Water Commission and BuRec.

On December 21, 1977, Western was organized and both of the power marketing contracts discussed above were transferred from the BuRec to Western for administration.

Due to construction delays, the Amistad Powerplant will not be operational until approximately May 1983. Western and CPL are in the process of extending the original contract for marketing Falcon power from January 1, 1983, to such time as the Amistad Powerplant is ready to deliver power. However, no rate for this time period has been approved for Falcon power by either the Federal Power Commission or FERC.

#### Public Notice and Comments

On August 30, 1982, a comment period was initiated with an announcement of the proposed rate extension published in the *Federal Register* at 47 FR 38186. Written comments were received through September 30, 1982. A public press release was also issued on August 20, 1982.

Written comments were received from five interested parties. One of the commenters recommended that the power rate be increased to the current market rate for fuel replacement energy of 36 mills/kWh in order to more nearly pay off the remaining debt on the Falcon Project before the Amistad Powerplant comes on line. It is estimated by this commenter that additional revenues of over \$1,240,000 would result from increasing the rate from 14 to 36 mills/kWh during the first 5 months of 1983.

The other four commenting parties supported an extension of the 14 mills/kWh rate for the interim period and each strongly opposed the 36 mills/kWh rate proposed by the commenting party above. The main reasons for opposing the increase are summarized below:

1. The language in the Falcon Dam Act provides that electric power and energy generated at the Falcon Dam and Amistad Dam shall be transmitted and disposed of at the lowest possible rates to consumers consistent with sound business principles. Rate schedules must provide for recovery of the cost of providing and transmitting such electric energy, including the amortization of the capital investment, over a reasonable period of years.

2. The rate formula contained in the 50-year contract for power and energy produced from both the Falcon and Amistad Powerplants binds the contractors to amortize any unamortized cost of the Falcon facilities.

#### Discussion

The 14 mills/kWh rate has been in effect since August, 1, 1977, when it was approved by the Federal Power Commission. It was the intent of the contracting parties that this rate would remain in effect until the date of initial

electric service from the Amistad Powerplant or December 31, 1982, whichever occurs first. Since the completion of the Amistad Powerplant is expected to be within approximately 5 months after the expiration of the original contract and the amortization of the Falcon Project will be accomplished under the terms of the contract between the United States and the two cooperatives, STEC and MEC, development of a new rate is not warranted. Therefore, it is appropriate to confirm and approve the extension of the 14 mill/kWh rate for the interim period.

#### Other Issues

##### Regulatory Procedural Requirements

###### A. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a final "rule," is further required to prepare and publish in the *Federal Register*, at the time of publication of the final rule, a final regulatory flexibility analysis. In this instance, the extension of the power rate on an interim basis relates to nonregulatory services provided by Western. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered "rules" within the meaning of the act; therefore, Western believe that no flexibility analysis is required.

###### B. Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA) and the Department of Energy (DOE) regulations published in the *Federal Register* on February 23, 1982 (47 FR 7976), Western has made a determination based on environmental consideration of the extension of the power rate on an interim basis that this action is not a significant action in the context of NEPA and that it will not lead to any significant environmental impacts.

###### C. Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of the Executive Order 12291.

##### Availability of Information

Information regarding this rate adjustment is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the Office of the Director, Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of Power Marketing Coordination, Department of Energy, 12th and Pennsylvania Avenue, NW., Washington, DC 20461.

##### Submission to the FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

#### Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective January 1, 1983, an extension of the current rate of 14 mills/kWh. This rate shall remain in effect on an interim basis until the date on which the Amistad Powerplant is ready to deliver power.

Issued at Washington, D.C., December 13, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 82-34542 Filed 12-20-82; 8:45 am]

BILLING CODE 6450-01-M

### FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82-804, File No. BPCT-820721KI; et al.]

#### Payvision Communications, et al.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Payvision Communications, Biloxi, Mississippi; BC Docket No. 82-804, File No. BPCT-820721KI; the Hightower Partnership, Biloxi, Mississippi, BC Docket No. 82-05; File No. BPCT-820722KF; and Four-O, Inc., Gulfport, Mississippi; BC Docket No. 82-806, File No. BPCT-820729KG; for construction permit for a new television station.

#### Hearing Designation Order

Adopted: November 29, 1982.

Released: December 10, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Payvision Communications (Payvision), The Hightower Partnership (Hightower), and Four-O, Inc., (Four-O) for a new commercial television station to operate on Channel 25, Biloxi, Mississippi.<sup>1</sup>

2. Payvision and Hightower specify Biloxi as the city of license. Four-O, however, specifies Gulfport. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, whether a new station in Biloxi or Gulfport would better provide a fair, efficient and equitable distribution of television service. If the Section 370(b) issue is not determinative (the applicants would serve substantial

areas in common), all applicants can be considered under the comparative issue.

3. Payvision's application did not include Page 19, F.C.C. Form 301. This page contains Sections VI and VII of the Application for Construction Permit for a New Commercial Broadcast Station. It also contains the certification by the applicant that the information contained in the application is true and correct. The only portion of the application which was signed by one of Payvision's general partners was the certification of Payvisions's Equal Employment Opportunity statement. We believe that Payvision's consultant assumed that the signature certifying the EEO statement could be substituted for the signature required on Page 19. Since the Commission has previously allowed applicants to submit *nunc pro tunc* certifications<sup>2</sup>, Payvision, accordingly, will be ordered to file a properly executed copy of this page with the Administrative Law Judge within 30 days of the release of this Order.

4. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Payvision has done either. If it has not already done so, Payvision will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 30 days of the release of this Order.

5. No determination has been reached that the tower heights and locations proposed by Payvision and Four-O would not constitute a hazard to air navigation. Accordingly, an issue will be specified.

6. There is a discrepancy between the azimuth of major lobes listed in Section V-C and the directional antenna pattern show in Exhibit E-1 of Hightower's application. Hightower will be required to submit the correct azimuth of major lobes to the Administrative Law Judge within 30 days of the release of this Order.

7. Section 73.636(a) of the Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly controls one or more AM or FM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of

<sup>1</sup> Channel 25 is assigned to Biloxi, Mississippi. Gulfport, Mississippi is located within 15 miles of Biloxi. Accordingly, under Section 73.607 of the Commission's Rules, Channel 25 is available for use in Gulfport.

<sup>2</sup> See, e.g., *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976).

license of one or more of the radio stations. Zane D. Roden, Sr., Vice-President, Director and 33.75% stockholder in Four-O, is an Executive Vice-President, Director and 37% stockholder of E.O. Roden & Associates, Inc., licensee of stations WTAM and WGCM-FM, Gulfport, Mississippi. He is also General Manager of WGCM-FM. Four-O has represented to the Commission that, in the event of a grant of its application, Mr. Roden will divest himself of his interest in the licensee of Stations WTAM and WGCM-FM. To ensure compliance with Section 73.636(a), any grant of a construction permit to Four-O will be conditioned upon the divestiture by Mr. Roden of all interest in, and connection with, WTAM and WGCM-FM.

8. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive television service of 64 dBu or greater intensity (Grade B), together with the availability of other primary television services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

#### Conclusion and Order

9. Except as indicated by the matters set out below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

2. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would provide a fair, efficient and equitable distribution of television service.

3. In the event it is concluded from the foregoing issues that a choice among applicants should not be based solely on

considerations relating to Section 307(b), to determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, with respect to Payvision Communications and Four-O Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 4.

12. It is further ordered, That Payvision Communications shall, within 30 days of the release of this Order, submit a properly executed Page 19, F.C.C. Form 301, to the Administrative Law Judge.

13. It is further ordered, That Payvision Communications shall, within 30 days of the release of this Order, certify to the Administrative Law Judge that local notice of the filing of its application has or will be published.

14. It is further ordered, That The Hightower Partnership shall submit an amendment to its application correcting the discrepancy noted in paragraph six, above, to the Administrative Law Judge within 30 days of the release of this Order.

15. It is further ordered, That, in the event of a grant of Four-O, Inc's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Mr. Zane D. Roden, Sr. has divested himself of all interest in, and connection with, Stations WTAM and WGCM-FM, Gulfport, Mississippi.

16. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the

publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division,  
Broadcast Bureau.

[FR Doc. 82-34547 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-912, File No. BPCT-5225; et al.]

#### Redwood Television Ministries, Inc., et al.; Enlarging Issues

In re applications of Redwood Television Ministries, Inc., Vallejo, California; BC Docket No. 81-912, File No. BPCT-5225; Golden State Television, Inc., Vallejo, California, BC Docket No. 81-913, File No. BPCT-790130LR, Bay Area Community Television, Inc., Vallejo, California; BC Docket No. 81-914, File No. BPCT-790130LS; Family Stations, Inc., Stockton, California; BC Docket No. 81-915, File No. BPCT-790104LD; and Sterling Recreation Organization Co., Stockton, California; BC Docket No. 81-916, File No. BPCT-790507KI; for construction permit.

#### Memorandum Opinion and Order

Adopted: October 28, 1982.

Released: December 14, 1982.

1. The Commission has under consideration the Hearing Designation Order, 40 FR 1,326 (January 12, 1982), by the Chief, Broadcast Bureau (Bureau); Applications for Review filed on January 13, 1982, by Bay Area Community Television, Inc., (BACTV), and on January 15, 1982, by Redwood Television Ministries, Inc. (Redwood); Comments filed January 22, 1982, by the Bureau; Oppositions filed January 20 and 27, 1982, by Golden State Television, Inc. (Golden State); a Motion for Leave to file Supplement to Applications for Review and accompanying Supplement, filed on May 21, 1982, by Redwood and BACTV; an Opposition thereto filed June 3, 1982, by Golden State; Comments thereon filed June 3, 1982, by the Bureau; and a Transmission of Attachments to Opposition filed June 17, 1982, by Golden State. Also before the Commission is a Memorandum Opinion and Order (FCC 82M-2271, released July 23, 1982) by the presiding Judge in this proceeding, certifying questions to the Commission concerning whether issues should be designated to inquire into Golden State's Ownership and whether Golden State has kept the Commission

apprised of the facts and circumstances concerning its ownership.

2. *Background.* Golden State filed its application on January 30, 1979, the cut-off-date for Vallejo, California, applications. Section II, Table I of the application listed the owners and officers of Golden State as follows:

Name and interest or office held	Shares subscribed	Ownership percent
Helena H. Chen, President.....	16,150	9.5
Leo H. Chen, Exec.-Vice President.....	16,150	9.5
Ting Chai Liang.....	18,700	11.0
Nelson K. Chen, Secretary-Treasurer.....		
Recortec, Inc.....		

No ownership interests were shown for either Nelson K. Chen or Recortec. In response to Section II, p. 2, q. 9, Golden State represented that none of its stock had been subscribed.

3. On June 18, 1979, after the cut-off-date, Golden State amended its application to reflect a different corporate ownership structure as follows:

Name	Shares (to be subscribed)	Ownership percent
Helena H. Chen.....	17,000	20
Leo H. Chen.....	17,000	20
Ting Chai Liang.....	17,000	20
James G. Freeman.....	17,000	20
Nelson K. Chen.....	5,666	6.66
Carson Chen.....	5,666	6.66
Han Y. Lee.....	5,666	6.66

The amendment indicated that none of Golden State's stock had been subscribed.

4. On October 12, 1979, golden State further amended its application to substitute two new stockholders for Ting Chai Liang, who was one of the original stockholders, as follows:

Name	Shares (to be subscribed)	Ownership percent
Helena H. Chen.....	17,000	20
Leo H. Chen.....	17,000	20
Nelson K. Chen.....	5,666	6.66
Carson Chen.....	5,666	6.66
Han Y. Lee.....	5,666	6.66
James G. Freeman.....	17,000	20
Christopher Hirose.....	8,500	10
Charlotte Hirose.....	8,500	10

(5) When the Bureau designated Golden State's application for hearing,<sup>1</sup> it recognized that the application did not fully disclose Golden State's ownership. The Bureau concluded, however, that the corporate structure set out in the original application never existed, and

<sup>1</sup>Hearing Designation Order (BC-1374), released January 8, 1982, by the Chief, Broadcast Bureau.

that Golden State's "true corporate structure was, and had always been, that shown in the June 1979 amendment." As a result, the Bureau found that the transfer of 20 percent of Golden State's stock, as reflected in the October 1979 amendment, did not effectuate a transfer of control and was only a minor change. The Bureau said that, although Golden State's applications was incomplete when filed, there was no basis for dismissal because Golden State perfected its application before processing and designation were completed.

(6) *The Applications for Review.* BACTV and Redwood argue that in addition to the attribution of ownership in the January 1979 application, Recortec and Nelson Chen were listed as officers, directors and stockholders in the newspaper notice published pursuant to Section 73.3580 of the Rules. They also note that Golden State did not account for 70 percent of its stock and they attribute that interest to Recortec and Nelson Chen. BACTV and Redwood assert that, if Recortec was originally a principal, Golden State's post-cut-off amendment constituted a transfer of control.<sup>2</sup> If Nelson Chen and Recortec were not principals in January 1979 as found by the Bureau, BACTV and Redwood argue that Golden State's application was incomplete and the Bureau improperly allowed it to allocate 70 percent of its stock 5 months after the cut-off-date. They also argue that under any permissible interpretation of the facts, there had to be a transfer of control, because the stockholders listed in the original filing held only 46.66 percent of the stock after the October 1979 amendment, while 5 new stockholders held 53.32 percent of Golden State.

(7) *The Bureau's Comments.* The Bureau argues that its conclusion in the Hearing Designation Order, that the corporate structure shown in the January 1979 application never existed, was necessary because of the confusion caused by the inconsistencies in that application. That conclusion was based on Golden State's claim that Recortec never intended to be a stockholder.<sup>3</sup> The Bureau insists that its action is consistent with sound policy considerations. It argues that dismissal of the application is a draconian

<sup>2</sup>The June 1979 amendment showed Nelson Chen with 6.66 percent of the stock. Thus, BACTV and Redwood argue that at least 63.34 percent of the stock was held by persons who did not have that stock at the time of the January 1979 filing.

<sup>3</sup>Comments in Opposition to Informal Objection, p. 2, filed August 31, 1979, by Golden State.

remedy<sup>4</sup> which would deprive the Commission of an opportunity to have the widest comparative choice of applicants.<sup>5</sup> Moreover, it argues that in *Grace Missionary Baptist Church*, where the Commission considered a post-cut-off-date transfer of control, the Commission did not dismiss the offending application.<sup>6</sup>

8. *Subsequent Events.* On March 9, 10 and 11, 1982, Golden State's principals and former principals were deposed.<sup>7</sup> The depositions establish that Leo and Helena Chen held the controlling interest in Golden State when it filed its application;<sup>8</sup> that their ownership interests were diluted to 40% by the June 18 and October 12, 1979, amendments; and that 60% of Golden State's stock is now held by persons who did not have any ownership interest when the application was filed.<sup>9</sup> Relying on the foregoing, Redwood and BACTV submit that the uncertainty and confusion surrounding Golden State's ownership have now been resolved and that, accordingly, the relief requested in their previously filed applications for review should be granted; i.e., the dismissal of Golden State's application because of a major change in ownership voluntarily effected after the cut-off-date. The Bureau, in its comments, acknowledges that its assumption in the Designation Order that Golden State's true corporate structure was, and had always been, as shown in the June 1979 amendment was incorrect. Accordingly, the Bureau now believes that Golden State's application should be dismissed, unless the post-cut-off amendments are withdrawn.

9. *Golden State's Arguments.* Golden State argues that the amendments did

<sup>4</sup>*Radio Athens, Inc. v. FCC*, 401 F. 2d 398 (D.C. Cir. 1968).

<sup>5</sup>*Anax Broadcasting Inc.*, 87 FCC 2d 483 (1981).

<sup>6</sup>80 FCC 2d 330 (1980). The applicant was allowed to withdraw the offending amendment.

<sup>7</sup>Relevant portions of the depositions were submitted with the Supplement to Applications for Review filed by Redwood and BACTV. The Supplement is not a pleading authorized by Section 1.115 of the Rules. It was, however, filed within 15 days after the depositions were made available to the parties, and the depositions clarify the confusion concerning Golden State's ownership which resulted from the omissions in its original application. Accordingly, good cause has been shown and we will grant the Motion to Accept Supplement to Applications for Review filed by Redwood and BACTV.

<sup>8</sup>Supplement to Applications for Review, filed May 21, 1982, Exhs. A and B (Depositions of Leo Chen, March 9, 1982 and Helena Chen, March 10, 1982).

<sup>9</sup>New stock ownerships are: Han Y. Lee, 6.66% (acquired on March 23, 1982); Carson Chen, 6.66% (acquired on April 20, 1979); Nelson K. Chen, 6.66% (acquired on April 27, 1979); James G. Freeman, 20% (acquired on June 15, 1979); and Christopher and Charlotte Hirose, 20% (acquired on September 14, 1979).

not effect a transfer of control because Leo and Helena Chen and their sons, Carson Chen and Nelson Chen, still hold more than 50% of the corporation's stock. Since all four members of the Chen family submitted affidavits asserting that they considered Golden State to be a family controlled corporation and that they will vote their stock as a family unit, and since Nelson Chen and Carson Chen also stated in their affidavits that it is their intent that their parents have control of the corporation, Golden State rationalizes that a transfer of control of the corporation has not taken place despite the amendments.

10. *Discussion.* Nelson Chen is 35 years old and independently employed.<sup>10</sup> Carson Chen is 33 years old, married, lives apart from his parents and is independently employed.<sup>11</sup> While their affidavits indicate an intent to insure family control over the corporation, the record establishes that Nelson Chen and Carson Chen are legally and financially independent from their parents, and that there are no legal or economic impediments to their exercising independent discretion in voting their stock.<sup>12</sup> Thus, Leo and Helena Chen can legally control only 40% of the stock of Golden State, and since 60% of the corporation's stock is held by persons not listed as shareholders in Golden State's original application, the amendments effectuated a post-cut-off transfer of control.

11. Section 73.3572(b) of the Commission's Rules provides that whenever amendments to an application effectuate a transfer of control, the application will be assigned a new file number and returned for processing as a new application. Here, because the amendments effectuating the transfer of control were filed after the cut-off-date for Valli, California, applications, strict adherence to Rule § 73.3572(b) would essentially remove Golden State's application from comparative consideration in this proceeding. However, it is well established that the Commission's procedural Rules should not be used to dismiss summarily applications where equity would warrant a different result.<sup>13</sup> Golden State filed its application almost three years before designation and its post-cut-off amendments were on file with

the Commission for over a year and a half. During this period the Bureau raised no question concerning Golden State's corporate ownership and in designating this proceeding for hearing the Bureau rejected objections filed by Redwood and BACTV, allowing Golden State to proceed believing that there were no questions concerning its ownership.<sup>14</sup> These Broadcast Bureau actions give rise to significant equities which warrant permitting Golden State to avoid dismissal at this late date. Consequently, we will give Golden State 10 days from the release date of this Memorandum Opinion and Order to further amend its application so that control of Golden State will be held by those persons listed as stockholders in Golden State's application on January 30, 1979, or suffer the dismissal of its application.<sup>15</sup> Moreover, having concluded that Golden State's application did not fully apprise the Commission of its structure we will also designate a hearing issue concerning Golden State's compliance with Section 73.3514 of the Rules and the impact of any violation of that Rule on its basic and/or comparative qualifications to be a licensee.<sup>16</sup> The Commission is concerned about the acceptance criteria being employed by the Broadcast Bureau, and notice is given that the Commission is reexamining the standards to be employed in accepting applications for filing.

12. Accordingly, it is ordered, That the Motion for Leave to File Supplement to Applications for Review, filed jointly on May 21, 1982, by Bay Area Community Television, Inc. and Redwood Television Ministries, Inc., is granted.

13. It is further ordered, That the Applications for Review, filed on January 13, 1982, by Bay Area Community Television, Inc., and on January 15, 1982, by Redwood Television Ministries, Inc., and as supplemented on May 21, 1982 are granted to the extent indicated herein and in all other respects are denied.

14. It is further ordered, That Golden State Television, Inc., is granted leave to further amend its application pursuant to paragraph 11, *supra*, within 10 days from the release date of this Memorandum Opinion and Order, but, if

<sup>10</sup>Had the Bureau recognized that the amendments effectuated a major change, it would have granted Golden State an opportunity to withdraw its amendments prior to suffering an assignment of a new file number and dismissal of its application. See *Grace Missionary Baptist Church*, 80 FCC 2d 330, 337 (1980).

<sup>11</sup>*Cf. Grace Missionary Baptist Church, supra* at 337-38.

<sup>12</sup>In view of our holdings herein, the questions raised by the ALJ's certification (FCC 28M-2271, released July 23, 1982) are mooted.

it does not do so, the presiding Administrative Law Judge is authorized to dismiss Golden State Television, Inc.'s application.<sup>17</sup>

15. It is further ordered, That the hearing issues in this proceeding are enlarged to include the following:

(a) To determine the facts concerning the ownership of Golden State Television, Inc., as they existed on the application cut-off date in this proceeding.

(b) To determine in light of the facts adduced pursuant to (a) above, whether Golden State Television, Inc., violated § 73.3514 of the Rules, and if so, the effect thereof on its basic and/or comparative qualifications to be a Commission licensee.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-34549 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-802, File No. BPCT-820721KH and BC Docket No. 82-803, File No. BPCT-820810KH]

**Norman E. Parkhurst Rodriguez and Mari Rosa Valderas d.b.a. Interamerican Broadcasting Co. and Amilcar Gandia, for Construction Permit; Designating Applications for Consolidated Hearing on Stated Issues**

#### Hearing Designation Order

Adopted: November 29, 1982.

Released: December 10, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above captioned mutually exclusive applications of Norman E. Parkhurst Rodriguez and Mari Rosa Valderas d.b.a. Interamerican Broadcasting Co. (Interamerican) and Amilcar Gandia for authority to construct a new commercial television station on Channel 20, Ponce, Puerto Rico.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64

<sup>17</sup>In the interest of administrative efficiency, we are authorizing the ALJ to dismiss Golden State's application in the event it does not comply with this Memorandum Opinion and Order, rather than to require the application to be returned to the processing line for assignment of a new file number and other appropriate action in accordance with § 73.3572(b).

<sup>10</sup>Supplement to Applications for Review, filed May 21, 1982, Exh. C (Deposition of Nelson Chen, March 9, 1982).

<sup>11</sup>*Id.* at Exh. D (Deposition of Carson Chen, March 11, 1982).

<sup>12</sup>*Cf. KTRB Broadcasting, Inc.*, 46 FCC 2d 605, 608 (1974).

<sup>13</sup>*Crosthwait v. FCC*, 584 F.2d 398 (D.C. Cir. 1969); *Eastern Broadcasting Co.*, 55 FCC 2d 276 (1975).

dBu (Grade B) contours, together with the availability of other television service of 64 dBu Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to one of the applicants.

#### Amilcar Gandia

3. The applicant's proposed antenna is to be mounted on the existing AM tower of station WZBS, Ponce, Puerto Rico. Therefore, in order to insure that the AM pattern will not be adversely affected, a grant of this application will be appropriately conditioned.

4. The applicant specifies overall height above average terrain (HAAT) of 104 feet, but its exhibits show minus 329 feet. Consequently, the applicant will be required to submit the correct figure for the overall height above average terrain within 20 days of the release of this Order.

#### Conclusion and Order

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. It is further ordered, That grant of a construction permit to Amilcar Gandia will be subject to the following condition:

During installation of the TV antenna, AM station WZBS shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission, along with a tower sketch of the installation, in an application for the AM station to return to the direct method of power determination. Thereafter, the TV

station may commence *Limited Program Tests*.

8. It is further ordered, That within 20 days of the release of this Order, Amilcar Gandia shall submit the correct figure for its overall height above average terrain.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division,  
Broadcast Bureau.

[FR Doc. 82-34548 Filed 12-20-82; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

December 14, 1982.

#### Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or record-keeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the *Federal Register*, but occasionally the public interest requires more rapid action.

### List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the *Federal Register*. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

#### Request for Extension Without Revisions

1. Report title: Bank Holding Company Financial Supplement—  
Agency form number: FR Y-9  
Frequency: annual; semi-annual depending on who is filing.

Reporters: bank holding companies  
SIC Code: 671

Small businesses are not affected.

General description of report:

Respondent's obligation to respond is mandatory (12 U.S.C. 1844); a pledge of confidentiality is not promised.

Report completed annually by bank holding companies (BHC's) having assets exceeding \$50 million and semi-annually by BHC's having assets exceeding \$300 million. All of the BHC's submit parent-only financial statements and those having assets exceeding \$100 million file consolidated financial statements. The report is used for monitoring and surveillance purposes and to analyze the condition of the holding company and its banks.

Board of Governors of the Federal System,  
December 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-34528 Filed 12-20-82; 8:45 am]

BILLING CODE 6210-01-M

### Ballston Spa Bancorp, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

**A. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ballston Spa Bancorp, Inc.*, Ballston Spa, New York; to become a bank holding company by acquiring 80 percent of the voting shares of Ballston Spa National Bank, Ballston Spa, New York. Comments on this application must be received not later than January 13, 1983.

2. *Ultra Bancorporation*, Bridgewater, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to First National Bank of Central New Jersey, Bridgewater, New Jersey. Comments on this application must be received not later than January 13, 1983.

**B. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Peoria Corp.*, Peoria, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Peoria, Peoria, Illinois; and at least 80 percent of the voting shares of First National Bank of Metamora, Metamora, Illinois. Comments on this application must be received not later than January 13, 1983.

**C. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480

1. *Duke Financial Group, Inc.*, St. Paul, Minnesota; to become a bank holding company by acquiring 87.46 percent of the voting shares of State Bank of New Prague, New Prague, Minnesota.

Comments on this application must be received not later than January 13, 1983.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bassett Investment Co.*, Bassett, Nebraska; to become a bank holding company by acquiring 83.8 percent of the voting shares of Commercial Bank, Bassett, Nebraska. Comments on this application must be received not later than January 31, 1983.

**E. Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Fergus Falls Bancshares, Inc.*, Fergus Falls, Minnesota; to become a bank holding company by acquiring 94.1 percent of the voting shares of Security State Bank of Fergus Falls, Fergus Falls, Minnesota. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Comments on this application must be received not later than January 13, 1983.

2. *Security Shares, Inc.*, Abilene, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Security State Bank, Abilene, Texas. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than January 13, 1983.

Board of Governors of the Federal Reserve System, December 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-34523 Filed 12-20-82; 8:45 am]

BILLING CODE 6210-01-M

### Bank South Corp.; Proposed Acquisition of Bank South Mortgage Corp.

Bank South Corporation, Atlanta, Georgia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Bank South Mortgage Corporation, Atlanta, Georgia.

Applicant states that the proposed subsidiary would engage in the activities of generating marketable

permanent mortgage loans and interim loans for sale to investors, and servicing such loans. These activities would be performed from offices of Applicant's subsidiary in Atlanta, Albany, Brunswick, Columbus, Mableton, Rome, Savannah, Valdosta, Marietta, and Newnan, Georgia and the geographic area to be served is the State of Georgia. Such activities have been specified by the Board in section 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 section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 12, 1983.

Board of Governors of the Federal Reserve System, December 15, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-34524 Filed 12-20-82; 8:45 am]

BILLING CODE 6210-01-M

### Barclays Bank PLC et al.; Bank Holding Companies; Proposed de Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

**A. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC*, and its subsidiary, *Barclays Bank International Limited*, each a bank holding company whose principal office is in London, England (consumer finance and insurance activities; Lexington, Kentucky): To engage through their subsidiaries, *Barclays American Corporation*, *Charlotte*, *North Carolina*, and *Barclays American/Financial of Kentucky, Inc.* in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries. These activities would be conducted from an office of *Barclays American/Financial of Kentucky*, located in Lexington, Kentucky, serving customers in Lexington and surrounding areas in Kentucky. Comments on this application must be received not later than January 13, 1983.

2. *Citicorp*, New York New York (consumer finance and insurance

activities; Indiana and Tennessee): To expand the activities and service area of an existing office of its subsidiary, *Citicorp Acceptance Company, Inc.*, located in Louisville, Kentucky. The new activities in which the office proposes to engage *de novo* are: the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; and the servicing, for any person, of loans and other extensions of credit. In addition, the office proposes to broaden its previously approved activities to include the extension of loans for the financing of inventory (floor planning) and working capital purposes and the purchasing and servicing for its own account of sales finance contracts with regard to all types of dealers and all types of consumer installment paper. The proposed expanded service area for all the aforementioned activities shall be comprised of the entire states of Kentucky, West Virginia, Indiana and Tennessee. Credit related life, accident, and health insurance may be written by *Family Guardian Life Insurance Company*, an affiliate of *Citicorp Acceptance Company, Inc.* Comments on this application must be received not later than January 13, 1983.

3. *Societe Generale*, ("Societe Generale"), Paris, France (commercial lending and leasing activities; California, Oregon, Washington, Nevada, and Arizona): To engage through *de novo* office of *Sogelease Corporation* in making or acquiring, for its own account or for the account of others, commercial loans and other extensions of credit; and leasing personal or real property or acting as agent, broker or advisor in leasing such property and servicing such leases, subject to all the qualifications specified in 12 CFR 225.4 (a) and (b), where the leases serve as the functional equivalent of an extension of credit to the lessee of the property. Such activities would be conducted from an office in San Francisco, California serving California, Oregon, Washington, Nevada, and Arizona. Comments on this application must be received not later than January 13, 1983.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First & Merchants Corporation*, Richmond, Virginia (insurance activities; Commonwealth of Virginia): To engage, through its wholly-owned subsidiary, *Securty Atlantic Insurance Agency, Inc.*, in acting as insurance agent or broker with respect to the following types of insurance: the sale of credit life,

credit disability, mortgage redemption and mortgage cancellation insurance in connection with extensions of credit by *First & Merchants National Bank (Bank)*, a wholly-owned subsidiary of the holding company, and any of Bank's subsidiaries; and the sale of vendors single interest physical damage insurance for motor vehicles, mobile homes, motor homes, boats, trailers and other kinds of personal property, or attachments designed for use in connection therewith, securing loans and other extensions of credit by Bank. The activities covered by this proposal would be conducted through the offices of Bank and its subsidiaries serving the cities of Roanoke, Salem, Staunton, Portsmouth, Chesapeake, Virginia Beach, Danville, Colonial Heights, Hopewell, Petersburg, Bedford, Alexandria, Fairfax, Falls Church, Hampton, Poquoson, and Williamsburg, Virginia; and the counties of Roanoke, Augusta, Dinwiddie, Prince George, Chesterfield, Pittsylvania, Bedford, Campbell, Amherst, Loudoun, Prince William, York, James City, Henrico, and Hanover, Virginia. Comments on this application must be received not later than January 11, 1983.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National of Nebraska, Inc.*, Omaha, Nebraska (industrial banking; Nebraska): To engage, through its subsidiary, *First of Omaha Savings Company*, in operation an industrial bank as authorized by Nebraska Law, including issuing certificates of indebtedness and making and acquiring loans and other extensions of credit such as would be made by an industrial bank from offices in Omaha, Nebraska, serving the City of Omaha and Douglas County. Comments on this application must be received not later than January 13, 1983.

**D. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Alaska Pacific Bancorporation*, Anchorage, Alaska (mortgage financing and loan servicing activities; Alaska and Washington): To engage through its subsidiary, *Alaska Pacific Mortgage Company*, in mortgage financing and loan servicing activities. These activities would be conducted from offices in Anchorage, Alaska, serving the States of Alaska and Washington. Comments on this application must be received not later January 13, 1983.

2. *Rainier Bancorporation*, Seattle, Washington (investments to promote

community welfare; Washington): To expand the geographic scope and to continue to engage through its indirect subsidiary, Rainier Community Service Corporation, in the activities of making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas. These activities will be conducted from an existing office located in Seattle, Washington, serving the entire State of Washington. Comments on this application must be received not later than January 13, 1983.

3. *U.S. Bancorp*, Portland, Oregon (consumer finance and credit-related insurance activities; Washington): To open a *de novo* office of its wholly owned subsidiary, U.S. Bancorp Mortgage Company ("Bancorp Mortgage"). Bancorp Mortgage will engage in the making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others, including, but not limited to loans and other extensions of credit secured by mortgages or deeds of trust on real property, and to act as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Bancorp Mortgage. Bancorp Mortgage's activities will be performed from an office in Spokane, Washington, serving the city of Spokane and the surrounding rural area. Comments on this application must be received not later than January 12, 1983.

4. *U.S. Bancorp*, Portland, Oregon (consumer finance and credit-related insurance activities; Washington): To open a *de novo* office of its wholly owned subsidiary, U.S. Bancorp Mortgage Company ("Bancorp Mortgage"). Bancorp Mortgage will engage in the making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others, including, but not limited to loans and other extensions of credit secured by mortgages or deeds of trust on real property, and to act as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Bancorp Mortgage. Bancorp Mortgage's activities will be performed from an office in Bellevue, Washington, serving the city of Bellevue and the surrounding rural area. Comments on this application must be received not later than January 12, 1983.

Board of Governors of the Federal Reserve System, December 15, 1982.

James McAfee,  
*Associate Secretary of the Board.*

[FR Doc. 82-34527 Filed 12-20-82; 8:45 am]  
BILLING CODE 6210-01-M

#### **Chase Manhattan Bank, N.A.; Corporation To Do Business**

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Chase Manhattan Capital Markets International, Newark, Delaware. Chase Manhattan Capital Markets International would operate as a subsidiary of Chase Manhattan Capital Markets (Holdings) Inc., which, in turn is a subsidiary of The Chase Manhattan Bank, N.A., New York, New York. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the office 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than January 12, 1983. 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, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 15, 1982.

James McAfee,  
*Associate Secretary of the Board.*

[FR Doc. 82-34525 Filed 12-20-82; 8:45 am]  
BILLING CODE 6210-01-M

#### **First Community Bancorp, Inc., et al.; Acquisition of Bank Shares by Bank Holding Companies**

The companies listed in this notice have 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 voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or

at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Community Bancorp, Inc.*, Rockford, Illinois; to acquire 80 percent or more of the voting shares or assets of The Guaranty National Bank of Rockford, Rockford, Illinois. Comments on this application must be received not later than January 10, 1983.

2. *Middle State Bancorporation, Inc.*, East Moline, Illinois; to acquire 9.22 percent of the voting shares or assets of Colona Avenue State Bank, East Moline, Illinois. Comments on this application must be received not later than January 11, 1983.

3. *Northern Trust Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares (less directors' qualifying shares) of Northern Trust Bank of Florida/Palm Beach National Association, Palm Beach, Florida, which will merge with Security Trust Company of Palm Beach, Palm Beach, Florida. Comments on this application must be received not later than January 12, 1983.

4. *Northern Trust Corporation*, Chicago, Illinois; to acquire 100 percent, less directors' qualifying shares of the voting shares of Northern Trust Bank of Florida/Naples National Association, Naples, Florida, which will merge with Security Trust Company of Naples, Naples, Florida. Comments on this application must be received not later than January 12, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of Citizens National Bank of Beaumont, Beaumont, Texas. Comments on this application must be received not later than January 13, 1983.

2. *RepublicBank Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of Texas National Bank of Midland, Midland, Texas. Comments on this application

must be received not later than January 13, 1983.

3. *Southwest Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of State National Bank, Odessa, Texas, Odessa, Texas. Comments on this application must be received not later than January 13, 1983.

C. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire 24.98 percent of the voting shares and 100 percent of the nonvoting preferred stock of Pittsburg Bancshares, Inc., Pittsburg, Kansas, and indirectly, The National Bank of Pittsburg, Pittsburg, Kansas. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas. Comments on this application must be received not later than January 13, 1983.

Board of Governors of the Federal Reserve System, December 15, 1982.

James McAfee,  
Associate Secretary of the Board.

[FR Doc. 82-34526 Filed 12-20-82; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### National Archives and Records Service

#### National Archives Advisory Council; Renewal

*Renewal of Advisory Committee.* This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the renewal of the National Archives Advisory Council. The Administrator of General Services has determined that renewal of this advisory committee is in the public interest to ensure that the archival program is responsive to public needs and interests.

*Designation.* National Archives Advisory Council.

*Purpose.* The committee advises the Archivist of the United States on policies, procedures, programs, objectives, and other matters relating to the effectiveness of the National Archives and Records Service program.

Issued in Washington, D.C. on December 14, 1982.

Ray Kline,  
Deputy Administrator of General Services.

[FR Doc. 82-34462 Filed 12-20-82; 8:45 am]

BILLING CODE 6820-34-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### National Institute for Occupational Safety and Health; Musculoskeletal Disorders; Request for Information

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, Public Health Service, HHS.

**ACTION:** Notice of request for information.

**SUMMARY:** NIOSH is seeking information on musculoskeletal disorders involving the lower extremities (i.e., hip, knee, ankle, foot) occurring in workers. The information may be in the form of case studies or incidence data collected for a given job/occupation, descriptions of apparent risk factors for a given occupation, and examples of tool/work methods redesign for preventing lower extremity disorders. This information will be used by NIOSH to develop research projects for evaluation and control of these disorders.

**DATES:** Comments concerning this notice should be submitted by February 22, 1983.

**ADDRESS:** Comments should be submitted in writing to Dr. Vernon Putz-Anderson, Chief, Psychophysiology and Biomechanics Section, Applied Psychology and Ergonomics Branch, Division of Biomedical and Behavioral Science (C-24) NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Frederick or Dr. Donald Badger, Project Officers, (513) 684-8383.

**SUPPLEMENTARY INFORMATION:** Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq), NIOSH conducts research to develop recommendations for new and improved occupational safety and health procedures. NIOSH is currently collecting information pertaining to musculoskeletal disorders of the lower extremities (hip, knee, ankle, and foot) and information on static or constrained work postures which may contribute to these musculoskeletal strains or disorders. NIOSH is particularly interested in obtaining the following information:

1. Identification of job-related musculoskeletal strains and disorders of the lower extremities including any statistical data on incidence, risk factors, and preventive measures. Identify sources and availability of data.

2. What static or constrained work postures contribute to the development

of musculoskeletal strains and disorders? This includes statistical data on incidence, risk factors, and preventive measures, along with sources and availability of data.

3. What sources of information such as case studies, accident/injury records, and epidemiology studies are currently available? What studies are being conducted or contemplated?

4. What pattern of work tasks are considered to have the most potential for the development of musculoskeletal disorders of the lower extremities? What postures for what period of time are associated with an increased risk of developing these strains or disorders?

5. What procedures have been developed, or are being used, to prevent or counteract these problems? Which of these are effective? Please describe in full detail.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, will be available for public examination and copying at the above address.

Date: December 13, 1982.

J. Donald Millar,  
Director, National Institute for Occupational  
Safety and Health.

[FR Doc. 82-34529 Filed 12-20-82; 8:45 am]

BILLING CODE 4160-19-M

### Food and Drug Administration

#### Prince AGRI Products; Iron Injectable; 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 Prince Agri Products, Inc., providing for use of Iron Injectable in baby pigs for prevention and treatment of iron deficiency anemia. The firm requested withdrawal of approval.

**EFFECTIVE DATE:** January 3, 1983.

**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:** Prince Agri Products, Inc., 8800 E. 63d St., Kansas City, MO 64133, is the current sponsor of NADA 033-070 which provides for intramuscular use of a colloidal ferric oxide injection in baby pigs for prevention and treatment of iron deficiency anemia.

The product, originally sponsored by Corn King Co., Cedar Rapids, IA, became effective August 5, 1966. In their submission of June 18, 1982, to the Bureau of Veterinary Medicine, Prince Agri Products requested withdrawal of approval of the NADA because the product is not being marketed. Approval of this NADA had not been codified in the Code of Federal Regulations.

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) and redelegated to 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 033-070 and all supplements for Prince Agri Products' Iron Injectable is hereby withdrawn, effective January 3, 1983.

Dated: December 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-34530 Filed 12-20-82; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Chesapeake and Ohio Canal National Historical Park; Maryland, West Virginia and District of Columbia

AGENCY: National Park Service, Interior.

ACTION: Notice of revision of park boundary.

**SUPPLEMENTARY INFORMATION:** For the proper management and development of the Chesapeake and Ohio Canal National Historical Park, it is necessary to modify the boundary to conform to the realignment of Maryland State Route 34 which will require the addition of one tract of land, comprising 3.16 acres hereinafter described. Paragraph 5 of Pub. L. 95-42, approved June 10, 1977, 91 Stat. 211, 16 U.S.C. sec. 4601-9, authorizes such a boundary modification.

Notice is given that the boundary of the Chesapeake and Ohio Canal National Historical Park has been revised pursuant to the above act, to include a 3.16 acre parcel of land lying on the northerly right-of-way line of Maryland State Route 34 in the First Election District, Washington County, Maryland. This parcel of land is depicted as Tract P-1 on Land Status Map numbered 412/35004, Segment 31, dated June 1971 prepared by L. Robert Kimball, Consulting Engineers,

Ebensburg Pennsylvania, under contract with the National Park Service.

The map is on file and available for inspection in the administrative office of the Chesapeake and Ohio Canal National Historical Park, Sharpsburg, Maryland, 21782; in the office of the National Capital Region, 1100 Ohio Drive, SW., Washington, D.C. 20242; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, D.C. 20240.

Dated: November 19, 1982.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 82-34555 Filed 12-20-82; 8:45 am]

BILLING CODE 4310-70-M

### 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 December 10, 1982. 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 January 5, 1983.

Carol D. Shull,

Chief of Registration, National Register.

#### ALABAMA

##### Etowah County

Gadsden, *Gadsden Times-News Building*, Fourth and Chestnut Sts.

##### Jackson County

Scottsboro, *College Hill Historic District*, 402-308 and 405-411 College Ave.

##### Mobile County

Mobile, *Greene-Marston House*, 2000 Dauphin St.

##### St. Clair County

Springville, *Presley Store*, 601 Main St.

#### ARIZONA

##### Coconino County

Flagstaff, *Railroad Addition Historic District*, Roughly bounded by Santa Fe RR tracks, Agassiz and Beaver Sts., Birch and Aspen Aves.

#### CALIFORNIA

##### Alameda County

Berkeley, *Phi Delta Theta Chapter House*, 2717 Hearst Ave.

#### FLORIDA

##### Manatee County

Sarasota vicinity, *Seagate (Powel Crosley, Jr. House)*, 6565 N. Tamiami Trail

##### Palm Beach County

Lake Worth, *Gulf Stream Hotel*, 1 Lake Ave.

##### Santa Rosa

Milton, *Ollinger-Cobb House*, 302 Pine St.

#### INDIANA

##### Fayette County

Brownsville vicinity, *Ranck, Thomas, Round Barn*, N of Brownsville on SR 500 N.

##### Vanderburgh County

Evansville, *Evansville College*, 1800 Lincoln Ave.

#### LOUISIANA

##### DeSoto Parish

Mansfield vicinity, *Wood Park (Glassell-Turner House)*, S of Mansfield off LA 175

##### Jefferson Parish

Gretna, *Old Jefferson Parish Courthouse*, 200 Huey P. Long Ave.

##### Lafayette Parish

Lafayette, *Hope Lodge #145*, 116 E. Vermilion St.

##### Orleans Parish

New Orleans, *Macheca Building*, 828 Canal St.

#### MAINE

##### Hancock County

Bar Harbor vicinity, *Abbe, Robert, Museum of Stone Age Antiquities*, S of Bar Harbor off ME 3.

##### Knox County

Rockland, *Tillson, Gen. Davis, House*, 157 Talbot Ave.

South Thomaston, *Thorndike, George, House*, ME 73.

#### NEW JERSEY

##### Bergen County

Hackensack, *Bergen County Court House Complex*, Court, Main and Essex Sts.

#### NEW MEXICO

##### Socorro County

Socorro vicinity, *Teypama Piro Site*,

#### OHIO

##### Allen County

Lima vicinity, *Breese, Griffith, Farm*, S of Lima at 2775 Fort Amanda Rd.

##### Athens County

Athens, *Athens B & O Train Depot*, Depot St.

##### Carroll County

Mechanicstown, *Herrington, John, House and Herrington Bethel Church*, 4070 Arbor Rd. NE

##### Delaware County

Delaware, *Delaware Public Library*, 101 N. Sandusky St.

Sunbury vicinity, *Center Inn*, SE of Sunbury on OH 37

**Franklin Parish**

Columbus, *Second Presbyterian Church*, 132 S. Third St.

**Hamilton County**

Cincinnati, *Withrow High School*, 1488 Madison Rd.

**Licking County**

Newark, *West Side Planing Mill*, 197 Maholm St.

**Madison County**

London, *Sweetland House*, 147 E. High St.

**Morgan County**

Ringgold vicinity, *Rock Hollow School*, S of Ringgold on SR 67

**Stark County**

Massillon vicinity, *Kettering, William, Homestead*, N of Massillon at 5509 Wales Ave.

**Summit County**

Akron, *Akron Public Library*, 69 E. Market St.

**Washington County**

Lowell vicinity, *Sprague, Jonathan, House*, W of Lowell off OH 60

Marietta, *Cisler Terrace*, 7th and Ephraim Cutler Sts.

**OKLAHOMA****Carter County**

Ardmore, *Ardmore Historic Commerical District*, Main St., and Hinkle Ave.

**Pottawatomie County**

Shawnee, *Beard Cabin (Shawnee Historic Homes TR)*, Woodland Park

Shawnee, *Governor's Mansion (Giza House) (Shawnee Historic Homes TR)*, 618 N Park St.

Shawnee, *Kerfoot House (Shawnee Historic Homes TR)*, 740 N Beard St.

Shawnee, *Nuckolls House (Shawnee Historic Homes TR)*, 200 E. Federal St.

Shawnee, *Walker House (Shawnee Historic Homes TR)*, 1801 N. Broadway

**Tulsa County**

Tulsa, *Maple Ridge Historic Residential District*, Roughly bounded by Hazel Blvd., S. Peoria Ave., 14th St., and Railroad

**TENNESSEE**

Davidson County, Nashville, *Savage House*, 167 Eight Ave., N.

**UTAH****Davis County**

Antelope Island, *Fielding Garr Ranch*, Off UT 127

**Utah County**

Springville, *Crandall Houses*, 112 and 136 E. 200 North

Springville, *Wood-Harrison*, 310 S. 300 West

**VERMONT****Lamoille County**

Morrisville, *Morrisville Historic District*, Portland, Main, Railroad and Foundry Sts.

**WISCONSIN****Ashland County**

Apostle Islands National Lakeshore, *Manitou Camp*, Manitou Island

[FR Doc. 82-34474 Filed 12-20-82; 8:45 am]

BILLING CODE 4310-70-M

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY****Agency for International Development****[Redelegation of Authority 41.8.1.1]****Chief, Government Property Resources Division, et al.; Redelegation of Authority Regarding Furnishing of Commodities**

1. Pursuant to the authority delegated to me by Redelegation of Authority No. 41.8.1, dated December 6, 1982, from the Deputy Assistant to the Administrator for Management, I hereby redelegate to the Chief, Government Property Resources Division, and to the Chiefs, field offices of the Government Property Resources Division, the authority to make the determinations prescribed in section 607(c) <sup>1</sup> of the Foreign Assistance Act of 1961, as amended.

2. The authority herein redelegated to the officers named above may be exercised by duly authorized persons who are performing the functions of those officers in an "Acting" capacity, but may not be redelegated.

3. This Redelegation of Authority shall be effective immediately.

Dated: December 9, 1982.

William C. Schmeisser, Jr.,

Director, Office of Commodity Management.

[FR Doc. 82-34481 Filed 12-20-82; 8:45 am]

BILLING CODE 6116-01-M

**[Redelegation of Authority 41.8.1]****Director, Office of Commodity Management; Redelegation of Authority Regarding Furnishing of Commodities**

Pursuant to the authority delegated to me by Redelegation of Authority No. 41.8, dated January 22, 1982 (47 FR 7346), from the Assistant to the Administrator for Management, I hereby redelegate to the Director, Office of Commodity Management the following authorities:

1. Authority to execute transfer or transfer/trust agreements with respect to the furnishing of commodities to international organizations having a membership consisting primarily of foreign governments, to the American

<sup>1</sup> Section 607(b) of the Foreign Assistance Act of 1961, as amended, was redesignated as section 607(c) by an amendment in 1978 (92 Stat. 959).

Red Cross, and to voluntary nonprofit agencies registered with and approved by the Agency for International Development<sup>1</sup> pursuant to determinations made under section 607(a) of the Foreign Assistant Act of 1961, as amended (the Act);

2. Authority to make the determinations prescribed in section 607(c)<sup>2</sup> of the Act.

The authorities herein redelegated to the Director, Office of Commodity Management, may be exercised by duly authorized persons who are performing the functions of the Director in an "acting" capacity.

Only the authority to make the determinations prescribed in section 607(c) of the Act may be redelegated by the Director.

This Redelegation of Authority amends and supersedes Redelegation of Authority No. 41.8.1 dated April 22, 1982 (47 FR 21931).

This Redelegation of Authority shall be effective immediately.

Dated: December 6, 1982.

John F. Owens,

Deputy Assistant to the Administrator for Management, Programs and Management Services.

[FR Doc. 82-34480 Filed 12-20-82; 8:45 am]

BILLING CODE 6116-01-M

**INTERSTATE COMMERCE COMMISSION****Motor Carriers; Permanent Authority Decisions; Decision-Notice**

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an

<sup>1</sup> The reference in the Act to the Agency for International Development was substituted in lieu of a reference to the Advisory Committee on Voluntary Foreign Aid by amendment in 1979 (93 Stat. 366).

<sup>2</sup> Section 607(b) of the Act was redesignated as Section 607(c) by amendment in 1978 (92 Stat. 959).

application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the *Federal Register* on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These 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.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be

issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Please direct status inquiries to Team 1, (202) 275-7992.

#### Volume No. OP1-228

Decided: December 14, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

MC 110310 (Sub-4), filed December 8, 1982. Applicant: INTER-COUNTY BUS LINES, INC., 513 S. Adams Street, Havre de Grace, MD 21078. Representative: James C. Vancheni III (same address as applicant), (301) 939-3900. Transporting *passengers*, in charter and special operations, beginning and ending at points in Baltimore, Cecil, and Harford Counties, MD, and York, Lancaster, Dauphin, Lebanon, Chester, Delaware and Montgomery Counties, PA and New Castle and Dover Counties, DE, on the one hand, and, on the other, points in the U.S.

**Note.**—Applicant seeks to provide privately-funded special and charter transportation.

MC 124421 (Sub-2), filed November 29, 1982. Applicant: 88 TRANSIT LINES, INC., Arentzen Blvd., Charleroi, PA 15022. Representative: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108-1166, (717) 232-8000. Transporting *passengers*, in special and charter operations, between points in the U.S.

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 127900 (Sub-7), filed December 8, 1982. Applicant: GROOME TRANSPORTATION, INC., P.O. Box A-23, Richmond, VA 23231. Representative: Dennis Dean Kirk, Suite 929, Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347-2857. Transporting *passengers*, in charter and special operation, between points in the U.S. (except AK and HI).

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 139210 (Sub-6), filed December 6, 1982. Applicant: ALASKA YUKON MOTORCOACHES, INC., 555 Forth &

Battery Bldg., Seattle, WA 98121. Representative: A. T. Wendells, 910 Bank of California Center, Seattle, WA 98164, (206)-682-1780. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK but excluding HI).

**Note.**—Applicant seeks to provide privately-funded charter and special operations.

MC 144410, filed December 9, 1982. Applicant: DEL AND NELLIE BUNCH, a partnership, d.b.a. ROYAL CHARTERS, 211 West Lewis, Pasco, WA 99336. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 148150 (Sub-4), filed December 3, 1982. Applicant: BROTHERS TRUCKING CO., INC., R.D. #2, Manchester, PA 17345. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233-5731. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 164911, filed November 29, 1982. Applicant: LODESTAR BUS LINES, INC., 230 Theatre Drive, Johnstown, PA 15904. Representative: John A. Pillar, 1500 Bank Tower, 307 Forth Ave., Pittsburgh, PA 15222, (412) 471-3300. Transporting *passengers*, in charter and special operations, between points in the U.S.

**Note.**—Applicant seeks to provide privately-funded charter and special transportation.

MC 165060, filed December 7, 1982. Applicant: ISAAC I. LAPP, 2926 Church Rd., Bird-in-Hand, PA 17505. Representative: George E. Campbell, 985 Old Eagle School Rd., Suite 501, Wayne, PA 19087, (215) 293-9220. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165081, filed December 7, 1982. Applicant: EMPIRE BUS CO., INC., 2024 3rd St., N.E., Washington, DC 20002. Representative: William L. Briscoe (same address as applicant), (202) 529

8679. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165090, filed December 8, 1982. Applicant: CHARLES BRUMLEY, Box 3681, Lubbock, TX 79452. Representative: Terry Holt, 8212 Ithaca #9, Lubbock, TX 79423, (806) 797-9743. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165091, December 7, 1982. Applicant: OPEM SPACE, INC., 5714 Eastern Ave., N.W., Washington, DC 20011. Representative: David L. Dupree (same address as applicant), (202) 529-9032. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 165100, filed December 9, 1982. Applicant: ACTION TRANSIT ENTERPRISES, INCORPORATED, 3810 Penn Ave., Pittsburgh, PA 15201. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471-1800. Transporting *passengers*, in charter and special operations, between points in the U.S. (excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 1 (202) 275-7030.

#### Volume No. OP2-322

Decided: December 14, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 3932 (Sub-1), filed December 2, 1982. Applicant: CLEVELAND-LORAIN HIGHWAY COACH CO., 3747 Colorado Ave., Lorain, OH 44054. Representative: Robert J. Brooks, 1828 L St., NW, Suite 1111, Washington, D.C. 20036, (202) 466-3892. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 61993 (Sub-2), filed December 6, 1982. Applicant: KEYSTONE TOURS, INC., R.D. 2, Box 116, Bath, PA 18014. Representative: Morton E. Kiel, Suite 1832—Two World Trade Center, New York, NY 10048, 212-466-0220. Transporting *passengers*, in charter and

special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 108452 (Sub-16), filed December 2, 1982. Applicant: GOLD LINE, INC., d.b.a. GOLD LINE, 5500 Tuxedo Rd., Tuxedo, MD 20781. Representative: L. C. Major, Jr., Suite 304 Overlook Bldg., 6121 Lincoln Rd., P.O. Box 11278, Alexandria, VA 22312, 703-750-1112. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 112422 (Sub-13), filed November 22, 1982. Applicant: SAM VAN GALDER, INC., 715 South Pearl St., Janesville, WI 53545. Representative: Richard A. Westley, 4506 Regent St., Ste. 100, P.O. Box 5086, Madison, WI 53705-0086, (608) 238-3119. Transporting *passengers*, in charter and special operations, beginning and ending at points in IL, IN, IA, MI, MN, and WI, and extending to points in the U.S. (except HI, but including AK).

Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a), submit an affidavit indicating why such approval is unnecessary, or file a petition seeking exemption under 49 U.S.C. 11343(e) to the Secretary's Office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 2, Room 2379.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 141743 (Sub-5), filed December 7, 1982. Applicant: MARK IV CHARTER LINES, INC., 14800 South Avalon Blvd., Gardena, CA 90248. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI, but including AK).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 156152 (Sub-2), filed December 9, 1982. Applicant: IMPERIAL ENTERPRISES CORPORATION, P.O. Box 6009, Lafayette, IN 47903. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317-846-6655. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 164782, filed November 19, 1982. Applicant: AMERICA TRAVELS, INC., 84-03 Northern Blvd., Jackson Heights, NY 11372. Representative: Robert J. Brooks, 1828 L St., N.W., Suite 1111, Washington, DC 20036, 202-466-3892. Transporting *passengers* in special and charter operation, between points in the U.S. (including AK and HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 164863, filed November 24, 1982. Applicant: GREAT AMERICAN BUS COMPANY, 1217 Griswold, Suite 200, Detroit, MI 48226. Representative: Robert J. Brooks, 1828 L St., NW, Suite 1111, Washington, DC 20036, (202) 466-3892. Transporting *passengers*, in special and charter operations, between points in the U.S. (including AK and HI).

Note.—Applicant seeks to provide privately-funded passenger charter and special transportation.

MC 164953, filed November 30, 1982. Applicant: WHITE HOUSE SIGHTSEEING CORPORATION, d.b.a. AMERICAN TOURS, 519 Sixth St., NW Washington, DC 20001. Representative: Robert R. Harris, 1730 M St., NW Suite 501, Washington, DC 20036, 202-296-2900. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 165022, filed December 6, 1982. Applicant: TRANSACTION INTERNATIONAL TRADE AND TRANSPORTATION, U.S.A. INC., 17412 Kurt Lane, Huntington Beach, CA 92647. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036, 202-785-0024. As a *broker of GENERAL COMMODITIES* (except household goods), between points in the U.S. (except AK and HI).

MC 165063, filed December 6, 1982. Applicant: L & M TRANSPORTATION, 719 Fritztown Rd., Sinking Spring, PA 19608. Representative: Darrell A. Lutz (same address as applicant), 215-678-5832. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165092, filed December 7, 1982. Applicant: OPAL E. & DENNIS L. WARE, 3220 Chippewa Lane, Council Bluffs, IA 51501. Representative: Edward A. O'Donnell, 1004-29th St., Sioux City, IA 51104, 712-255-3127. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 4 at 202-275-7669.

#### Volume No. OP4-075

December 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 154126 (Sub-1), filed December 6, 1982. Applicant: SEGURA'S TRUCKING, INC., P.O. Box 3232, Lafayette, LA 70502. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068, (713) 537-8156. Transporting (1) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and (2) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 164917, filed December 6, 1982. Applicant: A & A CHARTER SERVICE, INC., 297 Communipaw Ave., Jersey City, NJ 07304. Representative: Edward F. Bowes, P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special operations.

MC 165016, filed December 6, 1982. Applicant: L. A. PATTERSON, INC., 1000 Boston Neck Rd., N Kingstown, RI 02852. Representative: William F. Poole, 22 Knollwood Circle, N Kingstown, RI 02852, (401) 885-0474. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165017, filed December 6, 1982. Applicant: EUGENE R. THOMPSON, Box 62, Cascade, MT 59421. Representative: Charlene R. Thompson (same address as applicant), (406) 468-

2712. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165047, filed December 7, 1982. Applicant: JIM'S BUS SERVICE, 2824 Curtis Dr., Temple Hills, MD 20748. Representative: Joyce Marshall (same address as applicant), (301) 894-5417. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

#### Volume No. OP4-076

Decided: December 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 129596 (Sub-1), filed November 16, 1982. Applicant: ABC BONDED WAREHOUSES, INC., 5000 Pan American, NE, P.O. Box 724, Albuquerque, NM 87109. Representative: Norris R. Penny, Sr. (same address as applicant), (505) 881-1414. Transporting, (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *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. (except AK and HI).

For the following, please direct status inquiries to Team 5 at 202-275-7289.

#### Volume No. OP5-286

Decided: December 10, 1982

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 52479 (Sub-4), filed December 2, 1982. Applicant: SUNNYLAND STAGES INC., 320 South Kimbrough, Springfield, MO 65806. Representative: Wayne V. Barnes (same address as applicant), (417) 866-1495. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 134099 (Sub-2), filed November 29, 1982. Applicant: PACIFIC NATIONAL LINES, INC., 2209 Pacific Ave., Tacoma, WA 98402. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, 703-751-2441. Transporting *passengers*, in

*charter and special operations*, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 140818 (Sub-3), filed November 29, 1982. Applicant: THE GRAY LINE OF SEATTLE, INC., Suite 400 1218 Third Ave., Seattle, WA 98101. Representative: L. C. Major, Jr., Suite 304 Overlook Bldg., 6121 Lincoln Rd., P.O. Box 11278, Alexandria, VA 22312, 703-750-1112. Transporting *passengers*, in *charter and special operations*, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 150519 (Sub-3), filed November 22, 1982. Applicant: PETER PICKNELLY AND LOUIS MAGNANO, d.b.a. VIP COACH SERVICES, 1776 Main St., Springfield, MA 01103. Representative: Robert J. Brooks, 1828 L St., NW, Suite 111, Washington, DC 20036, (202) 466-3892. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

#### Volume No. OP5-288

Decided: December 13, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 108359 (Sub-10), filed December 6, 1982. Applicant: EMPIRE TRAILWAYS, INC., 384 East Ave., Rochester, NY 14607. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751-2441. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 128449 (Sub-15), filed December 3, 1982. Applicant: JIMMIE TUCKER TRUCKING, INC., P.O. Box 428, Broken Bow, OK 74728. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424-3301. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 129379 (Sub-4), filed December 3, 1982. Applicant: FIDELITY MOTOR BUS LINES, INC., 1920 Lincoln Way East, Massillon, OH 44646. Representative: Frank L. Calvary, 3066 N. Star Rd., Columbus, OH 43221, (614) 459-4248.

Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special operations.

MC 156179 (Sub-1), filed December 3, 1982. Applicant: MARIN AIRPORTER, 200 Tamal Vista Blvd., Suite 507, Corte Madera, CA 94925. Representative: Ellis Ross Anderson, 100 Bush Street, Suite 410, San Francisco, CA 94104, (415) 421-6743. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 164959, filed November 30, 1982. Applicant: CATHERINE E. STUTHEIT AND MARY MULLEE, d.b.a. VALLEY DISPATCH, 904 Second Ave. West, Columbia Falls, MT 59912. Representative: John B. Dudis, 1 Main—P.O. Box 759, Kalispell, MT 59901, 406-755-6644. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164979, filed December 2, 1982. Applicant: MERCED TRANSPORTATION, d.b.a. VIA CHARTER LINES, 300 Grogan Avenue, Merced, CA 95340. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 164988, filed December 2, 1982. Applicant: WILCO TRAVEL AGENCY, INC., 386 Waller Avenue, Suite 9, Lexington, KY 40504. Representative: Robert J. Brooks, 1828 L. Street, N.W., Suite 1111, Washington, DC 20036, (202) 466-3892. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-34536 Filed 12-20-82; 8:45 am]

BILLING CODE 7035-01-M

### Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the *Federal Register* on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the *Federal Register* December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the *Federal Register* on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922 (c) (2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon 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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience

and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly.

Please direct status inquiries to Team One at (202) 275-7992.

### Volume No. OP1-229

Decided: December 14, 1982.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

W-1310 (Sub-2), filed December 1, 1982. Applicant: PADEL FORD PACKET BOAT CO., INC., Harriet Island, St. Paul, MN 55107. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (602) 333-1341. As a *water carrier* in connection with the transportation of *passengers and their*

baggage by the use of self-propelled vessels, between points on the Mississippi River and coastal ports in FL and the Florida Keys.

MC 134781 (Sub-8), filed December 7, 1982. Applicant: FAST FREIGHT TRANSFER, INC., P.O. Box 2163, Hialeah, FL 33012. Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340, (404) 491-1696. Transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with K Mart Corporation, of Troy, MI.

MC 138730 (Sub-14), filed December 1, 1982. Applicant: CARAVAN COACH LINES, INC., RD 3, Box 451, Wharton, NJ 07885. Representative: L. C. Major, Jr., Suite 304, Overlook Bldg., 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312, (703) 750-1112. Over regular routes, transporting *passengers*, between the Newark International Airport, Newark, NJ, and New York, NY, from the Newark International Airport over access roads to junction with NJ Turnpike North (I-95), then over NJ Turnpike to U.S. Hwy S-3 at or near Secaucus, NJ, then over U.S. Hwy S-3 to the Lincoln Tunnel, then through the Lincoln Tunnel to New York, NY, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 140800 (Sub-8), filed December 9, 1982. Applicant: COLONIAL TRANSPORTATION, INC., P.O. Box 448, McMinnville, TN 37110. Representative: Robert L. Baker, Sixth Floor, U.S. Bank Bldg., Nashville, TN 37219-2180, (615) 244-8100. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in GA, IL and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148341 (Sub-6), filed December 3, 1982. Applicant: MASS TRANSIT, INC., 2450 Orange Ave., Signal Hill, CA 90806. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211, (213) 655-3573. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), and (2) *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) in (1) above with The Price Company, of San Diego, CA, and in (2) above with Flynn & Enslow, Inc., of San Francisco, CA.

MC 150221 (Sub-14), filed December 6, 1982. Applicant: CENTRAL SOUTHERN, INC., P.O. Box 375, Drayton, SC 29333. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687 (803) 244-9314. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), and (2) *pulp, paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Coats & Clark's Sales Corp., of Seneca, SC, and N.V.F. Co., of Hartwell, GA, and in (2) above with Champion International Corporation, of Stamford, CT.

MC 154510 (Sub-1), filed December 6, 1982. Applicant: INLAND CORPORATION, P.O. Box 1528, Farmington, NM 87401. Representative: Dale E. Isley, 50 S. Steele St., #330, Denver, CO 80209, (303) 320-6100. Transporting *commodities in bulk*, between points in La Plata, Montezuma, Dolores, San Juan, San Miguel, Ouray, Montrose, and Mesa Counties, CO, San Juan, Grand and Emery Counties, UT, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM, and Apache County, AZ.

MC 156071 (Sub-1), filed December 7, 1982. Applicant: RONALD GROSS, R. D. #2, Cabot, PA 16023. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281-9494. Transporting *metal products*, between points in Westmoreland and Armstrong Counties, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160730, filed December 9, 1982. Applicant: ATLANTIC MOBILE TRANSPORT, Gideon Grove Church Rd., Stokesdale, NC 27357. Representative: David L. Wilmore (same address as applicant), (919)-643-5475. Transporting *manufactured mobile homes, offices, housing, or other buildings of a similar design, and materials, parts, and supplies*, used in the construction thereof, between those points in and east of IL, KY, MS, TN and WI.

MC 161171 (Sub-1), filed December 7, 1982. Applicant: V. K. PUTMAN, 509 North Grand, Bozeman, MT 59715. Representative: Jerome Anderson, 315 North 24th, P.O. Drawer 849, Billings, Mt 59103-0849, (406)-248-2611. Transporting *vinyl and wood floor coverings, floor underlayment compounds, vinyl weld seam-fuses, floor cleansers, floor covering samples, display cases, racks and materials used in display-floor covering, metal containers, and ceramic tile*, between points in Lehigh County, PA, Stark County, OH and Orange County, NY, on the one hand, and, on

the other, points in Missoula County, MT, Multnomah County, OR and King, Spokane and Okanogan Counties, WA.

MC 162971 (Sub-1), filed December 6, 1982. Applicant: DONALD R. LIND AND NULLET L. SCHNEIDER, d.b.a. D&N TRUCKING, 19472 Yuma Pl., Castro Valley, CA 94546. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111, (415) 986-1414. Transporting *alcoholic beverages*, between points in OR, WA and CA.

MC 163221 (Sub-1), filed December 9, 1982. Applicant: COOLIDGE GRAIN AND PRODUCE, INC., 3112 Stratford St., Pearland, TX 77581. Representative: David H. Baker, 600 Maryland Avenue SW., Washington, DC 20024, (202) 484-9090. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Jensen Brokerage, Inc., of Houston, TX.

MC 163741, filed December 7, 1982. Applicant: JOSEF STONE, Stone Meadows Farm, P.O. Box 9, Newtown, PA 18940. Representative: Louis J. Carter, 7300 City Line Ave., Suite 120, Philadelphia, PA 19151-2291. Transporting *wheat middlings*, between points in Northampton County, PA, on the one hand, and, on the other, points in Salem County, NJ.

MC 164251, filed December 6, 1982. Applicant: NEW ENGLAND RETAIL EXPRESS, INC., 111 Lennox St., Norwood, MA 02062. Representative: John C. Fudesco, Suite 960, 1333 New Hampshire Avenue NW., Washington, DC 20036, (202)-659-5157. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Puritan Furniture Corp., of Norwood, MA.

MC 164451, filed December 7, 1982. Applicant: POLYOCK FARMS TRUCKING, INC., Box 43, Zenda, WI 53195. Representative: Richard A. Kerwin, 180 North LaSalle Street, Chicago, IL 60601, (312) 332-5106. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Arrow Plastic Manufacturing Co., of Chicago, IL.

MC 165051, filed December 7, 1982. Applicant: LONA TRUCKING CO., 7339 Lemont Road, Downers Grove, IL 60515. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, (312) 726-6525. Transporting *lumber and*

wood products, rubber and plastic products, and clay, concrete, glass or stone products, between points in IL, IN, IA and WI.

MC 165080, filed December 7, 1982. Applicant: OKLAHOMA CITY EASTERN EXPRESS, INC., 1002 North Owasso Ave., Tulsa, OK 74106. Representative: Martin E. Wyatt, P.O. Box 771, Tulsa, OK 74101, (918) 744-0306. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, KS, MO, TX and OK.

For the following, please direct status calls to Team 2 (202) 275-7030.

#### Volume No. OP2-321

Decided: December 14, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 109593 (Sub-23), filed December 6, 1982. Applicant: H. R. HILL, INC., P.O. Box 2389, Muskogee, OK 74401. Representative: Jack R. Anderson, 9 East 4th St., Suite 305, Tulsa, OK 74103, 918-583-9000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Owens-Illinois, of Toledo, OH.

MC 110012 (Sub-2), filed December 6, 1982. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425-13th Street NW., Washington, DC 20004, 202-737-1030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151753 (Sub-7), filed December 7, 1982. Applicant: M. W. CYCLE HAULER, INC., 25 S. Third, Kansas City, KS 66103. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110-L, Topeka, KS 66612, 913-233-9629. Transporting *paper and paper products*, between Newton Falls, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159982 (Sub-4), filed December 6, 1982. Applicant: O. L. EXPRESS, LTD., P.O. Box 327, Carlisle, IA 50047. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, 515-282-3525. Transporting *paper and paper products, printing supplies and clay*, between points in Polk County, IA and St. Joseph County, MI, on the one hand, and, on the other,

points in GA, IL, ME, MA, MI, NJ, NY, and WI.

MC 164003, filed December 6, 1982. Applicant: CASEBIER BULK TRANSPORT CO., INC., 1048 Creekside Drive, Wheaton, IL 60186. Representative: Robert G. Paluch, 7800 West 60th Place, P.O. Box 356, Summit, IL 60501, (312) 563-0060. Transporting *chemicals and related products*, between points in KY, on the one hand, and, on the other, points in IL, IN, KY, OH and TN, under continuing contract(s) with Hercules Incorporated, of Wilmington, DE, and Peabody Coal Company, of St. Louis, Mo.

MC 164823, filed November 22, 1982. Applicant: PEDRO ORTEGA, 2551 Sixth St. #C, San Diego, CA 92102. Representative: Pedro Ortega (same address as applicant), 619-233-0574. Transporting *general commodities* (except Classes A and B explosives and household goods), between points in the U.S. under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR.

MC 165062, filed December 6, 1982. Applicant: MIM'S MOTORFRATE, INC., 12662 York Rd., North Royalton, OH 44131. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889-2531. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with K Mart Corporation, of Troy, MI.

MC 165033, filed December 6, 1982. Applicant: ROYAL LINES, INC., 8605 Ames Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, 402-397-7033. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Dodge, Douglas, and Saunders Counties, NE, Pottawattamie and Shelby Counties, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165083, filed December 7, 1982. Applicant: KENNETH KALLMEYER d.b.a. GILLESPIE MOBILE HOMES, 2474 Anderson Rd., Crescent Springs, KY 41017. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, 216-652-2789. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of mobile homes, between points in Dearborn County, IN, Boone County, KY, and Clermont and Butler Counties, OH, on the one hand, and, on the other, points in AL, GA, FL, IL, IN, KY, KS, MI, NC, OH, SC, TN, and WV.

MC 165112, filed December 9, 1982. Applicant: GARDNER TRANSPORTATION CO., INC., 820 Ave. E. Pratt City, Birmingham, AL 35214. Representative: George M. Boles, 629 Frank Nelson Bldg., Birmingham, AL 35203, 205-251-6602. Transporting *iron, steel, and aluminum articles, pipe, pipe fittings and accessories, machinery, machinery parts, laundry supplies, and building materials*, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 3 (202) 275-5223.

#### Volume No. OP3-48

Decided: December 13, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF-635, filed December 2, 1982. Applicant: FLEET INTERNATIONAL FORWARDERS, INC., 703 Market St., Suite 485, San Francisco, CA 94103. Representative: D. A. Park (same address as applicant), (415) 957-9016. As a freight forwarder, in connection with the transportation of *household goods, baggage, and automobiles*, between points in the U.S.

MC 1745 (Sub-17), filed December 1, 1982. Applicant: INTERSTATE VAN LINES, INC., 5801 Rolling Rd., West Springfield, VA 22152. Representative: Marshall Krage, 1919 Pennsylvania Ave., NW., Suite 300, Washington, D.C. 20006, (202) 466-3778. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons as defined at 49 U.S.C. 10923 who are commercial shippers as defined at 49 CFR 1056.1(b)(6) of the Commission's regulations.

MC 67234 (Sub-67), filed December 2, 1982. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. 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 Ford Motor Company, of Dearborn, MI.

MC 117204 (Sub-2), Filed November 29, 1982. Applicant: JARVIS TRANS., INC., 25 Tower Rd., Seekonk, MA 02771. Representative: David Deneault, 848 Pleasant St., Suite 13, New Bedford, MA 02740, (617) 999-2929. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CT, MA, NH, and RI.

MC 149215 (Sub-1), Filed December 2, 1982. Applicant: RAYMOND SNELL d.b.a. SNELL & SONS, 5025 Ursula Way,

Denver, CO 80239. Representative: Raymond Snell (same address as applicant), (303) 373-1283. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 150235 (Sub-7), Filed November 29, 1982. Applicant: POWELL TRUCKING COMPANY, INC., Rt. 3, Box 13, Sumrall, MS 39482. Representative: John A. Crawford, 17th fl. Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948-5711. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AZ, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WV and WI.

MC 152074 (Sub-4), Filed November 23, 1982. Applicant: KEY-STONE FREIGHT, INC., 767 St. George Ave., Woodbridge, NJ 07095. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 153474 (Sub-3), Filed December 2, 1982. Applicant: WAYNE THOMAS d.b.a. C&W TRUCKING, Box 261, R.D.3, Rockton Rd., Du Bois, PA 15801. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104, (712) 255-3127. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Freight Brokers, Inc. of Sioux City, IA and (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Swift Independent Packing Co. of Chicago, IL.

MC 154904 (Sub-2), filed November 23, 1982. Applicant: RUSSELL TRUCKING, INC., 1860 W. Main, Ubly, MI 48475. Representative: James R. Davis, Tenth Floor, Michigan National Tower, Lansing, MI 48933, (517) 482-5800. Transporting (1) *wire; cord sets, scrap metal, plastic and metal products, plastic pellets, clay filler, rubber and materials* used in the manufacture of metal insulating materials between points in Sanilac County, MI, on the one hand, and on the other, points in AL, IL, AZ, CA, FL, GA, IN, KY, MA, MS, NE, NJ, PA, TX, TN, and NY, and (2) *metal buildings, gain bins, forage and livestock equipment*, between points in

MI, on the one hand, and, on the other, points, KS, IA, MN, and WI.

MC 161574, filed December 1, 1982. Applicant: INTERNATIONAL CONTAINER SERVICES, INC., 5155 Warner Rd., Garfield Heights, OH 44125. Representative: Norman J. Phillon, 1920 N St., N.W., Washington, DC 20036, (202) 331-8800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 164784 (Sub-1), filed December 1, 1982. Applicant: COMMAND SYSTEMS, INC., 6810 Fleetwood Rd., McLean, VA 22101. Representative: J. G. Dail, Jr., P. O. Box LL, McLean, VA 22101, (703) 893-3050. Transporting *general commodities* (except classes A and B explosives household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 164905, filed November 29, 1982. Applicant: G. M. G. TRANSPORTATION CORP., 18 Lido Blvd., Lake Ronkonkoma, NY 11779. Representative: Ronald I. Shapps, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting *general commodities* (except classes A and B explosives household goods, and commodities in bulk), between points in NY, NJ, CT, and PA.

MC 164955, filed December 1, 1982. Applicant: W. T. B. INC., 6422 E. Mallon, Spokane, WA 99206. Representative: James A. Eccles; (same address as applicant), (800) 541-4226. Transporting *general commodities* (except classes A and B explosives household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Gary J. Padrta D/B/A Western Truck Brokers, of Spokane, WA.

MC 164964, filed December 1, 1982. Applicant: J. & L. TRANSPORT, 24530 S. Cass Rd., Canby, OR 97038. Representative: James Watson, P.O. Box 209, Canby, OR 97013, (206) 254-3021. Transporting *such commodities* as are dealt in or distributed by manufacturers of building materials, machinery, metal products, chemicals, stone, clay, or glass products, between points in AR, AZ, CA, CO, GA, ID, IL, KS, MD, MT, NJ, NM, NY, OR, PA, TN, TX, UT, VA, NV and WA.

#### Volume No. OP3-54

Decided: December 14, 1982.

By the Commission, Review Board No. 2, Members Carlton, Williams, and Ewing.

MC 67234 (Sub-66), filed November 22, 1982. Applicant: UNITED VAN LINES,

INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S., under continuing contracts with General Electric Company, of Bridgeport, CT, Atlantic Plant Maintenance, of Oak Brook, IL, Network Consultants, of Chicago, IL, Banking Systems, Incorporated, of Dallas, TX, Benerson Corporation, of Evansville, IN, Calma Company, of Sunnyvale, CA, East Erie Commercial Railroad, of Erie, PA, General Electric Environmental Services, Inc., of Lebanon, PA, General Electric Broadcasting Company, General Electric Cablevision Corporation, and Multi-Craft Installation Services, Inc., all of Schenectady, NY, General Electric Credit Corporation, General Electric International Operations Company, Inc., General Electric Technical Services Co., Inc., General Electric Trading Company, and Kun-Yong of Korea, Limited, all of New York, NY, General Electric Information Services Company, of Rockville, MD, General Electric Uranium Management Corporation, of San Jose, CA, Great Western Silicon Corporation, of Chandler, AZ, L. E. Hawkins Contractor, Inc., of Midsonville, KY, Management and Technical Services Company, of Mankato, MN, Mitrol, Inc., of Lexington, MA, and Trafalger Developers of Florida, Inc., of Miami, FL.

MC 107515 (Sub-1427), filed November 26, 1982. Applicant: RTC TRANSPORTATION, INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., Suite 520, Atlanta, GA 30326, (404) 262-7855. 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 Kraft, Inc. of Glenview, IL.

MC 109064 (Sub-48), filed December 3, 1982. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC., 3301 East Loop 820 South, P.O. Box 8367, Ft. Worth, TX 76112. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255-6279. Transporting *chemicals and related products*, between points in Ellis County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 113855 (Sub-541), filed November 29, 1982. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, MN 55903. Representative: Leonard L. Bennett

(Same address as applicant), (507) 288-3331. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contracts with Hampton Lumber Sales Company, or Portland, OR, Arden Lumber Company, of Kettle Falls, WA, Avison Lumber Company, of Molalla, OR, Barbee Mill, of Quendall, WA, Bohemia Lumber Company, of Brownsville, OR, Boise Cascade Corporation, of Elgin, OR, Boise Cascade Corporation, of Emmett, ID, Boise Cascade Corporation, of Kettle Falls, WA, Boise Cascade Corporation, of LaGrande, OR, Boise Cascade Corporation, of Goldendale, WA, Boise Cascade Corporation, of Yakima, WA, Boyd Lumber Company, of Sedro Woolley, WA, Brazier Forest Products, of Molalla, OR, Brooks-Scanlon, Inc., of Bend, OR, Broughton Lumber Company, of Hood, WA, C & D Lumber Company, of Riddle, OR, C & W Lumber Company, of Woodland, WA, Channel Lumber Company, of Craigmont, ID, Clark & Powell Lumber Co., of Junction City, OR, Collins Pine Company, of Chester, CA, Cone Lumber Company, of Goshen, OR, Coos Head Timber Company, of Coos Bay, OR, Crane Mills, of Corning, CA, Crown Zellerbach Corp., Columbia City, OR, Crown Zellerbach Corp., of Rainier, OR, Dant & Russell, Inc., of Marysville, WA, Dant & Russell, Inc., of Port Angeles, WA, Dant & Russell, Inc., of Warrenton, OR, Davidson Industries, of Beck, OR, Delson Lumber Company, of Olympia, WA, Diamond International Corp., of Marysville, CA, Diamond International Corp., of Oroville, CA, Diamond International Corp., of Red Bluff, CA, Douglas County Lumber Co., of Roseburg, OR, Ellingson Lumber Company, of Baker, OR, Exeter Lumber Company, of Longview, WA, Forest Grove Lumber Company, of Carnation, OR, Friesen Lumber Company, of St. Helens, OR, Gram Lumber Company, of Kalama, WA, Hambleton Bros. Lumber Co., of Camas, WA, Hanel Lumber Company, of Odell, OR, Hemphill-O'Neill Lumber Co., of Chehalis, WA, Herbert Lumber Company, of Riddle, OR, Edward Hines Lumber Company, of Hines, OR, Hudspeth Pine, of Prineville, OR, Hull-Oakes Lumber Company, of Dawson, OR, Ida-Pine, of Grangeville, ID, International Paper Company, of Chalatchie, WA, International Paper Company, of Vaughan, OR, International Paper Company, of Gardiner, OR, Kimberly-Clark Corporation, of Anderson, CA, Louisiana Pacific Corp., of Alderpoint, CA, Louisiana Pacific Corp., of Fort Bragg, CA, Louisiana Pacific Corp., of Oroville, CA, Louisiana

Pacific Corp., of Red Bluff, CA, Louisiana Pacific Corp., of Samoa, CA, Louisiana Pacific Corp., of Tillamook, OR, Louisiana Pacific Corp., of Ukiah, CA, Louisiana Pacific Corp., of Willits, CA, McGrew Brothers Sawmill, of Bellview, OR, Main Industries, of Bieber, CA, Manke & Sons, Inc., of Tacoma, WA, Mary's River Lumber Company, of Corvallis, OR, Modoc Lumber Company, of Klamath Falls, OR, Mountain Fir Lumber Company, of Independence, OR, Mountain Fir Lumber Company, of Maupin, OR, Oregon Cedar Products, of Eugene, OR, Ostrom Lumber Company, of Pedee, OR, Pacific Wood Products, of Redmond, OR, Pack River Tree Farms, of Bonners Ferry, ID, Pack River Tree Farms, of Cashmere, WA, Pack River Tree Farms, of Entiat, WA, Pack River Tree Farms, of Gibbs, ID, Pack River Tree Farms, of Peshastin, WA, Pack River Tree Farms, of Spokane, WA, Paul Bunyan Lumber Company, of Anderson, CA, Plum Creek Lumber Company, of Columbia Falls, MT, Plum Creek Lumber Company, of Kalispell, MT, Pope & Talbot, Incorporated, of Port Gamble, WA, Pope & Talbot, Incorporated, of Oakridge, OR, Publishers Forest Products, of Liberal, OR, Publishers Forest Products, of Tillamook, OR, Rosboro Lumber Company, of Springfield, OR, Roseburg Lumber Company, of Roseburg, OR, SDS Lumber Sales, of Bingen, WA, SDS Lumber Sales, of Cascade Locks, OR, St. John's Stud, of Portland, OR, St. Regis Lumber, of Tacoma, WA, Schmidbauer Lumber Company, of Eureka, CA, Seneca Sawmill Company, of Eugene, OR, Sierra Pacific Industries, of Arcata, CA, Sierra Pacific Industries, of Loyalton, CA, Sierra Pacific Industries, of Quincy, CA, Sierra Pacific Industries, of Redding, CA, Sierra Pacific Industries, of Susanville, CA, Simpson Timber Company, of Shelton, WA, Spalding & Sons, Inc., of Grants Pass, OR, Summit Timber Company, of Everett, WA, John C. Taylor Lumber Co., of Shipley, OR, Three-G Lumber Company, of Wrens, OR, Twin Harbors Lumber Company, of Twin Harbors, WA, U.S. Plywood, of Odell, OR, U.S. Plywood, of Roseburg, OR, U.S. Plywood, of Morton, WA, Vaagen Bros. Lumber Company, of Colville, WA, Vanport Manufacturing, of Boring, OR, Warm Springs Forest Products, of Madras, OR, Welco Lumber Company, of Marysville, WA, Wendell Mills, of Fairfield, ID, Whipple & Moshofsky Lumber Co., of Grande Rone, OR, Wickes Forest Industries, of Dinuba, CA, Willamette Industries, of Dallas, OR, Willamette Industries, of Sweet Home, OR, and Willamette Industries, of Waterloo, OR.

MC 121395 (Sub-3), filed December 3, 1982. Applicant: PMS TRANSPORTATION CO., 110 East Chicago Ave., Westmont, IL 60559. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782-8880. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, WI, MI, OH, MO, KY, IA, and MN.

MC 125894 (Sub-26), filed November 24, 1982. Applicant: J & R SCHUGEL TRUCKING, INC., 2026 North Broadway, New Ulm, MN 56073. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333-1341. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of ND, SD, NE, KS, AR, and LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128504 (Sub-8), filed December 1, 1982. Applicant: JAMES M. and MRS. JAMES M. BARNETT, d.b.a. BARNETT'S MOVING AND STORAGE, 507 West Adams St., P.O. Box 726, Kosciusko, MS 39090. Representative: (Same as applicant), (601) 289-5071. Transporting *household goods*, between points in the U.S. (except ME).

MC 140615 (Sub-71), filed December 3, 1982. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Joseph A. Nemecek, 1992 Susan Ave., Neenah, WI 54956, (414) 725-4096. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 140645 (Sub-24), filed November 29, 1982. Applicant: UNITED TRUCKING, INC., P.O. Box 398, Tallapoosa, GA 30176. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328, (404) 256-4320. Transporting (1) *containers, container ends, container accessories*, (2) *liquid commodities*, (3) *buffing, polishing, scouring, and washing compounds, solvents, starch, bleach, lubricating oils, carbon gum and sludge removing compounds, disinfectants, softeners and sizing, janitorial supplies and equipment*, (4) *insecticides and pesticides*, (5) *food and such commodities* as are dealt in by grocery houses, retail chain department stores, and drug stores, and (6) *such commodities* as are dealt in by retail

paint stores, between points in the U.S. (except AK and HI).

MC 145054 (Sub-50), filed December 3, 1982. Applicant: COORS TRANSPORTATION COMPANY, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264, (303) 861-4028. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Adolph Coors Company, Coors Porcelain Company, Coors Energy Co., Cadco Incorporated, Coors Food Products Company, The Rocky Mountain Water Company, and The Wannamaker Ditch Company, all of Golden, CO, Coors Distributing Company, of Denver, CO, American Center for Occupational Health, Inc., of Aurora, CO, Alumina Ceramics, Inc., of Benton, AR, RI Ceramic Company, of Norman, OK, and Wilbank's International, Inc., of Hillsboro, OR.

MC 152524 (Sub-2), filed December 3, 1982. Applicant: COLONIAL EXPRESS, INC., 4 Alger Street, South Boston, MA 02127. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 01287, (617) 676-7610. Transporting *food and related products*, between points in MA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164935, filed December 1, 1982. Applicant: RANGE TRAFFIC SERVICE, INC., 803 Glenmar Rd., P.O. Box 154, Fairless Hills, PA 19030. Representative: Peter B. Tansey (same address as applicant), (215) 946-5293. As a broker, at Fairless Hills, PA, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164995, filed December 3, 1982. Applicant: THREE STAR CORPORATION, 1340 Highway 92 West, Winter Haven, FL 33880. Representative: M. Craig Massey, 1701 South Florida Avenue, P.O. Drawer 2787, Dixieland Station, Lakeland, FL 33806-2787, (813) 682-1178. Transporting *food and related products*, between points in AL, AR, FL, GA, IA, IL, IN, KY, LA, MI, MN, MO, MS, NC, OH, SC, TN, and WI.

For the following, please direct status calls to Team 4 (202) 275-7669.

#### Volume No. OP4-074

Decided: December 14, 1982.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing.

MC 102616 (Sub-1037), filed December 6, 1982. Applicant: COASTAL TANK LINES, INC., 250 Cleavland Massillon

Rd., Akron, OH 44319. Representative: Fred H. Daly, 2550 M St., Suite 475, Washington, DC 20037, (202) 293-3204. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Mobay Chemical Company, Pittsburgh, PA, and Ashland Oil, Inc., Ashland, KY.

MC 121316 (Sub-3), filed December 6, 1982. Applicant: M. K. & SONS EXPRESS, INC., 8 Upton St., Peabody, MA 01960. Representative: Curtis L. Wood, 14 New England Executive Pk., Burlington, MA 01803, (617) 272-7540. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, ME, MA, NH, NJ, NY, PA, RI and VT.

MC 141407 (Sub-4), filed December 7, 1982. Applicant: CHARLES N. CASKEY, d.b.a. B & C TRANSFER, 4915 Stone Ave., Sioux City, IA 51105. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104, (712) 255-3127. Transporting *food and related products*, between points in IA, IL, KS, MN, MO, ND, NE, SD, and WI.

MC 145637 (Sub-12), filed December 7, 1982. Applicant: B & B EXPRESS, INC., P.O. Box 5552, Station B, Greenville, SC 29606. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, (202) 347-8862. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Anderson County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148437 (Sub-7), filed December 6, 1982. Applicant: BORK TRANSPORT, INC., 2843 Ingersoll, Des Moines, IA 50312. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282-3525. Transporting (1) *alcohol*, between points in IL and IA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *petroleum products*, between points in IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151587 (Sub-2), filed December 6, 1982. Applicant: P & G OIL COMPANY, INC., d.b.a. P & G TRUCKING COMPANY, Lakeview Dr., Madison Heights, VA 24572. Representative: Eric Meierhoefer, 915 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, (202) 737-1030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under

continuing contract(s) with Hopeman Brothers, Inc., of Waynesboro, VA.

MC 150436 (Sub-1), filed December 6, 1982. Applicant: RUSH MOTOR TRANSIT, 260 S. Los Robles Ave., Pasadena, CA 91101. Representative: Milton McKay (Same address as applicant), (213) 793-0625. Transporting *petroleum and petroleum products*, between points in CA, AZ, NM, NV, UT, OR, ID, WY, MT, CO, WA, TX.

MC 159646 (Sub-3), filed December 2, 1982. Applicant: ENERGY TRUCKING, INC., 4100 So. 500 W, Salt Lake City, UT 84107. Representative: George Hammon (Same address as applicant), (801) 268-0909. Transporting *general commodities* (except classes A & B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Energy Fuels Nuclear, Inc. of Denver, Co.

MC 162397, filed December 7, 1982. Applicant: DAYTON TRUCKING, INC., 521 Brown St., Dayton, OH 45402. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215, (614) 228-8575. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163036 (Sub-1), filed December 6, 1982. Applicant: ANTHONY'S DELIVERY SERVICE, INC., 1196 W Broad St., Columbus, OH 43222. Representative: Earl N. Merwin, 85 E Gay St., Columbus, OH 43215, (614) 224-3161. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162457, filed December 6, 1982. Applicant: ROBERT E. ANDERSON, JR., 34 Greenridge Dr., Decatur, IL 62526. Representative: Patrick J O'Hara, P.O. Box 23, Petersburg, IL 62675, (217) 632-2878. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Decatur Bottling Company, of Decatur, IL.

MC 164557, filed December 7, 1982. Applicant: SEMINOLE REFINING, INC., P.O. Box 1217, Panama City, FL 32401. Representative: Mark S. Gray, 1006 South Tower, 225 Peachtree St., N.E., Atlanta, GA 30343, (404) 523-1717. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under

continuing contract(s) with A. E. Staley Manufacturing Company, of Decatur, IL.

MC 164977, filed December 2, 1982. Applicant: ABLE TRANSPORT, INC., 3484 Union St., P.O. Box 557, Mineral Ridge, OH 44440. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215, (614) 224-3161. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Syro Steel Company, of Girard, OH.

MC 164987, filed December 2, 1982. Applicant: NORRED TRUCKING AND MATERIALS, INC., 907 East 129th Ave., Tampa, FL 33612. Representative: Sheldon L. Wind, 2804 N. Central Ave., Tampa, FL 33602, (813) 224-9558. Transporting *clay, concrete, glass or stone products, sand, and agricultural products*, between those points in Fulton, De Kalb, Cobb, Clayton, Clark, Richmond, Chatham, Glynn, Dougherty, Chattahoochee, Bibb, Lowndes, Brooks, Decatur, Randolph, and Jefferson Counties, GA, those in Jefferson, Montgomery, Houston, Henry, Mobile, Dallas, Coosa, and Clay Counties, AL, Davidson, Shelby, Bradley, Knox, Madison, and Washington Counties, TN, Pulaski, Jefferson Union, Crittenden, and Miller Counties, AR, Charleston, Richland, Aiken, Greenville, Anderson, Florence, Georgetown, and York Counties, SC, Rankin, Jackson, Forrest, Lowndes, Washington, and Warren Counties, MS, New Hanover, Mecklenburg, Forsyth, Wake, Orange, and Chatham Counties, NC, Middlesex County, CT, Plaqueminis, Jefferson, St. Charles, and St. Bernard Parishes, LA, Nansemond County, VA, and points in FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165036, filed December 6, 1982. Applicant: ADVOCATE SERVICES, INC., P.O. Box 1510, Butler, PA 16001. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471-1800. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 165057, filed December 6, 1982. Applicant: NATIONS TRANSPORT CORPORATION, P.O. Box 4744, Syracuse, NY 13221. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th Street NW., Washington, DC 20036, (202) 783-8131. Transporting *general commodities* (except classes A and B explosives, household goods, and

commodities in bulk), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,  
Secretary.  
[PR Doc. 82-34537 Filed 12-20-82; 9:45 am]  
BILLING CODE 7035-01-M

[Volume No. OP3-057]

**Motor Carriers; Permanent Authority Applications; Republications of Grants of Operating Rights Authority Prior to Certification**

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the *Federal Register*.

An original and one copy of petition for leave to intervene must be filed with the Commission within 30 days after the date of this *Federal Register* notice addressing specifically the issue(s) indicated as the purpose for republication.

Agatha L. Mergenovich,  
Secretary.

MC 149565 (Sub-3) (Republication), filed April 12, 1982, published in the *Federal Register* issue of May 6, 1982. Applicant: G. L. DUNPHY & SON, INC., Box 2350, North Anson, ME 04958. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., Arlington, VA 22210. A Decision of the Commission, Review Board 3, decided August 23, 1982, and served September 14, 1982, finds that the performance by applicant of the service described herein to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown, and Covington IN, Buzzards Bay, Sagamore, Sandwich, and Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood, and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pompton Plains, Pemberton, and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tilsen, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malone, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris,

Sonyea, Linden, Oneida Castle, Red Oaks Mill, Fishkill Plains, St. Andrew, Plattekill, Iliion, and Stafford, NY, Berwick, Ellis, Dresden, Cadix, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham, and Crooksville, OH, and Heilwood, Mountain Home, Spring City, Seiple, Strawberry Ridge, Evers Grove, Pulaski, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Gol, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranon, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oadville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Bradford, Degolia, Custer City, Lewis Run, and Slatington, PA, on the one hand, and, on the other, points in the United States; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. CONDITIONS: To the extent that the authority granted embraces classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from the effective date of the certificate; and issuance of a certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423. The purpose of this republication is to give notice to those parties who have relied on the previous notice in the *Federal Register* of the application as published and may have an interest in, and would be prejudiced by the lack of proper notice to the authority granted to the extent it authorizes classes A and B explosives, household goods and service to Alaska and Hawaii.

MC 152914 (Sub-3) (republication), filed June 1, 1982, published in the *Federal Register* issue of June 25, 1982,

and republished this issue. Applicant: STATEWAY TRUCKING, INC., 2025 So. Morgan St., Chicago, IL 60608. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036, (202) 223-5900. A decision of the Commission, Review Board 2, decided August 31, 1982, and served September 15, 1982, finds that the performance by the applicant of the service described herein to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except household goods and classes A and B explosives), between Buckley and Enumclaw, WA, Big Sandy, Lacy, Series, Hornsby, Deanberg, Parkburg, and Silverton, TN, DeWalt and Herbert, TX, Ragan, Huntley, and Irvington, NE, Hunter, Salt Fork, LaMont, Eddy, Peckham, Middleton, and Simpson, OK, West Grove, Bloomfield, and Carbon, IA, Ehrhardt and Lodge, SC, Oakdale, MN, Davidson and Fordsville, KY, Waverly, FL, Kentmeer, DE, Ludlow, Randolph, and Newton Highlands, MA, Avondale, Elsonor, Eden Park, and Whitehall, OH, Centerville, Colon, Fairfax, Union City, Homer, Concord, Tekonsha, and Spring Arbor, MI, Rochester, Berry, Edinberg, Sharpsburg, Lakewood, Millersville, Beecher City, Iola, Louis, Windsor, Gays, Ashmore, Kansas, and Dudley, IL, Thorne, Cumberland, Gem, Greenfield, Charlottesville, Alysforth, Kouts, Hebron, Palmer, Leroy, Wallen, Huntertown, La Otto, Rupel, San Pierre, and Tefft, IN, Hepburnville, Earnst, Ironsides, Port Indian, and Betzwood, PA, Williamsville, Pittsford, Lima, Honeoye Falls, Woodbine, Aqueduct, E. Walden, Modena, Clintondale, Chauncey, Elmsford, and Eastview, NY, Finderne, E. Long Beach, Pompton West and Pompton Lakes, NJ, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. Condition: The certificate to be issued in this proceeding, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring five (5) years from the date of issuance. The purpose of the republication is to give notice to those parties who have relied on the previous notice in the *Federal Register* of the application as published and may have an interest in, and would be prejudiced by the lack of proper notice to the authority granted.

MC 162355 (republication) filed June 7, 1982, published in the *Federal Register*

issue of June 28, 1982. Applicant: UNIVERSAL INDUSTRIAL SERVICES, INC., 620 Wilbur Ave., Antioch, CA 94509. Representative: Elvis Lawhorn (same address as applicant), (415) 778-4430. A Decision of the Commission, Review Board 2, decided August 18, 1982 and served August 24, 1982, finds that the performance by applicant of the service will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hazardous materials*, between points in California, on the one hand, and, on the other, points in Owyhee County, ID, Union County, AR, and Washoe County, NV: That applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. Condition: The Certificate granted in this proceeding shall expire 5 years from its date of issuance. The purpose of this republication is to indicate that applicant is a *common carrier*.

[FR Doc. 82-34535 Filed 12-20-82; 9:45 am]

BILLING CODE 7035-01-M

#### [Volume No. 317]

#### Motor Carriers; Permanent Authority Decisions; Restriction Removals

Decided: December 15, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the *Federal Register* of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

#### Findings.

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 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 Shaffer, Williams, and Higgins.

Agatha L. Mergenovich,  
Secretary.

MC 40896 (Sub-2)X, filed November 8, 1982. Applicant: RUTGERS EXPRESS, INC., 6 Connerty Court, East Brunswick, NJ 08816. Representative: George A. Oslen, P.O. Box 357, Gladstone, NJ 07934. MC 20841 Subs 1, 2, 3, 4, 7, and 10 acquired thru FC-79963: (1) Broaden (a) general commodities, with exceptions to "general commodities (except classes A and B explosives and commodities in bulk)" in Sub 1 regular route, and "general commodities (except classes A and B explosives, commodities in bulk, and household goods)" in Sub 1 irregular route; (b) canned goods, processed food in packages, and foodstuffs to "food and related products" in Subs 1 and 2; and (c) paper products to "pulp, paper and related products" in Sub 1; (2) authorize service at all intermediate points, regular route portion Sub 1; (3) broaden (a) off-route point of Liberty to Sullivan County, NY in regular route portion, Sub 1; and (b) Sea Bright and Asbury Park to Monmouth County, NJ; New Rochelle, Mamaroneck, and White Plains, NY to Westchester County, NY and Fairfield County, CT; Woodbridge to Middlesex County, NJ; and Newark, Paterson, Passaic, and Perth Amboy to Hudson, Bergen, Essex Union, Passaic and Middlesex Counties, NJ in irregular route portion, Sub 1; (4) eliminate facility limitations at specified locations in Subs 2, 3, 4, 7 and 10; (5) change one-way to radial authority; and (6) remove the originating at and/or destined to restrictions in Subs 3, 4 and 10; (7) eliminate the restriction against service to those points in designated New Jersey counties which are within the New York, NY commercial zone in irregular route portion, Sub 1.

MC 45626 (Sub-78)X, filed November 23, 1982. Applicant: VERNON TRANSIT CO., INC., 135 St. Paul St., Burlington, VT 05402. Representative: L.C. Major, Jr., Suite 304, Overlook Bldg., 6121 Lincoln Rd., Alexandria, VA. Lead and Sub-33 certificates: (1) Lead certificate, Sheet No. 1, remove the restriction "against the transportation of any passengers or shipments who or which originate at Lebanon, NH, and terminate at White River Junction, VT, and terminate at Lebanon, NH which specifically impedes service at the intermediate point of Lebanon, NH; (2) lead

certificate, Sheet No. 5, authorize passenger service at all intermediate points on route for operating convenience only between Lowell and Tyngsboro, MA, and (3) sub 33, authorize service at all intermediate points on described regular route between Rutland, VT, and Junction Interstate Hwy 87 and unnumbered hwy near Glens Falls, NV, by eliminating the provision which restricts service at points between the FortAnn, NY—Kingsbury, NY town line and junction unnumbered hwy and Interstate Hwy 87 near Glens Falls "against the transportation of passengers, their baggage, express and newspapers originating at or destined to points south thereof."

MC 61335 (Sub-18)X, filed November 29, 1982. Applicant: TRANS-BRIDGE LINES, INC., 2012 Industrial Dr., Bethlehem, PA 18017. Representative: W. C. Mitchell, 370 Lexington Ave., New York, NY 10017. Subs 7, 9, 15, and 16; provide for passenger service at all intermediate points over described regular routes extending (1) between Belvidere, NJ, and Allentown, PA, Sub 7; (2) between Allentown, PA, and Hackettstown, NJ, Sub 9; (3) between Bethlehem, PA, and New York, NY, between Pluckemin, NJ, and Newark, NJ, and between Pluckemin, NJ, and Kearny, NJ, Sub 15; and (4) between Phillipsburg, NJ, and Atlantic City, NJ, and between Stroudsburg, PA, and jct. Pennsylvania Hwy 663 and Pennsylvania Hwy 9 (Pennsylvania Turnpike Extension), Sub 16; and eliminate provision restricting service at intermediate points by removing restriction "against the transportation of passengers originating at points west of Hackettstown, NJ, including New York, NY, or originating at New York, NY, and points east of Hackettstown, NJ, and destined to points west of Hackettstown, NJ" (Sub 9).

MC 86954 (Sub-10)X, filed November 23, 1982. Applicant: NODAK STAGES, INC., P.O. Box 638, Bismark, ND 58502. Representative: David Stockert (same as above). Lead certificate: Authorize passenger carrier service at all intermediate points along the described regular route between junction U.S. Highway 83 and North Dakota Hwy. 11 and Hague, ND.

MC 125115 (Sub-7)X, filed November 29, 1982. Applicant: EL PASO-LOS ANGELES LIMOUSINE EXPRESS, INC., 720 S. Oregon St. (P.O. Box 1183), El Paso, TX 79947. Representative: M. Ward Bailey, 2416 Continental Life Bldg., Fort Worth, TX 76102. Sub-5: Authorize passenger service to all

intermediate points between El Paso, TX and Los Angeles, CA.

MC 144989 (Sub-27)X, filed November 29, 1982. Applicant: BLUE RIDGE MOUNTAIN CONTRACT CARRIER, INC., P.O. Box 1965, Dalton, GA 30720. Representative: Malcolm Silvers (same address as applicant). Subs 1F, 6F, 7F, 8F, 10F, 13F, 15F, 16F, and 17F permits: broaden to "between all points in the US", under continuing contract(s) with named shippers, all Subs.

MC 146689 (Sub-18)X, filed November 22, 1982. Applicant: BLUE CHIP TRANSPORTATION COMPANY, 261 Maplewood Dr., Pottstown, PA 19464. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. Subs 2F, 3, and 4F permits: broaden to (A) "clay, concrete, glass or stone products" from glass containers, Sub 3F; and (B) "between points in the U.S. (except Alaska and Hawaii)," under continuing contract(s) with named shippers, all Subs.

[FR Doc. 82-34534 Filed 12-20-82; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 30059]

**Rail Carriers; Burlington Northern Railroad Co.; Trackage Rights Discontinuance Exemption; Over the Atchison, Topeka and Santa Fe Railway Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903-10906 the discontinuance of trackage rights by the Burlington Northern Railroad Company over 34.06 miles of the Atchison, Topeka, and Santa Fe Railway Company track between Augusta, KS and Winfield, KS in Butler and Cowley Counties, KS.

**DATES:** This exemption is effective on January 20, 1982. Petitions for reconsideration must be filed by January 10, 1983 and petitions for stay must be filed by January 3, 1983.

**ADDRESSES:** Send pleadings to:

- (1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Thomas A. Ehlinger, 176 East Fifth Street, St. Paul, MN 55101

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in

the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: December 13, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-34531 Filed 12-20-82; 8:45 am]  
BILLING CODE 7035-01-M

[Section 5b Application No. 7]

**Railroads Per Diem, Mileage, Demurrage and Storage Agreement**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of extension of time to file comments.

**SUMMARY:** In the Federal Register notice of October 26, 1982, (47 FR 47479), the date comments were due in this proceeding on the amended rate bureau agreement, Section 5b Application No. 7, was 60 days after Federal Register publication or December 27, 1982. Replies were due 90 days after publication or January 24, 1983. At the request of the Association of American Railroads, the due date has been postponed 60 days to February 25, 1983. Replies are postponed to March 29, 1983.

**DATES:** Comments are due February 25, 1983. Replies are due March 29, 1983.

**ADDRESS:** Send original and 15 copies to: Interstate Commerce Commission, Office of Proceedings, Room 5344, 12th and Constitution Avenue, NW., Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Douglas Galloway, (202) 275-7278.

By the Commission, Reese H. Taylor, Jr., Chairman

Dated: December 14, 1982.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-34533 Filed 12-20-82; 8:45 am]  
BILLING CODE 7035-01-M

[Ex Parte No. 387]

**Exemptions for Contract Tariffs**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notices of provisional exemptions

**SUMMARY:** Provisional exemptions are granted under 49 U.S.C. 10505 from the

notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

**DATES:** Protests are due within 15 days of publication in the **Federal Register**.

**ADDRESS:** An original and 6 copies should be mailed to: Office of the Secretary Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Galloway, (202) 275-7278

or

Tom Smerdon, (202) 275-7277

**SUPPLEMENTARY INFORMATION:** The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions.

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract no., and specifics	Review Board	Decided date
465	Missouri Pacific Railroad Co., ICC-MP-C-0207, (Galvanized pipe)	2	12-13-82
468	Illinois Central Gulf Railroad Co., ICC-ICG-C-0056, (Grain)	2	12-13-82
472	Southern Pacific Transportation Co., ICC-SP-C-0285, (Petroleum oil)	2	12-13-82

<sup>1</sup>Review Board No. 2, Members Carleton, Williams, and Ewing.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 82-34386 Filed 12-20-82; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### American Motors Corp. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the Address shown below, not later than January 3, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 13th day of December 1982.

Marvin M. Fooks.

Director, Office of Trade Adjustment Assistance.

#### APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Motors Corp., Jeep Plant (UAW)	Toledo, Ohio	11/30/82	11/23/82	TA-W-14,014	Jeeps.
American Motors Corp., Milwaukee Mfg. Plant (UAW)	Milwaukee, Wis.	11/30/82	11/23/82	TA-W-14,015	Stamping parts.
American Motors Corp., AM General South Bend (UAW)	South Bend, Ind.	11/30/82	11/23/82	TA-W-14,016	Vehicles, military.
Volkswagon of America (UAW)	Fort Worth, Tex.	11/30/82	11/24/82	TA-W-14,017	Parts, air conditioners, heaters, accessories—Volkswagon.
Volkswagon of America (UAW)	South Charleston W. Va.	11/30/82	11/24/82	TA-W-14,018	Auto stamping plant.
Volkswagon of America (UAW)	Westmoreland, Pa.	11/30/82	11/24/82	TA-W-14,019	Auto assembly plant (Rabbit).
Chrysler Corp., Hamtramck Assembly (UAW)	Hamtramck, Mich.	11/30/82	11/23/82	TA-W-14,020	Volare and Aspen—assembly.
Chrysler Corp., Jefferson Assembly (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,021	K cars, Aries, Reliant, E cars, and Dodge 600 assembly.
Chrysler Corp., Lynch Road (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,022	New York and Dodge Plymouth assembly.
Chrysler Corp., Mound Road Engine (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,023	Engines.
Chrysler Corp., Missouri Truck (UAW)	Fenton, Mo.	11/30/82	11/23/82	TA-W-14,024	Dodge van assembly.
Chrysler Corp., Twinsburg Stamping (UAW)	Twinsburg, Ohio	11/30/82	11/23/82	TA-W-14,025	Stamping—auto.
Chrysler Corp., St. Louis Assembly (UAW)	Fenton, Mo.	11/30/82	11/23/82	TA-W-14,026	LeBaron and Dodge 400 assembly.
Chrysler Corp., Warren Truck Assembly (UAW)	Warren, Mich.	11/30/82	11/23/82	TA-W-14,027	Dodge truck assembly.
Chrysler Corp., Harper Amplex (UAW)	Warren, Mich.	11/30/82	11/23/82	TA-W-14,028	Products—Metal, powered.
Chrysler Corp., Division Office (UAW)	Warren, Mich.	11/30/82	11/23/82	TA-W-14,029	Engineering and office and clerical.
Chrysler Corp., Detroit Universal Div. (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,030	Transmission—power and components.
Chrysler Corp., Mack Avenue Assembly (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,031	Stamping and assembly of small stampings.
Chrysler Corp., Outer Drive Mfg. Teck, Center (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,032	Engineering center.
Chrysler Corp., Eight Mile & Outer Drive Stamping (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,033	Stamping.
Chrysler Corp., Vernor Tool & Die (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,034	Tools and dies.
Chrysler Corp., Detroit Trim (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,035	Trim—auto.
Chrysler Corp., Chrysler Transportation (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,036	Trivers—transportation.
Chrysler Corp., McGraw Glass (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,037	Glass.
Chrysler Corp., Export-Import (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,038	Exports/imports.
Chrysler Corp., Emissions Test Facility (UAW)	Los Angeles, Calif.	11/30/82	11/23/82	TA-W-14,039	Emissions.
Chrysler Corp., Manufacturing Group & Stamping Office (UAW)	Detroit, Mich.	11/30/82	11/23/82	TA-W-14,040	Engineering and office and clerical.
Chrysler Corp., New Castle Machining & Forge (UAW)	New Castle, Ind.	11/30/82	11/23/82	TA-W-14,041	Forge and machinery.
Chrysler Corp., Trenton Engine (UAW)	Trenton, Mich.	11/30/82	11/23/82	TA-W-14,042	Engines.
Chrysler Corp., Trenton, Mich.	Trenton, Mich.	11/30/82	11/23/82	TA-W-14,043	Products—chemical brakes.
Chrysler Corp., Marine & Industrial (UAW)	Marysville, Mich.	11/30/82	11/23/82	TA-W-14,044	Engines—industrial.

## APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Chrysler Corp., Highland Park Complex (UAW)	Highland Park, Mich	11/30/82	11/23/82	TA-W-14,045	Engineering—maintenance and purchasing.
Chrysler Corp., Fostoria Foundry (UAW)	Fostoria, Ohio	11/30/82	11/23/82	TA-W-14,046	Casting.
Chrysler Corp., Highland Park Machining (UAW)	Highland Park, Mich	11/30/82	11/23/82	TA-W-14,047	Powerhouse.
Chrysler Corp., Indianapolis Foundry (UAW)	Indianapolis, Ind	11/30/82	11/23/82	TA-W-14,048	Castings.
Chrysler Corp., Introl Div. (UAW)	Ann Arbor, Mich	11/30/82	11/23/82	TA-W-14,049	Electronics and instruments.
Chrysler Corp., Kokomo Transmission (UAW)	Kokomo, Ind	11/30/82	11/23/82	TA-W-14,050	Transmissions.
Chrysler Corp., Warren Stamping (UAW)	Warren, Mich	11/30/82	11/23/82	TA-W-14,051	Stampings—auto.
Chrysler Corp., Detroit Forge & Axle (UAW)	Detroit, Mich	11/30/82	11/23/82	TA-W-14,052	Axles.
Chrysler Corp., Winfield Foundry (UAW)	Detroit, Mich	11/30/82	11/23/82	TA-W-14,053	Castings.
Chrysler Corp., Kokomo Castings (UAW)	Kokomo, Ind	11/30/82	11/23/82	TA-W-14,054	Die cast.
Chrysler Corp., Newark Assembly (UAW)	Newark, Del.	11/30/82	11/23/82	TA-W-14,055	K car, Aries, and Reliant assembly.
Chrysler Corp., Indianapolis Electrical (UAW)	Indianapolis, Ind	11/30/82	11/23/82	TA-W-14,056	Products—electrical.
Chrysler Corp., Sterling Stamping (UAW)	Sterling Hts., Mich	11/30/82	11/23/82	TA-W-14,057	Stamping—auto.
Chrysler Corp., Belvidere Assembly (UAW)	Belvidere, Ill	11/30/82	11/23/82	TA-W-14,058	Omni and Horizon assembly.
Chrysler Corp., Chelsea Proving Ground (UAW)	Chelsea, Mich	11/30/82	11/23/82	TA-W-14,059	Testing.
Chrysler Corp., Van Wert Complex (UAW)	Van Wert, Ohio	11/30/82	11/23/82	TA-W-14,060	Products—metal, powdered.
Chrysler Corp., Huntsville Electronics (UAW)	Huntsville, Ala	11/30/82	11/23/82	TA-W-14,061	Radios and electronics.
Chrysler Corp., Toledo Machining (UAW)	Perrysburg, Ohio	11/30/82	11/23/82	TA-W-14,062	Machinery—diversified and stamping.
Chrysler Corp., Nurses (UAW)	Detroit, Mich	11/30/82	11/23/82	TA-W-14,063	Nurses—industrial.
Chrysler Corp., Huber Foundry (UAW)	Detroit, Mich	11/30/82	11/23/82	TA-W-14,064	Castings.
Ford Motor Co., Wixom Assembly (UAW)	Wixom, Mich	11/30/82	11/24/82	TA-W-14,065	Lincoln, Mrk, Cont., Fairmont, Zephyr.
Ford Motor Co., Kansas City Assembly (UAW)	Kansas City Mo	11/30/82	11/24/82	TA-W-14,066	Fairmont, Zephyr.
Ford Motor Co., St. Louis Assembly (UAW)	St. Louis, Mo	11/30/82	11/24/82	TA-W-14,067	Mercury.
Ford Motor Co., Chesterfield Trim (UAW)	Utica, Mich	11/30/82	11/24/82	TA-W-14,068	Roof, vinyl covers, trim—seat.
Ford Motor Co., Utica Trim (UAW)	Utica, Mich	11/30/82	11/24/82	TA-W-14,069	Door trim panels, heat rests, seat trim covers, miscellaneous trim items.
Ford Motor Co., Lorain Assembly (UAW)	Lorain, Ohio	11/30/82	11/24/82	TA-W-14,070	T-Bird/XR7, Econoline Van.
Ford Motor Co., Chicago Assembly (UAW)	Chicago, Ill	11/30/82	11/24/82	TA-W-14,071	Granda/Cougar.
Ford Motor Co., San Jose Assembly (UAW)	San Jose, Calif	11/30/82	11/24/82	TA-W-14,072	Escort/Lynx, EXP/LN7.
Ford Motor Company, Dearborn Assembly (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,073	Mustang/Capri.
Ford Motor Co., B & A Gen. Office (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,074	General office.
Ford Motor Co., Louisville Assembly (UAW)	Louisville, Ky	11/30/82	11/24/82	TA-W-14,075	Ranger, light truck.
Ford Motor Co., Kentucky Truck (UAW)	Louisville, Ky	11/30/82	11/24/82	TA-W-14,076	Medium and heavy trucks.
Ford Motor Co., Twin Cities Assembly (UAW)	St. Paul, Minn	11/30/82	11/24/82	TA-W-14,077	Light trucks.
Ford Motor Co., Atlanta Assembly (UAW)	Atlanta, Ga	11/30/82	11/24/82	TA-W-14,078	Granada/Cougar, Fairmont/Zephyr.
Ford Motor Co., Wayne Assembly (UAW)	Wayne, Mich	11/30/82	11/24/82	TA-W-14,079	Escort/Lynx.
Ford Motor Co., Michigan Truck (UAW)	Wayne, Mich	11/30/82	11/24/82	TA-W-14,080	Bronco, light trucks.
Ford Motor Co., Ohio Truck (UAW)	Avonlake, Ohio	11/30/82	11/24/82	TA-W-14,081	Econoline van.
Ford Motor Co., Vulcan Forge (UAW)	Detroit, Mich	11/30/82	11/24/82	TA-W-14,082	Connecting rods for engines.
Ford Motor Co., Research & Eng. Pattern Shop Operators (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,083	Research and engineering.
Ford Motor Co., Sheffield (UAW)	Sheffield, Ala	11/30/82	11/24/82	TA-W-14,084	Cases, extension—transmission pistons, castings, aluminum.
Ford Motor Co., Sheldon Road (UAW)	Plymouth, Mich	11/30/82	11/24/82	TA-W-14,085	Heater and air conditioner controls and assemblies.
Ford Motor Co., Green Island (UAW)	Green Island, NY	11/30/82	11/24/82	TA-W-14,086	Radiators and heater cores.
Ford Motor Co., Ypsilanti Plant (UAW)	Ypsilanti, Mich	11/30/82	11/24/82	TA-W-14,087	Parts—small, bumper shock absorbers, struts.
Ford Motor Co., Rawsonville Plant (UAW)	Rawsonville, Mich	11/30/82	11/24/82	TA-W-14,088	Carburetors, alternators, throttle bodies, speedometer fram and shaft, motor for heater, master brake cylinders, cooling fans.
Ford Motor Co., Sandusky Plant (UAW)	Sandusky, Ohio	11/30/82	11/24/82	TA-W-14,089	Window regulators, door latches, lamps, air cleaners, starter motor drives, carbon canister, and other small parts.
Ford Motor Co., Dearborn Engine (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,090	Fuel tank, rocker arms, 4 cylinder auto engines.
Ford Motor Co., Engine Div. Gen. Office (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,091	General office.
Ford Motor Co., Lima Engine (UAW)	Lima, Ohio	11/30/82	11/24/82	TA-W-14,092	Engines—auto 4 and 6 cylinder engines—truck, medium 8 cylinder engines—econoline.
Ford Motor Co., Wixom Warehouse (UAW)	Wixom, Mich	11/30/82	11/24/82	TA-W-14,093	Support service.
Ford Motor Co., Glass Teck, Center (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,094	Windshields and backlites.
Ford Motor Co., Dearborn Glass Plant (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,095	Windshields and backlites.
Ford Motor Co., Nashville Glass (UAW)	Nashville, Tenn	11/30/82	11/24/82	TA-W-14,096	Windshields, backlites, bodyside glass.
Ford Motor Co., Tulsa Glass (UAW)	Tulsa, Okla	11/30/82	11/24/82	TA-W-14,097	Backlites and body glass.
Ford Motor Co., Woodhaven Stamping (UAW)	Woodhaven, Mich	11/30/82	11/24/82	TA-W-14,098	Stampings—auto.
Ford Motor Co., Walton Hills Stamping (UAW)	Cleveland, Ohio	11/30/82	11/24/82	TA-W-14,099	Stamp—auto.
Ford Motor Co., Chicago Stamping (UAW)	Chicago, Ill	11/30/82	11/24/82	TA-W-14,100	Stampings—auto.
Ford Motor Co., Dearborn Frame (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,101	Door hinges, frames, and stampings.
Ford Motor Co., Dearborn Stamping (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,102	Stampings—auto.
Ford Motor Co., Dearborn Tool & Die (UAW)	Dearborn, Mich	11/30/82	11/24/82	TA-W-14,103	Tools and dies.
Ford Motor Co., Monroe Plant (UAW)	Monroe, Mich	11/30/82	11/24/82	TA-W-14,104	Front and rear bumpers, coil springs, front stabilizer bars, sheels catalytic converters, small stampings.
Ford Motor Co., Buffalo Stamping (UAW)	Buffalo, N.Y.	11/30/82	11/24/82	TA-W-14,105	Stampings—auto.
Ford Motor Co., Maumee Stamping (UAW)	Maumee, Ohio	11/30/82	11/24/82	TA-W-14,106	Stampings—auto.
Ford Motor Co., Mt. Clemens Paint (UAW)	Mount Clemens, Mich	11/30/82	11/24/82	TA-W-14,107	Interior and exterior primers, enamels and resins.
Ford Motor Co., Mt. Clemens Vinyl (UAW)	Mount Clemens, Mich	11/30/82	11/24/82	TA-W-14,108	Vinyl film, vinyl materials, headlining, vinyl urethane composites.
Ford Motor Co., Milan Plastics (UAW)	Milan, Mich	11/30/82	11/24/82	TA-W-14,109	Instrument panels, fan shrouds, load floors, grill opening panels, and miscellaneous exterior plastic body parts.
Ford Motor Co., Saline Plant (UAW)	Saline, Mich	11/30/82	11/24/82	TA-W-14,110	Instrument cluster, radiator grills, and miscellaneous plastic body chassis and electrical parts, instrument panels.
Ford Motor Co., Livonia Plant (UAW)	Livonia, Mich	11/30/82	11/24/82	TA-W-14,111	C-6 transmissions, ADD for Ford and flywheels.
Ford Motor Co., Sterling Plant (UAW)	Sterling, Mich	11/30/82	11/24/82	TA-W-14,112	Drive shafts and rear axles.
Ford Motor Co., Canton Forge (UAW)	Canton, Ohio	11/30/82	11/24/82	TA-W-14,113	Spindles, sector shafts pinion gears, yokes and universal joint spindlers, output shafts, and side gears.
Ford Motor Co., Batavia Plant (UAW)	Cincinnati, Ohio	11/30/82	11/24/82	TA-W-14,114	ATX for Escort and Lynx.
Ford Motor Co., Sharonville Plant (UAW)	Cincinnati, Ohio	11/30/82	11/24/82	TA-W-14,115	C-5 transmissions.

## APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ford Motor Co., Indianapolis Plant (UAW)	Indianapolis, Ind.	11/30/82	11/24/82	TA-W-14,116	Steering columns, bolts, power steering pumps, XR-50 gears, rack and pinion gear.
Ford Motor Co., Van Dyke Plant (UAW)	Van Dyke, Mich.	11/30/82	11/24/82	TA-W-14,117	Rear axle assemblies, upper suspension arms, lower suspension arms, rear suspension arms, front wheel drive, spindle front wheel.
Ford Motor Co., Highland Park Tractor (UAW)	Highland Park, Mich.	11/30/82	11/24/82	TA-W-14,118	Tractors.
Ford Motor Co., Romeo Tractor & Equipment (UAW)	Romeo, Mich.	11/30/82	11/24/82	TA-W-14,119	Tractor, backhoe, loaders, and related equipment.
Ford Motor Co., KC Supply Depot (UAW)	Kansas City, Mo.	11/30/82	11/24/82	TA-W-14,120	Distributors and suppliers of tractors and related parts.
Ford Motor Co., Dallas Supply Depot (UAW)	Dallas, Tex.	11/30/82	11/24/82	TA-W-14,121	Distributors and suppliers of tractors and related parts.
Ford Motor Co., Atlanta Supply Depot (UAW)	Atlanta, Ga.	11/30/82	11/24/82	TA-W-14,122	Distributors and suppliers of tractors and related parts.
Ford Motor Co., Memphis Supply Depot (UAW)	Memphis, Tenn.	11/30/82	11/24/82	TA-W-14,123	Distributors and suppliers of tractors and related parts.
Ford Motor Co., Detroit Supply Depot (UAW)	Troy, Mich.	11/30/82	11/24/82	TA-W-14,124	Distributors and suppliers of tractors and related parts.
Ford Motor Co., Birmingham Supply Depot (UAW)	Troy, Mich.	11/30/82	11/24/82	TA-W-14,125	Distributor and suppliers of tractors and related parts.
Ford Motor Co., Oakland Supply Depot (UAW)	Oakland, Calif.	11/30/82	11/24/82	TA-W-14,126	Distributor and suppliers of tractors and related parts.
Rouge Steel Co., Rouge Steel (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,127	Steel.
Rouge Steel Co., Rouge Power (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,128	Steel.
Ford Motor Co., Seattle Parts Depot (UAW)	Seattle, Wash.	11/30/82	11/24/82	TA-W-14,129	Parts distribution.
Ford Motor Co., Detroit Distribution (UAW)	Detroit, Mich.	11/30/82	11/24/82	TA-W-14,130	Service and parts distribution.
Ford Motor Co., Cincinnati Distribution (UAW)	Cincinnati, Ohio	11/30/82	11/24/82	TA-W-14,131	Service and parts distribution.
Ford Motor Co., Kansas City Distribution (UAW)	Kansas City, Mo.	11/30/82	11/24/82	TA-W-14,132	Service and parts distribution.
Ford Motor Co., Detroit Industrial Engine (UAW)	Detroit, Mich.	11/30/82	11/24/82	TA-W-14,133	Service—engine.
Ford Motor Co., Chicago Distribution (UAW)	Chicago, Ill.	11/30/82	11/24/82	TA-W-14,134	Service and parts distribution.
Ford Motor Co., San Francisco Distribution (UAW)	San Jose, Calif.	11/30/82	11/24/82	TA-W-14,135	Service and parts distribution.
Ford Motor Co., Ford Redistribution (Brownstown) (UAW)	Brownstown, Mich.	11/30/82	11/24/82	TA-W-14,136	Distribution.
Ford Motor Co., National Distribution (UAW)	Detroit, Mich.	11/30/82	11/24/82	TA-W-14,137	Service and parts distribution.
Ford Motor Co., Detroit Area Distribution (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,138	Service and parts distribution.
Ford Motor Co., Ford Parts & Service Div. (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,139	Parts service.
Ford Motor Co., FCS Detroit Parts Depot (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,140	Parts distribution.
Ford Motor Co., FP & DS Gen Office (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,141	Office—headquarters.
Ford Motor Co., Dallas Distribution (UAW)	Dallas, Tex.	11/30/82	11/24/82	TA-W-14,142	Service and parts distribution.
Ford Motor Co., Atlanta Distribution (UAW)	Atlanta, Ga.	11/30/82	11/24/82	TA-W-14,143	Service and parts distribution.
Ford Motor Co., Twin Cities Distribution (UAW)	St. Paul, Minn.	11/30/82	11/24/82	TA-W-14,144	Service and parts distribution.
Ford Motor Co., Memphis Distribution (UAW)	Memphis, Tenn.	11/30/82	11/24/82	TA-W-14,145	Service and parts distribution.
Ford Motor Co., Mahwah (Teterboro) NY Parts (UAW)	Mahwah, NJ	11/30/82	11/24/82	TA-W-14,146	Parts service.
Ford Motor Co., Delaware Valley Distribution (UAW)	Delaware, NJ	11/30/82	11/24/82	TA-W-14,147	Service and parts distribution.
Ford Motor Co., Virginia Distribution (UAW)	Richmond, Va.	11/30/82	11/24/82	TA-W-14,148	Service and parts distribution.
Ford Motor Co., Denver Distribution (UAW)	Denver, Colo.	11/30/82	11/24/82	TA-W-14,149	Service and parts distribution.
Ford Motor Co., Los Angeles Distribution (UAW)	Pico Rivera, Calif.	11/30/82	11/24/82	TA-W-14,150	Service and parts distribution.
Ford Motor Co., Charlotte Distribution (UAW)	Charlotte, NC	11/30/82	11/24/82	TA-W-14,151	Service and parts distribution.
Ford Motor Co., Jacksonville Distribution (UAW)	Jacksonville, Fla.	11/30/82	11/24/82	TA-W-14,152	Service and parts distribution.
Ford Motor Co., Research & Engineering, Engineering Facility & Service Office (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,153	Research, engineering, and service office.
Ford Motor Co., Rouge Sales Operations Staff Ren Cen. (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,154	Sales office.
Ford Motor Co., Rouge Gen. Office Ford Div. (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,155	General office.
Ford Motor Co., Rouge Area Central Accounting Service (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,156	Accounting service.
Ford Motor Co., Rouge Area NAAO Staff (UAW)	Dearborn, Mich.	11/30/82	11/24/82	TA-W-14,157	Office.

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## [TA-W-13,280-13,326]

### General Motors Corp.; Affirmation of Negative Determination Regarding Eligibility for Worker Adjustment Assistance

On September 30, 1982, a negative determination was made regarding worker petitions TA-W-13,280-13,326 for trade adjustment assistance filed by the United Auto Workers in behalf of workers and former workers of General Motors Corporation at the facilities listed in the Appendix. The notice of negative determination was published in the Federal Register on October 15, 1982 (47 FR 46160). The determination was based on group eligibility requirements

of Section 222 of the Trade Act of 1974, 19 U.S.C. 2272, which were mandated at the time of denial by the Act as amended by Section 2501 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35.

Title XXV of the Omnibus Budget Reconciliation Act of 1981 amended worker adjustment assistance provisions of the Trade Act of 1974. Among the amendments was one that changed the group eligibility requirements from:

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or

production," Section 222(3) of the Trade Act of 1974, (Italic added for emphasis).

to:

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof were a substantial cause of such total or partial separation, or threat thereof, and of such decline in sales or production." Section 2501 of the Omnibus Budget Reconciliation Act of 1981. (Italic added for emphasis).

Subsequently, the Miscellaneous Revenue Act of 1982, (Public Law 97-362) enacted on October 25, 1982, postponed implementation of the amended group eligibility requirements until October 1, 1983. Because of the subsequent change in group eligibility

requirements, the Department of Labor reopened the cases in light of the "contributed importantly" test to ascertain whether a different outcome on the decision was required.

Upon reconsideration of these petitions using the "Contributed importantly" eligibility requirements, the Department concludes that the requirements of Section 222 for certification are not met.

Petitioning workers were engaged in employment related to the production and sales of all of the firms car lines. Therefore, the Department considered the effect of import competition in all categories of automobiles produced by General Motors. Information gathered in the factfinding investigation confirms that imports of foreign made automobiles did not contribute importantly to total or partial separation of workers, nor to the decline in sales or production. (See the attached Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued on September 30, 1982).

#### Conclusion

After careful reconsideration of the case file, I conclude that all workers of the facilities of General Motors Corporation listed in the Appendix are denied eligibility under the "contributed importantly" test to apply for adjustment assistance pursuant to the Trade Act of 1974.

Signed at Washington, D.C., on this 9th day of December 1982,

Harold A. Bratt,

Deputy Director, Office of Program Management Unemployment Insurance Service.

#### APPENDIX

TA-W No.	Facility	Location
<b>General Motors Corp., Chevrolet Motor Division</b>		
13,280	Central Office	Warren, MI.
13,281	Engineering Center	Warren, MI.
<b>General Motors Corp., Central Office</b>		
13,282	Central Office	Hackensack, NJ.
13,283	Central Office	Atlanta, GA.
13,284	Central Office	Pontiac, MI.
13,285	Central Office	Mesa, AZ.
<b>General Motors Corp., Buick Motor Division</b>		
13,286	Zone Sales Office	Denver, CO.
13,287	Zone Sales Office	Overland Park, KS.
13,288	Zone Sales Office	No. Quincy, MA.
13,289	Zone Sales Office	Farmington Hills, MI.
13,290	Zone Sales Office	White Plains, NY.
13,291	Zone Sales Office	Williamsville, NY.
13,292	Zone Sales Office	Rocky River, OH.
13,293	Zone Sales Office	Memphis, TN.
13,294	Zone Sales Office	Rockville, MD.
13,295	Zone Sales Office	Wauwatosa, WI.

#### APPENDIX—Continued

TA-W No.	Facility	Location
<b>General Motors Corp., Cadillac Motor Division</b>		
13,296	Zone Sales Office	Westlake Village.
13,297	Zone Sales Office	Fremont, CA.
13,298	Zone Sales Office	Jacksonville, FL.
13,299	Zone Sales Office	Oak Brook, IL.
13,300	Zone Sales Office	Overland Park, KS.
13,301	Zone Sales Office	Rockville, MD.
13,302	Zone Sales Office	Wellesley, MA.
13,303	Zone Sales Office	Edina, MN.
13,304	Zone Sales Office	Paramus, NJ.
13,305	Zone Sales Office	Wayne, PA.
13,306	Zone Sales Office	Beachwood, OH.
13,307	Zone Sales Office	Beaverton, OR.
<b>General Motors Corp., Oldsmobile Motor Division</b>		
13,308	Zone Sales Office	Fremont, CA.
13,309	Regional and Zone Sales Office	Oak Brook, IL.
13,310	Zone Sales Office	Overland Park, KS.
13,311	Regional and Zone Sales Office	Southfield, MI.
13,312	Regional and Zone Sales Office	Tarrytown, NY.
13,313	Zone Sales Office	Williamsville, NY.
13,314	Zone Sales Office	Charlotte, NC.
13,315	Regional and Zone Sales Office	Irving, TX.
<b>General Motors Corp., Pontiac Motor Division</b>		
13,316	Zone Sales Office	Westlake Village.
13,317	Zone Sales Office	Atlanta, GA.
13,318	Zone Sales Office	Overland Park, KS.
13,319	Zone Sales Office	Rockville, MD.
13,320	Zone Sales Office	Wellesley, MA.
13,321	Zone Sales Office	St. Louis, MO.
13,322	Zone Sales Office	Charlotte, NC.
13,323	Zone Sales Office	Cleveland, OH.
13,324	Zone Sales Office	Oklahoma City, OK.
13,325	Zone Sales Office	Memphis, TN.
13,326	Zone Sales Office	Brookfield, WI.

[TA-W-13,280-13,326]

#### General Motors Corp., Detroit, Michigan; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision were a substantial cause of the separations, or threat thereof, and of

the absolute decline in sales or production.

The investigation was initiated on February 26, 1982 in response to petitions received on February 18, 1982 which were filed on behalf of workers providing a variety of support services at the facilities of General Motors Corporation listed in the Appendix.

The investigation revealed that criterion (3) has not been met.

During 1980 the Department issued certifications of eligibility to apply for trade adjustment assistance benefits applicable to workers at a number of support facilities (primarily sales and administrative staff) of the Central Office and each of the automotive divisions (Chevrolet, Buick, Cadillac, Oldsmobile, Pontiac) of General Motors Corporation. The certifications were based on the finding that increased imports of automobiles contributed importantly to declines in sales and employment experienced by G.M. facilities in model year (MY) 1979 and MY 1980 (October 1979-September 1980).

The Department established a termination date of November 1980 (after the end of MY 1980) in these certifications. The present group of petitions were filed by officials of General Motors Corporation because layoffs occurred at a number of the firm's support facilities subsequent to November 1980. Model years 1981 and 1982 are therefore the relevant periods under investigation regarding the present group of petitions.

Since workers at support facilities of General Motors Corporation are engaged in employment related to the production and sales of all of the firm's car lines, the Department must consider the effect of import competition in all categories of automobiles in order to determine whether increased import competition was a substantial cause of the layoffs which occurred at these G.M. facilities.

U.S. imports of subcompact automobiles decreased, in quantity, absolutely and relative to domestic production in MY 1981 from MY 1980 and in the first six months of MY 1982 (October 1981-March 1982) from the same period of MY 1981. Compared to the same quarter of the previous model year, imports of subcompact automobiles decreased, in quantity, in three of the four quarters of MY 1981 and in each of the first two quarters of MY 1982. Compared to the previous model year, U.S. production of subcompact automobiles increased during each year of the MY 1978-MY 1981 period.

U.S. imports of compact automobiles decreased, in quantity, relative to domestic production in MY 1981 from MY 1980 and decreased absolutely, in quantity, in the first six months of MY 1982 from the same period of MY 1981. Compared to the same quarter of the previous model year, imports of compact automobiles decreased, in quantity, in four of the six quarters from the first quarter of MY 1981 through the second quarter of MY 1982. U.S. production of compact automobiles increased in MY 1981 from MY 1980.

U.S. imports of intermediate automobiles decreased, in quantity, in MY 1981 from MY 1980 and in the first six months of MY 1982 from the same period of MY 1981.

U.S. imports of luxury/specialty automobiles decreased, in quantity, absolutely and relative to domestic production in MY 1981 from MY 1980. Compared to the same quarter of the previous model year, imports of luxury/specialty automobiles decreased, in quantity, relative to domestic production in each of the last three quarters of MY 1981.

Domestic production by General Motors Corporation of intermediate and luxury/specialty automobiles increased, in quantity, in each category in MY 1981 from MY 1980.

Workers at the support facilities of the central Office and each of the automotove divisions of General Motors Corporation are not separately identifiable by automobile category. Standard automobiles accounted for a relatively small proportion of total sales and domestic production by General Motors Corporation during the period under investigation. Any import influence in this automobile category could not be considered a substantial cause of the overall employment declines which occurred at support facilities of General Motors Corporation.

Two factors which contributed to declines in sales and employment throughout the automobile industry in model years 1981 and 1982 are the general recession in the U.S. economy and the high interest rates which prevailed during this period. These two developments had a significant adverse impact on automobile sales in the United States during the period under investigation.

The overall negative influence of the recession and high interest rates can be illustrated by the fact that retail sales of all automobiles in the U.S. market by General Motors Corporation, by other North American automobile manufacturers, and by foreign automobile manufacturers decreased, in quantity, in MY 1981 from MY 1980 and

in the first six months of MY 1982 compared to the same period of MY 1981. Sales by Ford Motor Company, Chrysler Corporation, American Motors Corporation and Volkswagen of America.

These sales also include automobiles produced by their assembly plants in Canada. Imports from Canada represented a relatively small proportion of total U.S. sales and production. G.M.'s market share of these retail sales decreased by approximately one percentage point in MY 1981 from MY 1980 and by two percentage points in the first six months of MY 1982 from the same period of MY 1981. The market share of retail sales held by foreign automobile manufacturers remained the same in MY 1981 from MY 1980 before increasing by one percentage point in the first six months of MY 1982 from the comparable MY 1981 period. The market share held by other North American automobile manufacturers increased by one percentage point in MY 1981 from MY 1980 and by another percentage point in the first six months of MY 1982 from the comparable MY 1981 period. Therefore, most of the market share in retail sales which was lost by General Motors Corporation in MY 1981 and the first six months of MY 1982 was replaced by other North American automobile manufacturers' sales, not by foreign automobile manufacturers' sales.

### Conclusion

After careful review, I determine that all workers of the facilities of General Motors Corporation listed in the Appendix are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of September 1982.

Harold A. Bratt,

Acting Deputy Director, Office of Program Management, Unemployment Insurance Service.

### APPENDIX

TA-W #	Facility	Location
<b>General Motors Corporation, Chevrolet Motor Division</b>		
13,280	Central Office	Warren, MI.
13,281	Engineering Center	Do.
<b>General Motors Corporation, Central Office</b>		
13,282	Central Office	Hackensack, NJ.
13,283	do	Atlanta, GA.
13,284	do	Pontiac, MI.
13,285	do	Mesa, AZ.
<b>General Motors Corporation, Buick Motor Division</b>		
13,286	Zone Sales Office	Denver, CO.
13,287	do	Overland Park, KS.
13,288	do	No. Quincy, MA.
13,289	do	Farmington Hills, MI.

### APPENDIX—Continued

TA-W #	Facility	Location
13,290	do	White Plains, NY.
13,291	do	Williamsville, NY.
13,292	do	Rocky River, OH.
13,293	do	Memphis, TN.
13,294	do	Rockville, MD.
13,295	do	Wauwatosa, WI.
<b>General Motors Corporation, Cadillac Motor Division</b>		
13,296	Zone Sales Office	Westlake Village.
13,297	do	Fremont, CA.
13,298	do	Jacksonville.
13,299	do	Oak Brook, IL.
13,300	do	Overland Park, KS.
13,301	do	Rockville, MD.
13,302	do	Wellesley, MA.
13,303	do	Edina, MN.
13,304	do	Paramus, NJ.
13,305	do	Wayne, PA.
13,306	do	Beachwood, OH.
13,307	do	Beaverton, OR.
<b>General Motors Corporation, Oldsmobile Motor Division</b>		
13,308	Zone Sales Office	Fremont, CA.
13,309	Regional and Zone Sales Office	Oak Brook, IL.
13,310	Zone Sales Office	Overland Park, KS.
13,311	Regional and Zone Sales Office	Southfield, MI.
13,312	do	Tarrytown, NY.
13,313	Zone Sales Office	Williamsville, NY.
13,314	do	Charlotte, NC.
13,315	Regional and Zone Sales Office	Irving, TX.
<b>General Motors Corporation, Pontiac Motor Division</b>		
13,316	Zone Sales Office	Westlake Village.
13,317	do	Atlanta, GA.
13,318	do	Overland Park, KS.
13,319	do	Rockville, MD.
13,320	do	Wellesley, MA.
13,321	do	St. Louis, MO.
13,322	do	Charlotte, NC.
13,323	do	Cleveland, OH.
13,324	do	Oklahoma City, OK.
13,325	do	Memphis, TN.
13,326	do	Brookfield, WI.

[FR Doc. 82-34468 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,776]

### Gibson, Inc.; Kalamazoo, Mich.; Amended Determination on Reconsideration

On November 17, 1982, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of the Gibson, Incorporated's plant in Kalamazoo, Michigan. This determination was published in the Federal Register on December 7, 1982 (47 FR 55053).

The union claims that the April 1, 1982 termination date in the initial certification denies many workers trade adjustment assistance who were adversely affected by imports.

The Department's reconsideration investigation showed that the April 1, 1982 termination date was set because Gibson Incorporated began transferring production of the Epiphone line of

musical instruments in April 1982 from a corporate facility in the Orient to the Kalamazoo plant. Company imports from the Orient would cease when the production transfer was completed. However, the Department further found that although the Kalamazoo plant began Epiphone production in April 1982, the company continued to import the Epiphone line. Current plans are to make the Kalamazoo plant solely a distribution center for the imported Epiphone line when the Gibson line of musical instruments is moved to a corporate facility in Nashville, Tennessee in 1983. Production of the Epiphone line at Kalamazoo ceased on October 15, 1982 and all workers producing that line were laid off by that date. Production ceased because that Kalamazoo plant could not produce the Epiphone line of musical instruments as cheaply as they could import them.

U.S. imports of fretted musical instruments increased absolutely in 1981 compared to 1980 and in the first nine months of 1982 compared to the same period in 1981. The imports to production ratio (I/P) was 393.0 percent in 1981.

#### Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of fretted musical instruments contributed importantly to the total or partial separations of former workers at the Kalamazoo, Michigan plant of Gibson, Incorporated. In accordance with the provisions of the Trade Act of 1974, I make the following amended determination: All workers of Gibson, Incorporated, Kalamazoo, Michigan who became totally or partially separated from employment on or after March 16, 1981 and before October 16, 1982 are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of December 1982.

Robert A. Schaeffl,

Director, Office of Program Management  
Unemployment Insurance Service.

[FR Doc. 82-34472 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-30-M

#### TRW, Inc., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 6, 1982-December 10, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-13,063; TRW, Inc., Ross Gear Div., Greeneville, TN

TA-W-13,361; Brown Boveri Electric, Inc., Downey, CA

TA-W-13,135; Mass Machine & Stamping, Inc., Nashua, NH

TA-W-13,038; Margaret Fashions, Panama City, FL

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-13,131; Jeep Corp., Toledo, OH

TA-W-13,382; RCA Corp., Picture Tube Div., Marion, IN

TA-W-13,267; RCA Corp., Picture Tube Div., Dunmore, PA

TA-W-13,397; Fitchburg Foundry, Inc., Fitchburg, MA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-13,374; Davis Coal Co., Kermit, WV

Aggregate U.S. imports of metallurgical coal and coke did not increase as required for certification.

TA-W-13,274; Dietz & Co., Inc., East Norwalk, CT

Aggregate U.S. imports of boy's sportcoats did not increase as required for certification.

TA-W-13,387; Commercial Honing of Detroit, Ltd., Warren, MI

The investigation revealed that criterion (3) has not been met. The

workers' firm did not produce an article as required for certification under Section 222 of the Trade Act of 1974.

#### Affirmative Determinations

TA-W-13,355; General Electric Co., Special Products Dept., Auburn, NY

A certification was issued in response to a petition received on March 12, 1982 covering all workers separated on or after March 5, 1981.

TA-W-13,357; Rhone Poulenc, New Brunswick, NJ

A certification was issued in response to a petition received on March 1, 1982 covering all workers producing metronidazole who became separated on or after January 1, 1982.

TA-W-13,053; Tree Island Steel, Inc., Carson, CA

A certification was issued in response to a petition received on October 6, 1981 covering all workers separated on or after September 16, 1980.

TA-W-13,330; Brigham Apparel Corp., Brigham City, UT

A certification was issued in response to a petition received on February 23, 1982 covering all workers separated on or after July 24, 1981 and before April 1, 1982.

TA-W-13,331; Brigham Sportswear, Brigham City, UT

A certification was issued in response to a petition received on February 23, 1982 covering all workers separated on or after July 24, 1981 and before April 1, 1982.

TA-W-13,331A; The Los Angeles Plant of Sifton Brothers, Inc., Los Angeles, CA

A certification was issued in response to a petition received on February 23, 1982 covering all workers separated on or after July 24, 1981 and before April 1, 1982.

TA-W-12,583; Fulton Shirt Co., Fulton Street, Elizabeth, NJ

A certification was issued in response to a petition received on March 27, 1981 covering all workers separated on or after March 27, 1980 and before July 1, 1981.

TA-W-12,584; Fulton Shirt Co., Division Street, Elizabeth, NJ

A certification was issued in response to a petition received on March 27, 1981 covering all workers separated on or after March 27, 1980 and before July 1, 1981.

TA-W-13,120; RCA Corp., Consumer Electronics Div., Bloomington, IN

A certification was issued in response to a petition received on November 27, 1981 covering all workers engaged in

employment related to the production of color television components and subassemblies who became separated on or after December 4, 1981 and before October 3, 1982.

TA-W-13,327; Arvin Industries, Inc.,  
Princeton, KY

A certification was issued in response to a petition received on February 24, 1982 covering all workers separated on or after December 1, 1981.

TA-W-13,336; Missouri Resource  
Service, Mineral Point, MO

A certification was issued in response to a petition received on February 23, 1982 covering all workers separated on or after December 1, 1981.

TA-W-13,362; DeSoto Mining Co., Inc.,  
Richwood, MO

A certification was issued in response to a petition received on March 15, 1982 covering all workers engaged in employment related to production of drilling mud grade barite who became separated on or after November 1, 1981.

TA-W-13,363; DeSoto Mining Co., Inc.,  
Kingston, MO

A certification was issued in response to a petition received on March 15, 1982 covering all workers engaged in employment related to production of drilling mud grade barite who became separated on or after November 1, 1981.

TA-W-13,026; Act III Distribution  
Center, Spartanburg, SC

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,027; Andrew Knit,  
Tuscaloosa, AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,031; Debra Knit, Northport,  
AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,032; Eufaula Fashions,  
Eufaula, AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,036; Livingston Fashions,  
Livingston, AL

A certification was issued in response to a petition received on October 5, 1981

covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,039; Oxford Fashions, Oxford  
AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,041; Roanoke Fashions,  
Roanoke, AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,044; Stevens Fashions,  
Carrollton, AL

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

I hereby certify that the aforementioned determinations were issued during the period December 6, 1982-December 10, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 14, 1982.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment  
Assistance.

[FR Doc. 82-34470 Filed 12-20-82; 8:45 am]  
BILLING CODE 4510-30-M

## Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1-5 of Executive Order 12196 of February 26, 1980, published in the Federal Register February 27, 1980 (45 FR 12769), will meet on January 12, 1983 starting at 10:00 a.m. in Rooms N5437 A,B,C, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue N.W., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

- I. Call to Order.
- II. Announcement of Appointments.
- III. Approval of Minutes of October 6, 1982 Meeting.
- IV. Election of Vice Chairman.

V. Presidential Safety and Health Policy Statement.

VI. Reports.

A. Activities of Standing Committee on Federal Occupational Safety and Health.

B. Proposed FACOSH Action Plans.

C. Criteria for President's Safety and Health Awards.

D. Consideration of the FARS Report.

VII. New Business.

VIII. Adjournment.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business January 7, 1983, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business January 7, 1983. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, N.W., Room N3613, Washington, D.C., 20210, telephone (202)523-8081.

Signed at Washington, D.C. this 15th day of December 1982.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 82-34473 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-26-M

## Office of Pension and Welfare Benefit Programs

### Proposed Exemptions

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, or before February 4, 1983. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[Application Nos. D-3599 and L-3600]

**The Northern Minnesota-Wisconsin Area Retail Clerks Pension Plan (the Pension Plan) and the Northern Minnesota-Wisconsin Area Retail Food Health and Welfare Plan (the H/W Plan; Collectively, the Plans) Located in Duluth, Minnesota**

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75.1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sublease of office space by the Plans to Plan Administrators, Inc. (the Administrator), a fiduciary with respect to the Plans, provided the terms of the sublease are no less favorable to the Plans than the terms obtainable in an arm's length lease with an unrelated party.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective on October 1, 1982.

**Summary of Facts and Representations**

1. The Plans are multiemployer, jointly trustee plans, each covering approximately 2,700 employees in the retail grocery business. Each Plan is funded by a separate trust. As of December 31, 1981, the H/W Plan's assets totalled \$1,448,918, and the Pension Plan's assets totalled \$7,017,813. The applicant represents that the Administrator provides contract administration services to the Plans and is, accordingly, a fiduciary with respect to the Plans. The trustees of the H/W Plan—William D. Watters, Robert C. Hall, Dick Walsh, Virgil Dock, James J. Bouley, and Daniel H. Mundt—are responsible for investing the H/W Plan's assets. The trustees of the Pension Plan—William D. Watters, Jerry Miner, James J. Bouley, Bert Harstad, Vern D. Bates, Al Scott, and Daniel H. Mundt—have employed a registered investment consulting firm, Loomis Sayles, to invest the Pension Plan's assets. It is represented that neither Loomis Sayles nor the trustees of the Plans have any relationship to the Administrator aside from their working relationship as Plan fiduciaries.

2. The Administrator requires more office space than is currently available to it to process claims and to organize its whole operations more efficiently to

ultimately benefit the Plans' participants and beneficiaries. Therefore, the Administrator wishes to sublease from the Plans all of the space leased to the Plans by the Duluth Labor Temple Association (the Association). The applicant represents that the Association is not a party in interest with respect to the Plans and that the Administrator will use the subleased space exclusively to conduct its administrative services to the Plans.

3. The sublease agreement (the Sublease) between the Plans and the Administrator states that the terms and conditions of the Sublease shall be identical to those in the lease agreement between the Association and the Plans (the Lease). The Lease provides, among other things, for a yearly rental of \$6.00 per square foot per year for 3,100 feet of rental space, payable in equal monthly installments, for a five-year term beginning October 1, 1982, on Business Office No. 300, located on the third floor of the Duluth Labor Center, at 2002 London Road, Duluth, Minnesota. The rental shall be adjusted on a yearly basis for any increased operational costs incurred by the Association and attributable to the premises (on a square footage basis). The Lease may be renewed for an additional five years, at the Plans' option, on the same terms and condition, except that the yearly rental may be increased to a maximum of \$6.60 per square foot. If the proposed exemption is granted, the Sublease shall be effective as of October 1, 1982. The Plans will not be required to pay any commissions in connection with the Sublease. The applicant represents that the terms of the Sublease are the same as those that would be available to any other disinterested tenant.

4. The decision to sublease office space to the Administrator was a joint majority decision of the trustees of the Plans, after considering the specific terms of the Sublease and whether the Sublease would be in the best interests of the participants and beneficiaries of the Plans. The applicant states that the Administrator has no investment authority or discretion with respect to the decision of the Plans to sublease the office space in question and that throughout the trustees' discussions concerning the possibility of a sublease arrangement, the Administrator has been a totally neutral party with respect to that decision. Mr. Daniel H. Mundt, who serves as a trustee for both Plans, states that the Sublease will assure the Administrator's continued involvement and participation in the administration of the Plans, will be on a strictly arm's-length basis, and will automatically

terminate if the Administrator is no longer the administrator of the Plans. Mr. Mundt also states that he is personally acquainted with other plan administrators in surrounding localities and believes that the services, information, and background provided by the Administrator is of unique and particular value. He believes that the Administrator provides services at the lowest possible cost and in the most effective manner to the participants of the Plans. He explains that the reason the Plans have entered into the Lease and the Sublease, rather than have the Association lease directly to the Administrator, is that under the Lease and Sublease arrangement the Plans will control the space. Thus, in the event of any problem with the Administrator, whether because of inability to perform, incapacity, or otherwise, the Plans will still have the right to occupy the space. For all of the foregoing reasons, Mr. Mundt believes that the Sublease will be in the best interests of the Plans and their participants and beneficiaries.

The trustees of the Plans will be solely responsible for monitoring the Sublease during its term, will act to protect the rights and interests of the Plans under the Sublease, and will ensure throughout its term that the terms and conditions of the Sublease are being complied with.

5. In summary, the applicant represents that the Sublease meets the exemptive criteria provided by section 408(a) of the Act because (a) the terms of the Sublease are the same as those that would be available to any other disinterested tenant, (b) the additional space to be made available to the Administrator under the Sublease will enable the Administrator to process claims and to organize its entire operations more efficiently to ultimately benefit Plan participants and beneficiaries, (c) the trustees of both Plans have initially decided that the Plans should enter into the Sublease, will monitor the Sublease, and will take any action necessary to protect the rights of the Plans thereunder, (d) the trustees of the Plans believe that the Sublease is in the best interests of the participants and beneficiaries of the Plans, and (e) the Plans will not be required to pay any commissions in connection with the Sublease.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3623]

**The Annuity Trust Fund of Exxon Corporation (the Fund) Located in Houston, Texas**

*Proposed Exemption*

The Department is considering granting an exemption for the following transactions under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

*Section I.* The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to:

(A) The contribution of certain improved real property (the Property) to the Fund by Exxon Company, U.S.A. (EUSA), a contributing employer to the Fund, provided that EUSA's Federal tax deduction for the contribution does not exceed the fair market value of the Property as of the date it is contributed to the Fund;

(B) The lease (the Lease) of office space by the Fund to Friendswood Development Company (Friendswood), a contributing employer to the Fund, entered into pursuant to the property management agreement (the Management Agreement) between the Fund and Friendswood;

(C) The grant and exchange of certain interests in the Property between Friendswood and the Fund pursuant to an easement agreement (the Easement Agreement); and

(D) The joint use of certain portions of the Property by Friendswood and the Fund pursuant to a joint operating agreement (the Joint Operating Agreement).

*Section II.* The restrictions of section 406(b)(1) and (2)<sup>1</sup> of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the provision of certain real property management services to the Fund by Friendswood pursuant to the Management Agreement and the Joint Operating Agreement, provided that Friendswood receives no more than reasonable compensation for such services, pursuant to section 408(b)(2) of the Act and section 4975(d)(2) of the

<sup>1</sup> No exemption from section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code is being granted for the transactions discussed in this section beyond that which is provided by the statutory exemption provided by section 408(b)(2) of the Act or section 4975(d)(2) of the Code.

Code and the regulations promulgated thereunder.

*Section III.* The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lease of space by the Fund to certain parties in interest with respect to the Fund, provided that no space is leased (other than pursuant to the Lease) to:

(A) A subsidiary, division or affiliate (as defined in section 407(d)(7) of the Act) of Exxon Corporation (Exxon), the Fund sponsor, or

(B) A person who exercises discretionary authority, responsibility or control, or who provides investment advice, either with respect to the investment of any assets of the Fund or with respect to the management or disposition of the Property.

The proposed exemption is subject to the condition that the terms and conditions of each of the above-described transactions are at least as favorable to the Fund as those that could be obtained from an unrelated party.

**EFFECTIVE DATE:** The effective date of the proposed exemption, if granted, will be December 15, 1982.

*Summary of Facts and Representations*

1. The Fund is composed of a number of participating defined benefit plans of affiliates and divisions of Exxon. Both EUSA and Friendswood are wholly owned subsidiaries of Exxon. As of December 31, 1981, the Fund had net assets of \$3,426,000,000 and approximately 85,853 participants in the various plans comprising the Fund. The named fiduciary of the Fund is the Administrator-Finance who is the treasurer of Exxon, currently Mr. A. C. Hamilton.

2. EUSA proposes to purchase the Property from Friendswood and contribute the Property in partial satisfaction of EUSA's 1982 plan contribution. It was decided that EUSA would make the contribution of the Property, since the value of the Property would greatly exceed Friendswood's current plan funding obligation. According to an appraisal by Mr. James A. Britton, Jr., Britton Appraisal Associates, Inc., 444 Madison Avenue, New York, New York, an appraisal service company neither directly nor indirectly affiliated with Exxon or EUSA or with any other affiliate or division of Exxon, the estimated fair market value of the Property, as currently leased, is \$53,630,000.00 as of July 1, 1982. Mr. Britton will reappraise the Property

upon the granting of the exemption and EUSA will purchase the Property from Friendswood for an amount equal to this final appraisal value. EUSA will then contribute the Property to the Fund and take a Federal tax deduction in the amount of the final appraisal value. The Property is totally free of debt and encumbrance, and will represent approximately 1.6% of the Fund's current net assets.

3. The Property consists of approximately 15.1 acres of land, various office buildings and retail facilities located on the land, a 68% undivided interest in a central plant and a 41% undivided interest in a parking garage. The remaining interests in the central plant and parking garage will be held by Friendswood, in order to service a building owned by Friendswood which is adjacent to the Property. In each instance of joint ownership, the allocation of each party's interest was based upon the specific requirements and needs of each party, based upon the property serviced. The Property is located in the Greenspoint project, a 220 acre mixed-use land development project in North Houston. Friendswood acquired the Greenspoint project property in 1976 and subsequently developed the project pursuant to a controlled master plan. Friendswood currently manages the Property. Friendswood has been engaged in the business of real estate development in the Houston, Texas area since 1962, and has managed, developed or sold over 80,000 acres of land.

4. The "North Belt" market area, within which Greenspoint is located, has undergone substantial growth in the past six years. In 1976, the area had fewer than 200,000 square feet of office space and currently there are approximately 4,600,000 square feet of office space in the area. Current projections indicate the number will grow to 7,800,000 square feet by 1983. This growth is primarily attributable to the area's proximity to excellent residential areas, the Houston Intercontinental Airport, the presence of the successful Greenspoint Regional Shopping Mall and its location at the intersection of two primary Houston traffic arteries, Interstate 45 North Beltway 8. The area is now established as the commercial center of North Houston.

5. The facilities located on the Property are and will continue to be leased to a variety of business firms. The applicant represents that no portion of the Property (other than the office space reserved for Friendswood discussed below), will be leased to: (a) a

subsidiary, division or affiliate (as defined in section 407(d)(7) of the Act) of Exxon; or (b) a person who exercises discretionary authority, responsibility, or control, or who provides investment advice, either with respect to the investment of any assets of the Fund or with respect to the management or disposition of the Property. However, because of the size of the Fund and the large number of service providers who would be parties in interest with respect to the Fund, the applicant represents that it would be extremely difficult to ascertain in all instances whether a Property tenant was a party in interest with respect to the Fund. Therefore, the applicant requests an exemption to permit leasing of space in the Property to parties other than those specified in subparts (a) and (b) above.

6. In May 1982, a total of 4,343 square feet of space in the buildings located on the Property was vacant out of a total of 546,241 square feet, for a vacancy rate of 0.8%. The credit capability of all tenants is evaluated by Friendswood and when deemed appropriate, security deposits are required. The net cash flow to the Fund from rentals in the first year of the Fund's ownership of the Property would be \$4,727,607, representing an annual return of 8.8% of the appraised fair market value of the Property.

7. At the time EUSA contributes the Property to the Fund, the parties propose to enter into the Management Agreement, whereby Friendswood would agree to manage the Property on the Fund's behalf. The Management Agreement may be cancelled by the Fund upon 30 days advance notice. Friendswood's services would cover all aspects of financial and physical management, operation, maintenance and leasing of the Property. Pursuant to the Management Agreement, Friendswood is required to maintain detailed records and books of account concerning the operation of the Property, which are to be available to the Fund for examination at all reasonable times. In addition, detailed monthly reports on the operation of the Property will be prepared by Friendswood and sent to the Fund.

8. Friendswood's compensation under the Management Agreement will consist of reimbursement of costs for direct on-site management plus a management fee of 3% of all receipts collected and remitted from Property tenants on a monthly basis, or \$14,000 per month, whichever is greater. Additionally, pursuant to the Management Agreement, 3,781 square feet of space in Two Greenspoint Plaza (0.7% of the Property) would be reserved as office space for

Friendswood to provide the above-described services. It is represented that such arrangements are customary in the real property management industry and that the Lease is considered to be a portion of Friendswood's compensation. The applicant states that the Lease of office space would facilitate Friendswood's execution of its duties as the Property manager. This reservation of office space would terminate with the termination of the Management Agreement.

9. Upon the contribution of the Property, the Fund and Friendswood would also enter into the Joint Operating Agreement, whereby Friendswood would agree to maintain and operate the jointly owned central plant and parking garage. Friendswood would be reimbursed by the Fund for the Fund's share of direct and indirect expenses properly and actually incurred, pursuant to the terms of the Joint Operating Agreement. Friendswood would be required to furnish the Fund with reports on a monthly basis, detailing all such expenses for which reimbursement is sought.

10. The third agreement to be entered into between the Fund and Friendswood upon the contribution of the Property, would be the Easement Agreement, whereby the Fund and Friendswood, as owners of adjacent properties in the Greenspoint project, will grant to each other reciprocal easements regarding the use of the common access areas of such properties. Friendswood will receive no consideration under the terms of the Easement Agreement.

11. InterFirst Bank Dallas, N.A., Trust Division (the Bank, formerly First National Bank in Dallas) has agreed to serve as an independent fiduciary on behalf of the Fund for the transactions described herein. The Bank would decide whether to enter into the proposed transactions and would monitor the Agreements to ensure Friendswood's compliance therewith. The Bank and Exxon have a number of business relationships, however, these relationships constitute less than 1% of the Bank's commercial credit and deposit business. Furthermore, although the Bank serves as an investment manager for the Fund, the amount of Fund assets currently managed by the Bank constitutes less than 1% of the Bank's trust division business.

12. The Bank has reviewed the terms and conditions of the contribution of the Property, the Management Agreement, the Joint Operating Agreement and the Easement Agreement (collectively, the Agreements). The Bank has stated that the contribution of the Property, taking

into consideration the cash flow and net rate of return, would be in the interests of the Fund participants and beneficiaries and would be an appropriate investment for the Fund. The Bank further stated that the terms and conditions of the Agreements are standard, reasonable and customary in the real property management industry and are appropriate for the management and operation of the Property.

13. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) due to the following: (a) the Bank has reviewed the terms and conditions of the transactions and believes they are customary and reasonable and are in the interests of the Fund and its participants and beneficiaries; (b) the Bank will make all decisions on the Fund's behalf regarding the transactions proposed herein, will monitor the transactions to ensure Friendswood's compliance therewith, and will have the authority to terminate the Management Agreement upon 30 days advance notice; (c) the Property will be contributed at its fair market value as determined by an appraiser independent of Exxon and its affiliates and divisions; (d) the Property would represent approximately 1.6% of Fund assets; (e) the Property vacancy rate is currently 0.8%; and (f) no portion of the Property (other than the office space reserved for Friendswood) would be leased to Exxon or to any of its subsidiaries, affiliates, or divisions.

**FOR FURTHER INFORMATION CONTACT:** Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

[Application No. D-3700]

**Quain and Ramstad Clinic, P.C.  
Employees' Retirement Plan (the Plan)  
Located in Bismarck, North Dakota**

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of \$2 million (the Loan) by the Plan to Quain and Ramstad Clinic, P.C. (the Employer), the sponsor of the Plan, provided the terms of the transaction are at least as favorable to the Plan as those

obtainable in an arm's length transaction with an unrelated party.

#### *Summary of Facts and Representations*

1. The Plan is a defined benefit plan with 270 participants. As of May 31, 1982, the Plan had total assets of approximately \$5.7 million. The Northwestern National Bank of Minneapolis (the Bank) serves as the trustee of the Plan and is responsible for Plan investment decisions. Neither the Bank, nor any affiliate thereof, maintains any commercial or banking relationship with the Employer.

2. The Employer is a multispecialty medical clinic providing medical services. The Employer leases the space it utilizes from a partnership (the Partnership) whose partners are shareholders and employees of the Employer.

3. The applicant is requesting an exemption to allow the Plan to engage in the Loan with the Employer. The Loan proceeds will be subsequently loaned to the Partnership to provide a minor portion of the permanent financing for an expansion of the building currently used by the Employer. The major portion of the financing of the expansion of the building will be through a \$9.3 million loan from the First National Bank and Trust Company of Bismarck.

The Loan will be for a ten year term and will provide for equal monthly payments of principal. The Loan's interest rate will be equal to the prime rate of interest as daily quoted by the First National Bank of Minneapolis. Interest on the unpaid balance of the Loan will be payable monthly.

4. The Loan will be secured by a perfected first security interest in all of the accounts receivable of the Employer. As of August, 1982, the Employer had 23,579 receivables totalling \$4,677,000. The average amount of a receivable is \$198. The largest single receivable is \$362,098 which is due from the Bismarck Hospital for x-ray and laboratory services. The receivables have normally been collected within 109 days from the date the medical services are rendered. A large portion (approximately 79%) of the receivables represent insurance claims that require processing by insurance carriers.

5. The Employer will enter into a loan agreement with the Plan which will provide, inter alia, that certain conditions are imposed on the Employer. Among the conditions are that the Employer will maintain a ratio of debt to total assets of not more than .9 to 1; will maintain a ratio of current assets to current liabilities of not less than 1.25 to 1; and will maintain a tangible net worth of not less than \$500,000. Additional

conditions include prohibitions on the Employer from incurring debt or guarantees of debt, limitations on the types and amounts of investments that it may hold, prohibitions on the payment of dividends, prohibitions with respect to the sale of its assets, prohibitions pertaining to corporate reorganizations, prohibitions on expenditures for capital expenses, and prohibitions on certain lease transactions.

6. The Bank has examined the terms and conditions of the proposed Loan. After examining the overall investment portfolio of the Plan and the diversification of Plan assets in light of the proposed Loan investment, with consideration given to the cash flow needs of the Plan and the necessity of a sale of any Plan assets, the Bank has determined that the Loan is an appropriate and suitable investment for the Plan and its participants and beneficiaries. The Bank will render the same determination immediately prior to the consummation of the transaction.

7. The Bank will completely monitor the terms and conditions of the Loan. The Bank will require the Employer to reduce the outstanding balance of the Loan if at any time the value of the collateral falls below 150% of the outstanding Loan balance. The applicant represents that in the event of any default on the Loan the Bank would be able to effectively take over receivable collections which would be adequate to pay off the Loan within 60 days. The Loan agreement provides that the Bank will be provided (1) on an annual basis with financial statements of the Employer, an unqualified audit letter of a certified public accountant, and a certification by such certified public accountant that he or she knows of no event that would constitute an event of default under the Loan agreement; (2) quarterly, with unaudited financial statements of the Employer and a certification from the chief financial officer of the Employer that he or she knows of no event of default under the Loan agreement; and (3) monthly, with schedules of the accounts receivable of the Employer.

8. In summary, the applicant represents that the proposed Loan will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security interest in collateral which will, at all times throughout the term of the Loan, have a value not less than 150% of the outstanding Loan balance, (b) the Bank, an independent, qualified party will serve as the fiduciary of the Plan with regard to the Loan, and has determined that the Loan is an

appropriate and suitable investment for the Plan; and (c) the Bank will completely monitor the Loan and enforce the performance of the Employer's obligations under the applicable Loan documents.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Slander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Application No. D-3708]

**Profit Sharing Plan for Employees of Gonzalez, Lupo, Walker, Webb & Arthur, M.D.s, P.A. (the Plan) Located in Tampa, Florida**

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of the land described below by the Plan to Buffalo Avenue Associations (the Partnership), a party in interest with respect to the Plan, provided the sales price is no less than the fair market value of land on the date of the sale.

*Summary of Facts and Representations*

1. The Plan covered ten participants as of August 17, 1982, and had total assets of \$242,701 as of December 31, 1981. The Plan trustees—Drs. Arturo G. Gonzalez, Joseph F. Lupo, Charles G. Walker, Gilson S. Webb, and Gary K. Arthur—make investment decisions on behalf of the Plan.

2. Eighty percent of the profits interest in the Partnership, a Florida general partnership, is owned by the Plan trustees and administrators who are also officers, directors, and employees of the Plan sponsor and who collectively own over 50% of the stock of the Plan sponsor. The parties in interest with respect to the Plan who own interests in the Partnership are Arturo G. Gonzalez, M.D., Joseph F. Lupo, M.D., Charles G. Walker, M.D., Gilson S. Webb, M.D., Gary K. Arthur, M.D. and Espy D. Ball, Ph.D.

3. The land in question is two non-contiguous lots of vacant land, #19 of Block 1 and #1 of Block, 9 totalling 19,720 square feet in the Northdale subdivision of Tampa, Florida. The lots are zoned for single-family residences only and are encumbered by a purchase

money mortgage. The two lots are not located proximate to any property owned by the Partnership, the Plan sponsor, or any other party in interest. They are located in a rapidly developing residential neighborhood close to schools and numerous recently completed shopping centers. The Plan acquired these lots as an investment on November 20, 1980, from Criterion Corporation, which, according to the applicants, is not a party in interest with respect to the Plan. The purchase price paid by the Plan for the lots was \$51,400.00, 10% of which was paid on the purchase date, the balance payable within five years at 10% interest with a balloon payment due at the end of the fifth year. The Plan made some principal payments under the mortgage (see 5, below). As of October 25, 1982, the Plan had paid \$10,585.69 in interest under the mortgage, \$974.32 in taxes on the lots, \$360.88 for signs and advertisements, \$100.00 for mowing, and \$150.00 for appraisals of the lots on March 3, 1982.<sup>2</sup> The lots do not produce any income for the Plan. During 1981, the Plan attempted unsuccessfully to sell the lots.

4. The appraisals mentioned above were made by Charles K. Evanich and were reviewed by Diane G. Bussman, a member of the American Institute of Real Estate Appraisers. It is represented that neither appraiser is related to the Partnership. Both appraisers have experience appraising vacant land, among other types of real property, for savings and loan institutions and mortgage lenders, among other clients. The appraisals show that the highest and best use of each lot would be to improve it with a single family residence and estimate that Lot 19 of Block 1 had a fair market value of \$27,000 on March 3, 1982, and that Lot 1 of Block 9 had a fair market value of \$26,000 on that date.

5. The Plan proposes to sell both lots to the Partnership at a price equal to the fair market value of the lots as established in the appraisals described above (\$53,000 total) or in another appraisal made by a qualified independent appraiser on a later date closer to the proposed sale date. The Partnership will assume the balance due under the existing mortgage and will pay cash to the Plan in the amount of the difference between the proposed sales price and such balance due. The principal balance due under this mortgage as of December 31, 1981 was \$44,080.93, according to the Plan's financial statements of that date. The

<sup>2</sup> In this proposed exemption the Department expresses no opinion regarding whether the acquisition and holding of the lots violates any provision of Part 4 of Title I of the Act.

Plan trustees have reviewed the situation and determined that a sale of the lots, as soon as possible, for their fair market value is in the best interests of the Plan and its participants in order to eliminate the necessity of continuing to pay substantial interest expenses.

6. In summary, the applicants represent that the proposed sale meets the exemptive criteria provided by section 408(a) of the Act because (a) the proposed sale will involve the Plan in a one-time transaction in which the Plan will receive cash for its equity interest in the lots, (b) the proposed sale will relieve the Plan of both a non-income producing asset that is not readily saleable and also a mortgage obligation requiring large cash payments of interest and principal, (c) the proposed sales price will equal the fair market value of the two lots as appraised by a qualified independent appraiser, and (d) the Plan trustees believe the proposed sale is in the best interests of the Plan and its participants.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3725]

**H. A. Berkheimer, Inc. Profit Sharing Plan (the Plan Located in Bangor, Pennsylvania)**

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loan of \$100,000 by the Plan to H. A. Berkheimer, Inc., a party in interest with respect to the Plan, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

*Summary of Facts and Representations*

1. The Plan, which was established in 1969, is a profit sharing plan with 81 participants and total assets as of May 31, 1982 of \$322,757. First Valley Bank of Bethlehem, Pennsylvania (the Bank) is the Plan trustee and is solely responsible for the investment of Plan

assets. H. A. Berkheimer, Inc. (the Employer) is a tax collection agency for municipalities and other local government agencies in Pennsylvania.<sup>3</sup>

2. On November 18, 1981, the Employer purchased data processing equipment from National Cash Register Corporation (NCR). The data processing equipment is known as the NCR Criterion Group V-8550 Data Processing System (the Equipment) and cost \$112,512.<sup>4</sup> The Employer obtained interim financing for the Equipment from the bank in the form of a demand loan calling for monthly payments of interest based on the prime rate of interest.

3. The Employer proposes to pay off its loan to the Bank by borrowing \$100,000 from the Plan. Under the terms of the proposed loan, the Plan would receive a security agreement collateralized by a first lien on the Equipment (evidenced by a promissory note) plus a pledge agreement on a \$100,000 Bank 26-week time deposit (the Deposit).<sup>5</sup> The loan will be repaid in 36 equal monthly principal installments of \$2,777.78 plus an interest rate of the Bank's prime rate plus 1 percent. This rate will be adjusted monthly to reflect changes in the prime rate, but in no event will be less than 10 percent per annum. Further, in the event the value of the equipment and the Deposit should ever fall to less than 150 percent of the outstanding loan balance, the Employer shall within 30 days of such a determination provide additional collateral so that the fair market value of the collateral securing the loan will always represent at least 150 percent of the outstanding loan balance. The Employer will maintain insurance on the Equipment in an amount equal to or greater than the unpaid loan balance, with the Plan being named the loss payee of the insurance policy. All costs and expenses relating to the transaction will be paid by the Employer.

4. On July 19, 1982, Mr. J. P. Rowan, an account manager of major systems for NCR Corporation issued a letter to the Employer in which he valued the Equipment at \$112,512.

(5) The Northeastern Bank of Pennsylvania located in Scranton, Pennsylvania (Fiduciary Bank), has been engaged to serve as an independent fiduciary with respect to the above described transaction. The Fiduciary

Bank invests approximately \$60,000,000 in employee benefit plan assets. The Fiduciary Bank has no other relationship with the Employer or the Plan.

The Fiduciary Bank represents that the proposed loan is appropriate for the Plan and is in the best interests of its participants and beneficiaries. In making these determinations, the Fiduciary Bank has examined the overall portfolio of the Plan, considered the Plan's cash flow needs, considered the assets that might have to be sold in order to meet the liquidity and diversification requirements of the Plan in light of the proposed loan and reviewed the proposed loan in terms of how it fits within the Plan's funding policy.

The Fiduciary Bank has agreed to undertake the following actions as part of its responsibilities; (a) monitor the loan to insure that payments under the promissory note are made in accordance with its terms and to demand timely payment, if necessary; (b) adjust the interest rate for the loan monthly; (c) keep adequate records; (d) report at least annually to the Bank on the performance of the loan, specifically including an annual appraisal by an independent appraiser indicating that the fair market value of the collateral is never less than 150 percent of the outstanding balance of the loan; (e) demand additional collateral be pledged if necessary; (f) make certain the collateral is always insured with the Plan being named as beneficiary of the insurance policy; and (g) in the event of a default on the loan, take steps necessary to insure the collateral is repossessed, sold in conformity with Pennsylvania law and that any deficiency is collected from the Employer.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the Employer will insure the collateral and add additional collateral so that the value of the collateral securing the loan is always at least 150% of the outstanding balance of the loan;

(b) the loan will be administered by the Fiduciary Bank; and

(c) the Fiduciary Bank has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries.

**FOR FURTHER INFORMATION CONTACT:**  
Alan H. Levitas of the Department,  
telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3731]

**The Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, New Jersey**

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) a loan of \$300,000 (the Loan) by the Plan to Orloff, Lowenbach, Stifelman and Siegel, P.A. (the Employer), provided the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and (2) the guarantee of repayment of the Loan by the principals of the Employer.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 16 participants and total assets of \$820,795 as of June 30, 1982. The trustees of the Plan are the six principal shareholders of the Employer. These individuals make investment decisions for the Plan. The Employer is a law firm presently located in Roseland, New Jersey.

2. The Employer proposes to borrow \$300,000 from the Plan<sup>6</sup> to finance certain expenses associated with its recent move from Newark, New Jersey to a larger office facility located in Roseland, New Jersey. The Loan, which will be evidenced by a promissory note, will be amortized in equal monthly installments of principal and interest over an 84 month period. The Loan will carry interest at one percent over the prime rate of First National State Bank of New Jersey (First National). The interest rate will have a floor of 12 percent per annum and it will be adjusted monthly by an independent fiduciary designated to oversee the proposed transactions.

<sup>6</sup> Financial statements accompanying the exemption application show that the Plan had made loans to three participants as of June 30, 1981. On that date, the loans had a total outstanding principal balance of \$51,237. The application states that the participant loans satisfy the conditions of section 408(b)(1) of the Act. The Department expresses no opinion as to whether or not these conditions have been met.

<sup>3</sup> The applicant represents that the Employer is not an instrumentality of any state or local government.

<sup>4</sup> The total sales price for the equipment was \$121,388.80, however, this included taxes and distribution charges of \$8,876.80.

<sup>5</sup> The Deposit, including all interest earned, will be held by the Bank and will be rolled-over each 26 weeks until the loan has been repaid.

3. The Loan will be secured by an assignment of the Employer's accounts receivable (the Receivables). The Employer will execute and file UCC financing statements giving the Plan a perfected first security interest in the Receivables. The Employer has represented that the Receivables will at all times be equal to a minimum of 150 percent of the outstanding Loan balance. If the value of the Receivables falls below 150 percent of the outstanding loan balance, the Employer will be required to pledge additional security. As further collateral for the Loan, the six principal shareholders of the Employer will give their personal guarantees. As of October 14, 1982, the shareholders had a combined net worth in excess of \$3 million.

4. The Receivables represent amounts due the Employer from clients for the Employer's rendition of legal services. Between June 30, 1981 and August 31, 1982, the Receivables ranged between \$630,470 and \$841,358 in value. During the fourteen month period, 78 percent of the Receivables were collected, 7 percent were written off as uncollectible and 15 percent remain outstanding. Of the \$244,406 in Receivables which were more than 120 days old as of June 30, 1981, 68 percent were collected during the fourteen month period, 11 percent were written off as uncollectible and 15 percent remain outstanding.

5. By letter dated July 19, 1982, First National committed itself to lend \$300,000 to the Employer. The bank loan would have carried a floating interest rate of one percent over the prime rate with quarterly payments of principal and interest over a five year period. There would have been no prepayment penalty. The loan would have been secured by the personal guarantees of the principals of the Employer.

6. Mr. Irwin Gedinsky (Mr. Gedinsky), a certified public accountant and a senior tax partner with the accounting firm Granet and Granet of Union, New Jersey, has agreed to serve as the independent fiduciary for the Loan. Mr. Gedinsky has no other relationship with the Plan or the Employer. Mr. Gedinsky represents he has served as an executor and trustee of many estates and trusts in the past as well as at present. He also states that in his role as senior tax partner for his firm, he has advised the firm's clients with respect to the design of pension and profit sharing plans, the administration of such plans (including the investment of plan assets) and compliance with provisions of the Act.

With respect to the Loan, Mr. Gedinsky indicates he has examined its specific terms and he believes the Loan is in the best interests of the Plan and its

participants and beneficiaries because of the substantially higher interest rate than the Plan would otherwise earn, the fair and reasonable Loan duration, and the adequate collateral provided. Mr. Gedinsky also represents he has examined the overall Plan portfolio, considered the Plan's cash flow needs, considered the assets that might have to be sold to meet the Plan's liquidity requirements, examined the diversification of the Plan's assets in light of the proposed investment, and examined the Loan in terms of the manner in which it fits into the Plan's investment scheme.

As the independent fiduciary, Mr. Gedinsky will monitor the Loan to ensure repayment on a monthly basis. Mr. Gedinsky will also verify that the interest rate is adjusted monthly. He will further verify that the Receivables will at all times represent 150 percent of the outstanding Loan balance and if they ever fall below this level, he will demand additional collateral from the Employer. In addition, Mr. Gedinsky will take all necessary and appropriate actions to protect the interests of the plan.

7. In summary, it is represented that the proposed transactions will satisfy the requirements of section 408(a) of the Act because: (a) the Loan will be monitored by Mr. Gedinsky who believes the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; (b) the Loan will be secured by the Employer's Receivables and the personal guarantees of the Employer's principals; and (c) the Receivables will at all times throughout the duration of the Loan represent 150 percent of the outstanding Loan balance and if the value of the Receivables falls below this level, Mr. Gedinsky will demand that the Employer pledge additional collateral.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things

require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of December, 1982.

**Alan D. Lebowitz,**

*Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

(FR Doc. 82-34564 Filed 12-20-82; 8:45 am)

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#### Grant of Individual Exemptions

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such

exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 82-217; Exemption Application No. D-2794]

#### The Deferred Benefits Corporation Pension Plan (the Plan) Located in Atlanta, Georgia

##### Exemption

The restrictions of section 406(a)(1) (A) through (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the receipt of brokerage commissions by the Deferred Benefits Corporation (the Employer) and certain of its employees (the Employees) incidental to the purchase of investment media by the

Employees through their individual accounts in the Plan provided:

- (a) The terms of the sales will be at least as favorable to the Plan as the terms offered for similar purchases by unrelated third parties in the normal course of the Employees' business;
- (b) The purchases by the Employees will only be made for the respective Employee's individual account in the Plan;
- (c) During no plan year will the commissions paid by the Plan as a result of purchases by the Employees for their respective individual account exceed five percent (5%) of the commissions earned by such Employee during the plan year in similar purchases by unrelated third parties; and
- (d) Payment of commissions by the Plan in connection with such purchases will be treated under the Employer's fee sharing agreement in the same manner as all other commissions earned by the Employees in sales of investment media by unrelated third parties in the ordinary course of business.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 19, 1982 at 47 FR 46599.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-218; Exemption Application No. D-3076]

#### The Tenneco Inc. Thrift Plan (the Plan) Located in Houston, Texas

##### Exemption

The restrictions of section 406 (a) and (b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, effective January 1, 1982, to the sale of individual life insurance contracts by Philadelphia Life Insurance Co. (PLI) to the Plan, and the payment of commissions to agents of PLI, provided the following conditions are met:

- (a) PLI—(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Tenneco Inc. that is described in section 3(14) (E) or (G) of the Act,
- (2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,
- (3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Pennsylvania, within the 18 months prior to the date when the transaction is entered into or when such certificates

were last made available by the domiciliary state, if earlier, and (4) (i) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Pennsylvania) by the Insurance Commissioner of the State of Pennsylvania within 5 years prior to the end of the year preceding the year in which the sale occurred, or

(ii) Has undergone an examination by an independent certified public accountant for its last completed taxable year.

(b) The Plan pays no more than adequate consideration for the insurance contracts.

(c) The commission paid to an agent by PLI in connection with the sale of a policy to the Plan does not exceed the commission paid to the agent by reason of placing the same policy with a person who is not a Plan participant.

(d) For taxable years of PLI beginning after December 31, 1981, the gross premiums and annuity considerations received in that taxable year by PLI for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which PLI is a party in interest or disqualified person by reason of a relationship to such employers described in section 3(14) (E) or (G) of the Act and section 4975(e)(2) (E) or (G) of the Code do not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by PLI. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by PLI.

(2) All premiums and annuity considerations written by PLI for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982 at 47 FR 46181.

**EFFECTIVE DATE:** This exemption is effective January 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-219; Exemption Application No. D-3203]

**Design Master Homes, Inc. Profit Sharing Plan and Trust (the Plan) Located in Phoenix, Arizona**

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan (the Loan) by the Plan of \$350,000 to Design Master Homes, Inc., provided the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 19, 1982 at 47 FR 46597.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 821-220; Exemption Application No. D-3325]

**Starr-Wood-Chapman-Ahmad, P.C. Retirement Trust (the Plan) Located in Portland, Oregon**

*Exemption*

The restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed assignment by Dr. Albert Starr to the Plan of his interest in a real estate sales contract (the Contract) for \$51,200, minus the amount of any principal payments received by Dr. Starr prior to the assignment, provided that this price is not more than the fair market value of Dr. Starr's interest in the Contract on the date it is assigned to the Plan; and (2) Dr. Starr's agreement to indemnify the Plan in the event of any loss suffered as a result of default by Adams Street Investors under the Contract.

For more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-221; Exemption Application No. L-3350]

**National Production Workers Insurance Fund (the Fund) Located in Chicago, Illinois**

*Exemption*

The restrictions of section 406(a) of the Act shall not apply to the purchase of certain computer and office equipment by the Fund from Labor Benefit Services, a party in interest with respect to the Fund, for the cash amount of \$125,000, so long as the amount does not exceed the fair market value of the items purchased on the date the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982 at 47 FR 46174.

**EFFECTIVE DATE:** This exemption is effective April 16, 1982.

**FOR FURTHER INFORMATION CONTACT:** Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-222; Exemption Application Nos. L-3537 and L-3538]

**Painters District Council No. 3 Vacation Fund (the Vacation Fund) and Painters District Council No. 3, Health and Welfare Fund (the Welfare Fund), Located in Kansas City Missouri**

*Exemption*

The restrictions of section 406(b)(2) of the Act shall not apply to the transfer of unclaimed funds from the Vacation Fund to the Welfare Fund, provided that the Welfare Fund agrees to pay any future claims for benefits due former Vacation Fund participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 21, 1982 at 47 FR 41661.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code,

including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express conditions that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of December, 1982.

Alan D. Lebowitz,

*Assistant Administrator for Fiduciary Standard, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 82-34562 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-29-M

**Proposed Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers; Hearing**

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Class Exemption and Notice of Hearing.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are

managed by qualified professional asset managers (QPAMs) which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is proposed for employers which provide limited amounts of goods and services in the ordinary course of business. Limited relief is also provided for leases of office space between managed funds and QPAMs or contributing employers. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, QPAM's and other persons engaging in the described transactions.

**DATES:** Written comments and requests for time to present oral comments at the public hearing must be received by the Department on or before February 18, 1983. The hearing will be held on March 10, 1983 beginning at 10 a.m. The exemption would be effective as of the date of publication of the final grant notice.

**ADDRESSES:** Written comments and requests for time to present oral comments (preferably at least three copies) should be sent to: Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20216. Attention: Professional Asset Manager Exemption. All communications received in response to this notice will be available for public inspection in the Public Documents Room, Pension and Welfare Benefit Programs, Room N-4677 at the above address. The hearing will be held in the Department of Labor Auditorium, 200 Constitution Avenue, N.W., Washington, D.C. Hearing procedure: Any interested person who wishes to be assured of the opportunity to present oral comments at the hearing should submit by March 1, 1983: (1) A written request to be heard, and (2) an outline (preferably 5 copies) of the topics to be discussed, indicating the time to be allocated to each topic. The request to be heard and accompanying outline should be submitted to the address mentioned above.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special circumstances, each commentator will be allotted 10 minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after March 8, 1983, by telephoning Mr. Paul Antsen at (202) 523-6915. This is not a toll-free number. Individuals not listed in the agenda will

be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments should be prepared to answer questions regarding their comments.

A written record of the hearing will be made.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Ivan L. Strasfeld or Mr. Paul R. Antsen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, telephone (202) 523-7901 or 523-6915. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed class exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code,<sup>1</sup> and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), specifically section 3.01 of that Procedure.

**I. Background**

The Department is proposing the class exemption contained in this notice as part of a continuing effort to improve the administration of the prohibited transaction rules of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between plans and certain related parties. Those parties in interest described in section 3(14) of ERISA, such as plan fiduciaries, sponsoring employers, unions, service providers and their affiliates, may not engage in a transaction described in ERISA section 406 with a plan (or an entity whose assets are plan assets). Specifically, section 406 prohibits sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest, unless a

<sup>1</sup> Section 408(a) of ERISA provides, among other things, that the Department may grant an exemption from the prohibited transaction rules only if it finds that the exemption is administratively feasible; in the interests of the plan, and of its participants and beneficiaries; and protective of the rights of participants and beneficiaries of such plan. See also section 4975(c)(2) of the Code.

Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to the various provisions of section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

statutory or administrative exemption applies to the transaction. In addition, unless exempted, parties in interest who are fiduciaries of plans are not permitted to engage in acts of self-dealing or make decisions on behalf of a plan if they are in a conflict of interest situation.

The Department has in the past frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions where it has been able to find that the criteria for granting such exemptions have been met. In general, it has responded to applications for exemption submitted by members of the public. This process has been helpful in providing relief for transactions which would otherwise have been prohibited, without impairing the interests of plans, participants and beneficiaries.

The Department recognizes the general perception that in many instances the prohibited transaction rules continue to present complex problems of compliance for fiduciaries charged with responsibility for employee benefit plan assets. Nevertheless, based on its experience in considering applications for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department believes that, as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary.

Prohibited Transaction Exemption 78-19 (PTE 78-19) (43 FR 59915, December 22, 1978) and Prohibited Transaction Exemption 80-51 (PTE 80-51) (45 FR 49709, July 25, 1980) generally provide relief from the restrictions of section 406(a) of ERISA for transactions between parties in interest of plans and pooled separate accounts and collective investment funds maintained by insurance companies and banks, respectively, if, among other conditions, the plan has a five percent or less interest in the account or fund. Additional broad exemptive coverage is provided by PTEs 78-19 and 80-51, for parties in interest who are service providers of participating plans.

Established financial institutions, such as banks, insurance companies and registered investment advisers, must maintain current rosters or parties in interest with respect to plans that commit assets to single customer accounts, trust funds and those pooled accounts and collective funds which fail

to qualify for the relief provided by PTEs 78-19 and 80-51. These fiduciaries are required to undertake time consuming ERISA compliance checks for the numerous investment transactions under consideration each year to ascertain whether a party in interest of a plan, any of whose assets are subject to the fiduciary's management, would cause the transaction to be prohibited. In the case of a large plan, there may be thousands of parties in interest. Where a potentially prohibited party in interest transaction is identified and is not covered by an existing class exemption, the asset manager may have to choose between applying for an individual administrative exemption or foregoing the investment opportunity entirely. The Department believes that further actions would be appropriate in order to eliminate the need for individual exemptions wherever feasible, and that substantial deregulation in this area can be accomplished by administrative means without sacrificing the interests of plan participants and beneficiaries.

The exemption proposed in this document would be available for transactions that may involve assets of single customer accounts and funds managed by insurance companies, banks and registered investment advisers, as well as pooled separate accounts and collective trust funds maintained for a number of plans. Transactions involving assets of pooled separate accounts and collective investment funds that qualify for the relief contained in PTEs 78-19 and 80-51 may be entered into pursuant to those class exemptions or, in the alternative, may be covered by the exemption for qualified professional asset managers, when granted. However, the proposed exemption would not supersede three class exemptions identified in section I(b) of the proposal. The transactions described in, and the protective conditions adopted for, those exemptions were developed with regard to highly standardized industry practices and the generally accepted regulation that surrounds residential mortgage financing, mortgage pool and securities lending arrangements.

## II. Description of the Proposed Exemption

**A. The QPAM Concept:** As proposed, the class exemption would be available for various party in interest transactions that involve those assets of plans that are transferred for discretionary management to qualified professional asset managers (QPAMs). A QPAM is defined as a bank, insurance company or registered investment adviser that meets certain financial conditions. In

following the general pattern of the definition of "investment manager" in ERISA section 3(38), the Department recognizes that each of these categories of asset manager is subject to regulation by Federal or State agencies. The minimum capital and funds-under-management standards of the proposed exemption are intended to assure that the eligible fiduciaries managing the accounts or funds ("investment funds"), consisting of the assets of one or more plans, are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest.

A financial entity would not achieve QPAM status with regard to a plan unless it enters into a written management agreement or issues a contract that delineates its management authority over investment fund assets and contains a statement acknowledging that it is a fiduciary.<sup>2</sup> As is made explicit in a general condition of the proposed exemption, the Department is prepared to grant broad exemptive relief only where an independent asset manager has, and in fact exercises, discretionary authority to cause an investment fund to enter into a transaction which is otherwise prohibited. Party in interest transactions that are negotiated by, e.g., an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed. However, the exemption, as proposed, would be available even though the transfer of assets by a plan to a QPAM is subject to general investment guidelines, so long as there is no arrangement, direct or indirect, for the QPAM to negotiate, or engage in, any specific transaction or to benefit any specific person.

A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of

<sup>2</sup> Section 403(a) provides, in pertinent part, that, generally, all assets of a plan shall be held in trust by one or more trustees. Such trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that (1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, or (2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3). Section 402(c)(3) of ERISA provides that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire or dispose of) any assets of a plan.

It is the view of the Department that a delegation of authority to manage plan assets must describe with specificity the scope of the delegation and the duties to be undertaken by the investment manager. See section 404(a)(1) of ERISA.

integrity. Accordingly, the proposed exemption does not cover transactions if the QPAM or various "affiliates" have been convicted of various crimes (outlined in section I(g) of the proposal), that involve abuse or misuse of a position of trust, or felonies generally described in ERISA section 411.

**B. General Exemption:** The proposed exemption consists of four separate parts. The general exemption, set forth in Part I, would allow an investment fund managed by a QPAM to engage in all transactions described in ERISA section 406(a)(1) (A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction, and those parties most likely to have the power to influence the QPAM. In this latter regard, under section I(a), a QPAM would not be permitted to cause the investment fund to enter into a transaction if the party in interest dealing with the fund, or its "affiliate", (1) has the authority to appoint or terminate the QPAM as a manager of any of the plan's assets, (2) has the authority to negotiate the terms of the management agreement with the QPAM, or (3) has exercised such powers in the two years immediately preceding the date of the proposed transaction. Under this functional approach, the presence or absence of these disqualifying powers would be determined by the QPAM on a plan-by-plan basis; none of the parties in interest listed in section 3(14) of ERISA would be categorically excluded from the purview of the proposed relief. The principles of this paragraph may be illustrated by the following examples:

**Example (1).** Plan P establishes a trust fund for a portion of its assets with Bank B. Assume that B meets the criteria for a QPAM that are proposed. B uses Plan P assets to buy a building whose elevators are serviced by Company X under a maintenance contract. Under current law, an investment of Plan P assets to purchase a modern elevator from X, a party in interest described in ERISA section 3(14)(B), would violate the restrictions contained in section 406(a)(1)(A), and the transaction could not proceed until exempted by the Department. The general exemption set forth in Part I of the proposal would allow such a transaction.

**Example (2).** Corporation C is the named fiduciary of Plan P. C chooses Bank B to manage the portion of P's assets allocated for real estate investments. Bank B uses these assets to purchase a commercial building in New York City from Corporation Z. Z is a wholly-owned subsidiary of C. No part of the exemption would be available for

the purchase of the building because Z is an affiliate (as defined in section V(c) of the proposed exemption) of a party in interest (C) which has the authority to appoint or terminate the QPAM.

*Example (3).* Plan M is a collectively bargained multiemployer pension plan administered by a joint board of union and employer trustees. The board of trustees chooses Insurance Company Y to manage a portion of its assets in a pooled separate account. The Insurance Company uses a portion of the pooled separate account assets to purchase computers from corporation Z, a contributing employer to Plan M. These computers will be leased to the general public. Neither Z nor any of its affiliates is a member of the board of trustees. Although Z is a party in interest, as an employer any of whose employees are covered by the plan, the general exemption of Part I is available for the purchase of the computers. In this regard, neither Z nor an affiliate has the authority with respect to the plan described in section I(a) of the exemption.

*Example (4).* Assume the same facts as in Example (3) except that an officer of Corporation Z was a member of the board of trustees of Plan M for the year ending December 31, 1984. Insurance Company Y is chosen on January 1, 1986 to manage plan assets as a successor to Investment Adviser A whose 3 year management contract expired on March 15, 1985. Although the officer had the authority to participate in the appointment of the QPAM and to negotiate the terms of the management contract, this authority was never exercised. Corporation Z can engage in transactions under Part I of the proposed exemption because its affiliate, the officer, did not, at the time of the transaction have the authority, and during the immediately preceding two years (when it had the authority) did not exercise it to appoint the QPAM or negotiate a management agreement with the QPAM with regard to the Plan's assets.

*Example (5).* QPAM X invests part of a pension fund's managed account to acquire a parcel of unimproved real property from its president Y. QPAM X has engaged in an act of self-dealing described in section 406(b)(1) of ERISA because it has caused the fund's assets to be used in a transaction which benefits a person in whom QPAM X has an interest which may affect the exercise of its best judgment as a fiduciary. Although Part I of the proposal provides an exemption for the purchase of property from Y, it does not

provide relief from acts described in section 406(b) of ERISA.

*Example (6).* Plan P chooses a registered investment adviser, QPAM I, to manage 40 percent of its assets. The Plan allocates an additional 30 percent of its assets to a single customer separate account maintained by QPAM II. QPAM II uses a portion of the separate account's assets to purchase U.S. Government securities directly from Broker-Dealer B, a wholly-owned subsidiary of QPAM I. Assuming that the QPAMs are unrelated entities, the general exemption of Part I is available for this transaction because neither QPAM I nor its affiliate, Broker-Dealer B has, or exercised during the preceding two years, the authority to appoint or terminate QPAM II (or negotiate the QPAM's contract) as a manager of the Plan's assets involved in the transaction. In this regard, a person who is a plan fiduciary, as defined in section 3(21)(A) of ERISA, is deemed to be a fiduciary only with respect to those plan assets over which it exercises, or has responsibility to exercise, those functions which make it a fiduciary (See 29 CFR 2510.3-21(d)(2)). Thus, a fiduciary will be treated as a party in interest other than a fiduciary (i.e., a service provider) when it engages in a transaction involving plan assets with respect to which it is not a fiduciary. Accordingly, no additional relief under the self-dealing provisions of ERISA section 406(b) is required for this transaction which would be covered by Part I of the proposal.

Section I(c) of the proposal requires that the QPAM function as the decision maker of the investment fund for all covered transactions. In general, the terms of the transactions are also to be negotiated by the QPAM. However, specific transactions may be effected by a person or entity that acts under the authority and general direction of the QPAM.

*Example (7).* A collective fund for plans managed by a bank that is a QPAM invests assets to acquire a large office building. Under section I(c), the QPAM could contract with an unrelated property manager or leasing agent which would operate the property on a day to day basis, under the authority and general direction of the QPAM, for the purpose of making it a productive investment. So long as the transactional criteria are generally established and monitored by the QPAM, and the QPAM approves each transaction, the property manager could negotiate lease, etc., arrangements with parties in interest eligible for the exemption.

Except as permitted in a limited special exemption for leases of office space (proposed in Part III), a QPAM or its affiliate may not enter into transactions with an investment fund which it manages. Moreover, under section I(d), the general exemption would not be available if the QPAM and the party in interest dealing with the fund are related parties. Section V(h) general provides that a party in interest and a QPAM would be "related" if either entity owns a five percent or more interest, directly or indirectly, in the other entity.

The rule proposed in section I(e) makes explicit the Department's view that a plan (and its sponsor) which provides a significant portion of the QPAM's business as a manager of plan funds would, in many cases, be in a position to improperly influence investment decisions of the QPAM. Accordingly, transactions with parties in interest of a plan would not be covered if the amount of the plan's assets that are managed by a QPAM together with the assets managed by the same QPAM that are attributable to other plans maintained by a common sponsor (or its affiliate) represent more than 10 percent of all employee benefit plan assets under the management of the QPAM.

*Example (8).* A QPAM is organized to manage the assets of only three plans, Plans X, Y and Z delegate responsibility for the management of \$3,000,000, \$6,000,000 and \$1,000,000, of their respective assets to the QPAM. The proposed exemption would be available for transactions involving the parties in interest of Plan Z, only.

*Example (9).* Corporation X and its wholly owned subsidiary, Corporation Y, maintain separate pension plans for their employees. The assets of Corporation X's plan and Corporation Y's plan are managed by Investment Adviser Z (a QPAM) and comprise 7 percent and 6 percent, respectively, of the total employee benefit assets managed by the Investment Adviser. The Investment Adviser uses plan assets of Corporation X to purchase a shopping center. The Investment Adviser proposes to purchase landscaping shrubbery from any party in interest of either plan. The proposed exemption would not be available for this transaction because the assets of Corporation X's plan (7 percent) when aggregated with the assets of the plan maintained by its affiliate, Corporation Y (6 percent), represent more than 10 percent of the total employee benefit assets managed by the QPAM. However, as proposed, the exemption would be available for transactions

involving parties in interest with respect to other plans managed by the QPAM if the conditions of the exemption are met.

**C. Special Exemptions for Employers:** Part II of the proposed exemption provides limited relief under section 406 (a) and (b) of ERISA for certain transactions involving those employers and their affiliates who cannot qualify for the general exemption provided by Part I.

Part II is divided into two subparts. Section II(a) would permit transactions involving the furnishing of goods and services to an investment fund managed by a QPAM by a party in interest if certain requirements are met. Transactions must be necessary for the administration or management of the investment fund and must take place in the ordinary course of a business engaged in by the party in interest with the general public. As a limitation, the proposal requires that no more than one percent of the party in interest's annual gross receipts from all business sources may be attributable to transactions engaged in under this special exemption. The application of section II(a) may be illustrated by the following two examples.

**Example (10).** Pursuant to a proper plan provision, Corporation X, a pension consulting firm which provides actuarial services in the ordinary course of its business, enters into an agreement with a QPAM for the management by the QPAM of the assets of the X-sponsored plan. The QPAM wishes to retain X to provide actuarial services with regard to the trust fund established for the plan. Although the relief afforded by Part I of the proposed exemption would not be available to Corporation X because it has the authority to hire and fire the QPAM, Part II of the exemption would permit Corporation X to provide the type of services that it normally furnishes to the public and that are necessary for the plan, if the remaining conditions of Part II are met.

**Example (11).** The Board of Directors of Corporation X allocates a portion of Plan P's assets to Investment Adviser I for management. I uses these assets to purchase a shopping center. I contracts with X, a lighting fixtures wholesaler, to purchase and install new fluorescent fixtures throughout the shopping center. The contract sales price for the fixtures and installation amounted to .05 percent of the total gross receipts received by X during its taxable year. The special exemption for employers contained in section II(a) is available for the purchase of fixtures and the accompanying services because the total cost of these goods and services is less than one percent of X's total annual

gross receipts and such goods and services are provided in the ordinary course of X's business.

Section II(b) would permit the leasing of office or commercial space by an investment fund to a party in interest if the unit of space under the lease is suitable for use by different tenants and does not exceed 15 percent of the rentable space of the office building or commercial space. The Department notes that the general exemption provided by Part I of the proposal would not provide relief from the limitations with respect to holdings by certain plans of employer securities and employer real property contained in section 407(a) of ERISA (even in the case of employers who contribute to multiple employer plans and do not hold the power of appointment over a QPAM). Section II(b), however, proposes an exemption from the restrictions of ERISA section 407(a) for transactions involving the leasing of office space to employers even where such leases might not otherwise qualify under the employer real property rules by reason of the definition of "qualifying employer real property" contained in ERISA section 407(d)(4).<sup>3</sup> However, in the case of a plan that is not an eligible individual account plan, immediately after the lease transaction, the aggregate fair market value of employer real property and employer securities held by the investment funds of the QPAM in which the plan has an interest may not exceed ten percent of the fair market value of the assets of the plan held in these investment funds. The application of section II(b) may be illustrated by the following example.

**Example (12).** Corporation X chooses Insurance Company I to manage Profit-Sharing Plan P's assets in a single customer separate account. I uses plan assets to purchase a fifty-story office building. I proposes to lease one floor of the building to Corporation Z, a wholly owned subsidiary of X. Real estate agent A will receive a commission from Z for locating the rental space. The special exemption provided by section II(b) is available for this transaction because the amount of space to be leased to Z is less than 15 percent of the rentable space of the office building and no commission will be paid by the separate account in connection with the transaction.

The availability of the relief provided by sections II(a) and II(b) of the proposal is further conditioned by the

<sup>3</sup> For example, a lease of an office by the investment fund to the employer may not meet the requirement of ERISA section 407(d)(4)(A) that a substantial number of leased parcels be dispersed geographically.

requirement that the transactions satisfy the provisions of sections I(c) through (g) of the proposed exemption.

**D. Specific Lease Exemption for QPAMs:** Part III of the proposed exemption provides limited relief under section 406 (a) and (b) of ERISA for the leasing of office space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who cannot qualify for the general exemption provided by Part I because it holds (or has held) the power of appointment described in section I(a). For this exemption to be available, the unit of space under the lease must be suitable for use by different tenants and cannot exceed one percent of the rentable space in the office building.

The Department recognizes that a QPAM or its affiliate often needs to occupy space in close proximity to those assets managed by the QPAM on behalf of plans. The one percent limitation on the amount of space leased in an office building is designed to ensure that the terms of the lease are no more favorable to the QPAM or its affiliate than are available to other occupants of the building in which the investment fund has an investment.

**E. Places of Public Accommodation:** In the regular operations of places of public accommodation, such as hotels and motels, that may be purchased by a QPAM on behalf of an investment fund, many people, including parties in interest with respect to a plan managed by the QPAM, may receive the use of rooms, services, food, etc. Such hotels and motels will typically be managed by hotel management companies who probably would not be aware of the relationships of the hotel and motel guests to the QPAM and the plans whose assets are managed by the QPAM. Accordingly, based on precedents established in several class and individual exemptions, the Department is proposing a special exemption, set forth in Part IV, that would provide relief from sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM to all parties in interest if the services and facilities are furnished on a comparable basis to the general public.

#### Notice to Interested Persons

Because all plan participants and beneficiaries whose plans participate in investment funds managed by QPAMs could conceivably be interested persons, the Department has determined that the

only practical form of notice is by publication in the *Federal Register*.

#### General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

#### Proposed Exemption

The Department has under consideration the granting of the following exemption under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

**Part I. General Exemption.** Effective [date of grant of this exemption], the restrictions of ERISA section 406(a)(1) (A) through (D) and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in

section V(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding two years has not exercised, the authority to—

(1) Appoint or terminate the QPAM as a manager of any of the plan's assets, or

(2) Negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81-6 (46 FR 7527; 1/23/81) (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 81-7 (46 FR 7520; 1/23/81) (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 82-87 (47 FR 21331; 5/18/82) (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and the QPAM makes the decision on behalf of the investment fund to enter into the transaction;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 10 percent of the total employee benefit plan assets (as defined in section V(i)) managed by the QPAM;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any other, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction

has been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgement of the trial court, regardless of whether that judgement remains under appeal.

**Part II. Specific Exemptions for Employers.** Effective [date of grant of this exemption], the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of Code section 4975(c)(1) (A) and (E), shall not apply to:

(a) The sale, leasing, or servicing of goods, or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in subparagraphs (E), (G), (H) or (I) of ERISA section 3(14),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, no more than one (1) percent of gross receipts derived from all sources may be attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption, and

(5) The requirements of sections I (c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in subparagraphs (E), (G), (H), or (I) of ERISA section 3(14),

(2) No commission is paid by the investment fund in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants.

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(a)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in these investment funds. For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reasons of a relationship to the employer described in subparagraphs (E), (G), (H), or (I) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

**Part III. Specific Lease Exemption for QPAMs.** Effective [date of grant of this exemption], the restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of ERISA and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the leasing of office space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed one (1) percent of the rentable space of the office building in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission is paid by the investment fund in connection with the transaction.

**Part IV. Transactions Involving Places of Public Accommodation.** Effective [date of grant of this exemption], the restrictions of section 406(a)(1)(A) through (D) and 406(b) (1) and (2) of ERISA and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

**Part V. Definitions and General Rules.**

For the purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(j)) in excess of \$1,000,000, or

(2) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(k)) in excess of \$1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(3) An investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of \$50,000,000 and either (A) shareholders' or partners' equity (as defined in section V(1)) in

excess of \$750,000 or (B) all of its obligations and liabilities assumed or guaranteed by a person described in (a)(1) or (a)(2) of section V above or by a broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of \$750,000, that has acknowledged in a written management agreement that it is a fiduciary with respect to the plan.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or nor in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a), an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, partner or employee (but only if the employer of such employee is the plan sponsor); and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, relative of, or partner in, any such person;

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, partner, or owner; and

(4) Any employee of the person who—  
(A) is a highly compensated employee, defined in section 4975(e)(2)(H) of the Code, or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified

person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns, directly or indirectly, a five percent or more interest in the QPAM or if the QPAM (or a person controlling, or controlled by, the QPAM) owns, directly or indirectly, a five percent or more interest in the party in interest. For purposes of this definition, the term "interest" means with respect to ownership of an entity—

(1) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(2) The capital interest or the profits interest of the entity if the entity is a partnership, or

(3) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

(i) For purposes of section I(e), the term "employee benefit plan assets" includes assets attributable to plans described in section 3(3) of ERISA and section 4975(e)(1) of the Code, with respect to which assets the QPAM is a fiduciary as defined in section 3(21)(A) of ERISA.

(j) For purposes of section V(a)(1), the term "equity capital" includes stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(k) For purposes of section V(a)(2), the term "net worth" includes capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(l) For purposes of section V(a)(3), the term "shareholders' or partners' equity" is the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

Signed at Washington, D.C. this 14 day of December.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-34563 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-68)]

### NASA Advisory Council (NAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Task Force for the Study of Effective Shuttle Utilization.

**DATES:** January 5, 1983, 9 a.m. to 5 p.m.; January 6, 1983, 8:30 a.m. to 4 p.m.

**ADDRESS:** Nasa Headquarters, Room 7002, 400 Maryland Avenue SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl R. Praktish, Code LB-4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8380).

**SUPPLEMENTARY INFORMATION:** The NASA Advisory Council Informal Task Force for Effective Shuttle Utilization was established under the NASA Advisory Council to conduct a study of the directions NASA should take to ensure the most effective use of the Shuttle capability and to report its findings and recommendations to the Council. The Task Force is chaired by Edgar M. Cortright, and has a total of 11 members.

The meeting will be closed to the public from 8:30 a.m. to 4 p.m. on January 6, 1983, because the members will consider the qualifications of candidates to participate in the study either as additional Task Force members or as other contributors. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

For the open sessions, visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

**TYPE OF MEETING:** Open—except for the closed session as noted in the following agenda.

#### AGENDA:

January 5, 1983

9 a.m.—Introduction

9:10 a.m.—Policy and Operations

10:45 a.m.—Marketing and Pricing

3:15 p.m.—Future Launch Vehicles

5 p.m.—Adjourn

January 6, 1983

8:30 a.m.—Planning Session (closed)

4 p.m.—Adjourn

Richard L. Daniels,

Director, Management Support Office, Office of Management.

December 15, 1982.

[FR Doc. 82-34478 Filed 12-20-82; 8:45 am]

BILLING CODE 7510-01-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Agency Report Forms Under OMB Review

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

**DATE:** Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Submitting Officer of your intent as early as possible.

**ADDRESS:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB reviewer.

#### FOR FURTHER INFORMATION CONTACT:

*OPIC Agency Submitting Officer:* L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Room 405, 1129 20th Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

*OMB Reviewer:* Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

#### SUPPLEMENTARY INFORMATION:

*Summary of Form Under Review*

*Type of Request:* Reinstatement.

*Title:* Project Information Report.

*Form Number:* OPIC 71.

*Frequency of Use:* Annually.

*Type of Respondent:* Businesses.  
*Standard Industrial Classification Codes:* All.

*Description of Affected Public:*  
Private, U.S.-owned businesses or investors having overseas investments.

*Number of Responses:* 60.

*Reporting Hours:* 1½ hours per response.

*Federal Cost:* \$0.00.

*Authority for Information Collection:*  
Section 231(k) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The project information report form is necessary to elicit and record information on the developmental, environmental, and U.S. economic effects of projects assisted by OPIC. The form will be used by OPIC's staff and management solely as a basis for monitoring these projects and for reporting the results in aggregate form to Congress. The information elicited is available from OPIC's clients only and is pledged to be held in strictest confidentiality.

Dated: December 13, 1982.

Leo H. Phillips, Jr.,

*Assistant General Counsel for Legislative and Administrative Affairs.*

[FR Doc. 82-34479 Filed 12-20-82; 8:45 am]

BILLING CODE 3210-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 19276 (SR-PSE-82-14)]

### Pacific Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

#### Corrections

In FR Doc. 82-33124, beginning on page 54887, in the issue of Monday, December 6, 1982, make the following corrections:

(1) On page 54887, in the heading, "(SR-PSE-82-18)" should read "(SR-PSE-83-14)"

(2) On page 54888, the first column, first complete paragraph, the last line should read "No. SR-PSE-82-14".

BILLING CODE 1505-01-M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978

(43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "Paintings from the Royal Academy" (included in the list<sup>1</sup> filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the foreign lender and the International Exhibitions Foundation. I also determine that the temporary exhibition or display of the listed exhibit objects at the Society of the Four Arts, Palm Beach, Florida, beginning on or about January 7, 1983, to on or about February 13, 1983, at the Cincinnati Art Museum, Cincinnati, Ohio, beginning on or about March 1, 1983, to on or about April 17, 1983, at the National Academy of Design, New York, N.Y., beginning on or about May 1, 1983, to on or about June 15, 1983, at the Seattle Art Museum, Seattle, Washington, beginning on or about June 28, 1983, to on or about August 14, 1983, at the New Orleans Museum of Art, New Orleans, Louisiana, beginning on or about September 10, 1983, to on or about October 23, 1983, at the San Antonio Museum of Art, San Antonio, Texas, beginning on or about November 6, 1983, to on or about December 25, 1983, at the Virginia Museum, Richmond, Virginia, beginning on or about January 15, 1984, to on or about February 28, 1984, and at the Delaware Art Museum, Wilmington, Delaware, beginning on or about March 10, 1984, to on or about April 15, 1984, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*.

Dated: December 17, 1982.

Charles Z. Wick,

*Director.*

[FR Doc. 82-34697 Filed 12-17-82; 5:06 pm]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "Paintings in Naples from Coravaggio to Giordano" (included in the list<sup>1</sup> filed as

<sup>1</sup> An itemized list of objects included in the exhibit is filed as part of the original document.

a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the foreign lenders and the National Gallery of Art. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about February 13, 1983, to on or about May 1, 1983, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*

Dated: December 17, 1982.

Charles Z. Wick,

*Director.*

[FR Doc. 82-34698 Filed 12-17-82; 5:06 pm]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "Caravaggio in Sicily" (included in the list<sup>1</sup> filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the foreign lenders and the National Gallery of Art. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about February 13, 1983, to on or about May 1, 1983, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*

Dated: December 17, 1982.

Charles Z. Wick,

*Director.*

[FR Doc. 82-34698 Filed 12-17-82; 5:06 pm]

BILLING CODE 8230-01-M

## VETERANS ADMINISTRATION

### Notice of Agency Forms Under OMB Review

AGENCY: Veterans Administration.

<sup>1</sup> An itemized list of objects included in the exhibit is filed as part of the original document.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists a new form and a revised form. The entries contain the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency

Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420 (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Andy Usher, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the forms should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: December 13, 1982.

By direction of the Administrator.

**Dominick Onorato,**

*Associate Deputy Administrator for Information Resources Management.*

**New Form**

- (1) Office of Budget and Finance.
- (2) Work-Study Time Record (VETERAN-STUDENT SERVICES).
- (3) VA Form 4-8690.

- (4) Recurring.
- (5) Educational Institutions.
- (6) 45,000 responses.
- (7) 11,250.
- (8) Not Applicable under 3504 (H).

**Revision**

(1) Department of Veterans Benefits, Veterans Assistance Service.

(2) Compliance Report of Proprietary Institutions.

(3) VA Form 27-4274.

(4) The collection of data is an ongoing process.

(5) All proprietary schools receiving Federal financial assistance from the VA and/or the Department of Education.

(6) 649 responses annually.

(7) 649 hours.

(8) Not applicable under 3504(H).

[FR Doc. 82-34574 Filed 12-20-82; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 47, No. 245

Tuesday, December 21, 1982

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

#### FEDERAL RESERVE SYSTEM

(Board of Governors)

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on December 15, 1982.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 9:30 a.m., Wednesday, December 22, 1982.

**CHANGES IN THE MEETING:** Deletion of the following open item(s) from the agenda:

Proposed amendments to Regulation K (International Banking Operations) regarding bank holding company investment in export trading companies.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: December 17, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1846-82 Filed 12-17-82; 3:43 pm]

BILLING CODE 6210-01-M

### 2

#### NUCLEAR REGULATORY COMMISSION

**DATE:** Tuesday, December 16, 1982.

**PLACE:** Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:** *Thursday, December 16:*

10:00 a.m.:

Briefing by Ad Hoc Committee on Regulatory Reform (Public Meeting) (replaces Briefing by Regulatory Reform Task Force) (Legislative Proposals)—moved to December 22, 1982.

All other meetings remain as announced.

#### AUTOMATIC TELEPHONE ANSWERING

**SERVICES FOR SCHEDULE UPDATE:** (202)

634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Walter Magee (202) 634-1410.

December 15, 1982.

Walter Magee,

Office of the Secretary.

[S-1844-82 Filed 12-17-82; 10:21 am]

BILLING CODE 7590-01-M

### 3

#### NUCLEAR REGULATORY COMMISSION

**DATE:** Friday, December 17, 1982 and Week of December 20, 1982 (Revised).

**PLACE:** Commissioner's Conference Room, 1717 H Street, N.W., Washington, D.C.

**STATUS:** Open and close.

**MATTERS TO BE DISCUSSED:** *Friday, December 17:*

1:00 p.m.:

Briefing on Board Notification—TMI-1 Seismic Capability of Auxiliary Feedwater System (Public Meeting) (New Item)

2:30 p.m.:

Discussion of Immediate Effectiveness Issues in TMI-1 Restart Proceeding (Closed—Exemption 10) (New Time)

*Monday, December 20:*

10:00 a.m.:

Discussion of Management—Organization and Internal Personnel Matters (Closed—Exemption 2 and 6) (As Announced)

2:00 p.m.:

Briefing by Regulatory Reform Task Force (Legislative Proposals) (Public Meeting) (As Announced)

*Tuesday, December 21:*

9:30 a.m.:

Discussion of Plans for Hearing on NFS Erwin (Open/Portions May be Closed) (New Item)

10:30 a.m.:

Discussion of Immediate Effectiveness Issues in TMI-1 Restart Proceeding (Closed—Exemption 10) (Replaces previously announced Public Meeting: "Possible Vote on Immediate Effectiveness Issues in TMI-1 Restart Proceeding")

2:00 p.m.:

Discussion of Possible Actions in Regard to Indian Point (Public Meeting) (Title Change)

*Wednesday, December 22:*

10:00 a.m.:

Discussion of Regulatory Reform Task Force Legislative Proposals (Public Meeting) (Title Change)

2:00 p.m.:

Discussion of Proposed Safety Goals and Staff Evaluation Plan (Public Meeting) (Title Change)

3:30 p.m.:

Affirmation/Discussion and Vote (Public Meeting) (Items Revised)

a. Indian Point Special Proceeding

b. Review of ALAB-691 (Consumers Power Company)

c. San Onofre Memorandum and Order re Medical Services

d. ALAB-687 (Duke Power) (postponed from December 16)

4:00 p.m.:

Discussion/Possible Vote on Actions in Regard to Indian Point (Public Meeting) (Title Change)

**ADDITIONAL INFORMATION:** On December 16 the Commission voted 5-0 to hold Discussion of Letters Regarding Water Level Indicators (Public Meeting), held that day.

#### AUTOMATIC TELEPHONE ANSWERING

**SERVICE FOR SCHEDULE UPDATE:** (202)

634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Walter Magee (202) 634-1410.

December 16, 1982.

Walter Magee,

Office of the Secretary.

[S-1847-82 Filed 12-17-82; 3:54 pm]

BILLING CODE 7590-01-M

### 4

#### SECURITIES AND EXCHANGE COMMISSION

**"FEDERAL REGISTER" CITATION OF**

**PREVIOUS ANNOUNCEMENT:** (47 FR 55564, December 10, 1982.

**STATUS:** Closed/open meeting.

**PLACE:** 450 Fifth Street, N.W., Washington, D.C. Room 1C30.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, December 7, 1982.

**CHANGES IN THE MEETING:** Additional/deletion items. The following item was considered at a closed meeting scheduled for Wednesday, December 15, 1982, at 9:00 a.m.:

Access to investigative files by Federal, State, or Self-Regulatory authorities.

The following additional item was considered at an open meeting scheduled for Wednesday, December 15, 1982, 10:00 a.m.:

Consideration of whether to adopt final rules which would replace the existing

requirement for supplemental oil and gas disclosures with a requirement to provide the supplemental disclosures specified in FASB Statement No. 69. In addition, the Commission will consider certain conforming amendments to Industry Guide 2, the proxy rules, and various "safe harbor" provisions. For further information, please contact M. Elizabeth Rader or John W. Albert at (202) 272-3081.

The following item was not considered at an open meeting

scheduled for Wednesday, December 15, 1982, at 10:00 a.m.:

Consideration of whether to permit Vincent Forma to become an associated person in a non-supervisory, non-proprietary capacity with BAP Management Corporation. For further information, please contact Mary Binno at (202) 272-2318.

Chairman Shad and Commissioners Evans, Thomas, Longstreth and Treadway determined by vote that Commission Business required the

above changes 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: Diane Klinke at (202) 272-2014.

December 16, 1982.

[S-1845-82 Filed 12-17-82; 11:45 am]

BILLING CODE 8010-01-M

# **federal register**

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**Tuesday  
December 21, 1982**

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**Part II**

**Department of  
Commerce**

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**International Trade Administration**

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**Export Trade Certificates of Review**

**DEPARTMENT OF COMMERCE****International Trade Administration****15 CFR Part 325****[Docket No. 21215-252]****Export Trade Certificates of Review****AGENCY:** International Trade Administration, Commerce.**ACTION:** Proposed rule.

**SUMMARY:** The Department of Commerce is proposing regulations to implement Title III of the Export Trading Company Act, Pub. L. 97-290. The purpose of this statute is to promote United States export trade by affording United States businesses an export trade certificate of review process. These regulations will establish the procedures for the application for and issuance of the export trade certificates of review. Persons identified in these certificates will have certain protections from liability under Federal and state antitrust laws for certified export trade, export trade activities and methods of operation conducted while the certificates are in effect.

**DATE:** Comments must be submitted on or before January 20, 1983.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of the Assistant General Counsel for Export Trading Companies, Department of Commerce, Room 4877, Washington, D.C. 20230. Communications should refer to this rule by its title above.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Department of Commerce, Washington, D.C. 20230; (202) 377-0937. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** On October 1, 1982, Congress passed the Export Trading Company Act (Pub. L. No. 97-290, 96 Stat. 1233) which the President signed into law on October 8, 1982. The purpose of this legislation is to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers. This is to be accomplished by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies (ETCs), by permitting bankers' banks and bank holding companies to invest in ETCs, by reducing restrictions on export financing provided by financial institutions, by affording certain protections from liability under Federal and state

antitrust laws, and by clarifying the application of Federal antitrust laws to certain export trade.

These proposed regulations will implement Title III of the Export Trading Company Act. Title III (15 U.S.C. 4011-4021) authorizes the Secretary to promote and encourage export trade by issuing export trade certificates of review. A person to whom a certificate of review is issued is protected from the trebling of damages for any injury resulting from and criminal liability for export trade, export trade activities and methods of operation specified in the certificate.

Any person may apply for a certificate or review. The regulations define "person" to mean an individual who is a resident of the United States; a partnership or corporation created and existing pursuant to the laws of any state or of the United States; a state or local government entity; or any association or combination, by contract or other arrangement, between or among such persons. There is no requirement that the applicant be organized and operated principally to export or to facilitate the export of goods or services produced in the United States. However, only the applicant's export trade activities can be certified. The Secretary will publish notice of each application in the *Federal Register*. Interested parties will then have twenty days to submit to the Secretary information they consider relevant to the application.

The Secretary may issue a certificate of review to an applicant only if the Secretary, with the concurrence of the Attorney General of the United States, determines that the applicant's proposed conduct will: (1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant; (2) not unreasonably enhance, stabilize, or depress prices within the United States; (3) not constitute unfair methods of competition against competitors engaged in the export of the same class of goods or services; and (4) not reasonably be expected to result in the sale for consumption or resale in the United States of goods or services exported by the applicant. The proposed regulations set out and require the applicant to submit, as part of its application, information needed by the Secretary to make this determination. The Secretary may also request such supplemental information as he or the Attorney General deems necessary to make a proper determination on an application.

The Secretary and the Attorney General are especially interested in

comments on the preparation and disclosure of information on the total domestic and foreign sales of the applicant and its members as required in § 329.3(b)(9)(B) of the proposed regulations. The exchange and sharing of such information among competitors may, in certain circumstances, raise antitrust concerns. Since it is not dealt with in the regulations, the Secretary invites comments on how this issue should be addressed.

In addition to the submission of applications, these regulations will also establish the procedures for the review of applications by the Secretary and the Attorney General and for the issuance of a certificate or the denial of an application. The regulations will allow the applicant to withdraw its application at any time prior to a final determination. However, an application which is denied is not entitled to be submitted again for twelve months. The applicant may, within 30 days of receiving a notice of denial, request the Secretary to reconsider his determination.

A person to whom a certificate of review has been issued may subsequently apply for an amendment of the certificate. An application for an amendment will be treated in the same manner as an original application. The grounds and procedures for the modification or revocation of a certificate are also set out in these regulations. The Secretary specifically invites comments on the appropriateness of the proposed revocation and modification procedures. Finally, the regulations will implement Section 305 of the Export Trading Company Act which governs the judicial review of decisions by the Secretary to grant, deny, amend, modify or revoke a certificate.

The Secretary, with the concurrence of the Attorney General, plans to promulgate guidelines for the issuance of certificates of review. These guidelines will set forth the standards and analytical approach which will be applied in determining whether to certify an applicant's proposed export trade, export trade activities and methods of operation. The Secretary will publish these guidelines in the *Federal Register* when they are developed.

The Department is providing a period of 30 days for public comments on this rule. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are

accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. The proposed regulations are procedural in nature and will not have an annual effect on the economy of \$100 million or more. Analysis of the regulations also indicates that they will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a preliminary Regulatory Impact Analysis of this rule is not required.

The only potential costs of the proposed regulations are those to businesses associated with applying for certification and the costs to the Government for processing applications. The recordkeeping, administrative burdens, and direct financial costs to a business to prepare an application under the regulations are expected to be minimal and there is no requirement on a firm wishing to conduct an export venture to utilize the certification mechanism: It is entirely voluntary. Comments from the public regarding costs are specifically requested by the Department to aid in preparing a final rule to ensure cost minimization. The costs to the Federal Government for conducting the antitrust reviews are not expected to be significant.

The proposed rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, no assessment of environmental impact statement has or will be prepared.

The proposed rule is exempt from the Regulatory Flexibility Act since the requirements of Section 603 of the Regulatory Flexibility Act since the Department is not required by Section 553 of Title V, United States Code, or any other law, to publish general notice of proposed rulemaking for interpretative rules, general statements of policy, and rules of procedure or practice. However, even if the proposed rule were not exempt, preparation of an initial Regulatory Flexibility Analysis would not be required because the record keeping, administrative burdens and other costs on any individual entity applying for a certificate of review under the regulations would be minimal and those costs would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The Department has requested approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) of the information collection requirements contained in these regulations.

#### List of Subjects in 15 CFR Part 325

Exports, Antitrust, Administrative practice and procedure, Reporting requirements, and Freedom of information.

Accordingly, the Department proposes to amend 15 CFR Chapter III by adding a new Part 325 to read as follows:

### PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

Sec.	
325.1	Scope.
325.2	Definitions.
325.3	Application for certification.
325.4	Issuance of certificate.
325.5	Publication in the Federal Register.
325.6	Amendment.
325.7	Expedited certification.
325.8	Reconsideration of denial of application for certificate.
325.9	Modification or revocation of certificate.
325.10	Judicial review.
325.11	Return of documents.
325.12	Nonadmissibility in evidence.
325.13	Reports.
325.14	Confidentiality of information.

Authority: Title III of the Export Trading Company Act, Pub. L. 97-290 (96 Stat. 1240-1245, 15 U.S.C. 4011-4021).

#### § 325.1 Scope.

This part contains regulations for the issuance of Export Trading Certificates of Review under Title III of the Export Trading Company Act, Pub. L. No. 97-290. Persons identified in these certificates have certain protections from liability under the antitrust laws for certified export trade, export trade activities and methods of operation engaged in while the certificates are in effect.

#### § 325.2 Definitions.

As used in this part:

(a) "Act" means Title III of Pub. L. 97-290, Export Trade Certificates of Review.

(b) "Antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) "Applicant" means the person or persons submitting an application for a certificate.

(d) "Application" means an application for a certificate issued pursuant to this Act.

(e) "Attorney General" means the Attorney General of the United States or his designee.

(f) "Certificate" means a certificate of review issued pursuant to this Act.

(g) "Control" means either: (1) Holding 50 percent or more of the outstanding voting securities of an issuer; or

(2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

(h) "Controlling entity" means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) "Export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation.

(j) "Export trade activities" means activities or agreements in the course of export trade.

(k) "Member" means a partner in the partnership or joint venture, if the applicant is a partnership or joint venture; a shareholder of the corporation, if the applicant is a corporation; or a participant in the association, cooperative, or other form of profit or nonprofit organization if the applicant is an association, cooperative or other form of profit or nonprofit organization, where such partner, shareholder or participant is seeking protection under the certificate.

(l) "Method of operation" means any method by which a person conducts or proposes to conduct export trade.

(m) "Person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a state or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other Arrangement, between or among such persons.

(n) "Secretary" means the Secretary of the Department of Commerce, or his designee.

(o) "United States" means the several States of the United States the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

### § 325.3 Application for certification.

(a) *Place of filing.* An original and two copies of an application for certification shall be submitted for filing by personal delivery during normal business hours or by registered mail to the Department of Commerce, Washington, D.C. 20230.

(b) *Contents of Application.* Any person may submit an application for certification. Such application shall contain the following information:

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number and relationship to

the applicant of the individual or individuals to whom all correspondence should be addressed.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, bylaws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized and conducts or proposes to conduct its export trade activity.

(4) An organization chart or table for the export-related operations of the applicant.

(5) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with this application, a brief description of the applicant's operations, including the nature of its business, the types of products or services with which it deals, the places where it does business and its methods of operation.

(6) A copy of the most recent annual report of each member and of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with this application, a brief description of each member's business operations, including the types of products it manufactures or sells, the types of services it provides, and the places where it does business.

(7) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses engaged in the production or sale of any types of goods or services described in paragraph (b)(8) of this section.

(8)(i) A description reflecting customary industry product or service definitions of the goods or services which the applicant exports or proposes to export for itself, its members or its customers.

(ii) To the extent it is reasonably ascertainable, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should be identified at the most detailed SIC level available.

(9) For each class of the goods, wares, merchandise or services set forth in paragraph (b)(8) of this section:

(i) The principal geographic area or areas in the United States in which the

sales of the applicant and each member are made.

(ii) For the previous two calendar years, the dollar value of the applicant's and each member's (A) total domestic sales and (B) total foreign sales. The value of sales of the controlling entity and all entities under its control should be included.

(10) For each class of the goods, wares, merchandise or services set forth in paragraph (b)(8) of this section, the best information or estimate accessible to the applicant of the total value of sales in the United States for the last two years. Identify the source of the information or basis of the estimate.

(11) A description of the specific export trade activities and methods of operation which the applicant seeks to have certified. Only the specific activities and methods described in the application will be eligible for certification. Examples indicating the degree of specificity that the applicant may want to provide, and thus have certified, include:

(i) The types of services which the applicant will provide to or secure for persons engaged in export trade and the manner in which those services will be provided;

(ii) The manner in which prices and quantities of products and services to be exported will be established;

(iii) Any agreements to sell exclusively to or through the applicant or other person, any agreements with foreign persons who may act as joint or exclusive agents, any agreements for pooling tangible or intangible property or resources, and any territorial or price maintenance restrictions to be imposed or agreed to;

(iv) The nature of any restrictions for withdrawal by members.

(12) A statement of whether the export trade, export trade activities or methods of operation for which certification is sought will involve, directly or indirectly, any agreement or any exchange of information with respect to domestic prices, production or sales, or will involve any exchange of other business confidential information. If so, specify the nature of any such agreement or exchange of information.

(13) A statement of whether the applicant intends or foresees that any exported goods or services will re-enter the United States, either in its original or modified form. If so, identify the goods or services and the manner in which they may re-enter the U.S.

(14) The number of employees of the applicant, and of each member of the applicant.

(15) A proposed non-confidential summary of the conduct for which certification is sought for publication in the *Federal Register* pursuant to § 325.5(a).

(16) A draft proposed certificate for the export conduct which the applicant seeks to have certified.

(17) A statement of whether the applicant proposes to engage in the export of goods or services supplied by persons not covered by the certificate.

(18) Such other information as the applicant believes necessary or helpful to a determination on the application under the standards of the Act.

(19) Such other information as the Secretary deems necessary.

(c) *Conformity with regulations.* No application shall be deemed submitted unless such document is in compliance with these regulations. Applicants are encouraged to consult with the Department of Commerce prior to filing an application in order to avail themselves of guidance and assistance in the preparation and documentation of their application.

(d) *Review and acceptance.* On the day of delivery of an application, the Secretary shall stamp the application as received. The Secretary shall have five working days from the stamped date of delivery of the application to determine whether the application is complete, has been properly prepared and can be deemed submitted under this Act. On the date on which the application is deemed submitted, the Secretary shall stamp the application with that date, and notify the applicant of the determination. Where the application cannot be deemed submitted, the Secretary shall advise the applicant that it may be refiled when the specified deficiencies have been corrected.

(e) *Withdrawal of application.* An application may be withdrawn by an applicant by written request at any time before a determination under § 325.4 is made on the application. An applicant who withdraws an application may at any time thereafter submit a new application in accordance with these regulations.

(f) *Supplemental information.* In addition to the information contained in the application, the Secretary shall request such supplemental information as he or the Attorney General deems necessary to make a determination on the application. If such a request is made, and the applicant consents to supply the additional information, the time period for determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and deemed complete by the

Secretary. If the applicant does not agree to provide the additional information, and the Secretary or Attorney General deems the information in their possession insufficient to make a determination on the application, the application may be withdrawn by the applicant, or shall be denied by the Secretary.

#### § 325.4 Issuance of certificate

(a) *Time period.* The Secretary shall issue or decline to issue a certificate to an applicant within 90 days after an application is deemed submitted under this Act pursuant to § 325.3(d) (excluding any time period which has been suspended pursuant to § 325.3(f)). Upon agreement by the applicant, the Secretary may, if he deems it necessary, or at the request of the Attorney General, take up to an additional 30 days before issuing or declining to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Within seven days after an application is deemed submitted under this Act pursuant to § 325.3(d), the Secretary shall forward to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information obtained in connection with the certification review process, unless otherwise prohibited by law.

(2) Immediately upon completion of an initial draft of a certificate, but in no event later than twenty days prior to the

expiration of the time period for a determination on the application, the Secretary shall make it available to the Attorney General for discussion and comment. If the Attorney General disagrees with the proposed certificate, he shall, no later than ten days prior to the running of the time period for a determination on the application, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application for a certificate.

(3) If, after having received the draft certificate by the date specified in paragraph (c)(2) of this section, the Attorney General does not render advice within the time period specified in the preceding paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export trade, export trade activities, methods of operation, and all persons which are protected from liability under the antitrust laws. The Secretary may certify in whole or in part the proposed export trade, export trade activities, and methods of operation contained in the applicant's draft certificate with such changes, modifications, terms or conditions as appropriate.

(e) *Effect of denial.* If an application is denied, on the merits, in whole or in part, the applicant shall not be entitled, without the approval of the Secretary, to resubmit the application for certification within the twelve month period succeeding the date of the denial. The Secretary shall consult with the Attorney General regarding any request to resubmit an application prior to the twelve month period.

(f) *Certificate procured by fraud.* A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

(g) *Minimum thirty day period.* No certificate of review may be issued earlier than thirty days from the date of publication of notice in the *Federal Register* pursuant to § 325.5

#### § 325.5 Publication in the "Federal Register."

(a) Not more than ten days after an application is deemed submitted for filing under § 325.3(d), the Secretary shall publish notice of the submission of such application in the *Federal Register*, identifying the name of the applicant,

and a non-confidential summary of the conduct for which certification is sought.

(b) Interested parties may, within twenty days from the date of publication in the *Federal Register*, submit to the Secretary information relevant to the determination of whether to issue a certificate.

(c) If a certificate is issued to an applicant, the Secretary shall publish a copy of the certificate in the *Federal Register*. If an application for a certificate is denied, the Secretary shall publish a brief statement of its action on the application.

#### § 325.6 Amendment.

An application for an amendment shall be treated in the same manner as an original application under these regulations. The application for an amendment to a certificate shall set forth the proposed amendment(s) and the reasons therefor, and shall contain the information specified in § 325.3(b) which is relevant to the determination of the application for an amendment. The application shall also include a copy of the original application, copies of any previous applications for amendment, and a copy of the certificate under which the applicant has been operating. The effective date of an amendment, if granted, shall be the date on which the application for the amendment is deemed submitted for filing pursuant to § 325.3(d).

#### § 325.7 Expedited certification.

(a) *Request for expedited action.* (1) An applicant may request expedited action on its application where circumstances indicate a special need for prompt disposition. Such applicant should set forth the facts and circumstances which warrant expedited processing of its application.

(2) The Secretary shall, with the concurrence of the Attorney General, advise the applicant within 10 days after an application is deemed submitted under this Act pursuant to § 325.3(d) whether it will receive expedited action. The Secretary may grant the request in part, and process the remainder of the application through the normal procedures.

(b) *Time period.* The Secretary shall, with regard to any application for which a request for expedited action has been granted, and subject to the minimum time period in § 325.4(g), issue or decline to issue a certificate within forty five days after an application is deemed submitted under this Act pursuant to § 325.3(d) (excluding any time period which has been suspended pursuant to § 325.3(f)).

(c) *Concurrence of the Attorney General.* (1) Immediately upon completion of an initial draft of a certificate, but in no event later than ten days prior to the expiration of the time period for a determination on the application, the Secretary shall make it available to the Attorney General for discussion and comment. If the Attorney General disagrees with the proposed certificate, he shall, no later than five days prior to the running of the time period for a determination on the application, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application for a certificate.

(2) If, after having received the draft certificate by the date specified in paragraph (c)(1) of this section, the Attorney General does not render advice within the time period specified, he shall be deemed to concur in the proposed certificate.

#### § 325.8 Reconsideration of denial of application for certification.

(a) If the Secretary determines to deny a certificate to an applicant, in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within 30 days of receipt of a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration should include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and such additional information as the applicant deems pertinent.

(2) In the discretion of the Secretary, upon the request of the applicant, the Secretary, and the Attorney General may meet informally with the applicant and/or his representative to discuss the reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to the reconsideration of the application. The Secretary may not modify his original determination without the concurrence of the Attorney General.

(d) The Secretary shall notify the applicant, in writing, of his final determination upon reconsideration and the reasons therefor within thirty days after the request for reconsideration has been received.

#### § 325.9 Modification or revocation of certificate.

(a) *Action subject to modification or revocation.* A person holding a certificate whose export trade, export trade activities or methods of operation no longer comply with the requirements set forth in § 325.4(b) or the terms and conditions set forth in the certificate, or who fails to comply with a request for information pursuant to paragraph (b) of this section, may be subject to any of the following actions:

(1) Revocation of certificate. A certificate may be revoked, in whole or in part.

(2) Modification of certificate. A certificate may be modified by the Secretary in such manner and upon such terms and conditions as necessary.

(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall request such information as he or the Attorney General deems necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate.* (1) *Notification letter.* If, upon the review of such relevant information as is in their possession, the Secretary or the Attorney General believes that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall notify the holder of a certificate in writing by registered or certified mail to the address specified in the certificate of his intent to revoke or modify the certificate. The notification shall include a detailed statement setting forth the facts, conduct or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer.* The certificate holder shall respond to the notification letter within 30 days of receipt thereof. The answer shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if true, do not warrant the revocation or modification of the certificate. The failure to respond within the specified period shall be deemed an admission of the allegations contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General may meet informally with the certificate

holder, and may require the certificate holder to provide such documents or information as necessary to support its contentions. Upon the review of the statements of the certificate holder and the documents or information submitted in support thereof, and upon consideration of other relevant documents or information in his possession, the Secretary shall make a proposed determination of the factual matters in dispute. The Attorney General shall not be bound by the proposed determination.

(4) *Final determination.* The Secretary and Attorney General shall review the notification letter and the answer thereto, the proposed factual determination made pursuant to paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, upon such review, the Secretary or Attorney General determines that the export trade, export trade activities or methods of operation no longer comply with the standards set forth in § 325.4(b), the Secretary shall revoke or modify the certificate as appropriate. The decision shall be final and will be issued to the certificate holder in writing. The decision shall include a statement of the circumstances underlying, and the reasons in support of the determination. If the determination is made to revoke or modify the certificate, the decision shall specify the effective date for the revocation or modification, which date shall be no earlier than thirty days nor later than ninety days after notice of the determination is given.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information obtained in response to Civil Investigative Demands issued pursuant to Section 304(b)(3) of this Act. The Attorney General and the Secretary shall also make available to each other such other information which each is relying upon under these proceedings, unless such disclosure is prohibited by law.

#### § 325.10 Judicial review.

(a) *Review of certain determinations.*  
(1) Any person aggrieved by final orders of the Secretary pursuant to §§ 325.4, 325.6, and 325.9 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United

States to set aside the determination on the ground that such determination is erroneous.

(2)(i) For purposes of this section, an order shall be deemed final under §§ 325.4 and 325.6 when notice is published in the *Federal Register* of the final determination: (A) To grant, in whole or in part, the application or request for amendment; or (B) to deny, in whole or in part, the application or request for amendment, unless the applicant requests reconsideration of the determination within 30 days pursuant to § 325.8. If the applicant requests reconsideration, the final determination upon reconsideration shall be deemed final when notice is published in the *Federal Register*.

(ii) For purposes of this section, an order shall be deemed final under § 325.9 when notice is published in the *Federal Register* of a final determination pursuant to § 325.9(c)(4).

(b) *Record for review.* For purposes of this section, the record, unless otherwise stipulated by the parties, shall consist of:

(1) with regard to the determination to grant or deny an application for a certificate, a copy of all information presented to or obtained by the Secretary which had a bearing on the determination;

(2) with regard to the revocation or modification of a certificate, all information relating to the preparation of the notification letter or which had a bearing on the final determination;

(3) A copy of the determination and the supporting statement.

(c) *Confidential or privileged material.* In any action under this section, the parties shall seek an appropriate protective order prior to the disclosure of any confidential or privileged documents or information.

(d) *Limitation on judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under this Act shall be subject to judicial review.

#### § 325.11 Return of documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, an applicant may request the return of all documents and all copies of the documents available to the Department of Commerce or the Department of Justice. The applicant shall submit such a request to both the

Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return all such documents to the applicant not later than thirty days after receipt of the request, except to the extent that the information contained in a document has been made available to the public.

#### § 325.12 Nonadmissibility in evidence.

The denial of an application for a certificate, in whole or in part, or for an amendment to a certificate, and the revocation or modification of a certificate, and any statement of reasons in support thereof shall not be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

#### § 325.13 Reports.

On the anniversary date of each year following the issuance of a certificate, a certificate holder shall submit to the Secretary a report which shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application, and any other information the Secretary deems appropriate, after consultation with the Attorney General.

#### § 325.14 Confidentiality of information.

(a) Any information submitted by any person pursuant to this Act shall be exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(2) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted pursuant to this Act if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) An officer or employee of the United States may disclose such information under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee or Subcommittee of the Congress,

(ii) In a judicial or administrative proceeding, subject to issuance of an appropriate protective order,

(iii) With the consent of the person who submitted the information,

(iv) When the Secretary deems disclosure of the information to be necessary for a determination with respect to the issuance, amendment, or revocation of a certificate, provided that—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause.

(v) In accordance with any requirement imposed by a statute of the United States.

Dated: December 16, 1982.

Malcolm Baldrige,  
Secretary of Commerce.

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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.) Documents normally scheduled for publication

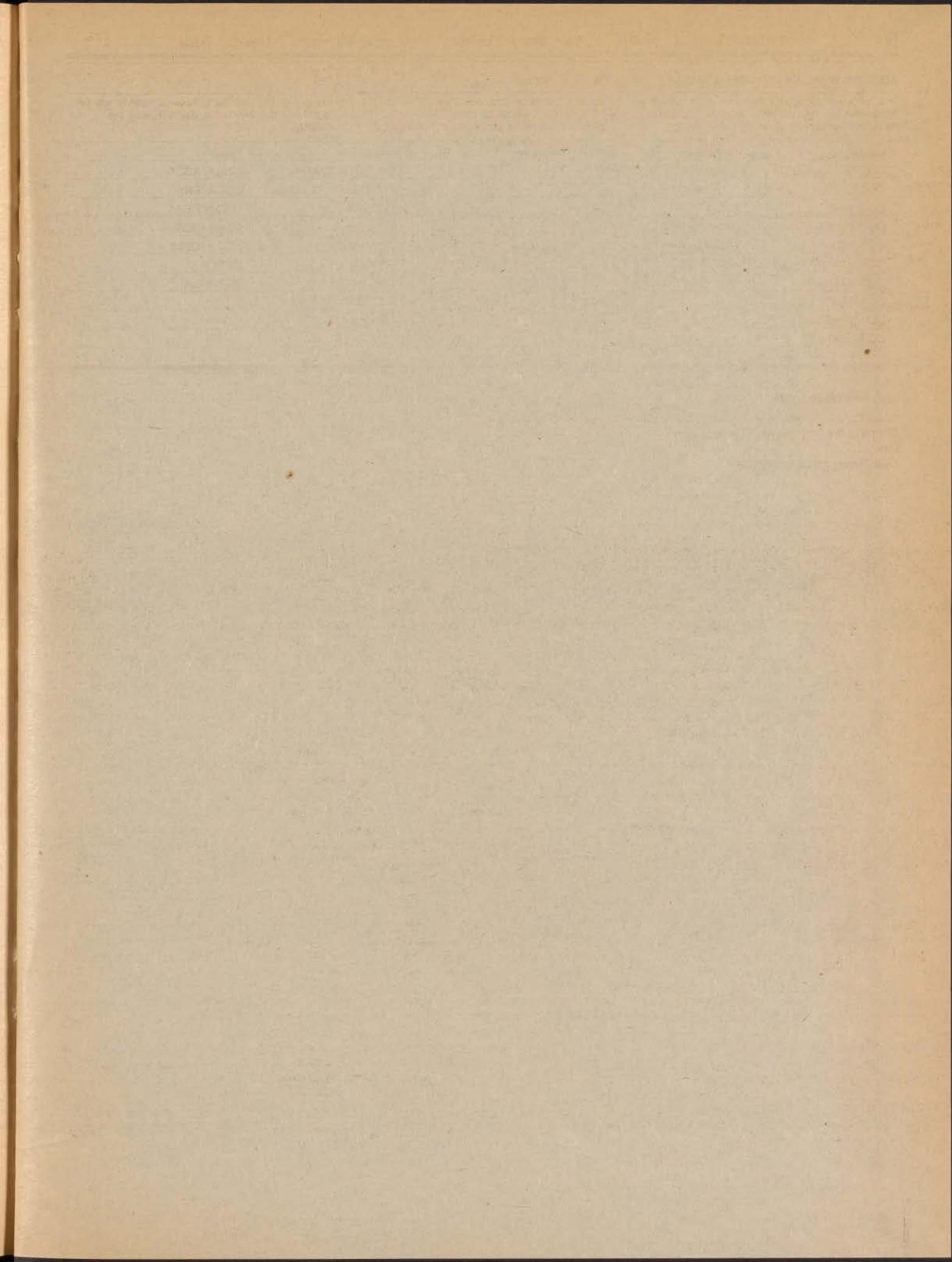
on a day that will be a Federal holiday will be published the next work day following the holiday.

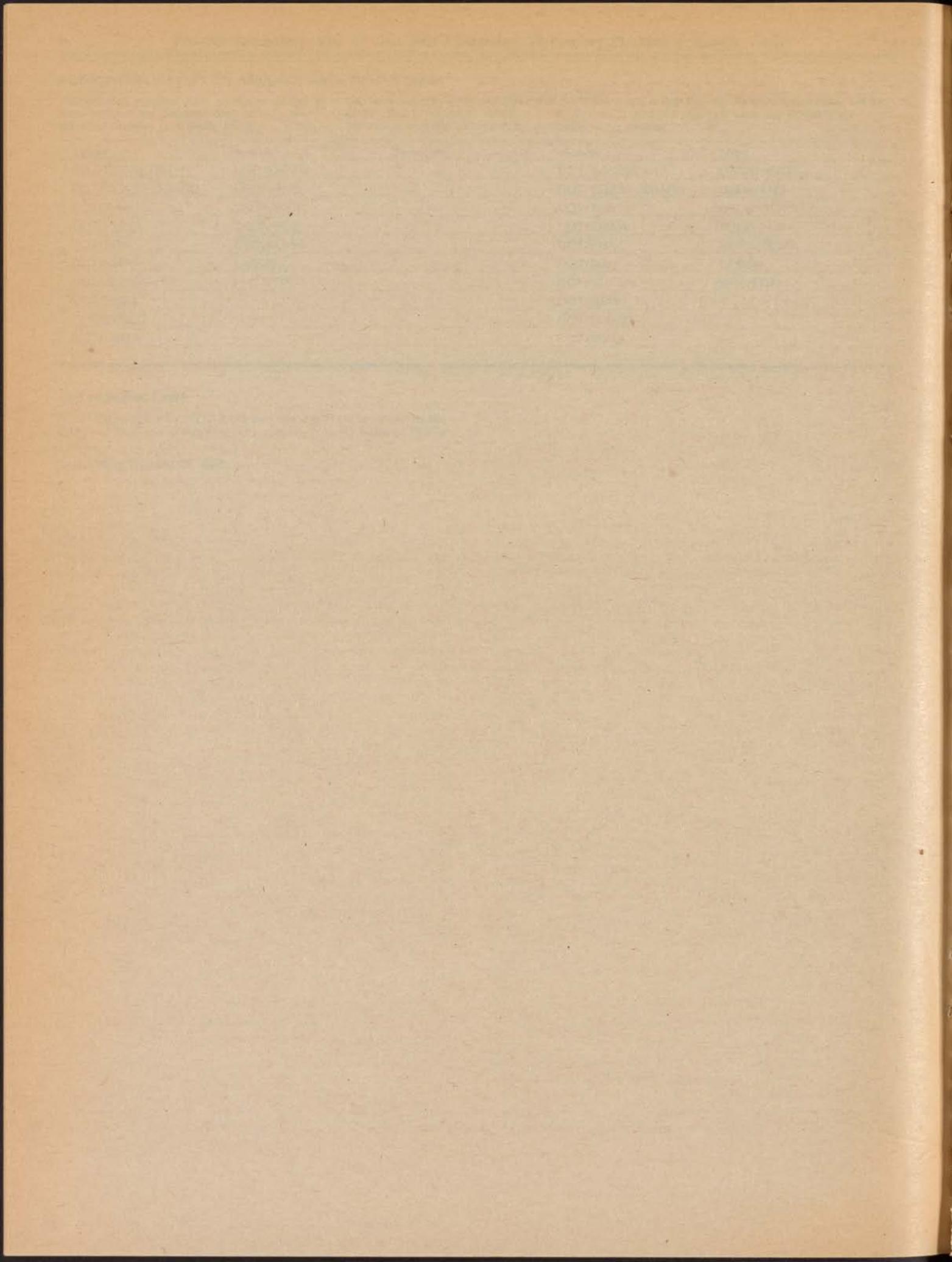
Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

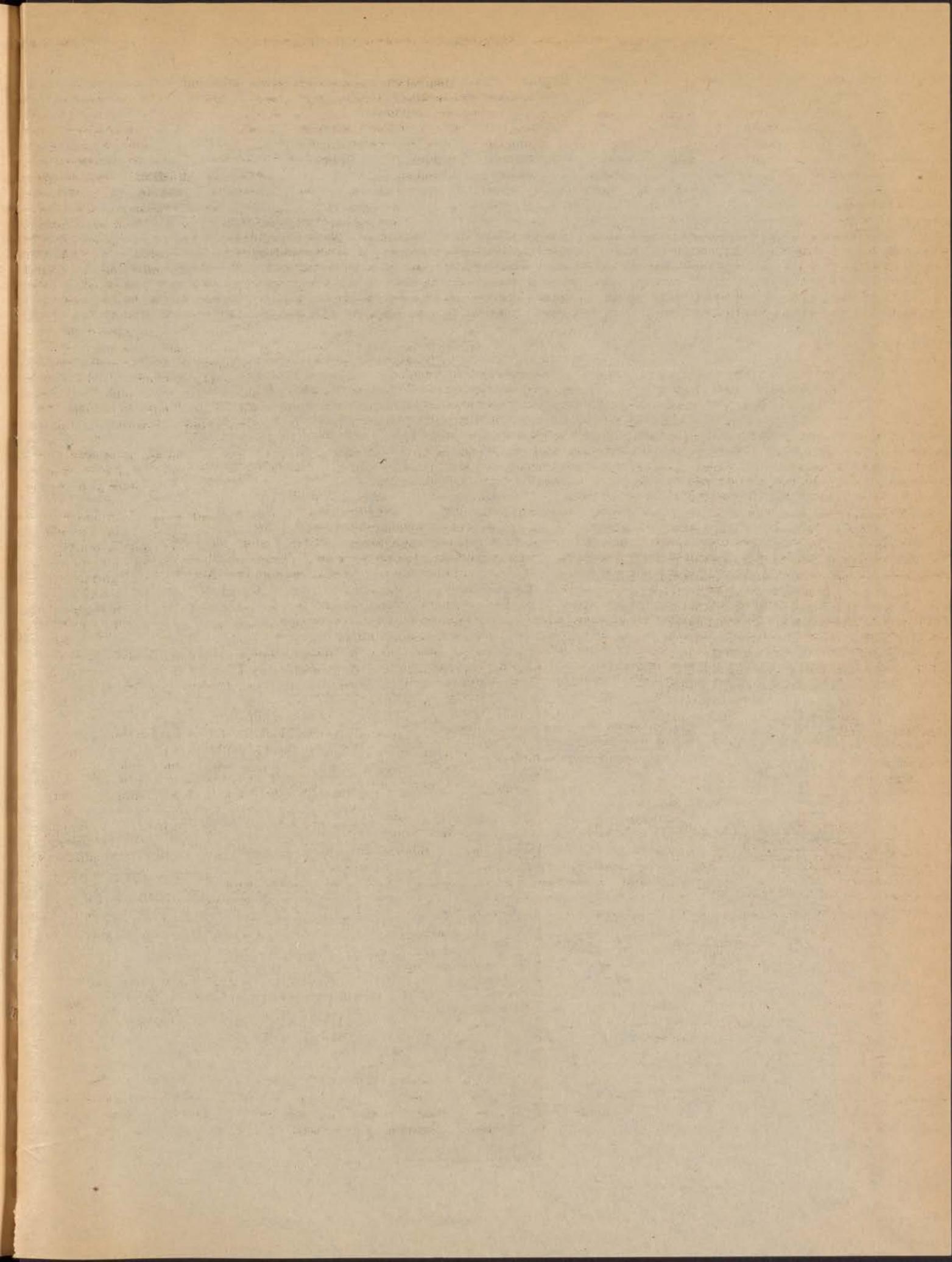
**List of Public Laws**

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing October 28, 1982









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