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Wednesday
January 19, 1983

Selected Subjects

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Selected Subjects

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0446]

Reserve Requirements of Depository Institutions; Money Market Deposit Accounts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to implement Section 13 of Senate Joint Resolution 271, which exempts Money Market Deposit Accounts ("MMDAs") from the phase-in of reserve requirements under the Monetary Control Act of 1980 (Pub. L. 96–221; 12 U.S.C. 461(b)(8)). MMDAs were authorized by the Depository Institutions Deregulation Committee ("DIDC"), effective December 14, 1982, pursuant to section 327 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320; 96 Stat. 1501) ("Garn-St Germain Act"). Under this action, all depository institutions will be subject, without application of the phase-in provisions, to a reserve requirement of three percent on all nonpersonal MMDAs and to a zero percent reserve requirement on all personal MMDAs. The Board also has modified the procedure for allocating the exemption from reserve requirements for the first $2.1 million of an institution's reservable liabilities in order to provide the most benefit to depository institutions in light of the legislation exempting MMDAs from the phase-in of reserve requirements.

DATES: Effective January 13, 1983. The first reserve maintenance period to which these amendments apply begins on January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452–3625), or Paul S. Pilecki, Senior Attorney (202/452–3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective December 14, 1982, federally-insured commercial banks, savings and loan associations, and mutual saving banks were authorized by the DIDC, pursuant to section 327 of the Garn-St Germain Act, to offer MMDAs. The MMDA has the following principal characteristics: (1) An initial and average balance requirement of $2,500; (2) no minimum maturity requirement, but institutions are required to reserve the right to require at least seven days' notice prior to withdrawal; (3) no interest rate ceiling on deposits that satisfy the initial and average balance requirements, and (4) no more than six preauthorized, automatic, or other transfers per month, of which no more than three can be checks. The Board of Governors amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) on December 1, 1982, to subject MMDAs that are authorized to have no more than six transfers per month to the same reserve requirements as savings deposits (47 FR 55207, December 8, 1982). Such an MMDA in which any beneficial interest is held by a depositor that is not a natural person or that is transferable is subject to reserve requirements as a *nonpersonal time deposit* with a maturity of less than 3½ years, which presently has a reserve requirement of three percent. Under the Board's action, such an MMDA in which the entire beneficial interest is held by natural persons and that is not transferable is regarded as a *personal time deposit* not subject to basic reserve requirements of the Monetary Control Act of 1980 ("MCA").

In determining the application of reserve requirements to the MMDA, the Board determined that the transitional adjustment provisions of the MCA applied. In this regard, nonmember depository institutions generally are phasing in to the reserve requirements of the MCA over an eight-year period. Member banks generally are phasing in to the reserve requirements of the MCA, which are lower than pre-MCA requirements, over a four-year period. As a result, the effective reserve requirements that applied to MMDAs were as follows:

EFFECTIVE RESERVE RATIOS ON MMDAS (12/14/82)

	Nonmembers 8-yr phasein	Members (4-yr phasein to lower Reserves)
Personal MMDAs	0	1.125
Nonpersonal MMDAs	1.125	3

On January 12, 1983, Senate Joint Resolution 271 was enacted. In order to provide competitive equity among depository institutions, section 13 of this legislation exempts MMDAs from the transitional adjustments of the Monetary Control Act. Since MMDAs are now exempt from the reserve requirement phase-in, member banks (and Edge and Agreement corporations and certain former member banks) will have a reduction in effective reserve requirements to zero percent on personal MMDAs. On the other hand, the reserve requirement on nonpersonal MMDAs for nonmember depository institutions will rise to an effective ratio of three percent. Nonmembers will continue to be subject to a zero percent reserve requirement on personal MMDAs, and members will continue to be subject to a three percent reserve requirement on nonpersonal MMDAs.

The Board of Governors has amended Regulation D to implement section 13 of the Senate Joint Resolution 271. For member banks, and other institutions subject to reserve requirements in the same manner as member banks, the reduction in reserve requirements on *personal* MMDAs shall be effective from December 14, 1982, the date on which such accounts were first offered. The Board believes that making the reduction in reserve requirements for member banks retroactive to December 14, 1982, is consistent with congressional intent in exempting MMDAs from the reserve requirement phase-in. Member banks will be reimbursed for reserve balances that have been maintained against personal MMDAs through "as of" adjustments to be calculated and administered by the Federal Reserve Banks.

Nonmember depository institutions will be subject to a full reserve requirement of 3 percent on all

nonpersonal MMDAs. The change in reserve requirements on nonpersonal MMDAs for nonmember depository institutions will be effective for the reserve computation period that begins January 13, 1983, which is the reserve computation period that begins after the date on which the bill in enacted. The first reserve maintenance period to which this change applies begins on January 27, 1983.

The change in reserve requirements on MMDAs will first apply to depository institutions that report deposits and maintain reserves on a quarterly basis starting with the reserve maintenance period that begins on January 27, 1983, for such institutions that submitted a Report of Transaction Accounts, Other Deposits, and Vault Cash (Form FR 2900) for the computation period of December 16–22, 1982. The exemption from the reserve requirements phase-in for MMDAs for other quarterly reporters will be effective with the reserves required to be maintained based on deposit reports to be submitted in either January 1983 or February 1983.

The exemption from reserve requirement phase-ins for MMDAs does not apply in the case of the phase-in for *de novo* institutions and has no effect in the case of those institutions that are now subject to full reserve requirements under the reserve requirement structure in the Monetary Control Act. In addition, this action does not affect nonmember depository institutions in Hawaii that do not begin maintaining reserves until January 1986; however, when such institutions begin to maintain reserves at that time, nonpersonal MMDAs will be subject to a three percent reserve requirement without the benefit of a phase-in. Depository institutions that are not subject to the jurisdiction of the DIDC, such as credit unions and certain non-federally insured savings and loan associations, also are not affected by this action.

Eliminating the phase-in on MMDAs will make it generally most beneficial to depository institutions to apply the exemption from reserve requirements for $2.1 million of reservable liabilities to nonpersonal MMDAs first. Accordingly, as indicated below, the Board also has revised the procedure for allocating the $2.1 million exemption in order to assure institutions subject to DIDC rules the maximum benefit of the reserve exemption.

For institutions subject to DIDC rules that are not allowed a phase-in on NOW accounts (except U.S. branches and agencies of foreign banks).

1. Nonpersonal MMDAs
2. Net NOW accounts (NOW accounts less allowable deductions)
3. Net other transaction accounts (other transaction accounts less allowable deductions)
4. Nonpersonal time and savings deposits with maturities of less than 3½ years—excluding nonpersonal MMDAs
5. Eurocurrency liabilities

For all other institutions subject to DIDC rules (including U.S. branches and agencies of foreign banks).

1. Nonpersonal MMDAs
2. Net transaction accounts
3. Nonpersonal time and savings deposits with maturities of less than 3½ years—excluding nonpersonal MMDAs
4. Eurocurrency liabilities.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with adoption of these amendments because the change involves the implementation of a statutory provision that is effective upon enactment and does not provide the Board with discretion to modify its terms. Thus, the Board has determined that notice and public participation is unnecessary. The effective date of the amendment has not been deferred pursuant to 5 U.S.C. 553(d), since deferring the effective date would be inconsistent with section 13 of Senate Joint Resolution 271.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*) and under section 13 of Senate Joint Resolution 271 (S.J. Res. 271, 97th Cong., 2d Sess. section 13 (1982)), the Board amends Regulation D (12 CFR Part 204) effective January 13, 1983, as follows:

PART 204—[AMENDED]

1. In § 204.3, by revising paragraph (a)(3)(i) to read as follows:

§ 204.3 Computation and maintenance.

(a) * * *

(3) *Allocation of exemption from reserve requirements.* (i) In determining the reserve requirements of a depository institution, the exemption provided for in section 204.9(a) shall apply in the following order of priorities: (A) First, to nonpersonal time deposits representing deposits or accounts issued pursuant to 12 CFR 1204.122; (B) second, to net transaction accounts that are first authorized by Federal law in any state after April 1, 1980; (C) third, to other net transaction accounts; and (D) fourth, to other nonpersonal time deposits or Eurocurrency liabilities starting with those with the highest reserve ratio under § 204.9(a) and then to succeeding lower reserve ratios.

* * * * *

2. In § 204.4, the last sentence of paragraph (a), paragraphs (b)(1) introductory text, (b)(1)(i), (b)(2) introductory text, and (b)(2)(i), and the last sentence of paragraph (c) are revised and paragraph (f) is amended by revising the first sentence and adding a sentence at the end to read as follows:

§ 204.4 Transitional adjustments.

* * * * *

(a) * * * However, an institution shall not reduce the amount of required reserves on any category of deposits or accounts that are first authorized under Federal law in any state after April 1, 1980, or on deposits or accounts issued pursuant to 12 CFR 1204.122.

(b) * * *

(1) A depository institution whose required reserves are higher using the reserve ratios in effect during a given computation period (§ 204.9(a)) than its required reserves using the reserve ratios in effect on August 31, 1980 (§ 204.9(b)) (without regard to required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122):

(i) Shall maintain the full amount of required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122; and

(ii) * * *

(2) A depository institution whose required reserves are lower using the reserve ratios in effect during a given computation period (§ 204.9(a)) than its required reserves computed using the reserve ratios in effect on August 31, 1980 (§ 204.9(b)) (without regard to required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122):

(i) Shall maintain the full amount of required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122; and

* * * * *

(c) * * * However, an institution shall not reduce the amount of required reserves on any category of deposits or accounts that are first authorized under Federal law in any state after April 1, 1980, or on deposits or accounts issued pursuant to 12 CFR 1204.122.

* * * * *

(f) *Nonmember depository institutions with offices in Hawaii.* Any depository institution that, on August 1, 1978, (i) was engaged in business as a depository institution in Hawaii, and (ii) was not a member of the Federal Reserve System at any time on or after such date shall

not maintain reserves imposed under this part against deposits, including deposits or accounts issued pursuant to 12 CFR 1204.122, held or maintained at its offices located in Hawaii until January 2, 1986. * * * However, after January 1, 1986, an institution shall not reduce the amount of required reserves on any deposits or accounts issued pursuant to 12 CFR 1204.122.

* * * * *

By order of the Board of Governors, January 13, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-1496 Filed 1-18-83; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 217

[Docket No. R-0447]

Regulation Q, Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and flooding in the Louisiana parishes of Allen, Beauregard, Calcasieu, Catahoula, Grant, LaSalle, Natchitoches, Ouachita, Rapides, and Winn.

EFFECTIVE DATE: January 11, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452-3711).

SUPPLEMENTARY INFORMATION: On January 11, 1983, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Louisiana parishes of Allen, Beauregard, Calcasieu, Catahoula, Grant, LaSalle, Natchitoches, Ouachita, Rapides, and Winn, major disaster areas. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the severe storms and flooding beginning on or about December 19, 1982. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to January 11, 1983, and will remain in effect until 12 midnight, July 11, 1983.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated parishes of Louisiana directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, January 13, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-1442 Filed 1-18-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 305

[Reg. PR-255; Procedural Reg. Amdt. No. 4 to Part 305]

Rules of Practice in Informal Nonpublic Investigations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates its requirement that orders initiating informal nonpublic investigations must designate specific staff attorneys of the Enforcement Division, Office of the General Counsel, as Investigation Attorneys. This change will reduce costs to the Board without disadvantage to any person.

DATES: Adopted: January 12, 1983; Effective: January 17, 1983.

FOR FURTHER INFORMATION CONTACT: Stephen A. Metoyer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5937.

SUPPLEMENTARY INFORMATION: 14 CFR 305.5 has required orders that begin informal nonpublic investigations to include the names of the Enforcement Division staff attorneys who will conduct the investigation. To comply with this rule, the Board has frequently had to amend its Part 305 orders to reflect changes in the Division staff by either adding or removing attorneys' names. Since the naming of the particular enforcement attorneys assigned to an investigation does not affect the rights of any person, the Board has now decided to change § 305.5 by eliminating this requirement. The change will reduce the cost and burden of the Board's enforcement effort, without disadvantage to any person. The name of the Investigation Attorney is easily obtainable from the Enforcement Division upon request.

Since this amendment is administrative in nature, affecting agency practice and procedure, the Board finds for good cause that notice and public procedure are unnecessary and that the amendment may become effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 305

Administrative practice and procedure, Investigation.

PART 305—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 305, *Rules of Practice in Informal Nonpublic Investigations*, as follows:

1. The authority for Part 305 is:

Authority: Secs. 202, 204, 411, 415, 1001, 1002, 1004, 1007, Pub. L. 85-726, as amended; 72 Stat. 742, 743, 770, 771, 788, 792, 796; 49 U.S.C. 1322, 1324, 1381, 1385, 1481, 1482, 1484, 1487; 5 U.S.C. 555, 556.

2. Section 305.5, *Initiation of investigation*, is revised to read:

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Board. Attorneys of the Enforcement Division, Office of the General Counsel, shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys and administrative law judges are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Board.

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.
[FR Doc. 83-1242 Filed 1-18-83; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9149]

Ogilvy & Mather International Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a New York City advertising agency to cease, among other things, employing the name Aspercreme or any other trade name which erroneously implies that aspirin is an active ingredient of the product. The order also bars misrepresentations concerning the validity, conclusions, interpretations or results of any test or study; as well as unsubstantiated claims regarding the mode of action by which a drug treats, eases or cures any symptom, condition or disease. Further, the firm is prohibited from representing without reasonable substantiation that any topically applied drug is faster or more effective than aspirin in the treatment of arthritis, tendonitis, bursitis or rheumatism, or that is involves a new scientific or mechanical principle. Additionally, the order requires the company to retain all data that substantiates or contradicts advertised product claims for a period of three years following dissemination of any advertisement subject to the order.

DATES: Complaint issued Feb. 5, 1981. Decision issued Jan. 4, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PA, Melvin H. Orlans, Washington, D.C. 20580. (202) 724-1529.

SUPPLEMENTARY INFORMATION: On Tuesday, Oct. 19, 1982, there was published in the **Federal Register**, 47 FR 46531, a proposed consent agreement with analysis In the Matter of Ogilvy & Mather International Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.45 Content; § 13.170 Qualities or properties of product or service; 13.170-52 Medicinal, therapeutic, healthful, etc.; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests; § 13.280 Unique nature or advantages. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 3.1605 Content; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported; § 13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1850 Content; § 13.1885 qualities or properties; § 13.1895 Scientific or other relevant facts. Subpart—Using Misleading Name—Goods: § 13.2325 Qualities or properties.

List of Subjects in 16 CFR Part 13

Advertising, Drugs.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Carol M. Thomas,
Secretary.
[FR Doc. 83-1482 Filed 1-18-83; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[Docket 9102]

Kroger Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Modifying order.

SUMMARY: As agreed to by the FTC and The Kroger Company, this Order modifies the Commission's Final Order issued on Sept. 25, 1981 (46 FR 53648). The Modified Final Order prohibits Kroger from advertising survey-based food price comparisions that refer to a particular city, metropolitan area or competitor, unless: (1) Employees responsible for pricing Kroger's products do not know which items have been selected for the survey prior to its completion; and (2) the claim does not generalize the results of the survey to a product catagory that has been systematically excluded from the survey, unless such generalization clearly and conspicuously discloses that the product category has been excluded from the survey. The Order, which will remain in effect until Dec. 31, 1984, dismisses the allegations contained in Paragraphs Six B and D, and Seven B and D of the complaint.

DATES: Final Order issued Sept. 25, 1981. Modified Final Order issued Dec. 29, 1982.

FOR FURTHER INFORMATION CONTACT: Barbara E. Arnold, Acting Director, 4R, Cleveland Regional Office, Federal Trade Commission, Suite 500, Mall Bldg., 118 St. Clair Ave., Cleveland OH 44114. (216) 522-4207.

SUPPLEMENTARY INFORMATION: In the Matter of The Kroger Company, a corporation. Codification appearing at 46 FR 53648 remains unchanged.

List of Subjects in 16 CFR Part 13

Grocery stores, Surveys, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Modified Final Order, including further order requiring report of compliance therewith, is as follows:

In the matter of The Kroger Company, a corporation. Docket No. 9102.

Modified Final Order

The Kroger Company having filed in the United States Court of Appeals for the Eleventh Circuit a petition for review of the order to cease and desist issued herein on September 25, 1981; and the Commission and the Kroger Company having subsequently agreed upon the provisions of a final order modifying the order of September 25; and the Commission having the authority to modify its order by virtue of the fact that the record in the proceeding has not been filed with the court of appeals (see 15 U.S.C. 45(b) and Commission Rule 3.72(a)); accordingly,

It is ordered that the order of September 25, 1981, be, and it hereby is, modified in accordance with the parties' agreement to read as follows:

Order

I

A. "Respondent" means the Kroger Company, a corporation, its successors and assigns, and its officers, representatives, agents and employees, acting directly or indirectly through any

[1] Copies of the Complaint and the Decision and Order filed with the original document.

corporation, subsidiary or other device in the sale of food, household items and other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

B. "Survey-based food price comparison" means an advertised claim that refers to a survey of respondent's and any competitior's food prices and that projects the result obtained from the survey sample to items not included in the survey.

II

It is ordered that respondent cease and desist from advertising any survey-based food price comparison that refers, directly or indirectly, to a particular city, metropolitan area or competitor (or competitors) by name or other designation unless:

A. Employees responsible for pricing respondent's merchandise do not know which items have been selected for the survey prior to its completion, and

B. The claim does not generalize the results of the survey to a product category that has been systematically excluded therefrom; provided, however, that no such generalization will be deemed to extend to any product category whose systematic exclusion is disclosed clearly and conspicuously in respondent's advertisements.

III

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, file with the Commission a written report setting forth in detail the manner and form in which it has complied, or intends to comply, with this Order.

IV

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

V

It is further ordered that the provisions of this Order shall remain in effect until December 31, 1984.

VI

It is further ordered that the allegations contained in paragraphs Six B and D, and Seven B and D, of the Complaint be, and they hereby are, dismissed.

Issued: December 29, 1982.

By the Commission, Commissioner Pertschuk dissenting.

Carol M. Thomas,

Secretary.

Dissenting Statement of Commissioner Pertschuk

January 3, 1983.

I view the willingness of a majority of the Commission to accept what is essentially an illusory order as a product of the sustained ideologically-based attack on this case by the Chairman and the Director of the Bureau of Consumer Protection in connection with their proposals for weakening the Commission's deception and advertising substantiation standards.

Before I explain the inadequacies of the modified final order agreed to by Kroger and the Commission, I believe it is useful to review briefly the basic facts of the case to remind the Commission that its initial finding of liability and accompanying order were quite reasonable.

Kroger ran a lengthy and remarkably successful advertising campaign relying on its own price survey, comparing it to competitors. As those familiar with the history of *advertised* supermarket price surveys know, there is a powerful tendency to structure such surveys to produce results favorable to the advertiser. In Kroger's case, this incentive resulted in a number of survey characteristics. First, its comparison was limited to "dry groceries"—that is, fresh meat and produce were excluded though the record showed Kroger tended to be higher in those categories; second, the person in each marketing area who set prices for the items, the "grocery merchandiser," was responsible for selecting the items to be placed in the survey; third, in some cities, the grocery merchandiser systematically put items in the survey that Kroger was buying from manufacturers on special promotion and in turn temporarily reducing at retail.

Kroger almost always "won" its own survey and emphasized in weekly newspaper ads that it had again been shown to have the lowest prices in each metropolitan area. There is something of an abstract debate in the Commission's opinion about whether Kroger claimed to have *more* lower prices, or the *most* lower prices, compared to its competitors, but the key claims found by the Commission were that it was cheaper overall to shop at Kroger and that Kroger had a survey which backed up that claim. 98 F.T.C. 639, 736 (1981).

At the same time Kroger was conducting its advertised survey, it was regularly conducting two internal surveys for its own management. One of these was a market basket survey—that is, a survey which showed the cost of a typical "market basket" of food, purchased on a weekly basis for a household, compared with Kroger's competitors. The record evidence indicates that this market basket had all the earmarks of a reliable survey. The persons who chose the items did some rough and ready—but reasonable—weighing of the items and changed the items over time. Most importantly, they had no incentive to manipulate the items because the results were for internal use only.

The record in the case shows how Kroger's *internal* survey stacked up with its *advertised* survey. In general, Kroger did relatively well in the grocery category, and not so well in meat and produce. For example, of all the market basket checks conducted by Kroger in Ft. Wayne, Indiana, it was lowest on grocery items five out of nine times but lowest on produce two out of nine times and lowest on meat one out of nine times. The patterns in the other cities are similar. 69 F.T.C. at 683–86. Yet virtually every week, Kroger's advertised survey proclaimed it to be the chain with the lowest prices. The record contains numerous examples where both of Kroger's internal surveys—the market basket comparison and a comparison of the number of items on which Kroger was lower—showed Kroger to be higher than others at the same time the advertised survey showed Kroger to be lowest. (See CX 813)

In response to these practices the Commission issued an order covering any future advertised survey upon which Kroger bases a claim comparing its prices to those of its competitors in a particular area. That order, in its key parts, said that if Kroger advertised such a survey, it would have to: (1) Make sure the items were selected in a representative way and that employees responsible for pricing products did not know the items on the survey; and (2) make sure claims based on the survey fairly represented the results of the survey (for example, if major categories of food were left out, the claim would have to make that clear). There is little doubt that Kroger's own internal survey could have met those requirements. It is inconceivable to me that those standards are unreasonable and that American consumers would not feel misled if they were violated.

Yet most of the modest but fundamental standards contained in the final order have been jettisoned by the Commission in the settlement with Kroger, apparently on some theory that

meeting them would disrupt the flow of "useful" information. It is a highly dubious proposition that advertisements of surveys in which items aren't chosen representatively or which draw conclusions which do not fairly represent the actual survey are particularly useful for anything. Apparently believing that elimination of these requirements did not weaken the order enough, the Commission also finally gave in to Kroger's central demand for an automatic "sunsetting" of the order after a short period of time.

Neither the record, the reasonable exercise of our remedial discretion, nor considerations of competitive equity compel these major concessions and modifications to the final order that was once deemed by the Commission to be a reasonable and restrained resolution of this case. The majority opinion authored by Commissioner Clanton set forth clear justification for the prescribed sampling methods and survey misrepresentation provisions that are deleted from the modified order. Nothing has persuaded me since that time that these provisions are now either unnecessary or unwarranted. As explained in some detail in the opinion, the prescribed sampling methods provided reasonable flexibility and specificity to Kroger on suitable means of sampling for its price surveys. Also, the general fencing-in prohibition on survey misrepresentations was reasonably related to the core deception in Kroger's price patrol, e.g., overall price claims which were misleading because they failed to disclose the systematic exclusion of large product categories from the survey.

With respect to the two-year sunset provision, there are better ways of responding to any legitimate concerns of potential competitive inequity that Kroger may have from being "singled out" by the Commission. These could include serving the order on Kroger's competitors under the Commission's Section 205 authority, and reconsidering the order in the future should the Commission demonstrate a refusal to hold Kroger's competitors to the same standards. These alternatives would strike a much better balance between the agency's interest in preserving the integrity of its record findings and enforcement credibility in this case, with Kroger's interest in avoiding unfair competitive injury. With the inclusion of the short-term sunset provision, the order loses all credibility in the industry, assuring that no Kroger competitor will feel obliged to obey it, even if placed on notice of its requirements by the Commission. Further, and even more damaging to the Commission's enforcement interests, such an automatic sunset provision (which to my knowledge is virtually unprecedented in consumer protection cases) would create an irresistible temptation for other respondents to demand similar sunset relief on competitive equity or other grounds, particularly in this era of deregulation and decreased enforcement activity. If the basis of the Commission's concession to Kroger's demand for automatic sunset protection is that a majority of the Commission no longer believes in its own findings of liability or its ability to defend them on appeal, then it would be more straightforward simply to admit mistake and dismiss the case. At the very least, that would avoid the dangerous precedent that will be set for our consumer protection mission by acceptance of this sunset provision.

As my colleagues know, I was not averse to settlement of this case on justifiable grounds. But I am not so anxious to settle that I would acquiesce to settlement on these terms. Yet it seems to me that it is precisely such an overwhelming urge to settle this case at all costs that has driven the Commission toward acceptance of this modified order.

Because I am not prepared to pay such a price, I am dissenting from the Commission's agreement with Kroger.

[FR Doc. 83-1449 Filed 1-18-83; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-82-1036]

Annual Contributions for Operating Subsidy Performance Funding System; Correction

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Correction of interim rule.

SUMMARY: On December 23, 1982 (47 FR 57270), HUD published an interim rule that amended 24 CFR Part 890 to reinstate the Rolling Base Period in determining the Allowable Utilities Consumption Level (AUCL) to be utilized by public housing agencies (PHAs) in the Performance Funding System (PFS) calculation of the Utilities Expense Level. The purpose of this correction is to indicate that waiver of Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535)(o)(3)) has been received.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: J. Milton Slifkin, Fiscal Management Division, (202) 426-1872.

Accordingly, the following correction is made to the Interim Rule in FR Doc. 82-34671 appearing at 47 FR 57271 in the issue of December 23, 1982:

(1) On page 57271, column two, the second full paragraph is corrected to read, "Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication. A waiver of this requirement has been received from the Chairman and Ranking Minority members of the Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Banking Finance, and Urban Affairs."

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535))

Dated: January 13, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-1440 Filed 1-18-83; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

28 CFR Part 45

[Order No. 993-83]

Disqualification Arising From Personal or Political Relationships

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: This rule provides for the disqualification of employees of the Department of Justice from participation in criminal investigations or prosecutions in which they may have a personal or political conflict of interest. The rule is required by statute and supplements the Department's current regulation on disqualifications arising from financial conflicts of interest.

EFFECTIVE DATE: January 6, 1983.

FOR FURTHER INFORMATION CONTACT: Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, Washington, D.C. 20530 (202) 633-3657.

SUPPLEMENTARY INFORMATION: This order pertains to agency management. Publication for notice and comment is not required under 5 U.S.C. 553. Further,

the order is not a rule within the meaning of, or subject to the requirements of, either Executive Order No. 12291 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

PART 45—[AMENDED]

Accordingly, by the authority vested in me as Attorney General by 28 U.S.C. 528, Part 45 of Title 28, Code of Federal Regulations is amended by adding a new § 45.735–4, to read as follows:

§ 45.735–4 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with: (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that: (1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and (2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section.

(1) "Political relationship" means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and

(2) "Personal relationship" means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

(d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

List of Subjects in 28 CFR Part 45

Conflict of interests.

Dated: January 6, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-1403 Filed 1-18-83; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AH305PA; A 3-FRL 2246-2]

Approval and Promulgation of Implementation Plans; Approval of Revision to the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA approves revisions to the Pennsylvania State Implementation Plan (SIP) submitted to EPA by the Pennsylvania Department of Environmental Resources (DER). The approved revisions consist of reasonably available control technology (RACT) regulations for most Volatile Organic Compound (VOC) sources covered by EPA's Group II Control Technique Guidelines (CTG) documents, a generic VOC bubble regulation, Continuous Emission Monitoring (CEM) regulations and procedures, and Alternative Opacity Limit regulations. EPA approves these revisions since it has determined that they meet the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

EFFECTIVE DATE: February 18, 1983.

ADDRESSES: Copies of Pennsylvania's SIP revision are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106

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

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120

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

FOR FURTHER INFORMATION CONTACT: Mr. Raymond D. Chalmers at the address for EPA Region III above, or at telephone number (215) 597–8309.

SUPPLEMENTARY INFORMATION: EPA approved revisions to the Pennsylvania SIP submitted to EPA by the Pennsylvania DER. The approved revisions include RACT regulations for most VOC sources covered by EPA's Group II CTG documents, a generic VOC bubble regulation, CEM regulations and procedures, and Alternative Opacity Limit regulations. EPA approves these revisions since it has determined that they meet the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51. The approved Pennsylvania SIP revisions are briefly described in the sections that follow. Those wishing a more detailed discussion of the revisions are advised to consult the proposed approval notice of May 28, 1982 (47 FR 23186).

I. Pennsylvania's SIP Revision

A. Group II VOC Regulations

Pennsylvania's approved SIP revisions include RACT regulations for most VOC sources covered by EPA's Group II CTG documents. The approved regulations cover the following source categories: (1) Petroleum Refinery Fugitive Emissions (Leaks); (2) Synthesized Pharmaceutical Manufacturing; (3) Pneumatic Rubber Tire Manufacturing; (4) Surface Coating of Miscellaneous Metal Parts and Products; (5) Graphic Arts (Printing); (6) Gasoline Tank Trucksl (Leak Prevention); and (7) Petroleum Liquid Storage in External Floating Roof Tanks. The revisions are included in 25 PA Code Chapters 121, 129, and 139.

One regulation for a VOC source category covered by EPA's Group II CTG's, the Perchlorethylene Dry Cleaning regulation, has not been approved by EPA. Pennsylvania submitted a dry cleaning regulation to EPA that differs significantly from that adopted by most other states in that it does not specify an emission limit. Because an emission limit is not

specified, add-on control equipment is not required. As noted in the proposal notice, EPA will take no action on this regulation at this time. EPA is reviewing the reactivity of perchloroethylene and will continue to defer action on this regulation until the study is completed.

B. Generic VOC Bubble Regulation

EPA approves Pennsylvania's regulatory provision entitled "Alternative Standards Allowing Internal Offsets for Surface Coating and Graphic Arts Facilities" as a generic bubble provision. The bubble provision provides that an eligible source need not necessarily be bound by the exact limitations for each process given in Pennsylvania's regulations, but may be bound by an alternative set of emissions limitations, provided that no increase in emissions results from the alternative set of limitations. Approval of this provision as a "generic" bubble provision has the effect that Pennsylvania will not require EPA approval of each individual bubble it approves. Pennsylvania's generic bubble provision is found in 25 Pennsylvania Code Chapter 129.53.

C. Continuous Emission Monitoring

EPA approves Pennsylvania's CEM regulations. These regulations require installation of CEM equipment on fossil fuel-fired steam generators, fluid bed catalytic cracking catalyst regenerators, and sulfuric acid plants in accordance with the EPA requirements specified in 40 CFR Part 51, Appendix P. Nitric acid plants are not required to install CEM equipment because there are no nitrogen dioxide nonattainment areas in Pennsylvania. EPA also finds that Pennsylvania's "Continuous Source Monitoring Manual" specifies monitoring procedures and specifications that satisfy the EPA requirements given in 40 CFR Part 51, Appendix P and 40 CFR Part 60, Appendix B. Pennsylvania's CEM provisions are contained in 25 PA Code, Chapters 123, 127, 129, and 139.

D. Alternative Opacity Limits

EPA approves Pennsylvania's regulatory provision allowing establishment of alternative opacity limits (AOLs). This provision allows a source which meets all applicable mass-emission standards, but which nevertheless does not meet existing opacity standards, to be granted an AOL. A source granted an AOL must nevertheless seek to minimize opacity by operating and maintaining its equipment in a manner that will minimize opacity. This approval does not allow Pennsylvania to establish an AOL for sources subject to opacity limits specified aby EPA in a New Source Performance Standard or an EPA issued Prevention of Significant Deterioration permit. If an AOL is desired for any source subject to such an EPA specified limitation, EPA approval of the AOL must be obtained pursuant to 40 CFR 60.11's requirements, or EPA approval of a PSD permit modification must be obtained, whichever is appropriate.

II. Comments

EPA received comments from two companies on the proposed revisions. These comments are described below.

A. Comment I

The first commenter stated that "the regulation referred to as The Generic VOC Bubble Regulation should be modified to make VOC limitations in Pennsylvania consistent with BACT (Best Available Control Technology) requirements in other States." The commenter goes on to say that "The reduction the formula developed by the DER (PA Department of Environmental Resources) requires creates a requirement that is almost always as tight as BACT and exceeds LAER (Lowest Achievable Emission Rate) for many types of coatings." The commenter argues that this level of control is more stringent than the level of control other States require.

EPA's response is that EPA is required to approve any generic bubble regulation submitted by a State that meets the criteria found in EPA's "Emission Trading Policy Statement" (47 Fed. Reg. 15076 (April 7, 1982)). EPA has reviewed Pennsylvania's generic bubble and has determined that it meets all Federal criteria for approval. It should be noted that if the commenter believes the requirements of Pennsylvania's generic "bubble" regulations are too strict, the commenter has the option of complying with Pennsylvania's BACT requirements instead of applying for a "bubble."

B. Comment II

The second commenter was concerned by Pennsylvania's regulation requiring installation of continuous opacity monitoring equipment on fossil fuel-fired steam generators with 250 million BTU heat input or greater. The commenter stated that it believed this regulation should not require continuous monitors in cases "where there is no demonstrated need for opacity monitors, such as utility boilers equipped with baghouses."

EPA has approved Pennsylvania's CEM regulations because it has determined that they meet the requirements for EPA approval specified in 40 CFR 51.19; those requirements permit no exemption such as the commenter suggests. EPA would be required to revise 40 CFR 51.19 in accordance with the commenter's suggestions before any State could submit a regulation to EPA containing exemptions such as the commenter desires. As a result of this comment, EPA is now considering whether changes in 40 CFR 51.19 are appropriate. If EPA eventually makes such changes, Pennsylvania will then have the option of adopting CEM requirements consistent with the commenter's suggestions.

III. Conclusion

EPA is revising 40 CFR 52.2520 as indicated below to indicate the inclusion in the Pennsylvania SIP of these SIP revisions.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642.)

Dated: January 12, 1983.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended by adding paragraph (c)(48) to § 52.2020 to read as follows:

Subpart NN—Pennsylvania

§ 52.2020 Identification of plan.

* * * * *

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

(48) Volatile Organic Compound (VOC) regulations, a generic VOC bubble regulation, Continuous Emission Monitoring (CEM) regulations and procedures, and Alternative Opacity

Limit regulations submitted by Pennsylvania to EPA on July 13, 1981, August 17, 1981, August 26, 1981, and September 4, 1981.

* * * * *

[FR Doc. 83-1346 Filed 1-18-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[A-6-FRL 2259-3]

State of Oklahoma: Designation Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice approves the Oklahoma State Department of Health (OSDH) July 2, 1982, request to change Oklahoma County's existing nonattainment designation for ozone to attainment. On October 22, 1982, and November 3, 1982, the OSDH submitted additional information to support their request.

DATE: This action will be effective on March 21, 1983, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Incorporation by reference materials is available for inspection during normal business hours at the following locations:

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

Environmental Protection Agency, Public Information Reference Unit, EPA Library Rm. 2404, 401 M Street, SW., Washington, D.C. 20460

Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith, State Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270 (214) 767-9853.

SUPPLEMENTARY INFORMATION: On July 2, 1982, the OSDH submitted a SIP revision requesting redesignation of Oklahoma County to attainment for ozone. On October 22, 1982, and November 3, 1982, the OSDH submitted additional information to support their request. EPA developed an evaluation report [1] based on conformance with criteria from the Clean Air Act of 1977, as amended, Section 107(d)(5); 40 CFR 50.9 National primary and secondary ambient air quality standards for ozone; 40 CFR Part 50, Appendix H—Interpretation of the National Ambient Air Quality Standards for Ozone; and, Guideline for Interpretation of Ozone Air Quality Standard, January 1979. This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

The State provided 1980, 1981, and 1982 ozone data for site 372200033F01. Since site 033 had one violation in 1980, EPA's redesignation to attainment is based on data for the last 3 years (1980, 1981, and 1982) from this site.

Site 033 had 1.1 expected number of exceedances in 1980, and 0.0 expected number of exceedances in 1981 and 1982. Therefore, Oklahoma County is attainment for ozones since the average of the expected number of exceedances is less than 1 for the past 3 years.

Based upon EPA's review of the 1980, 1981, and 1982 data, EPA is redesignating Oklahoma County from nonattainment to attainment.

Because EPA considers today's action to be noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on March 21, 1983. However, if we receive notice by February 18, 1983, that someone wishes to submit critical comments, *then* EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeal for the appropriate circuit by March 21, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Director 12291.

(Sec. 107(d) of the Clean Air Act, as amended 42 U.S.C. 7407(d))

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

[1] EPA Review of Oklahoma's Revisions for redesignation of Oklahoma County to attainment for Ozone.

Dated: January 12, 1983.

Anne M. Gorsuch,
Administrator.

PART 81—[AMENDED]

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

1. In § 81.337 Oklahoma, the attainment status designation table for Oxidant (O_x) is amended by revising the designation for Oklahoma County from "does not meet primary standards." to cannot be classified or better than national standards." The amended portion of the Oklahoma O_x Table for § 81.337 reads as set forth below.

§ 81.337 Oklahoma.

OKLAHOMA—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 184:		
Oklahoma Co		X.
Cleveland Co		X.
Remainder of AQCR		X.
* * * * *		

[FR Doc. 83-1388 Filed 1-18-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 123

[W-8-FRL 2276-6]

Utah Division of Environmental Health Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Utah has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the States's injection well program for Classes I, III, IV, and V injection wells meet the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective January 19, 1983.

FOR FURTHER INFORMATION CONTACT: Michael J. Salazar, Chief, Utah/Montana/South Dakota Section, Drinking Water Branch, Environmental

Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-2731. Copies of the responsiveness summary are available from the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SWDA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Utah was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The State of Utah submitted complete applications March 22 and 23, 1982 for the approval of a UIC program. The portion of the State's program governing Class II wells will be administered by the Utah Division of Oil, Gas and Mining. This portion of the program was reviewed separately under Section 1425, and approved on October 8, 1982, (47 FR 44561). The portion of the program governing Class I, III, IV and V wells, which we are approving today under Section 1422, will be administered by the Utah Division of Environmental Health (UDEH). On April 7, 1982, EPA published notice of its receipt of the applications, announced the availability of the applications for review, requested public comments, and scheduled a public hearing. The public hearing was held on May 6, 1982, in Salt Lake City, Utah. After careful review of the Class I, III, IV and V application and comments received from the public, I have determined that the Utah UIC program submitted by the UDEH meets the requirements sestablished by Federal regulations pursuant to Section 1422 of the SDWA, and hereby approve it.

EPA is publishing this approval effective immediately so that Utah can begin issuing UIC permits for Classes I, III, IV, and V wells under the UIC program.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Waster supply, Intergovernmental relations, Penalties, Confidential business information.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Utah Division of Environmental Health will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: January 5, 1983.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 83-1446 Filed 1-18-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2E2606/R508; PH-FRL 2284-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide 2,4-D in or on the commodities nuts, pistachios, and stone fruits. This regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was submitted, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: January 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 71D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of November 24, 1982 (47 FR 53061), that announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2606 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Alabama, California, Hawaii, Idaho, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodities nuts, pistachios and stone fruits at 0.1 part per million (ppm). The petition was later amended to propose tolerance levels of 0.2 ppm is or on the commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated in the notice of proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health and are established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: January 4, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.142(b) is amended by adding and alphabetically inserting the raw agricultural commodities nuts, pistachios, and stone fruits to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Nuts	0.2
* * * * *	
Pistachios	0.2
* * * * *	
Stone Fruits	0.2
* * * * *	

[FR Doc. 83-657 Filed 1-18-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2668/R509; PH-FRL 2286-7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural commodity figs. This regulation to establish a maximum permissible level for residues of chlorpyrifos in or on figs was submitted, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: January 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of December 1, 1982 (47 FR 54106) that announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, had submitted pesticide petition 2E2668 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 406(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide chlorpyrifos (*O, O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity figs at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking.

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

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: January 6, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.342 is amended by adding and alphabetically inserting the raw agricultural commodity figs to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Figs	0.1
* * * * *	

[FR Doc. 83-1342 Filed 1-18-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2655/R507; PH-FRL 2286-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of phosphine in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels for residues of phosphine in or on the commodities was submitted, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: January 19, 1983.

ADDRESS: Written comments to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of November 24, 1982 (47 FR 53061) that announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station,

P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, has submitted pesticide petition 2E2655 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Florida, Hawaii and South Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of phosphine, resulting from postharvest application of magnesium phosphide, in or on the raw agricultural commodities avocados, bananas, Chinese cabbage, citrus citron, eggplants, endive (escarole), grapefruit, kumquats, lemons, lettuce, limes, mangoes, mushrooms, oranges, papayas, peppers, persimmons, pimentos, plantains, salsify tops, tangelos, tangerines, and tomatoes at 0.1 part per million (ppm). The petition was later amended to propose tolerance levels of 0.01 ppm in or on the commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health and are established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: January 6, 1983.

Edwin L. Johnson,

Director Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.375 is amended by adding and alphabetically inserting the following raw agricultural commodities to read as follows:

§ 180.375 Magnesium phosphide; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Avocados	0.01
Bananas	0.01
* * * * *	
Cabbage, Chinese	0.01
* * * * *	
Citrus citron	0.01
* * * * *	
Eggplants	0.01
Endive (escarole)	0.01
* * * * *	
Grapefruit	0.01
Kumquats	0.01
Lemons	0.01
Lettuce	0.01
Limes	0.01
Mangoes	0.01
* * * * *	
Mushrooms	0.01
* * * * *	
Oranges	0.01
Papayas	0.01
* * * * *	
Peppers	0.01
Persimmons	0.01
Pimentos	0.01
* * * * *	
Plantains	0.01
* * * * *	
Salsify tops	0.01
* * * * *	
Tangelos	0.01
Tangerines	0.01
* * * * *	
Tomatoes	0.01
* * * * *	

[FR Doc. 83-1343 Filed 1-18-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Health Care Payment Plans

Correction

In FR Doc. 82-35354 beginning on page 58252 in the issue of Thursday, December 30, 1982, make the following corrections:

1. On page 58258, third column, § 405.2093(b)(2), in the second line, "[effective date of these regulations]" should have read "January 31, 1983".

2. On page 58259, first column, under § 405.2094, the line "§ 405.2095 Cost apportionment." should be removed. (The same line below it in bold face type remains as the heading to the next section.)

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 79-105; RM-3017; FCC 82-581]

Amendment With Respect to Accounting for Station Connections, Optional Payment Plan Revenues and Customer Provided Equipment and Sale of Terminal Equipment

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order concerning further reconsideration.

SUMMARY: The order considers a petition for reconsideration filed by the American Telephone & Telegraph Co. and a petition for Declaratory Ruling filed by General Telephone of Ohio. Both petitions request that the Commission assert preemptive assertion with respect to depreciation policies and rates. On further reconsideration, the Commission reversed its earlier holding that states were free to follow accounting and depreciation practices of their own choosing for intrastate ratemaking. The order finds that Section 220(b) of the Communications Act of 1934, as amended, preempts state depreciations rates that are inconsistent with those prescribed by the FCC. Alternatively, the order finds that even if Section 220(b) were construed not to preempt, the Commission would preempt inconsistent state depreciation rates to avoid the frustration of federal policies. The order also grants the Petition for Declaratory Ruling. The first reconsideration order was printed at 47 FR 19361 (May 5, 1982).

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

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, 202-632-9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform systems of accounts.

Memorandum Opinion and Order

Adopted: December 22, 1982.

Released: January 6, 1983.

In the matter of amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, of the Commission's Rules and Regulations with respect to accounting for station connections, optional payment plan revenues and customer provided equipment and sale of terminal equipment; petition for declaratory ruling on question of Federal preemption involving order of the Public Utilities Commission of Ohio in Conflict with (i) FCC Prescriptions Under Section 220 of the Communications Act and (ii) Established FCC Policies.

1. The Commission has before it a Petition for Reconsideration filed on June 7, 1982, by the American Telephone and Telegraph Company, on behalf of itself and the associated Bell System Operating Companies (AT&T). AT&T seeks reconsideration of the Commission's decision in *Amendment of Part 31*, 89 FCC 2d 1094 (1982) (hereinafter cited as *Preemption Order*), in which the Commission determined that Sections 220(a) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 220(a) and 220(b), did not preempt state commissions from applying different accounting and depreciation procedures for purposes of intrastate ratemaking proceedings.[1] The *Preemption Order* was a reconsideration of *Amendment of Part 31*, 85 FCC 2d 818 (1981) (hereinafter cited as *Expensing Order*).

2. The Commission also has before it a Petition for Declaratory Ruling filed on June 7, 1982, by General Telephone Company of Ohio (GTE of Ohio). This petition requests that the Commission preempt an order of the Public Utilities Commission of Ohio (Ohio) that denied GTE of Ohio the same depreciation rates for intrastate purposes as had been prescribed by this Commission. GTE of Ohio contends that Section 220(b) established the rate prescribed by the Commission as the only depreciation rate the company could utilize.

3. The Commission established a joint reply period for the two petitions, utilizing the pleading cycle for comments in response to the Petition for Reconsideration, and allowed parties to cross-reference their pleadings where appropriate. In addition to pleadings filed by the petitioners and the GTE parties, comments or reply comments were filed by the Arkansas Public Service Commission (Arkansas), Ohio, the People of the State of California and the Public Utilities Commission of the State of California (California), the Virginia State Corporation Commission (Virginia), the National Association of Regulatory Utility Commissioners (NARUC), the United States Independent Telephone Association (USITA), the Office of Consumers' Counsel, State of Ohio (Consumers' Counsel), the United Telephone System Inc. and the Idaho Public Utilities Commission (Idaho). A summary of the comments is contained in Appendix A. Below we consider the issues raised on reconsideration, after which we shall consider the question presented by GTE of Ohio's Petition for Declaratory Ruling.

I. Background

4. In *Docket No. 19129*, 64 FCC 2d 1, 54–56 (1977), we concluded that it would be desirable to have the causative rate payer bear the costs associated with station connections. We directed AT&T to file a plan for accomplishing this objective. Following AT&T's submission we initiated this proceeding, albeit with a somewhat different approach for modifying the accounting for station connections than proposed by AT&T.

5. After reviewing the comments, we concluded that the drop, block and protector portion of station connections should not be included in any accounting or regulatory revisions. We also concluded that our objective of placing the costs of station connections on the cost causative customer could not be achieved by means of an accounting change alone. This is so because costs associated with the provision of inside wiring must be apportioned between the federal and state jurisdictions as long as inside wiring is provided as a tariffed service subject to dual jurisdiction. Complete unbundling could be achieved by requiring inside wiring to be provided on a detariffed basis, as was done with customer premises equipment. Accordingly, we initiated a further inquiry to explore the detariffing concept further, *Amendment of Part 31*, 86 FCC 2d 885 (1981).

6. Nevertheless, we concluded that changes in accounting and depreciation procedures that would begin expensing the inside wiring portion of the station connection account would be in the public interest, and would facilitate the deregulation of the provision of inside wiring if the Commission should later decide to take that approach. The principal changes required that future costs of installing inside wiring and similar costs be included as an expense in Account 605, Repair of Station Equipment. Such costs were previously capitalized in Account 232, Station Connections. The expensing of these costs would be phased in over a four year period unless a carrier obtained state commission approval to expense one hundred percent immediately. The *Expensing Order* also required that the present net investment in inside wiring and the investment capitalized during the phase-in period be amortized over a ten year period. These expensing and amortization rules replaced the depreciation procedures that had previously applied to the inside wiring portion of the station connections account.

7. On reconsideration, we concluded that the *Expensing Order* was not intended to preempt state commissions from utilizing other depreciation or accounting procedures for intrastate ratemaking proceedings, unless such preemption occurs as a matter of law. Our discussion was based in part on an assumption that most or all of the state commissions would follow our lead. We also indicated that Section 220 does not preclude state commissions from departing from accounting and depreciation rules prescribed by this Commission for purposes of regulating intrastate communications services. In reaching this conclusion, we reviewed Section 20(5), the Interstate Commerce Act predecessor of the accounting and depreciation provisions contained in Section 220. We concluded that nothing in the history of Section 20(5) provided any indication of whether that provision had been intended to preempt state commissions from prescribing divergent depreciation rates when the Interstate Commerce Commission (ICC) had prescribed a rate. We stated:

> [i]nasmuch as Section 20 had never been construed to restrict state commissions from requiring carriers to keep additional records for purposes of intrastate ratemaking and court decisions in analogous contexts did not adopt an expansive interpretation of that provision, the reenactment of that language should not be interpreted to restrict state commissions from keeping such additional records in the absence of clear evidence that the 1934 Congress intended to produce that result.

Preemption Order, supra at 1102.

8. We also reviewed the legislative history of the Communications Act and concluded that Congress had been uncertain of the preemptive effect of reenacting the Interstate Commerce Act language and that it apparently did not want to resolve the question at that time. We concluded that Congress had

[1] On June 8, 1982, GTE Service Corporation, on behalf of itself, United Telephone System, Inc., and Continental Telecom, Inc. (hereinafter referred to as GTE), filed a Petition for Clarification of the Commission's *Preemption Order*. This petition was dismissed as untimely. *Amendment of Part 31*, Mimeo No. 4766 (released June 24, 1982). However, the Commission stated that it would consider the substance of the petition in connection with AT&T's petition.

been attempting to obtain as much uniformity as possible without coercing any state commission to use ratemaking methods which it might find unacceptable. We found that we had proceeded in a manner consistent with this purpose for nearly four decades, noting that we had recognized divergent practices by state commissions from time-to-time. The language of Section 2(b)(1) was found to support the interpretation that state commissions are not precluded from applying different accounting and depreciation procedures from this Commission. The *Preemption Order* concluded by finding that nothing in the Act precluded us from preempting state commission actions that might interfere with or tend to frustrate policies or rules we have adopted to carry out statutory objectives with respect to interstate or foreign communications, but we also found that federal regulation would not be frustrated if carriers maintain additional records for intrastate ratemaking purposes.

II. Discussion

9. The question presented in the reconsideration petition is a clearly delineated controversy over whether Section 220(b) preempts state depreciation prescriptions that are inconsistent with the rates prescribed for classes of property by this Commission, or, whether Section 2(b)(1) or Section 221(b) reserve to the states the right to prescribe their own depreciation rates for intrastate regulatory purposes. Alternatively, it is argued that the Commission should preempt inconsistent state depreciation rates pursuant to its authority to preempt state actions which would frustrate or interfere with the accomplishment of federal objectives. *See North Carolina Utilities Commission* v. *FCC*, 537 F.2d 787 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 (1976) (hereinafter cited as *NCUC I*). The *Preemption Order* was the first time the Commission had squarely addressed the preemptive effect of a prescribed depreciation rate, despite having prescribed rates for more than thirty years. No federal court has addressed the question of the preemptive effect of a Commission prescribed depreciation rate.[2]

[2]The United States Supreme Court has held that state commissions may prescribe depreciation rates where the empowered federal commission has not prescribed rates. *Northwestern Bell Telephone Co. v. Nebraska State Railway Comm.*, 297 U.S. 471 (1936). The Court specifically reserved judgment on the effect of prescribed rates by the federal commission.

10. It is argued that the Commission erred in the earlier decision by concentrating on Sections 220(a), and 220(g) rather than properly analyzing Section 220(b), the provision dealing directly with depreciation. A careful review of AT&T's and GTE's pleadings and a thorough reevaluation of the entire question of the Commission's depreciation jurisdiction leads to the conclusion that the evaluation in the *Preemption Order* did not sufficiently consider the effect of Section 220(b). Accordingly, we shall undertake to evaluate anew the scope of the Commission's jurisdiction under Section 220(b).

11. Before turning to the analysis of the statutory provisions, it is necessary to understand the relationship between capitalizing and expensing a transaction or economic event. When an event is capitalized, its cost is recorded on the company's books to be recovered over some future period through depreciation charges to operating expense. Depreciation as used here is an accounting convention for allocatively spreading the original cost, less net salvage, over the useful life of a capital asset. Thus, for there to be depreciation there must be costs that are to be recovered over more than one accounting period. However, when the decision to expense is made, all costs are to be recovered at one time. Thus, the decision to expense is a determination that there is no category of asset for which depreciation expense will be allowed. It is therefore clear that the decision to commence expensing the inside wiring portion of station connections involves questions of depreciation policy.

12. The law is clear that federal regulation should not be presumed to preempt state regulations without clear evidence of either congressional design to preempt the field or that state regulatory activities would obstruct the accomplishment and execution of the full purposes and objectives of Congress. *Florida Lime and Advocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 141 (1963), *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Our review reveals that both criteria are satisfied in this case. In reaching this conclusion we analyzed the language of Section 220, the legislative history, relevant court cases, and our regulatory objectives.

A. Statutory Language

13. The Commission's express jurisdiction with respect to depreciation is set forth in Section 220(b). That section provides:

> The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

14. The plain language of the statute is express and unequivocal. Section 220(b) says the Commission "shall" make depreciation prescriptions, and that carriers "shall not" charge depreciation different than that prescribed by the Commission. That this preempts inconsistent state action is further indicated in Section 220(h) which gives the Commission discretion to "except" carriers from the requirements of Section 220 "where such carriers are subject to state commission regulation."

15. The requirement of Section 220(i) that states be given an opportunity to comment before the Commission prescribes "any requirements as to accounts, records and memoranda" is consistent with an interpretation that states are preempted when the Commission has acted in the depreciation area. By providing that states be given notice, Congress ensured that state needs for accounts, records and memoranda brought to the Commission's attention would be considered. Such a procedure assures that the states' needs and legitimate interests are met.

16. In setting the duties of the Commission and the prohibitions on the carriers subject to the Act, Congress spoke of depreciation in general terms without any attempt to make distinctions between either "intrastate" or "interstate" property. This is significant because when Congress wanted to make such distinctions in the Act it did so. See, *e.g.*, 47 U.S.C. 221 (c) and (d), and 410(c). The fact that Congress did not make such a distinction here indicates that it intended no distinction.

17. Taken as a whole, the language of Section 220 appears clearly to preempt the states in connection with depreciation expense determinations and the related accounting. The language strongly implies that the states may not depart from depreciation rules prescribed by the FCC unless the Commission in its discretion allows them to do so. Otherwise, the federal statute would govern state depreciation practices in form only, allowing the states to treat substantive depreciation matters as they might choose. While that might be a plausible construction of Section 220, after full analysis we do not believe that Congress intended such a feeble gesture. There would be little purpose to require the carriers to keep all their books pursuant to an FCC prescription, and then allow the states to require the carriers to follow inconsistent depreciation practices. Instead, the language of the section and the comprehensive treatment given to this matter by the Congress demonstrate that more was intended. Accordingly, we find that the statutory language indicates that FCC depreciation prescriptions are to be followed in both the federal and state jurisdictions unless the FCC provides otherwise. As demonstrated below, this construction is also consistent with the legislative history.

B. Legislative History

18. In the *Preemption Order* we found that the legislative history of Section 220 was inconclusive and at most indicated that Congress was "not sure" about the preemptive effect of the new legislation. 89 FCC 2d at 1106. However, the reconsideration petition and comments supporting it show that Congress believed that the language ultimately adopted would preempt the states from prescribing depreciation rates for subject carriers when the Commission had prescribed rates.

19. In our *Preemption Order*, we observed that Section 220 of the Communications Act had been adopted from Section 20 of the Interstate Commerce Act, and our review of the few ICC cases touching upon preemption did not reveal the ICC to have possessed the kind of broad preemptive power now urged by GTE and AT&T. However, after reviewing the pre-1934 cases again, we find that, while not dispositive, the lean more toward GTE and AT&T's views than against them.

20. The closest the ICC came to delineating its position on this matter came in *Depreciation Charges of Telephone Companies*, 118 I.C.C. 295, 332 (1926), where it said:

> It seems to be well established that where a local telephone company undertakes to originate or deliver toll messages, and most of them do so undertake, practically all of its property is open for use in interstate commerce and at any time may be so used. Under such circumstances, no doubt would seem to exist as to the power of Congress to regulate the accounting practices of such companies with respect to their property, including the accounting for depreciation.

In the *Preemption Order* we focused on the fact that the ICC had not actually prescribed depreciation rates and thus there was uncertainty regarding the ICC's actual authority. However, after reviewing that case again we find that the better and more sensible interpretation is that if the ICC had prescribed depreciation rates, the state commissions would have been precluded from prescribing rates that diverged from those it prescribed. We cited *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 159 (1930), in the *Preemption Order* as supporting our conclusion that the ICC decision did not preempt the states. In that decision the Supreme Court held that absent ICC action prescribing depreciation rates, Section 20(5) did not preclude states from prescribing depreciation rates. Since the ICC proceeding did not actually prescribe depreciation rates, but only began a proceeding looking toward the ultimate prescription of depreciation rates, there were no depreciation rates prescribed that could have preempted state-prescribed depreciation rates. Thus *Smith* only stands for the proposition that until the ICC actually prescribed rates, there was no basis for preempting the states. It did not reach the question of whether Section 20(5) would preempt the states if the ICC prescribed depreciation rates.[3]

21. At the hearings pertaining to the Communications Act the then chairman of the ICC indicated his belief that the ICC depreciation rulings would govern both federal and state depreciation practices:

> Paragraph (j) * * * should be most carefully considered. It unquestionably directly conflicts with, and destroys the uniformity of systems of accounts and depreciation accounting required by the preceding provisions of the section. That is not true under the present law.[4]

22. Other witnesses who appeared at the hearings repeated the same view. See statements of Mr. Gifford,[5] Mr. Benton,[6] and Dr. Irvin Stewart.[7]

23. The *Preemption Order* relied heavily on the "silence contained in the Congressional Reports," 89 FCC 2d 1105, in concluding that the legislative history did not support a finding that Section 220 was intended to preempt state commissions from prescribing their own depreciation rates for intrastate purposes. However, a reexamination of the legislative history in light of the comments on reconsideration indicates that the committee reports accompanying the bills did contain language indicating that the committees believed that the predecessor provision had preempted the states. The House Report, in discussing the Section 220(j) provision (which was not adopted) that would have reserved jurisdiction over depreciation rates to the states for purposes of intrastate ratemaking, stated that the provision was "responsive to the requests of the State commissions that the present law be *changed so as to permit* those bodies to exercise, for State purposes, certain jurisdiction over . . . depreciation accounting."[8]

24. In remarks on the House floor, Representative Rayburn, Chairman, House Committee on Interstate and Foreign Commerce, explained Section 220 of the proposed bill as follows:

> [p]aragraphs (a) to (g), relating to accounts records, memoranda, and depreciation, are based upon sections 20 (5) to (8) of the Interstate Commerce Act with *changes necessary to permit State commissions to prescribe* the systems of accounts for the

[3] Similarly, *Interstate Commerce Commission v. Goodrich Transportation Co.*, 224 U.S. 194 (1912) and *Kansas City Southern Ry. Co. v. I.R.S.*, 52 F. 2d 372 (8th Cir. 1931) do not appear to have any pertinence to the issue at hand. As noted in 89 FCC 2d at 1099, *Goodrich* did not raise any question with respect to the effect of ICC accounting rules upon activities not subject to ICC rate regulation. The *Kansas* holding simply reconciles two federal statutes, the Internal Revenue Code and the Interstate Commerce Act. It did not purport to establish new law on state preemption.

[4] Ltr. of F. McManamy, Hearings on S. 2910, p. 208.

[5] Hearings on H.R. 8301, pp 191–192 (See 89 FCC 2d at 1105, fn. 17). The *Preemption Order* had indicated that Mr. Gifford's preemption views were tentative. However, careful review of that testimony reveals that Mr. Gifford's uncertainty may have concerned the date Section 20(5) was enacted, not preemption.

[6] Hearings on S. 2910, 73rd Cong., 2d Sess., p. 181 (1943).

[7] Hearings on H.R. 8301, 73rd Cong., 2d sess., p. 17 (1934).

[8] H.R. Rep. No. 1850, 73rd Cong., 2d Sess. 7 (1934) (emphasis added). The section (j) proposed by the House would have provided: "Nothing in this section shall (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices; (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State Law." H.R. 8301, 73rd Cong., 2d Sess. Section 220(j) (February 27, 1934).

intrastate operation of carriers. Paragraphs (h) to (j) are new . . . *paragraph (j) removes any limitation upon the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction, rates of depreciation.* The last three paragraphs named were placed in the bill at the request of the State commissions which feel that their task of regulating intrastate communications will be greatly facilitated by the adoption of these paragraphs.[9]

25. The Senate version of Subsection (j) took a totally different approach than the House version. It called "for investigation and report to Congress instead of immediately turning over these matters to the State." S. Rep. No. 781, 73rd Cong., 2d Sess. 5 (1934).[10] The version of Section 220(j) finally enacted was the result of agreement in the conference committee. The conferees agreed to adopt the House provisions as to Sections 220 (h) and (i), but decided against the House Section 220(j) proposal to remove any limitation upon the power of states to prescribe rates of depreciation. Instead, Section 220(j) was modified along the lines of the Senate proposal to require the Commission to "investigate and report to Congress as to the need for legislation to define or further harmonize the powers of the Commission and of State commissions with respect to other matters to which this section relates." Conf. Comm. Rep. No. 1918, 73rd Cong., 2d Sess. 17 (1934). The obvious inference to be drawn is that the conferees were not prepared at that time to allow the states to prescribe depreciation rates different than those established at the federal level, but that matter might be considered later if the report required by Section 220(j) indicated it to be appropriate.

26. The hearing testimony and Committee reports therefore indicate that the language being recodified from Section 20(5) of the Interstate Commerce Act preempted the state commissions' jurisdiction over depreciation. The rules of statutory construction provide that where Congress reenacts a provision from an existing statute, it intends that the construction applicable to the existing provision apply as well to the new provision.[11] The legislative history thus supports the actual language of Section 220(b) and indicates that Congress intended to preempt state commission jurisdiction over depreciation rates for subject carriers when it recodified the language from the Interstate Commerce Act. Accordingly, we conclude that the analysis of the legislative history contained in the comments of AT&T and GTE accurately represents the intent of Congress and that the more persuasive reading of the legislative history supports the construction that Section 220(b) preempts inconsistent state action where the Commission has prescribed depreciation rates for a carrier.

C. Administrative and Court Decisions

27. The *Preemption Order* cited *Accounting Rules for Telephone Companies*, 203 ICC 13 (1934), as evidence that the FCC could not preempt state depreciation practices. There the ICC recognized that states might have additional accounting needs and indicated that it had permitted state-prescribed sub-accounts within the federally-required books of account. However, the adoption of a blanket subdivision rule does not lead to the conclusion that federally adopted accounting and depreciation rules are not preemptive. Rather, it reflects an awareness that state commissions may have special data requirements to properly administer their regulatory policies which may require additional detail beyond that prescribed by the federal agency. A subdivision rule, however, does not permit what is accounted for as an expense to be capitalized in the guise of subdividing an expense account. While we may allow subdivisions of accounts, we will not allow inconsistent accounting or depreciation methods unless such practices are otherwise consistent with the public interest. Any other policy would obliterate the prescriptive effect of our adoption of a uniform system of accounts.

28. In fact we have approved variations from the prescribed uniform system of accounts. For example, our rules give carriers blanket authority to subdivide certain prescribed accounts "provided such subdivisions do not impair the integrity of the accounts prescribed." 47 CFR 31.01–2(d)(1). CFR 31.01–2(f), authorizing carriers to subdivide accounts "in the manner ordered by any state commission having jurisdiction * * *" We also have approved state commission rate making treatment of plant under construction different from that adopted by us. See 89 FCC 2d at 1107.

29. There may well have been some instances of inconsistent state treatment of depreciation in the past. However, we do not seek controversy unless it is necessary to protect vital federal interests. Either such instances did not come to our attention or they may not have appeared threatening to federal interests.[12] In the past the communications marketplace was typified by monopoly conditions and life and salvage factors underlying the state rates were generally very similar, if not identical, to those used by the Commission. In that environment it was not essential that the Commission assert all the authority granted it. See *Computer and Communications Industry Association* v. *FCC*, No. 80–1471 (D.C. Cir. November 12, 1982). As discussed, *infra.*, in the more competitive conditions prevailing today, the utilization of proper methods and rates is more critical if the proper incentives are to be created to insure that the marketplace will function efficiently to bring the benefits of that competition to the ratepayers of this country. Therefore, where it is necessary to protect important federal policies against frustration by inconsistent state actions, we will exercise the full breadth of our depreciation powers. *See* para. 14 above.

30. Nor is there any merit to the argument that federal preemption of depreciation practices constitutes intrastate ratemaking which might run afoul of 47 U.S.C. 152(b). Section 220(b) only prohibits the states from setting depreciation rates for telephone property inconsistent from those prescribed by the FCC. It does not require that any particular tariff for intrastate service be accepted by the state commissions. The setting of depreciation rates and classes of depreciable property only resolves a single issue impacting the ratemaking process. It does not restrict the state commission's broad discretion in setting charges for individual services. In any event, Section 2(b) of the Act, 47 U.S.C. 152(b), has a well defined purpose which would not be implicated here: "To restrain the Commission from interfering with those essentially local incidents

[9] 78 Cong. Rec. 10314 (1934) (emphasis added).

[10] The Senate version of Section 220(j) provided: "The Commission shall investigate and report to the Congress whether in its opinion legislation is desirable (1) authorizing the Commission to except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates; and (2) permitting the State commissions, in pursuance of authority granted under State Law, to prescribe their own percentage rates of depreciation or systems of accounts records, or memoranda to be kept by carriers." S. 3285, 73rd Cong., 2d Sess. Section 220(j) (March 28, 1934).

[11] Courts have given weight to interpretations of the Interstate Commerce Act in interpreting the Communications Act. See, *e.g.*, *American Telephone and Telegraph Company* v. *FCC*, 487 F.2d 865 (2d Cir. 1973).

[12] *Pacific Telephone and Telegraph Company* v. *California*, 401 P. 2d 353 (1965), was cited in the *Preemption Order* to support nonpreemption. However, the California Supreme Court did not analyze Section 220(b) or its legislative history and its determination is therefore unpersuasive.

and practices of common carriage by wire that do not substantially encroach upon the administration and development of the interstate telephone network." *NCUC I, supra* at 794 n.6. Here the setting of depreciation rates is not an essentially local incident or practice and it has substantial effects upon the administration and development of the interstate telephone network.[13]

D. Preemption Under Federal Supremacy

31. Even if one were to assume that Section 220(b) did not automatically preempt the states whenever this Commission has acted, federal preemption of inconsistent state depreciation would be justified in this case to avoid frustration of validly adopted federal policies. The Fourth Circuit has stated:

> We have no doubt that the provisions of section 2(b) deprive the Commission of regulatory power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications. But beyond that, we are not persuaded that section 2(b) sanctions any state regulation, formally restrictive only of intrastate communication, that in effect encroaches substantially upon the Commission's authority under sections 201 through 205.

NCUC I, supra at 793. To the same effect, see *Computer and Communications Industry Association v. FCC, supra* at 35.

32. The D.C. Circuit recently addressed the preemption question, observing:

> We fail to see any distinction in this case between preemption principles applicable to state ratemaking authority and those applicable to other state powers. The operative principle [is that] . . . preemption of state tariffs on CPE is justified because state tariffs would interfere with the consumer's right to purchase CPE separately from transmission service and would thus frustrate the validly adopted federal policy.

Id. at 38. The court went on to find that conflicting state regulation may be preempted even though there is some indirect effect on state ratemaking discretion, noting:

> the Act itself does not distinguish between authority over rates and authority over other aspects of communications. Sections 2 (a) and (b) of the Act allocate federal and state authority with regard to both "charges [and] * * * facilities." Therefore, conflicting federal and state regulations regarding dual use CPE are no more acceptable under the Act when equipment rates are involved, as here, than when interconnection policies are involved, as in the *NCUC* cases.

Id. at 38–39.

33. The provision for adequate capital recovery is important to "make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, world-wide wire and radio communication service with adequate facilities at reasonable charges * * *." 47 U.S.C. 151. State depreciation rate prescriptions that do not adequately provide for capital recovery in the competitive environment, which constitutes this Commission's policy in those markets found capable of supporting competition, would frustrate the accomplishment of that policy and are preemptable by this Commission.

34. Over the past decade the Commission has embarked in several areas of telecommunications to pursue a policy of encouraging competition wherever the market conditions will support such a policy and produce benefits to the public interest. In *MTS–WATS Market Structure Inquiry*, 81 FCC 2d 177 (1980), the Commission opened the domestic MTS–WATS market to competitive entry, reserving the question of entry to Alaska to a later phase since concluded with the adoption of a similar open entry policy, *MTS–WATS Market Structure Inquiry*, FCC 82–515 (released November 30, 1982). In *Computer Inquiry II*, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *recon.*, 88 FCC 2d 512, *aff'd sub nom., Computer and Communications Industry Association v. FCC, supra*, the Commission opened the areas of enhanced services and customer premises equipment to competitive provision. These are just two examples of the policies which the Commission has pursued. However, they do point up the fact that if this policy is to be successful, it will be necessary for the marketplace to operate efficiently. Such efficient operation requires proper price signals generating from supply and demand conditions.

35. Capital recovery is an important determinant of the price at which services can be offered and significantly affects the amount of facilities provided to supply the needs of the communications industry. In *Amendment to Part 31*, 83 FCC 2d 267 (1980), *recon.*, 87 FCC 2d 916 (1981), the Commission adopted remaining life and straight line equal life group depreciation methods that recover capital on a basis that approximates straight line unit depreciation more closely than did the previously used methods. More timely capital recovery was anticipated to result in faster technological innovation with its accompanying benefits of more efficient service provision and lower costs resulting from more productive use of facilities.

36. Capital recovery issues are important in the implementation of *Computer Inquiry II* due to the part depreciation plays in the determination of net book value and the resultant gain or loss that may occur on the transfer of assets to the new subsidiary. It will also be significant in any later transfer of assets from the provision of regulated service to unregulated service or vice-versa. Thus, appropriate capital recovery will ease the regulatory burdens associated with supervising the transition to the new structure.

37. Depreciation is a significant portion of the revenue requirement of the regulated telephone companies. As such, it plays an important role in determining the price at which they offer their services. If competition is to be viable, it is necessary for prices to reflect depreciation expenses that are realistic for a competitive market. Absent such depreciation levels, improper signals will be given to the market. Since most plant is used interchangeably to provide interstate and intrastate communications service, supply and demand is determined by the combination of inputs from service demand in both regulatory jurisdictions. Approximately 75 percent of exchange plant is allocated to the intrastate jurisdiction. It is clear that unless telephone plant, including that portion subject to allocation to the intrastate jurisdiction, is depreciated at a reasonable rate, improperly timed capital recovery will occur. Indeed, in an increasingly competitive environment, it is possible that improper capital recovery could delay or prevent modernization which would add to the costs borne by ratepayers and could, ultimately, threaten carriers' ability to fully recovery their invested capital. Moreover, the extent of state action attempting to prevent carriers from utilizing our depreciation prescriptions places substantial burdens on carriers and could well impair their ability to raise the investment capital they will need to fully compete in the continually evolving competitive

[13] Nor is federal preemption of depreciation practices inconsistent with 47 U.S.C. 221(b). Section 221(b) was intended to reserve state jurisdiction over exchange rates where exchange boundaries extend over two states. That provision was not intended to create new reservations to the states beyond that contained in Section 2(b) and the narrow circumstance encompassed by interstate exchanges. See *Computer and Communications Industry Association* v. *FCC, supra*, and *North Carolina Utilities Commission* v. *FCC*, 552 F.2d 1036, 1046 (4th Cir. 1976), *cert. denied*, 434 U.S. 874 (1977) (hereinafter cited as *NCUC II*).

telecommunications marketplace.[14] Such a result could undermine the achievement of the Commission's objective to develop policies that will engender a dynamic, efficient telecommunications marketplace with services being provided at reasonable prices.

38. NARUC contends that preemption with respect to station connections is unnecessary and will not produce competitive benefits because expensing is not the same as unbundling. While NARUC is correct in a strict sense, it avoids the critical issue, which is the proper timing of cost recovery. If the Commission preempts with respect to station connections and all states must expense these costs, current ratepayers will be paying these costs instead of future ratepayers as would be the case with capitalization. Thus, future prices will reflect the appropriate costs for providing those services. Moreover, if these costs are expensed and state commissions must allow rates to cover these costs, it is likely that the cost causative ratepayer will in many cases be charged for the costs being expensed in connection with the provision of inside wiring. Thus, the Commission's objective may be substantially achieved by preempting state commissions from departing from our expensing rules.

39. In 1971 Congress amended the Communications Act to change the procedures for allocating costs between federal and state jurisdictions by adding Section 410(c). The Commission was given the ultimate authority with respect to such allocations, further solidifying its superintendency over common carrier communications. See *NCUC I, supra* at 795. Section 410(c) procedures provide for uniformity in the separations process, thereby insuring that plant, expenses and revenues will be rationally accounted for in the dual jurisdictional environment. The utilization of one depreciation rate is the most effective method for insuring that this uniformity will be maintained and to insure that no jurisdiction bears a greater burden than another in the transition to a fully competitive marketplace. Several parties suggest that under or over recovery will result from one jurisdiction or another because of the shifting usage patterns for telephone plant over time and argue that if such a result were to occur, significant inequities would result to both ratepayers and carriers. A uniform depreciation rate for each class of property applicable to all property whether allocated to the federal or state jurisdiction clearly eliminates these potential problems.

40. For all of these reasons, it is apparent to us that a substantial impact on federal policies could result if state commissions were allowed to diverge from Commission prescribed depreciation rates and practices. Accordingly, it is essential to preempt inconsistent state depreciation practices to avoid frustration of these vital national policies.

III. Declaratory Ruling Petition

41. GTE of Ohio seeks to have the Commission preempt an order of the Ohio Public Utilities Commission that did not approve remaining life and equal life group rates for intrastate ratemaking purposes. As alleged by GTE of Ohio, the differential in rates amounts to seven million dollars per year. GTE of Ohio states that failure of this Commission to preempt the state will frustrate the achievement of federal policies adopted by this Commission. Its argument is similar to those cited in connection with the reconsideration petition.

42. Essentially the same arguments are made against the GTE of Ohio petition as were urged on reconsideration with regard to the substance of the issue. However, Ohio cites an Ohio statute that precludes the state commission from adopting remaining life depreciation for intrastate purposes.

43. One procedural argument is raised by Ohio with respect to the petition. It contends that the question presented is premature since the order is subject to further reconsideration before the Ohio Commission pursuant to a request filed by GTE of Ohio. We do not agree since the purpose of declaratory rulings is to give guidance to affected persons in areas where uncertainty or confusion exists. A case or controversy in the judicial sense is not required, *NCUC I, supra* at 790–1. In this case, it appears necessary to issue such a ruling to clarify for the state commissions and the carriers the effect of our depreciation prescriptions. The fact that reconsideration proceedings are underway in Ohio does not mitigate against such a course in light of the divergencies from this Commission's depreciation methods and rates that are occurring to the detriment of federal policies. Thus, we find it imperative to declare today that inconsistent state prescribed depreciation rates are preempted by the Communications Act and are accordingly void. The existence of a state statute preventing a state commission from adopting a particular method does not affect this determination. When federal preemption is involved, there is no difference between a statute or a regulation of a state commission. Both must fall in the face of overriding federal concerns and policies.

IV. Conclusion

44. We have carefully reviewed the record upon reconsideration. The issues raised concerning the *Preemption Order* caused us to reevaluate the statutory language of Section 220(b), the legislative history of the provision, and the relevant judicial and administrative proceedings relating to the subject. Our considered judgment after this review is that the *Preemption Order* must be reconsidered. We find that the most logical and reasonable interpretation of Section 220(b) of the Act is that where the Commission prescribes depreciation rates for classes of property, state commissions are precluded from departing from those rates. Since the depreciation method utilized is a material part in determining the rate to be applied, state commissions are also precluded from departing from the depreciation methods prescribed by the Commission. Thus, the *Expensing Order* is binding upon state commissions and they must expense additions to inside wiring in accordance with the plan established therein. Moreover, they must follow the amortization procedures adopted in that decision for the embedded inside wiring and any additions to the capitalized amount as a result of the phase-in of the expensing of inside wiring.

45. Even if Section 220(b) does not preempt state commissions, we would act under our authority to preempt state actions that interfere with the accomplishment of federal policies and objectives. *Computer and Communications Industry Association v. FCC, supra,* and *NCUC II.* We note that petitioner and the parties supporting the petition cite several states that have indicated they do not intend to follow the Commission's depreciation prescriptions or expensing of inside wiring, or have refused to follow either. In light of the concerns

[14] AT&T and GTE indicate several state commissions have refused to follow, have indicated an intent not to follow, or are being urged not to follow Commission determinations with respect to the expensing of inside wiring and/or the adoption of straight-line equal life group or remaining life depreciation methods. A staff review of state action in conjunction with AT&T intrastate tariff proceedings reveals that all but two states have approved expensing of station connections, that 13 states have rejected and 12 have approved equal life group depreciation, and that 9 states have rejected and 22 have approved remaining life group depreciation. Prior to issuing our *Order* in this docket we did not expect that such significant variance would be required by states.

expressed about an efficiently functioning market, we must find that inconsistent depreciation rates prescribed by state commissions will interfere with the efficient operation of the communications marketplace and thereby frustrate the achievement of the Commission's policies. Accordingly, we find that this Commission's depreciation policies and rates, including the expensing of inside wiring, preempt inconsistent state depreciation policies and rates.

46. Accordingly, it is ordered, pursuant to Sections 1, 4(i), and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 220(b), that the Petition for Reconsideration filed by the American Telephone and Telegraph Company is granted.

47. It is further ordered, that the Petition for Declaratory Ruling filed by General Telephone Company of Ohio is granted to the extent reflected herein.

48. It is further ordered, that the Secretary shall cause this order to be published in the **Federal Register.**

49. It is further ordered, that the Secretary shall cause a copy of this order to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Due to the continuing effort to minimize publishing costs, the Appendix of this document (Summary of Comments) will not be printed herein. However, copies of this document in its entirety are available from any of the distribution centers listed in the FCC Office of Public Affairs, Room 202, 1919 M St., N.W., Washington, D.C. 20554, (202) 254-7674. In addition, a copy is available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., N.W.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Reconsideration of Docket No. CC 79-105.

Having dissented from the Commission's original decision declining to preempt State accounting and depreciation rules inconsistent with those prescribed by the FCC,[1] I am pleased that the Commission has reconsidered this issue and acted to preempt such inconsistent State regulation.

As this *Order* establishes in detail, a true reading of the statutory language and legislative history of Section 220(b) of the Communications Act clearly demonstrates that Congress intended FCC depreciation rules and policies to control the field.

Even if preemption were not explicitly mandated by Section 220(b), the effective implementation of our pro-competitive federal telecommunications policies dictates that inconsistent State depreciation regulation be preempted by this Commission. We cannot "defer to the States" on capital recovery issues. Telephone companies must be able to recover their cost of capital in a timely and effective manner if they are to price their services efficiently and to improve and expand their facilities to meet the challenges of competition and technologic innovation.

This preemption imperative is not merely theoretical. Too many States (e.g., Alabama, Louisiana, Nebraska, Ohio, New Jersey, Michigan, Arkansas) have already refused to recognize the critical necessity of the FCC's cost recovery principles. The resulting depreciation rate differentials are alarming: GTE of Ohio has indicated that it will be denied $7 million in capital recovery this year if the State of Ohio's disparate depreciation treatment is allowed to prevail.

The FCC cannot ignore the detrimental impacts of inconsistent State treatment of depreciation if our pro-competitive policies are to have any integrity and viability. This Commission now recognizes that preemption is both mandated as a matter of law and essential as a matter of policy, and our action today has my full endorsement and support.

[FR Doc. 83-1348 Filed 1-18-83; 8:45 am]

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47 CFR Part 73

[BC Docket No. 81-364; RM-3875]

Radio Broadcast Services; TV Broadcast Station in Victoria, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns and reserves UHF Channel *47 to Victoria, Texas, as its first noncommercial educational channel, in response to a petition by South Texas Educational Broadcasting Council.

DATE: Effective: March 15, 1983.

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

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order—Proceeding Terminated

Adopted: January 5, 1983.

Released: January 12, 1983.

1. A Notice of Proposed Rule Making in this proceeding was published in the **Federal Register** on September 28, 1981 (46 FR 47480). The Notice was issued in response to a petition by South Texas Educational Broadcasting Council ("petitioner") to reserve UHF Television Channel 25 already assigned at Victoria, Texas, for noncommercial educational use. Petitioner proposes to provide a translator service on the channel rebroadcasting its noncommercial educational station in Corpus Christi, Texas, Station KEDT (Channel *16). Petitioner is now the permittee of television translator Station K25AE, Victoria, Texas, and seeks modification of its permit to specify operation on Channel 25 if reserved for noncommercial educational service at Victoria. In the Notice, the Commission proposed the reservation of Channel 47 instead of Channel 25. Petitioner filed comments in support of the proposal, but requested a lower channel, if possible. A reply to petitioner's comments was filed by Community Television of Victoria ("CTV"), permittee of Television Station KVTX, Channel 31, Victoria. CTV contends that Channel 47 should be assigned and reserved, rather than a lower channel.

2. On March 4, 1982, the Commission adopted a *Report and Order* in Docket No. 78-253, *"In the Matter of an Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System,"* published in the **Federal Register** on May 18, 1982 (47 FR 21468). It provided among other things that translators can operate with power up to one thousand watts on unassigned UHF channels. Previously only assigned channels could accommodate 1000 watt translators consistent with our rules. Although petitioner recognizes that it no longer needs an assigned channel to operate its proposed translator station, it nevertheless desires a reserved assignment to avoid competing filings by commercial translator or low power interests.[1]

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[1] Amendment of Part 31, Joint Dissenting Statement of Commissioners Joseph R. Fogarty and Anne P. Jones, 89 FCC 2d 1109-1111 (1981).

[1] We also note that an assignment could enable a station to upgrade its operation to a full-service use without the need for another rule making proceeding. However, petitioner has not expressed an interest in upgrading.

3. Victoria (population 50,695) is the seat of Victoria County (population 68,804).[2] It has three local UHF TV channels—Channel 19 (Station KXIX); Channel 25 (Station KAVU-TV); and Channel 31 (CP issued for Station KVTX). Victoria has no channel reserved for noncommercial educational use.

4. As to the need for a noncommercial educational assignment at Victoria, the assignment could provide for a first such service. Although we have no commitment for a full broadcast use of the channel, the reservation would preserve the availability of such service at a future date. Since Channel 47 is the lowest available channel for assignment to Victoria (Channel 25 is already in use), we have selected that channel for assignment to Victoria.

5. Petitioner's request that its permit (for translator use on Channel 25) be modified to specify operation on Channel *47 would present a significant problem. Applications have been filed with the Commission for low power television stations to operate on Channel 47 in Corpus Christi and in San Antonio, Texas, and on Channel 48 in Victoria, Texas, all of which could involve interference with an operation on Channel *47 in Victoria. In our opinion such applications are entitled to simultaneous consideration before a grant of any of the applications, including the modification requested by petitioner. See *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945). We note that although there is a freeze on the filing of such translator applications, we have provided an exemption for the filing and processing of applications by holders of permits which must change frequencies pursuant to our *Report and Order* in Docket 78-253. Therefore petitioner's application for Channel *47 would be accepted.

6. As for petitioner's belief that there is a preference for educational rebroadcast on the reserved channel, the priority was eliminated by our *Report and Order* in Docket 78-253 (see par. 5, *supra*). That action, among others, is the subject of petitions for reconsideration.

7. To reiterate, we have provided an assignment for noncommercial educational use at Victoria. Petitioner does not have any right to automatic use of the new channel for its translator station but its application can be accepted as freeze-exempt. However, the use of that channel by petitioner may need to be considered on a comparative basis with the pending applications for Channel 48 at Victoria and Channel 47 at Corpus Christi and San Antonio.

8. Authority for the adoption of the amendment herein is contained in section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules.

9. Accordingly, it is ordered, That effective March 15, 1983, § 73.606(b) of the Commission's Rules, the TV Table of Assignments, is amended with regard to the following community:

City	Channel No.
Victoria, Texas	19+, 25, 31, and *47.

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

11. For further information concerning the above, contact Philip S. Cross, Mass Media Bureau, (202) 632-5414.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-1462 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[2] Population figures are taken from the 1980 U.S. Census, Advance Reports.

47 CFR Part 81 and 83

[Docket No. 20813; FCC 82-574]

Changes in Frequencies, Operating Procedures, Technical Standards and Other Criteria Relating to the Use of Radiotelegraphy in the Maritime Services Adopted at the ITU World Maritime Administrative Radio Conference, Geneva, 1974

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends certain rules in the Maritime Services relating to the use of radiotelegraphy. These changes result from petitions filed by interested parties after earlier action in this proceeding. The intended effect of these changes is the improve ship-shore radiotelegraph communications.

EFFECTIVE DATE: January 30, 1983.

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

FOR FURTHER INFORMATION CONTACT: Walter E. Weaver, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Radiotelegraph.

47 CFR Part 83

Radio, Ship stations, Telegraph.

In the matter of amendment of Parts 2, 13, 81 and 83 to implement changes in frequencies, operating procedures, technical standards and other criteria relating to the use of radiotelegraphy in the maritime services adopted at the ITU World Maritime Administrative Radio Conference, Geneva, 1974; Docket No. 20813.

Memorandum Opinion and Order

Adopted: December 22, 1982.

Released: December 30, 1982.

1. The Report and Order terminating this proceeding was released on June 10, 1977.[1] The Commission has received a Petition for Reconsideration from ITT Mackay Marine (Mackay); a Request for Partial Stay and Petition for Reconsideration from Mobile Marine Radio, Inc. (MMR); a Petition for Partial Reconsideration from RCA Global Communications, Inc. (RCA Globcom); and a request from the Maryland Port Administration (MPA) that it be joined with RCA Globcom in the Petition for Partial Reconsideration filed by RCA Globcom.

Mackay Petition for Reconsideration

2. Mackay refers to those provisions of the Report and Order (see Appendix 2, thereto) which became effective July 18, 1977, prohibiting the installation of transmitter type 2013 aboard new vessels or as a replacement transmitter aboard existing vessels. Mackay states that on the effective date of the Report and Order it had under contract, sold or delivered to shipyards a number of transmitters of the type 2013 which would be installed aboard new vessels over a period of time ending January 18, 1979. Mackay requested that the Commission permit the installation and licensing of these transmitters.

3. In a letter to Mackay dated July 19, 1977, the Chief, Private Radio Bureau stated that relief sought by Mackay was more properly a request for waiver; that the information submitted was persuasive; and, accordingly, that for this limited number of vessels a waiver would be granted permitting the installation of transmitter type 2013. Mackay was requested to identify each vessel and its associated shipyard. That information has been received and waivers have been granted to the vessels involved. In view of the above, the Petition for Reconsideration filed by Mackay will be dimissed as moot.

[1] FCC 77-380; 42 FR 30999; 65 FCC2d 49.

RCA Globcom Petition for Partial Reconsideration

4. RCA Globcom objects to various aspects of § 81.209(c)(1), 81.209(c)(2), 83.315 and 83.317.[2] Regarding § 81.209(c)(2), RCA Globcom construes that section as limiting to 500 Hz the permissible selectivity of coast station receivers used on the A1 Morse ship calling channels. We received several requests for clarification of this subparagraph, in consequence of which we released an Errata, on July 29, 1977, in which we amended § 81.209(c)(2) to delete the terminal phrase "500 Hz removed." This earlier action disposes of RCA Globcom's request that § 81.209(c)(2) be amended.

5. RCA also objects to § 81.209(c)(1). This section requires that general purpose tunable receiver(s) at a public coast radio telegraph (PCRT) station used for reception of ship station calling and/or working frequencies, have a capability to be accurately set to any one of the ship calling frequencies used by that PCRT station, retuned to the ship working frequency and then reset to the ship calling frequency.[3] The time limit provided, five seconds, applies to the time to tune from the ship calling frequency to the ship working frequency, or from the ship working frequency to the ship calling frequency. The maximum spacing from the bottom of the ship calling band to the top of the ship working band varies among the several megacycle order bands, from 40 kHz at 4 MHz to 140 kHz at 16 MHz. Most, if not all, commercial grade receivers marketed in the last 10 to 20 years provide the capability to tune over this range within the required time limit. We are not, therefore, persuaded that § 81.209(c)(1) should be amended.

6. With regard to § 83.315 and 83.317, RCA Globcom recommends that these rules be amended to provide access to all of the frequencies within each calling channel series to those ships that are fitted with synthesizers. We are amending § 83.317(a), as set forth in the attached Appendix, to permit ship stations desiring to do so to use the off-set frequencies 100 and 200 Hz above and 100 and 200 Hz below each frequency set forth in the table of § 83.317(b). This amendment permits a ship station to employ five frequencies in each of the 18 calling channels at each megacycle order. This increases the number of available frequencies from 111 to 555.

MMR's Request for Partial Stay and Request for Reconsideration

7. In its Request for Partial Stay, MMR requested the Commission to stay the application of § 81.143(c)(2) and 81.209(a). With its Request for Partial Stay, MMR filed a Petition for Reconsideration. In a letter dated July 13, 1977, the Chief, Private Radio Bureau, based on the information contained in MMR's petition for reconsideration, granted MMR's station, WLO, a temporary waiver of these sections until Commission action is taken on MMR's Petition for Reconsideration.

8. Section 81.143 applies to narrow-band direct-printing (NB-DP) radiotelegraph (radioteleprinter) equipment. MMR has two concerns about this section. The first pertains to subsection (c)(2), which specifies that the residual carrier of the suppressed carrier single sideband transmitter shall be suppressed to the 50 microwatt level, and that the audio subcarrier used to carry the digital information shall be shifted 85 Hz above and below a center frequency of 1700 Hz.[4]

9. MMR states that all of its equipment meets the 50 microwatt requirement, that its equipment uses a subcarrier of 1900 Hz; and that MMR's use of 1900 Hz predates the FCC requirement to use 1700 Hz. MMR asserts that since it suppresses the residual carrier to the required level, which protects the NB-DP channels below those used by MMR, there is no reason to impose upon MMR the unnecessary expense of shifting from 1900 Hz to 1700 Hz. We agree. Accordingly, § 81.143(c)(2) as set forth in the attached Appendix is amended to delete specification of the subcarrier center frequency.

10. MMR second concern pertains to subsection (d), which specifies the "mark" and "space" positions for stations using the 5-element telegraph alphabet. If the requirements of this section are applicable to the 7-unit system (referred to § 81.143(f)) which MMR operates, MMR advises that it will be unable to use their equipment. The matter raised by MMR is equally applicable to all PCRT licenses using NB-DP with error correction.

11. CCIR Recommendation 476–3 sets forth the internationally agreed error-detection or forward error correction system for use with NB–DP. It also provides a comparison of the bit arrangement of the emitted signal of both the 5-unit and 7-unit systems. The bit arrangement of the 5-unit system conforms to ITU Appendix 38(e) and to § 81.143(d).

12. For the bits which are common to the 5-unit and 7-unit systems, the "mark" and "space" bits of the 7-unit system are reversed from that of the 5-unit system. Thus, the "mark" and "space" of the 7-unit system do not conform to ITU Appendix 38(e) or to § 81.143(d). To correct this, § 81.143(d) is amended to limit its applicability to the 5-unit system, as set forth in the attached Appendix.

13. MMR again urges the Commission to require that vessels fitted with NB–DP also fit with Automatic Reply Request/Forward Error Correcting (ARQ/FEC) equipment. This proposal was discussed in paragraph 31 of the Report and Order. While some of the arguments included therein are no longer applicable, it continues to be our view that those in the marketplace who desire or require an improved NB–DP service will fit their vessels with the (ARQ/FEC) equipment, if not initially, then at a later date. We are not, therefore, adopting this additional regulation.

14. Regarding § 81.209(a) MMR expresses concern about the operation and staffing of PCRT stations. It argues (1) that the Commission is requiring PCRT stations to maintain a continuous listening watch on twenty distinct ship (A1 Morse) calling frequencies; and (2) that two staffs of operators will be required at PCRT stations, one to guard the calling channels and a second to operate the working frequencies. The Commission has not heretofore and is not in this proceeding specifying the frequency bands or the time of day a PCRT station will maintain a watch on the ship (A1 Morse) calling frequencies. Nor have we specified the staffing which will be provided at PCRT stations, or how the staff of such a station will be deployed. The PCRT station will select the frequency bands in which service will be provided. Once that decision is reached, this proceeding specifies that the PCRT station will, at each of those frequency bands, guard the ship (A1 Morse) common calling

[2] Additionally, in a letter dated August 25, 1977, RCA Globcom requested for all of its public coast radiotelegraph (Class I–A) stations a waiver of § 81.209 for a six months' period, which was granted by Chief, Private Radio Bureau in an Order released October 12, 1977. This Order was applicable to all public coast radiotelegraph (Class I–A) stations listed in the subject rule section.

[3] The wording of § 81.209(c)(1) effectively precludes the use of fixed-tuned, single-frequency, receivers. The use of multiple, fixed-tuned, single-frequency receivers, each for reception of a specific single channel, could be expected to provide a superior means of monitoring the required A1 Morse ship calling frequencies, with improved technical performance and at a reduced cost as compared to a general purpose, all-band receiver. Since the use of fixed-tuned, single-frequency receivers for this purpose is advantageous, we are amending § 81.209(c)(1), as set forth in the attached Appendix to provide for their use.

[4] This corresponds to the system specification of CCIR 476–3 Recommendation.

channels 5 and 6, plus one group channel for the area in which the PCRT station is located.

15. In regard to § 81.209(c)(1), MMR asks the question: Does this rule provision permit scanning as a means of meeting the watch requirement; if not, what is its import? [5] U.S. registry telegraph vessels are fitted with all of the calling and all of the working channels available for A1 Morse. Many foreign registry vessels are similarly fitted. For these U.S. and foreign registry vessels, scanning of the calling bands serves no useful purpose.

16. However, most communications by U.S. PCRT stations are with foreign registry vessels. The 1974 MWARC anticipated that most vessels would be fitted to employ the new calling procedure. The effective date of the 1974 MWARC agreement was January 1, 1976. We are now some seven years beyond that effective date and a substantial number of foreign registry vessels continue to employ the old procedure. In order to get traffic from these vessels PCRT stations must scan the calling bands. Arguably, as long as these vessels obtain service using the old procedure, they will have no incentive to fit for use of the proper calling channels. This, of course, will defeat implementation of the calling procedure adopted by the 1974 MWARC. The advantages of the new procedure far outweigh considerations to perpetuate the old procedure.

17. We are reluctant to say either that scanning of the ship calling bands shall be discontinued, or that we shall not implement the new calling procedure. Some compromise is desirable. In the Report and Order we concluded that once the PCRT station had determined which megacycle order bands were to be guarded, that PCRT station would, at those megacycle orders, guard calling channels 5 and 6, in addition to the group calling channel.

18. Channels 5 and 6 were imposed by the 1974 MWARC to cover those vessels which were not fitted for use of the group calling channels. It now appears that a substantial number of foreign registry vessels are not fitted for use of either channel 5 or 6, or the group calling channels. On the other hand, all U.S. registry and many foreign registry vessels are fitted for the use of all of the channels and should not be penalized by a return to the old procedure.

[5] Scanning means the process of tuning a general purpose receiver from one end to the other end of one of the ship calling bands, back and forth, over and over. There are calling bands at each of the megacycle orders, i.e., at 4, 6, 8, 12, 16 and 22 MHz. The widest calling band is at 16 MHz and it is 29 KHz wide.

19. We believe a reasonable compromise would be for each PCRT station, at each chosen megacycle order to: (1) Guard the group calling channel (East coast, channel 3; Gulf Coast, channel 9; West coast, channel 13) for service to vessels fitted with all channels; and (2) either guard channels 5 and 6, or scan the calling bands, at the option of the PCRT station licensee.

20. We view the above compromise in procedure as being of an interim nature. Those foreign registry vessels which have not done so are urged to fit for and to call on the group calling channels.

21. MMR notes correctly that the Commission stated in the Report and Order its intent to include in § 81.152(d) appropriate amendment to permit the holder of T–3 and P–3 licenses to operate radioteleprinter service. However, these amendments were not included in that section as it appeared in the Appendixes to the Report and Order. Following receipt of MMR's request, changes were made to § 81.152(d), providing for T–3 and P–3 operation of radioteleprinter, which were set forth in a Second Errata, released July 18, 1977, in the instant proceeding.

22. Finally, MMR disputes the allocation of narrow-band direct-printing (NB–DP) frequencies by radiotelegraph station call sign.[6] MMR argues the Commission should abandon the call sign allocation method in favor of assignment of these frequencies "on a first come-first served basis, subject to such showings or justification as the Commission and the Communications Act may require." We agree that it may be useful to revise the allocation method adopted in our Report and Order in this proceeding. At present, only 5 PCRT stations are offering NB–DP service on the frequencies assigned to them in the rules. We wish to foster more efficient use of these frequencies by exploring ways in which to encourage new providers of this service to enter the markeplace and to facilitate expansion of the service by existing providers. Accordingly, we are simultaneously releasing with this Memorandum Opinion and Order, a Notice of Proposed Rulemaking and Order which will address the NB–DP allocation problem.[7] To this degree this action grants MMR's petition that we reconsider the allocation question.

23. Accordingly, it is hereby ordered, That, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 81 and 83 of the Commission's rules are amended effective January 30, 1983, as set forth in the attached Appendix.

24. It is further ordered, That, the Petition of Mackay, is dismissed; and that the Petitions filed by Mackay, MMR, RCA GLOBCOM and MPA are granted to the extent indicated herein and are denied in all other respects.

25. Regarding questions on matters covered by this document contact Walter E. Weaver, telephone (202) 632–7175.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[6] See § 81.204(c) of the rules.

[7] We are proposing among other things that MMR's method of allocation be considered, together with a proposed specific set of requirements for a showing.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

1. In § 81.143 paragraph (c)(2) and paragraph (d) are revised to read as follows:

§ 81.143 Narrow-band direct-printing radiotelegraph equipment.

* * * * *

(c) * * *

(2) When frequency shift keying is effected by applying audio signals (a frequency shifted subcarrier)[1] to the input of a single sideband transmitter, the suppressed (residual) carrier, when it falls outside the authorized bandwidth, shall be suppressed to the level prescribed by § 81.140. Further, the subcarrier shall appear on the higher frequency side of the residual carrier, shall have a frequency stability of ±5 Hz, and shall be shifted 85 Hz above and below the frequency of the subcarrier.

(d) In systems using the 5-element International Telegraph Alphabet No. 2, the higher of the emitted frequencies shall correspond to "space" (Start, A, or no perforation) and the lower of the emitted frequencies shall correspond to "mark" (stop, Z, or perforation).

[1] CCIR Recommendation 476–3 recommends a subcarrier of 1700 Hz.

* * * * *

2. In § 81.209 paragraph (c)(1) is revised to read as follows:

§ 81.209 Watch on ship calling frequencies.

* * * * *

(c) The receivers employed shall:

(1) If tunable receivers, be capable of being set to and of being reset to any one of the designated calling frequencies in each band for which the receiver is intended to operate. The time required to set or to reset the receiver to frequency shall not exceed five seconds.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.143, paragraph (d) is revised to read as follows:

§ 83.143 Narrow-band direct-printing radiotelegraph equipment.

* * * * *

(d) In systems using the 5-element International Telegraph Alphabet No. 2, the higher of the emitted frequencies shall correspond to "space" (start, A, or no perforation) and the lower of the emitted frequencies shall correspond to "mark" (stop, Z, or perforation).

* * * * *

2. In § 83.317, paragraph (a) and footnotes [1, 2] and [4] of this section are revised to read as follows:

§ 83.317 Calling frequencies—A1 Morse radiotelegraphy.

(a) Ship radiotelegraph calling frequencies in the bands between 2 and 27.5 MHz are set forth in the seven tables of this section. All of these frequencies are available to all properly authorized ship stations. Ship stations may, in addition, employ the frequencies 100 and 200 Hz above and 100 and 200 Hz below each of the frequencies listed in the table of paragraph (b) of this section. In paragraphs (c) through (f) of this section the calling frequencies are arranged by Channel Series numbers. The Channel Series which is routinely guarded by coast radiotelegraph stations at United States locations is marked by appropriate footnote. The specific frequencies of the Channel Series which are guarded at a coast station will vary subject to normal propagation conditions. For vessels operating internationally, the calling frequencies which are routinely guarded at coast stations at other than United States locations can be determined by reference to the ITU publication entitled "List of Coast Stations". The world-wide plan for the distribution and use of calling frequencies appears in Appendix 34 [previously Appendix 15C] and Resolution No. 312 [previously designated MAR 2-5] to the current edition of the ITU Radio Regulations.

* * * * *

[1] Routinely guarded by all coast radiotelegraph stations, including coast stations of the USCG for AMVER and other communications.

[2] Routinely guarded by East coast radiotelegraph stations, including coast stations of the USCG for AMVER and other communications.

* * * * *

[4] Routinely guarded by West coast and Pacific radiotelegraph stations, including coast stations of the USCG for AMVER and other communications.

3. In § 83.319, paragraph (a) is revised and paragraph (b) is removed and reserved to read as follows:

§ 83.319 Working frequencies—A1 Morse Radiotelegraphy.

(a) Ship radiotelegraph working frequencies are set forth in Tables (d)(1) through (d)(6) of this section. Two Series Nos. of working frequencies, for example W1 and W31, are assigned to each radiotelegraph ship station. Frequencies from the two Series Nos. assigned to each radiotelegraph ships stations should be used for normal working. Other Series Nos., and frequencies therefrom, may be used by a ship station when the frequencies of the two assigned Series Nos. are not adequate.

(b) [Reserved.]

* * * * *

[FR Doc. 83-1387 Filed 1-18-83; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1240

[No. 38889]

Elimination of Regulations on Classes of Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule eliminates 49 CFR Part 1240, Classes of Carriers. The Commission has concluded that 49 CFR Part 1240 duplicates the requirements for classification of carriers included in 49 CFR Part 1201, Instruction 1-1; 49 CFR Part 1206, Instruction 2-1; and 49 CFR Part 1207, Instruction 1. The information on carrier classification can be obtained from these instructions, thus, 49 CFR Part 1240 is unnecessary.

DATE: This rule is effective for the accounting and reporting year beginning January 1, 1982.

ADDRESS: Copies of this rule may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423, (202) 289-4357, D.C. Metropolitan Area; (800) 424-5403, toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Leonardo A. Rodriguez, (202) 275-7448.

SUPPLEMENTARY INFORMATION: As a part of the Commission's continuing effort to simplify regulatory requirements and eliminate duplicative and extraneous regulations, the Commission is eliminating 49 CFR Part 1240, Classes of Carriers. After reviewing 49 CFR Parts 1200 to 1299, we have concluded that 49 CFR Part 1240 is duplicative and is no longer necessary. The accounting and reporting classification for carriers shall be determined by applying the rules in 49 CFR Part 1201, Instruction 1-1; 49 CFR Part 1206, Instruction 2-1; and 49 CFR Part 1207, Instruction 1.

The Commission finds that a notice of proposed rulemaking as defined under the Administrative Procedure Act, 5 U.S.C. 553(b), is not required to adopt this revision because it involves the elimination of duplicative carrier classification regulations. However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting that the public study the rule and report, within 45 days, any suggested changes. If the Commission concludes after reviewing the comments that it is necessary to reconsider this rule, a further notice will be published in the Federal Register. Otherwise, the provisions of this final rule are in effect.

Regulatory Flexibility

The Commission certifies this final rule will not have a significant economic impact upon a substantial number of small entities. In this proceeding, we do not propose any new instructions; rather, we are eliminating a duplication. Thus, we anticipate no adverse economic impact on businesses, organizations or other small entities.

This final rule does not significantly affect the qualify of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1240

Motor carriers, Railroads, Classes of carriers.

Accordingly, we adopt the changes to Title 49 of the Code of Federal Regulations as set forth in Appendix A.

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

Decided: January 10, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Gilliam,

Andre, Simmons, and Gradison.
Commissioner Gilliam did not participate.

James H. Bayne,

Acting Secretary.

Appendix A

Title 49 CFR shall be amended by making the following changes:

1. Amend the center heading **PARTS 1240–1259—REPORTS** by removing the number 1240 and inserting in it place, the number 1241.

PART 1240—[REMOVED]

2. Remove 49 CFR Part 1240, Classes of Carriers.

[FR Doc. 83-1453 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 13
Wednesday, January 19, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A49]

Milk in the Texas Marketing Area; Rescheduling of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rules.

SUMMARY: This notice reschedules for February 1, 1983, a public hearing to consider proposals to amend the Texas milk order. The hearing was initially scheduled to begin on January 18, 1983. Cooperative associations representing a large segment of the dairy industry in the north central United States requested a postponement, indicating that they need additional time to prepare for the hearing.

ADDRESSES: Robert Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Agriculture Department, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert Groene, (202) 382-9376.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued December 27, 1982, published January 3, 1983 (48 FR 28).

A notice was issued on December 27, 1982 giving notice of a public hearing to be held January 18, 1983, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

Notice is hereby given, pursuant to the rules of practice applicable to these proceedings (7 CFR Part 900) that the said hearing is rescheduled to be held at the Sheraton Grand Hotel, Dallas-Ft. Worth Airport, Highway 114 and Esters Boulevard, Dallas, Texas 75261, beginning at 9:30 a.m., local time, on February 1, 1983.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on January 14, 1983.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 83-1501 Filed 1-18-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-81-04]

Tertiary Incentive Program

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Analysis of Comments.

SUMMARY: The Economic Regulatory Administration (ERA) is publishing its analysis of the comments on the proposals set forth in the May 6, 1981 Notice of Proposed Rulemaking concerning the Tertiary Incentive Program. As announced previously, ERA decided not to adopt any of these proposals as a final rule. This analysis was initially prepared in the summer of 1981, but its publication was deferred pending resolution of the tertiary litigation.

FOR FURTHER INFORMATION CONTACT:

F. Scott Bush, Office of Fuels Programs, Economic Regulatory Administration, Room GA-017, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2202

William Funk, Assistant General Counsel for Regulatory Oversight, U.S. Department of Energy, Room 6A-141 (GC-12), 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6736

Jack Vandenberg (Office of Public Information), Economic Regulatory Administration, Room 4309, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633-8108.

SUPPLEMENTARY INFORMATION: On March 17, 1981, ERA issued an advance notice of proposed rulemaking (46 FR 17566, March 19, 1981) announcing that it would propose to rescind the Tertiary Incentive Program ("incentive program") with respect to allowed expenses that had not been incurred and paid on or before March 19, 1981. ERA stated that its basis for such action was its assumption that continuation of the incentive program beyond March 19 would not meaningfully increase the production of crude oil. This assumption was based on ERA's belief that expenses with respect to those enhanced oil recovery ("EOR") projects which the incentive program was intended to encourage most likely already had been incurred and paid.

On April 28, 1981, ERA issued a notice of proposed rulemaking (46 FR 25315, May 6, 1981) that proposed the action discussed in the advance notice. This notice also proposed to rescind the incentive program with respect to all in-house allowed expenses and with respect to those prepaid allowed expenses that were not incurred and paid prior to January 28, 1981. ERA's basis for such action was its assumption that many of the in-house and prepaid allowed expenses that had been incurred and paid in the months immediately following decontrol related to EOR activities that would have been undertaken on the same time schedule, without regard to the incentive program. With respect to in-house expenses, statements by some members of the industry indicated their belief that, in most instances, they represented no new commitment by a firm to EOR activity but merely accounting entries between affiliated entities that result in a "wash" between the two entities and a positive cash flow to a firm as a whole. With respect to prepaid expenses, statements by some members of the industry indicated their belief that most of the prepaid expenses incurred and paid after decontrol represented an attempt by producers to receive the market price for all their price-controlled crude oil without any corresponding new commitment to EOR activity.

ERA recognized the retroactive nature of the proposals. However, it indicated that adoption of these proposals might not be an impermissible retroactive final rule since very few firms may have acted in reliance on the regulations that were proposed to be rescinded. Moreover, ERA stated that in many situations where firms had relied, a firm might be able to undo the agreement

relating to the allowed expenses in question and thus would suffer no detrimental reliance damage.

On July 8, 1981, ERA issued a notice of its determination not to adopt any of these proposals as a final rule. (46 FR 36103, July 13, 1981). ERA made this decision after a careful review of the available data on the incentive program and the public comments on the proposals. This notice is intended to set forth ERA's analysis of the comments.[1]

ERA received comments from sixty-one different sources. Comments from thirty-eight of these sources opposed the adoption of the proposals, while comments from twenty-two of these sources favored their adoption.[2] The opposition to the proposals came from independent crude oil producers, suppliers of goods and services to enhanced oil recovery ("EOR") projects, and some refiners. The support came from other refiners.[3]

In general, those refiners that favored the adoption of the proposals argued that, as a matter of law, Executive Order 12287 (46 FR 9909, January 30, 1981) terminated the incentive program after January 27, 1981. On the basis of this argument, refiners, tended to view the rulemaking as unnecessary, but supported adoption of the proposals relating to the period after January 27 as a means of clarifying the situation surrounding the incentive program. DOE's office of General Counsel had considered this argument and rejected it since Executive Order 12287 *did not eliminate* the then existing price and allocation regulations, but only *exempted* from those regulations crude oil and petroleum products sold after January 27. This position had been stated publicly in Ruling 1981–1 (46 FR 12945, February 18, 1981). Moreover, Ruling 1981–1 specifically considered the effect of Executive Order 12287 on the incentive program and stated that crude oil sold on or before January 27 could be certified as tertiary incentive crude oil on the basis of allowed expenses incurred, paid and reported through March 31, 1981.[4] Thus, rather than clarifying the situation surrounding the incentive program, proposed amendments would have represented a substantive change in the program. Accordingly, ERA did not find persuasive those arguments that treated the proposals as interpretative matters rather than as substantive changes in the regulations.

In a related vein, many refiners argued that the continued effectivess of the regulations that related to the incentive program beyond January 27, 1981, would be contrary to the policy of Executive Order 12287 and the original intent of the incentive program.

With respect to Executive Order 12287, they argued that the President had intended to return the oil industry to a free market by terminating all aspects of the then existing price and allocation regulations, except for certain designated provisions, such as the Entitlements Program. The continuing effectiveness of the tertiary regulations after January 27, they said, would run counter to a free market since it would cause producers to make decisions concerning EOR projects not only on the basis of normal market forces but on the basis of governmentally created price incentives which had only a limited time to run. With respect to the original intent of the incentive program, they argued that since the program had been adopted to overcome the disincentives for EOR activity created by the crude oil price regulations, the removal of price controls from all crude oil sold after January 27 eliminated any regulatory disincentives for EOR activity. Furthermore, they argued that the continued effectiveness of the regulations after January 27 would be arbitrary and capricious since it would provide an unnecessary windfall to project operators able to attract private investment on their own merits, while also wasting scarce economic resources on projects unable to justify such investment in a free market.

ERA does not find the continued effectiveness of the tertiary regulations through March 1981 to be inconsistent with the return to a free market that occurred on January 28, 1981. These regulations did not affect crude oil sold on or after that date, but only crude oil sold before that date. Thus, the continued effectiveness of the regulations operated to compensate for disincentives created by and suffered under the crude oil price regulations and did not distort free market forces in the sale of crude oil. More importantly, the continued effectiveness of the regulations carried out the Congressional mandate to provide "additional price incentives for bona fide tertiary recovery techniques". Energy Conservation and Production Act section 122, 15 U.S.C. 757(j)(1)(A).[5] The removal of price controls on January 28 did not eliminate the results of price controls in effect prior to that date and, accordingly, did not terminate the regulatory basis for provisions intended to eliminate the disincentives created by the former price controls. In fact, the continued effectiveness of the teritary regulations was not only consistent with the removal of price controls, but actually increased the volume of decontrolled oil in the marketplace prior to the President's Executive Order.

Another argument made in support of the proposals was that the operation of the incentive program, especially those aspects of it that related to in-house or prepaid allowed expenses, had resulted in many firms being placed in a position in the Entitlements Program substantially more detrimental than their historical position. These refiners asserted that since the issuance of Executive Order 12287 there had been a remarkable increase in the volume of old and new crude oil certified or recertified as tertiary incentive crude oil and that most of these certifications resulted from in-house and/or prepaid allowed expenses incurred or paid after January 27, 1981. This certification of old and new crude oil as tertiary incentive crude oil meant that there was less deemed old oil whose benefit would be distributed by means of the Entitlements Program.

ERA agrees that the incentive program did operate to reduce the amount of deemed old oil whose benefit could be distributed by means of the Entitlements Program. However, ERA cannot agree that this situation in itself supported adoption of the proposals, since any action that decontrols crude oil has the same effect. The effect of the incentive program on the amount of deemed old oil in the Entitlements

[1] ERA originally intended to publish this analysis soon after its July 13, 1981 notice. However, prior to completion of the analysis for publication, that portion of Ruling 1981–1 relating to the tertiary program was held invalid by the District Court for the Central District of California on Setember 30, 1981. See *Union Oil Company of California* v. *Department of Energy*, 530 F. Supp. 717 (C.D. Cal. 1981). Since such a holding, if upheld, would have made the rulemkaing essentially moot, ERA suspended its efforts to publish an analysis. On September 1, 1982, the Temporary Emergency Court of Appeals reversed the district court and upheld Ruling 1981–1. See *Union Oil Company of California* v. *Department of Energy*, 688 F.2d 797 (TECA 1982), petition for cert. filed, 51 U.S.L.W. 3380 (No. 82–771 November 4, 1982).

[2] One firm stated that it did not have sufficient information on which to make a decision to support or to oppose the proposals.

[3] Among refiners, 14 out of the 16 small and independent refiners and 8 out of 15 major integrated refiners supported the proposals.

[4] This position has been upheld by the Temporary Emergency Court of Appeals. *Union Oil Co.* v. *DOE*, 688 F.2d 797 (TECA 1982).

[5] This conclusion was also reached by the Temporary Emergency Court of Appeals in *Union Oil Co.* v. *DOE*, *supra*.

program would have provided support for the adoption of the proposals only if the incentive program had not promoted the objectives of the Emergency Petroleum Allocation Act of 1973. ERA had proposed to rescind the tertiary provisions with respect to the allowed expenses in question because of its tentative assumption that the disallowance of recovery of such expenses would not be a disincentive to EOR activity, and thus that recovery of such expenses did not promote the objectives of the EPAA. Although many of the refiners that supported the proposals stated that they agreed with ERA's assumption, none offered any actual examples of sitiuations in which the recovery of such expenses had not encouraged EOR activity.

Those firms that opposed the proposals disagreed strongly with ERA's assumptions concerning the operation of the incentive program in early 1981, especially with respect to the allowed expenses in question. They also disputed ERA's estimte that they would suffer only minor injury through retroactive rescission of the teritiary provisions.

While many of these comments acknowledged the large increase in the amount of allowed expenses reported in the first months of 1981, they did not accept the contention that this increase represented a "last-minute" attempt to participate in the program before Executive Order 12287 eliminated the possibility. They stated that because of the complex nature of most EOR activity, the long lead times involved, and the large overall investment, few, if any, of the recently reported allowed expenses could relate to EOR activity generated "overnight" in response to Executive Order 12287. In support of this position, several producers that only recently had begun to report allowed expenses detailed the degree and length of planning that was required in connection with the EOR project to which the expenses related.

The comments suggest that a combination of factors could explain the increase in the amount of crude oil certified as tertiary incentive crude oil in early 1981. One factor was the growing realization within the industry that the incentive program existed and that it could provide significant incentives to EOR activity. The major factor cited by the commenters, however, was a series of actions by DOE to clarify and expand the scope of the program with respect to prepaid expenses,[6] in-house expenses [7] and arrangements to acquire price-controlled crude oil.[8] In addition, they cited several mechanical aspects of the price regulations that probably had contributed to the increase in the volume of crude oil certified as tertiary incentive crude oil in early 1981.[9]

ERA has concluded on the basis of the comments, as well as its own projections of tertiary activity in 1981, that most of the expenses incurred and paid after January 27, 1981, would have been expended under the tertiary program absent immediate decontrol. Specifically, ERA has concluded that both on-going and incipient tertiary projects were accelerated during the period after January 27 in order to obtain some of the up-front financing that producers expected would be available through September 30, 1981, under phased decontrol. As a result of this increased activity, producers incurred and paid a larger volume of expenses during the period January 28 through March 31 than they would have absent immediate decontrol. These expenses, however, would likely have been incurred and paid before September 30 under phased decontrol. Thus, while these expenses permitted more crude oil to be decontrolled with respect to December and January than would otherwise have occurred, this merely represented a compression into two months of a portion of the expenses that otherwise would have been spread out over several months. ERA has found no evidence of "bogus" projects that were initiated solely to obtain benefits during the period January 28 through March 31.

ERA considered the primary issue in this rulemaking to be whether the recovery of the allowed expenses in question promoted the original intent of the incentive program, that is, the encouragement of EOR activity. The commenters that opposed adoption of the proposals addressed this issue directly. In general, they stated that the ability to recover such expenses had encouraged them to participate in EOR projects and that retroactive rescission of the incentive program would cause them to reconsider their participation in those and, possibly other, EOR projects. In this regard, several of the major refiners disputed the notion that the incentive program was a windfall for them just because they did not have as much difficulty in raising capital as smaller producers. They pointed out that the amount of funds available to any firm for investment is finite and that EOR projects had to compete for available funds with more conventional and predictable crude oil production as well as other investment opportunities for the available funds. Thus, by making EOR projects better investment opportunities the incentive program encouraged major refiners to undertake some EOR projects that probably would not otherwise have been undertaken, at least during this time period.

Many of the comments that opposed the proposals challenged ERA's assumptions concerning the post-March 19, 1981 period and concerning in-house and prepaid allowed expenses. With respect to allowed expenses incurred or paid after March 19, 1981, the comments and ERA's analysis indicated that very few allowed expenses had been incurred and paid after that date. However, those comments from producers that had incurred and paid such expenses stated that they were made as part of an organized and continuing commitment to EOR activity. In fact, several of these producers indicated that it was adherence to a prior plan of investment that prevented these expenses from being incurred and paid at an earlier date.

With respect to in-house expenses, many of the comments objected to the characterization of these expenses as accounting entries. These comments stated that in-house expenses represented a real commitment to EOR

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[6] Many producers had hesitated to incur and pay prepaid expenses because they were not certain that such expenses were recoverable under the incentive program. ERA did not state publicly that the recovery of such expenses was permissible under the program until July 1980. 45 FR 40106, 40107 (Aug. 15, 1980).

[7] Many producers believed that it would be more efficient for them to acquire goods and services internally rather than externally. ERA did not amend the regulations to permit the recovery of in-house expenses until January 5, 1981. 46 FR 1246 (Jan. 5, 1981).

[8] Many producers did not possess sufficient quantities of price controlled crude oil to participate fully in the program. They were unable to conclude agreements to acquire access to sufficient quantities until DOE issued a series of interpretations concerning the acceptability of such agreements. The first two of these interpretations were not issued until September 1980. *See Barber Oil Corp.*, Interpretation 1980–22, 45 FR 61563 (September 16, 1980); *Mitchell Energy Corp.*, Interpretation 1980–23, 45 FR 61564 (September 16, 1980).

[9] The price regulations provided for the gradual conversion of old (lower tier) oil to new (upper tier) oil. As a result of this shift in the composition of price-controlled oil, it would be expected that a greater volume of controlled crude oil would be certified as tertiary incentive crude oil since less additional revenue is generated on a per barrel basis by selling new oil at the market price than by selling old oil at the market price.

The price regulations also provided that a producer could sell at the market price that quantity of price-controlled crude oil necessary for a producer to recover its allowed expenses and to pay related Windfall Profit Tax liability. This provision had the effect of a multiplier on the amount of crude oil certified as tertiary incentive crude oil.

activity since in order to supply the goods or services to which the expenses related, the firm would have to expend a portion of the limited internal resources available to it. Moreover, many firms indicated that these in-house expenses related to EOR activity that had been undertaken as a result of the incentive program. These firms stated that they would have utilized the incentive program to undertake this activity by means of external suppliers, had not the in-house option been available and more economically efficient; thus, they would be harmed by a retroactive rescission.

With respect to prepaid expenses, many firms disagreed with the assumption that a large portion of such expenses represented a major abuse of the program. Firms stated they had been encouraged to make an expanded commitment to EOR activity because of the ability to recover prepaid expenses. Some of these firms also offered an explanation for the increasingly large amount of prepaid expenses reported, reasoning that since the incentive program had a fixed duration and since most EOR expenses related to items that normally were acquired over a much longer period of time, the only practical way for many firms to utilize the incentive program was to prepay expenses. Many firms also noted they could recover only seventy-five percent of the cost of the good or service for which they had prepaid and, thus, that they had made a substantial current commitment to future EOR activity that they most likely would not have been made in the absence of the incentive program.

Most of the comments in opposition also argued that the adoption of the proposals concerning in-house and prepaid allowed expenses would result in a retroactive final rule that would adversely affect them.[10] They disagreed with ERA's assumption that they may not have relied on the recoverability of the allowed expenses and that it might not be difficult to rescind arrangements that related to such expenses. These producers stated that the recoverability of such expenses was a determinative consideration in their participation of EOR projects. In addition, they stated that if the program was rescinded with respect to these allowed expenses they would be forced to reconsider their commitment to these EOR projects. Further, even if they decided to continue these particular projects, the rescission of the program could affect their decision to undertake or to continue other EOR projects. Moreover, they stated that they had entered into contracts at the time they incurred and paid the allowed expenses, and any attempt to terminate or amend these contracts would be subject to substantial legal controversy. In this regard, some suppliers of EOR equipment opposed the proposals on the ground that they had relied on the contracts with project operators and had expended substantial sums to produce the needed equipment. Thus, they would be financially harmed if project operators were able to terminate these contracts.

In light of the many statements that firms had acted in reliance on the recoverability of the allowed expenses in question and that many of these firms would be substantially harmed if the incentive program was rescinded with respect to such expenses, ERA decided that it would not be appropriate to adopt these proposals retroactively. As previously stated, the comments persuaded ERA that the recovery of these allowed expenses had promoted EOR activity and that there was no regulatory reason to rescind retroactively the provisions in question.

Upon consideration of these comments on the allowed expenses in question, ERA decided that its assumptions about these expenses had been erroneous since the rulemaking record and its own analysis strongly indicated that the recovery of these expenses did promote new or expanded commitments to EOR activity. Moreover, it was clear that participants had relied on the program and that its termination prior to March 31 would detrimentally affect not only many of the participating firms but also future tertiary production. Accordingly, ERA decided that the program had made a positive contribution to EOR activity and, thus, that it would not have been appropriate to rescind it with respect to these allowed expenses.

[10] Most of the comments on the retroactivity issue referred to *Retail, Wholesale and Department Store Union* v. *NLRB*, 466 F. 2d 380 (D.C. Cir. 1972) in which the court set forth five factors to be considered in determining whether it was permissible to adopt a rule on a retroactive basis. These five factors are: (1) Whether the particular case is one of first impression; (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law; (3) the extent to which the party against whom the new rule is applied relied on the former rule; (4) the degree of the burden which a retroactive order imposes on a party; and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. The commenters that analyzed these factors indicated that in their view each of these factors cut against adopting the proposals retroactively.

Issued in Washington, D.C., January 11, 1983.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 526, 541, 545, 555, 561 and 563

[No. 82-813]

Implementation of New Powers; Limitations on Loans to One Borrower

Dated: December 16, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to its regulations to implement the expanded authority for Federal savings and loans contained in the Garn-St Germain Depository Institutions Act of 1982. The proposed regulations would permit Federal associations to offer demand deposit accounts and governmental unit NOW accounts, and to engage in leasing and commercial lending; and expand the authority of Federal associations to offer consumer loans, educational loans, real estate loans and to invest in government obligations. In addition, the Board proposed to revise Part 545 of its regulations governing the general operations of Federal associations in order to remove obsolete or unnecessary provisions and to facilitate use by improving the organization of the Part. These amendments would expand the investment authority of, and services offered by, Federal savings and loan associations.

DATE: Comments must be received by March 10, 1983. Due to the complexity of the proposal, no late comments will be considered.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available at this address for public inspection.

FOR FURTHER INFORMATION CONTACT:

Michael D. Schley, Attorney, Office of General Counsel (202-377-6444) for information on leasing, commercial lending, letters of credit, manufactured home lending, and loans-to-one borrower limitations.

Neil R. Crowley, Attorney, Office of General Counsel (202–377–6417) for information on real estate lending.
Robert H. Ledig, Attorney, Office of General Counsel (202–377–7057) for information on Demand Deposit Accounts and Governmental Unit NOW Accounts.
Wendy B. Samuel, Deputy Director, Policy & Projects Division, Office of General Counsel (202–377–6465) for information on Consumer lending, educational loans, and investment in government securities.
Wendy B. Samuel (202–377–6465), Deputy Director, or Peter M. Barnett (202–377–6445), Director, Policy and Projects Division, Office of General Counsel for information on all other aspects not specifically listed above.

SUPPLEMENTARY INFORMATION: On October 15, 1982, President Reagan signed into law the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Pub. L. No. 97–320, 96 Stat. 1469, which included broad new powers for Federally chartered savings and loans and mutual savings banks ("Federal associations"). Among the purposes of this legislation is to revitalize the housing industry, to strengthen home mortgage lenders and to ensure the availability of mortgage loans. Title III of the Act is specifically designed to give associations the flexibility necessary to maintain their role of providing credit for housing. To this end, the legislation amended the Home Owners' Loan Act of 1933, 12 U.S.C. 1461–1470, to permit Federally chartered thrift institutions to exercise new powers, and to increase the scope of existing authorizations. The Act permits Federal associations to offer demand deposit accounts, including overdraft privileges, to offer NOW accounts to governmental units, to make time deposits in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions"), to make commercial loans, and to engage in leasing operations. Existing powers were extended in the areas of real estate lending, investment in governmental securities, investment in commercial paper and corporate debt securities, educational lending, and consumer lending. Certain of these authorities have already been implemented by the Board on an interim basis. Board Resolution No. 82–730 (November 4, 1982), 47 FR 51732 (November 17, 1982). The Board now proposes these regulations as the first step in fully implementing the new powers. The temporary authorizations will remain in effect until permanent regulations are adopted.

Federal Preemption

The proposal would add a new section stating specifically the Board's intention that these regulations preempt any state laws or regulations purporting to affect the operations of Federally chartered institutions. This would codify a long-standing position taken by the Board and supported by a line of court decisions from *People v. Coast Federal Savings and Loan Association*, 98 F. Supp. 311 (S.D. Cal. 1951) through the recent Supreme Court decision in *Fidelity Federal Savings and Loan Association v. De La Cuesta*, 102 S. Ct. 3014 (1982).

Savings Accounts

The proposal would revise substantially the various regulations governing the issuance of savings accounts by Federal associations, thus completing the process begun by Board Resolution No. 82–193 (47 FR 13776 (1982)) to grant Federal associations the ability to structure savings accounts as required by the financial marketplace. The proposal would authorize Federal associations to issue savings accounts as permitted by their charters and bylaws subject to regulatory requirements applicable to all insured institutions. These are the requirements of the Board's Bank System Regulations (12 CFR Part 526) and Insurance Regulations (12 CFR Part 563) and the regulations of the Depository Institutions Deregulation Committee (12 CFR part 1204). The proposal would delete from the Federal Regulations provisions regarding rates of return and renewal of fixed-term accounts that currently only apply to Federal associations.

The proposal also would eliminate the prohibition on collateralization of savings deposits at Federal associations contained in 12 CFR 545.24 (1982). Currently, Federal associations are authorized to give security for public deposits (12 CFR 545.24–2), for Eurodollar certificates (12 CFR 545.1–4, 563.3–3), for outside borrowings (12 CFR 563.8), and in their capacity as a depository and fiscal agent of the government (12 CFR 545.24–3). The Board believes that the extension of the power to give security would enhance the ability of Federal Associations to attract large savings deposits which exceed FSLIC insurance coverage. The amendment also would equalize the authority of Federal associations and state-chartered insured institutions.

To limit the risk exposure of the FSLIC, the Board proposes to require that the FSLIC have the same right to purchase the collateral securing savings deposits as provided by current regulations concerning Eurodollar certificates and outside borrowings, which require an association to provide the FSLIC the right upon the default of an obligation to be given 30 days, subsequent to notification, to purchase the collateral at the price set by sale or other means. The FSLIC right to purchase would not extend to liquid assets, as defined in 12 CFR 523.10, or to assets which would be liquid but for their remaining term to maturity.

Furthermore, the proposal would make express the authority of Federal associations to issue savings accounts in book-entry form. Current regulations already have been interpreted to permit the issuance of certificate accounts in book entry form, and the proposal would codify this interpretation. By permitting such accounts to be issued, without a requirement tht a formal certificate or document be presented to the depositor, the Board believes that a cost savings to depositors and institutions will result and that the development of a secondary market will be facilitated.

The Board is also proposing to consolidate present 12 CFR 545.24–2, "Public deposits or investments," and § 545.24–3, "Tax and loan depositories; depositaries of public money and fiscal agents," into a single section, § 545.1–5, to be entitled "Public deposits, depositaries, and fiscal agents." The substance of the present regulations would not be changed by this amendment. With respect to the "Additional suretyship" provision of the proposed § 545.1–5(c), the Board requests public comment on the issue of a Federal association's authority to act as surety, subject to Board approval, on, for example, industrial development bonds. Specifically, the Board request comment on the most appropriate procedures to be used in granting an association authority to act as surety under this provision.

Governmental Unit NOW Accounts

Section 706 of the Act authoritzes member institutions of the Fedral Home Loan Bank System to offer NOW accounts for deposit of public funds by a unit of a Federal, state or local government. The proposal would amend 12 CFR 526.1(l) (as amended by 47 FR 13781 (1982)) to implement this authority.

Demand Deposits

Section 312 of the Act permits Federal associations to accept non-interest-bearing demand accounts under certain circumstances. The proposal would

implement this new power by authorizing associations to accept demand accounts from persons or organizations with a business, corporate, commercial or agricultural loan relationship with the association. The proposal specifies that a business, corporate, commercial or agricultural loan relationship is any loan other than a loan on a home to be occupied by the borrower or a loan to a natural person for personal, family or household use. A loan relationship would be defined to include any outstanding loan, the establishment of a line of credit, or a previous loan and a reasonable expectation of the renewal of a lending relationship. Associations also would be permitted to accept demand accounts from a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments to the entity by nonbusiness customers of the entity; the nonbusiness customers need not have any relationship with the association. This provision is not intended to prevent a business from making a payment to such an account when acting in a capacity equivalent to that of an individual consumer. For example, a utitlity company with or without a loan relationship with a Federal association could maintain a demand account to allow all of its customers, including corporate customers, to pay their monthly bills.

The Act also authorizes associations to offer overdraft privileges on demand accounts. The proposal would implement the overdraft loan authority subject to the percentage-of-assets and other limitations on commercial loans. The Board solicits comments regarding whether there is a need to define the overdraft lending authorized in conjunction with demand and NOW accounts.

Real Estate Loans

Section 322 of the Act revised the statutory authority of Federal associations to make loans on the security of "residential" and "nonresidential" real property. In implementing this provision, the Board is proposing to define these terms and to restructure its real estate lending regulations. "Residential real property" (or "residential real estate") would be defined essentially the same as in section 5(c)(6) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(6) (Supp. IV 1980), and would include homes, multi-family dwellings, combinations of either of these and business property, farm residences, combinations of farm residences and commercial farm real estate, or property that will be improved by the construction of such structures. "Nonresidential real property" (or "nonresidential real estate") would include all other real estate.

The definition of residential real estate would include "real estate used for primarily residential purposes other than a home." Combinations of such real estate and business property involving only minor business use would also be included within the definition. The Board is proposing to use this description of real estate in lieu of the definition of "other dwelling unit" (currently 12 CFR 541.16 (1982)). The term proposed would include those types of real estate specified in 12 CFR 541.16, such as multifamily dwellings, structures (or parts thereof) designed or used as fraternity or sorority houses which include sleeping accommodations for students of a college or university, structures used principally for living accommodations for students, employees, or staff of a college university, or hospital or for a nursing home or convalescent home. The Board believes that the definition is unnecessary if the type of real estate is adequately described in the definition of residential real estate.

The Board is also proposing to revise further the definitions in Part 541 by removing certain definitions that are unnecessary in light of the amendments made to the real estate lending regulations and by amending certain others. Section 541.3, "Combination of dwelling units, including homes, and business property, involving only minor or incidental business use," would be amended by deleting the reference to "other dwelling units," the definition of which at § 541.16 is being deleted, as mentioned above. Section 541.12, "Improved real estate", would be amended by deleting the reference to § 541.16, adding the language currently at 12 CFR 541.17(b), and amending the title to "Improved residential real estate." A new section 541.33, "Improved nonresidential real estate," would be added and would consist of the present § 541.17 (a) and (c). Section 541.17, "Other improved real estate," would be deleted, its provisions being incorporated into the proposed §§ 541.12 and 541.33. Section 541.29, "Unimproved real estate," would be amended to include a reference to the new § 541.33. The Board requests public comment on the effect, if any, of these changes and whether any of the remaining definitions in Part 541 of the Federal Regulations may be clarified, amended, or eliminated as a means of further simplifying the Board's real estate lending regulations.

In revising the real estate lending regulations, the Board is proposing to consolidate into one section, 12 CFR 545.6, the authority for Federal associations to make loans on the security of real estate and most of the limitations on that authority. As amended, § 545.6 would provide broad authority for Federal associations to invest in real estate loans, subject to the limitations in that Part. A real estate loan is defined as one made on the security of residential or nonresidential real estate where the real estate is the primary security for the loan. The proposed language would eliminate the current requirement that loans on nonresidential real estate be secured by a first lien. In addition, the authorization would include specifically the brokerage, warehousing and servicing of real estate loans as part of an association's authorized investments. The proposal would also provide that a loan would be considered to be secured by a lien on real estate if it is secured by an interest in fee or in a leasehold or subleasehold extending or renewable automatically at the option of the holder or the Federal association for five years beyond the loan maturity. Loans secured by an assignment of such a loan would also be included. The existing provision in 12 CFR 541.14 pertaining to this matter would be deleted as being no longer necessary.

The Board has considered including within the investment authorization of its real estate lending regulations a provision pertaining to loans secured by time-sharing units. In some states the interest conveyed in the unit may be a fee interest in the shared real estate, on which an association may foreclose to the same extent as with a fee interest in any other real estate. In these circumstances, a loan made on the security of the property could be categorized as a real estate loan rather than a consumer loan, as it is currently viewed. The Board acknowledges that the value of the security property will be less than the value of the aggregate number of time-share units in the security property. The Board recognizes, however, that an individual time-share unit will also include other rights and privileges that incidentally enhance its value. A foreclosing association could rely on this incidental value to ensure that a subsequent resale of the unit would cover its outstanding loan. In states where the owner of a time-share unit has only a right to use the property, a loan on the security of the would not be deemed to be a real estate loan. The Board is requesting comment on whether it would be appropriate to

include within its real estate lending regulations a provision allowing loans on the security of fee interests in time-share units.

Because the value of a time-share unit is attributable in part to the fee interest in the real estate and in part to the incidental rights and privileges, the Board believes that such a provision if adopted should limit the amount of any real estate loan on a unit to the owner's *pro rata* interest in the appraised value of the real estate alone. Any excess amount of the loan (i.e., that attributable to the incidental rights) would be made under the consumer lending authority.

Those parts of the present § 545.6 pertaining to the determination of loan-to-value ratios would be retained, except for the amendments noted below, although the Act eliminated the statutory loan-to-value requirements. This is not indictive, however, of a decision by the Board that these are necessary in their present form. To the contrary, the Board believes that it may be appropriate to eliminate or reduce these requirements, and specifically requests comments on what loan-to-value ratios, if any, are a necessary component of a regulatory program to ensure safe and sound operation.

Paragraph (b) of the proposed § 545.6 would apply to loans made on the security of residential real estate. The provisions pertaining to home loans would be substantially the same as the present regulations. The proposal would provide, however, that interest on a home loan need not be paid semi-annually, as would be otherwise required, in the case of a reverse annuity mortgage. The loan contract would also be permitted to provide that an association receive a portion of the interest on the loan in the manner permitted by proposed new section 555.19, pertaining to interest expressed as a percentage of income from security property. In addition, the proposal would add a sentence to § 545.6(b)(1)(*a*) specifically allowing Federal associations to make a loan on which the percentage or dollar amount of the payments may very pursuant to a formula or schedule set forth in the loan contract. The Board is proposing this change to make clear that the loan contract may provide that the initial interest rate on a home loan may be increased at intervals agreed to in the loan contract independent of any interest-rate index. The existing loan-to-value limitations for home loans would be retained.

The provision pertaining to multi-family dwelling loans would be changed to reflect the proposed deletion of the term "other dwelling units" from the definitions in Part 541. The Board believes that the use of descriptive language is adequate to indicate the type of dwelling that would constitute a multi-family dwelling. The provision allowing minor or incidental business use would be retained. The Board is also proposing to allow an association to include in the contract for a multi-family dwelling loan a provision allowing negative amortization of interest, essentially to the same extent as is currently allowed on nonresidential real estate loans.

Proposed paragraph (c) of § 545.6 would allow a Federal association to make loans on the security of nonresidential real estate up to 40 percent of its assets. There would be no requirement that such loans be secured by a first lien. No such loan, however, could exceed the existing limit of 90 percent of the value of the security property.

The Board is proposing to consolidate into paragraph (d) of § 545.6 the authority and limitations for making acquisition loans, development loans, loans on the security of building lots and sites, construction loans, and rehabilitation loans. At present, these provisions (with the exception of construction loans) pertain solely to loans made on the security of residential real estate. The Board is proposing to allow associations to make loans pursuant to paragraph (d) on the security of both residential and nonresidential real estate because it believes that there is no reason to distinguish between the two types of loans in light of the increased investment authority for nonresidential real estate loans.

The loan-to-value limitations for development loans and loans on the security of lots and sites would remain at 75 percent of the value of the secruity property. The Board believes that acquisition loans for unimproved land involve essentially similar risks as the latter two types of loans and, for that reason, is proposing to increase the loan-to-value ratio to 75 percent, from the existing 66⅔ percent of the security property. The Board is also proposing to allow associations to make construction or rehabilitation loans to 90 percent of the property's value. At present, construction loans on residential real estate may not exceed 75 percent of the property's value, while those on commercial real estate may be made to 90 percent. The Board believes that the construction of structures or the improvement of existing structures on real estate is sufficient reason to allow loans to 90 percent, regardless of whether the structure is to be used for residential or nonresidential purposes.

The Board is also proposing to amend those provisions pertaining to the maximum loan terms for construction and rehabilitation loans, loans (other than for an individual residence) on the security of building lots and sites, loans to finance the development of real estate, and combination loans. Currently, the regulations provide specified maximum terms for each of the types of loans and allow extensions for various periods. Because an association may readily extend the loan term as a matter of practice, the Board believes that it should eliminate the provisions regarding extensions and instead allow loans to be made within new maximum terms equal to the present term plus the length of the permissible extension for each type of loan.

With respect to combination loans authorized by the proposed § 545.6(e), the Board is proposing to simplify the method of amortizing the principal loan balance over the remaining term. At present, the regulations require amortization at a rate of 1¼ percent of that portion of the loan balance applicable to any home after 3 years, and not applicable to the construction of any home after 4 years. The proposal would require that the amortization be calculated on a straight-line basis, rather than at the rate of 1¼ percent.

In all other respects, the existing regulatory provisions for these types of loans would be in substance unchanged. In comformity with the amendments regarding real estate lending generally, however, §§ 545.6–2, 545.6–6, and 545.6–4 would be removed.

In order to simplify the existing regulations pertaining to the permissible investments that an association may make in loans insured or guaranteed by a government agency, the Board is proposing to consolidate present 12 CFR 545.6–1, 545.6–11, 545.6–13, 545.6–14, and 545.7–2 into a single section to be designated as § 545.6–1, "Insured and guaranteed loans." The substance of the prior sections would not be changed by this amendment.

In conjunction with its revision of the real estate lending regulations, the Board is proposing to adopt a ruling to clarify the extent to which a Federal association may participate with the borrower in the income generated by the security property. It has become commonplace for lenders to take an interest in the security property or a share of the income generated by the property as a means of protection against changing interest rates. Because Federal associations, in general, lack the

authority to acquire ownership interest in real estate, they may not acquire an equity interest with the borrower in the security property. This prohibition against acquiring an ownership interest has been construed to preclude an association from sharing with the borrower in the net income generated by the security property. At present, a share in the gross income from the property is not considered to constitute an equity interest in the property. To clarify any confusion that may arise from the existing interpretation, the Board is proposing to adopt a ruling setting forth the instances in which an association may participate with the borrower in the income from the property.

In principle, the Board believes that a share of the income from the security property does not necessarily constitute a prohibited equity interest because it is calculated as a percentage of the income from the property. If the share of the income received in substance constitutes a part of the compensation for the use of an association's funds, it should be considered interest for purposes of this regulation, regardless of the manner in which it is calculated. Accordingly, the proposed ruling states that if an association receives "a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest in the form of a share of the income" generated by the security property.

Although the proposed ruling would pertain only to real estate loans, the Board solicits comment as to the applicability of this ruling to commercial loans made by a Federal association.

Manufactured Home Financing

The Board is taking this opportunity to propose two changes to its regulation on manufactured home financing that do not relate to new powers conferred by the Act, but would enhance the ability of Federal associations to invest in manufactured home chattel paper. Section 545.7–6(e)(2) of the Board's regulations currently requires that a manufactured home be occupied by the owner or a relative in order for a Federal association to lend on security of the home. The Board believes that owner occupancy does not necessarily provide significant enhancement of the security afforded by manufactured home collateral. Consequently, the Board proposes to delete the owner-occupancy requirement.

Section 545.7–6(e)(4) of the Board's regulations also restricts the purchase of retail manufactured home chattel paper by providing that such paper secured by property located outside the association's normal lending territory may be purchased only if the seller retains a 25-percent interest in each document evidencing a loan secured by the paper. This requirement has prevented Federal associations from participating as investors in secondary market offerings of pass-through securities based on manufactured home loans. Although restated in the proposal at § 545.7(e)(4), the Board is considering either deleting this 25-percent retention requirement or imposing substitute or alternative requirements calling for: (1) Primary credit insurance; (2) pool insurance (for pass-through and similar securities); (3) an investment-grade rating of the chattel paper by a nationally recognized rating service; or (4) any combination of the prior three factors. The Board requests specific comments on the desirability of each of these options.

In addition to these two changes, the Board proposes to make a technical change in the language of proposed § 545.7(e)(2)(iii)(*a*) to clarify that that provision applies only to new manufactured homes.

Commercial Loans

Proposed § 545.8 would implement the commercial lending authority set forth in section 325 of the Act. In implementing this authority it is the intent of the Board to give associations the broadest authority permitted by section 325 in order to maximize potential benefits while limiting the risks inherent in this previously unauthorized activity.

The definition of "commercial loan" in paragraph (a) of the proposed regulation is purposefully broad. Any loan made to a business or government entity would be presumed to satisfy the "commercial, corporate, business, or agricultural purposes" test of the regulation. An association would be able to rely on a natural person's statement of purpose for requesting a loan.

Paragraph (b)(1) would authorize investment and dealing in commercial loans, subject to statutory percentage-of-assets limits. The percentage-of-assets limitations would generally apply to a loan only if an association has not elected to make it under another applicable section; however, the 5%, 7½%, or 10% commercial loan "basket" would always include overdraft loans on business demand deposits and standby letters of credit. The Board believes, however, that Congress did not intend that the limitations apply to other authorized loans and investments that may have a business purpose, such as nonresidential real estate loans, but are subject to separate statutory percentage-of-assets limitations. For purposes of applying the percentage-of-assets limitations, the proposed regulation would clarify that a loan commitment is not a "loan" until funds have been advanced under it, and loans sold are not included in the basket unless sold with recourse.

Section 325 of the Act subjects commercial loans of Federal associations to the same limitations on loans to one borrower that apply to national banks. The proposed rules implementing this requirement are discussed under the heading "Limitations on Loans to One Borrower" below.

In connection with the issuance of these proposed rules on commercial lending, the Board requests comments on whether any special requirements regarding recordkeeping and lending practices (other than those in proposed § 545.6–7) would be appropriate.

Letters of Credit

Proposed § 545.8–2 would provide general authority for Federal associations to issue commercial and standby letters of credit, and would set forth basic requirements relating to this activity. (As discussed under the heading "Limitations on Loans to One Borrower," standby letters of credit would be subject to special loans-to-one-borrower limitations under § 563.9–3.)

A Federal asociation's authority to issue letters of credit flows from two sources. First, as instruments of commercial credit, letters of credit are authorized by the commercial lending provisions of the Act discussed above. Second, to the extent letters of credit are used to secure performance of an obligation, they may be authorized by Board regulation pursuant to section 5 (b)(2) of the Home Owners' Loan Act of 1933 (12 U.S.C. 146(b)(2)).

The basic requirements set forth in the proposed regulation are based on comparable provisions in the regulations of the Comptroller of the Currency (12 CFR 7.7016, 7.1160), and are dictated by principles of sound banking practice. The Board expects to issue in the near future more detailed guidelines for letters of credit through its Office of Examinations and Supervision.

Consumer Loans

Section 329 of the Act expands the consumer lending authority of Federal associations to include loans reasonably incident to personal, family, or household purposes. The legislative history indicates that this authorization

is intended to include inventory and floor planning financing in conjunction with extensions of consumer credit, and the proposal implements this expanded authority. The Board is also considering whether this authority should permit loans secured by accounts receivable derived from credit sales of consumer goods, and specifically requests comments on this question and suggestions of other types of financing that might be included in this broadened consumer authority. The proposal also would increase to 30 percent the proportion of an association's assets that may be invested in consumer loans, and would substitute the commercial loans-to-one-borrower limitations for the more restrictive limits contained in the current section.

Educational Loans

Current regulations provide that Federal associations can invest in loans for payment of expenses of college, university or vocational education. The Act expands this authority to include loans for any educational purpose. The proposed amendment would make a corresponding change in the language of the regulation.

Finance Leasing

The Board proposes to expand Federal assocations' authority to engage in leasing activities that are the functional equivalent of lending. In the Board's view, Federal associations have the power to engage in such leasing activities under the lending authority provided by the Home Owners' Loan Act of 1933, as amended. Currently, 12 CFR 545.7–10a of the regulations authorizes Federal associations to become legal or beneficial owners of personal property to be leased to consumers for personal, family or household purposes. Such leases must be net, full-payout leases, which are defined to be leases under which a Federal association has no responsibility for maintenance of the leased property and under which the association expects to receive a full return of its investment plus the estimated cost of financing the property over the lease term from rentals, estimated tax benefits, and the residual value of the property. The regulation specifies that the estimated residual value of the leased property may not exceed 25 percent of its acquisition cost, unless the excess over 25 percent is guaranteed. The regulation is substantially similar to the ruling of the Office of the Comptroller of the Currency ("OCC") governing consumer leasing by national banks. 12 CFR 7.3400 (1982). Both the OCC's ruling and the Board's regulation reflect the guidelines established by the courts for bank leasing activities that are the functional equivalent of lending. *See M & M Leasing Co. v. Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978).

The Board proposes to expand Federal associations' existing consumer leasing authority consistent with the new commercial lending authority. The Board also proposes to permit real property leasing that is the functional equivalent of real estate lending. As proposed, leases of personal and real property would have to be structured as net, full-payout leases, and the estimated residual value of the property at the end of the initial lease term could not exceed 25 percent, in the case of personal property, or 20 percent, in the case of real property, of the acquisition cost of the property. In addition, associations would be required to liquidate their interest in the property as soon as practicable upon expiration of the lease. The Board specifically requests comment on whether these percentages are appropriate for finance leases.

A "net" lease would be defined so as to preclude an association from directly or indirectly becoming obligated to provide for the repair or maintenance of the property, the purchasing of parts or accessories, the loan of replacement or substitute property, the purchasing of insurance for the lessee, or the renewal of any license, registration or filing required for the property. A "full-payout" lease would be defined to be one from which an association reasonably could expect to recover its investment in the property, plus the cost of financing it over the lease term, from rental payments, estimated tax benefits (*e.g.*, investment tax credit, net economic gain from tax deferral due to accelerated depreciation), and the estimated residual value of the property upon expiration of the initial lease term. The proposed regulation would also permit an association to include in a lease such provisions and to enter such additional agreements as would be necessary to protect the value of the property or its interest as the lessor or lessor's assignee.

Since the proposed financial leasing authority would be the functional equivalent of lending on the security of the leased property, the proposed regulation would provide that leases entered into pursuant to the finance leasing authority would be subject to all of the limitations on investment in comparable loans, including limitations on total investment in a particular type of loan as well as limitations on individual loan transactions (*e.g.*, loans to one borrower). Thus, a lease of personal property to a consumer for personal, family or household purposes would be subject to the limitations applicable to investment in consumer loans. A lease of personal property for corporate, commercial, agricultural or business purposes would be subject to the limitations applicable to commercial loans. Finally, a lease of real property would be subject to the limitations applicable to real estate loans. It is noted that, with respect to the limitations on total investments in loans or leases of a particular type, an association entering into a finance lease would be able to issue the lease either under the finance lease regulation, which would tie the association to the limitations applicable to loans, or under the leasing regulation (discussed below), which provides independent authority to invest up to ten percent of assets in leasing activities.

General Leasing Authority

The Board also proposes to implement the authority provided Federal associations by section 330 of the Act to invest up to ten percent of assets in all types of tangible personal property for the purpose of leasing such property. The proposed § 545.12–6 would permit investments in both financing and operating leases. Thus, associations would not be limited to entering into net, full-payout leases, but would be permitted to assume responsibility for, among other things, servicing and maintaining the property. In addition, an association would not have to expect to be reimbursed for its investment in the leased property within the lease term.

The only limitation in the proposed regulation would prohibit entering into a lease under which the estimated residual value of the leased property would exceed 70 percent of the acquisition cost of the property. The effect of this limitation would be to prevent an association from entering into extremely short-term leases, such as daily rentals of cars, where the value of the property could not be expected to drop 30 percent during the term of the lease. The Board specifically requests comment on whether a limitation or 70 percent is appropriate for limiting the leasing authority in this way.

In connection with the authorization for Federal association to engage in leasing activities, the Board proposes to permit similar authority for service corporations of Federal associations. In addition, the Board requests comment on whether service corporations should

be permitted to engage in leasing activities without limitation as to the estimated residual value of the leased property. In this regard, the Board notes that section 330 of the Act contains no such limitation.

Also in connection with Federal associations' proposed leasing authority, the Board notes that, under the definition of scheduled items as the definition is proposed to be amended (see discussion below), both leases on which the required payments are overdue and real and personal property repossessed by an association because of the lessee's failure to make the required lease payments would be defined to be a scheduled item.

Finally, the Board requests comment on what recordkeeping requirements would be appropriate for institutions engaged in leasing activities, including state-chartered institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The Board's existing recordkeeping requirements do not directly address such activities.

Government Securities

Section 324 of the Act authorizes Federal associations to invest in obligations of or obligations issued by any state or political subdivision thereof, including, any instrumentality of a state or political subdivision. Accordingly, the Board proposes to implement this authority by authorizing Federal associations, which currently are limited to investing in *general* obligations of a state, territory or possession of the United States, or political subdivision thereof, to invest in any obligation of a governmental unit, including an agency, corporation of instrumentality of a governmental unit, provided that (1) as section 324 requires, investment in the obligations (other than general obligations) of any one issuer does not exceed 10 percent of the sum of an institution's regulatory net worth (as defined in 12 CFR 561.13), excluding the amount of regulatory net worth attributable to appraised equity capital, plus reserves for loan losses, *and* (2) such obligations whether or not they are general obligations continue to hold one of the four highest national investment grades, or are issued by a public housing agency and are backed by the full faith and credit of the United States.

Implementation of this authority would be accomplished by amending 12 CFR 523.10(g)(6) defining liquid assets, which section is referenced by the regulation authorizing Federal associations' investment in securities. In addition, the Board would retain Federal associations' authority to invest up to one percent of assets in such obligations without regard to their investment ratings. Finally, the Board notes that the authority currently provided associations by 12 CFR 545.7–11 to invest in state and local housing obligations is subsumed into the broader authority granted by section 324. Therefore, the Board proposes to delete § 545.7–11.

In connection with this implementation of authority, the Board proposes to permit members of the Federal Home Loan Bank System to count such obligations, subject to the investment limitations described above, in satisfaction of their liquidity requirements. Such obligations would count as liquid assets only if their remaining terms to maturity were two years or less, and as short-term liquid assets only if their remaining terms to maturity were six months or less. The Board also proposes to make minor technical changes to paragraph (h)(3) of § 523.10 to conform the wording to amendments adopted by the Board on October 27, 1982, 47 FR 50201 (1982).

Service Corporations

Although the Act does not directly address the activities of service corporations, several of its sections have an impact on the service corporation authority. First, the legislative history, while suggesting that service corporation activities generally should not be expanded, stated that new regulations to permit service corporations to engage in the same activities authorized to parent associations would not be objectionable. Secondly, the commercial lending authorization specifically requires loans by an association's service corporation to be included in calculating the amount of an association's assets devoted to this type of lending. For these reasons, the proposal includes amendments to the service corporation authority to include commercial lending and investments in tangible personal property as preapproved activities. The proposal would also rearrange this section and make various technical amendments.

Corporate Debt Securities and Commercial Paper

Current regulations permit investment in commercial paper and corporate debt securities, defined at 12 CFR 541.27 and 541.28, provided that such investments together with consumer loans do not exceed 20 percent of an association's assets. The proposal would remove this limit, which has been deleted from the Home Owners' Loan Act. Purchases of commercial paper would be limited to instruments of investment quality rated in the top two grades by a national rating service. Corporate debt securities would be required to be rated in the top four grades and marketable. A new provision would permit limited investment in commercial paper and cororate debt securities not subject to specific requirements as to quality. The current limitations on purchases of commercial paper and corporate debt securities from a single issuer would be deleted and replaced by the new limitations applicable to commercial loans to one borrower. Conforming changes to § 523.10(g)(9) are also proposed.

Funds Transfer Services

Existing § 545.1–6 (12 CFR 545.1–6), sets forth the authority of federal associations to provide funds transfer services to their customers. Because the existing regulation expressly recognizes only certain types of funds transfer mechanisms, the Board has received numerous inquiries regarding the authority of associations to use other mechanisms and devices. In order to clarify the Board's position, § 545.1–6 would be amended to authorize funds transfer by any means conforming with applicable laws and established commercial practices. In addition to transfers of customers' funds, the proposed regulation would confirm an association's authority to use any of these payment mechanisms to transfer its own funds for purposes relating to its everyday operations.

Election Regarding Classification of Loans

Proposed § 545.5 would expressly permit a Federal association to choose the lending or investment authority provision under which a loan or investment would be made if the transaction met the requirements of more than one provision. This section would replace comparable provisions found in various lending authority regulations (e.g., § 545.7–10(b)) and codify an established interpretation of the Board's lending and investment regulations.

Limitations on Loans to One Borrower

The Board proposes to amend § 563.9–3 to impose stricter limitations on the extension of commercial credit to one borrower by insured institutions. The limitations imposed would be comparable to those applicable to national banks under 12 U.S.C. 84, which are also applicable to commercial lending by Federal associations pursuant to section 325 of the Act. The

Board believes the application of these restrictions to insured state-chartered institutions is recommended by safety and soundness considerations, even though it is not required by statute, because of the increased insurance risk posed by excessive commercial lending to one borrower.

The loans-to-one-borrower limitations applicable to national banks are expressed in terms of percentages of "unimpaired capital and unimpaired surplus." Mutual institutions do not have equity accounts designated "capital" and "surplus"; therefore, it is necessary for the Board to define "unimpaired capital and unimpaired surplus" for purposes of these limitations. The Board believes the legislative purpose behind tying these limitations to "capital" and "surplus" was to ensure that a lending institution would be able to absorb potential losses on commercial loans.

The Board proposes to define "unimpaired capital and unimpaired surplus" to mean regulatory net worth (as defined in 12 CFR 561.13) plus specific reserves for loan losses, less appraised equity capital. The Board proposes to exclude the "appraised equity capital" account from the definition of "unimpaired capital and unimpaired surplus" because national banks have no comparable account and this account is only authorized temporarily for insured institutions. Finally, the Board proposes to include all specific reserves for loan losses, even though they are not part of regulatory net worth, because they constitute reserves for absorption of losses. The Board notes that at present the Comptroller of the Currency's regulations include only 50 percent of loan loss reserves in "unimpaired capital and unimpaired surplus"; however, the Comptroller has proposed to amend the regulatory definition to include all such reserves. *See* 46 FR 40520, Aug. 10, 1981.

The proposed amendments would apply the limitations in 12 U.S.C. 84 (i.e., 10% of unimpaired capital and unimpaired surplus until April 14, 1983; thereafter, 15% for unsecured loans and an additional 10% for fully secured loans) to the aggregate of: (1) Loans to one borrower for commercial, corporate, business, or agricultural purposes, except those fully secured by real estate or deposit accounts; (2) all investments in commercial paper and corporate debt securities of one issuer; (3) financial leases to one lessee for commercial, corporate, business, or agricultural purposes; and (4) standby letters of credit. Commercial loans secured by real estate or deposit accounts would be excluded because (1) insured institutions have expertise in assessing the risksd involved in real estate loans, (2) account loans involve very little risk, and (3) the Board believes Congress generally did not intend the limitations in 12 U.S.C. 84 to be applied to loans of the type authorized for Federal associations prior to the Act. The proposed rule for commercial paper and corporate debt securities is in recognition of the similarity between the risks posed by these investments and commercial loans. The proposed inclusion of commercial financial leases is warranted because these are the substantive equivalent of direct commercial loans. Finally, the limitations would apply to a standby letter of credit for which the issuer-institution has not been "put in funds" by the account party, since the risks posed by the obligation on the letter of credit are comparable to those involved in a commercial loan.

The Board also proposes to make a technical correcting amendment to § 563.9–3 to incorporate a change that was formally adopted by Board action on January 3, 1980 (Res. No. 80–18) but, through inadvertence, was never reproduced in the Code of Federal Regulations. As explained in the Board's 1980 action, the amendment was intended to exclude from the loans-to-one-borrower limitations loans made under HUD's former Section 23 program only, not loans made under the Section 8 program. A detailed discussion of the amendment may be found at 47 FR 1849 (Jan. 9, 1980).

Definition of Scheduled Items

The Board uses the term "scheduled items" to describe assets whose carrying value on an institution's books may not be fully realized. The amount of scheduled items is factored into the calculation of net-worth requirements pursuant to § 563.13(b) of the Board's regulations, and is utilized as one of several indicators of an institution's financial soundness. Section 561.15 of the Board's regulations defines "scheduled items" to include slow loans and real estate acquired as a result of or in lieu of foreclosure. Currently, however, due to broadened lending authority provided to both state and Federally chartered savings and loan associations, a significantly larger portion of the lending activities engaged in by institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") involves loans secured by assets other than real estate, such as securities, manufactured homes, and other types of personal property.

There does not appear to be a basis for distinguishing between real estate acquired by an insured institution by or in lieu of foreclosure and other types of assets acquired through enforcement of a security interest. Therefore, the Board proposes to amend its definition of scheduled items to incorporate all types of assets acquired through enforcement of a security interest.

The proposal would incorporate the changes by amending paragraphs (g), (h), (i) and (j) of § 561.15. Paragraphs (i) and (j) would be amended to parallel the treatment given real estate under paragraphs (c) and (d) by including within the definition of scheduled items personal property acquired through enforcement of a security interest as well as loans secured by personal property thus acquired.

Paragraph (g) would be amended to provide that *any* asset, whether real or personal property, acquired in exchange for any scheduled item is itself a scheduled item. Thus, assets acquired in exchange for slow consumer loans of any type (as defined in § 561.16a), and assets acquired in exchange for assets that previously had been acquired through enforcement of a security interest, would be included within the definition of scheduled items. However, as currently is the case, securities with market values equal to or exceeding their book values at the time of acquisition, securities qualifying as liquid assets under § 523.10(g), and assets owned pending transfer to an insuring or guaranteeing agency of the United States Government (*e.g.*, Veterans' Administration, Federal Housing Administration) would be excluded from the definition.

The proposal would also amend paragraph (h) to include within the definition of scheduled items any assets transferred by an insured institution to a service corporation or to any corporation in which an insured institution has an investment, to the same extent the assets would have been so included if not transferred.

Finally, as is discussed above with respect to leasing activities, the definition of scheduled items would be amended to include both leases on which the required payments are overdue and personal or real property that is repossessed by an insured institution because of a lessee's failure to make payments on a financing lease. The Board believes this change is necessary to accommodate an expected increase in the leasing activities of insured institutions. The change would apply only to financing leases and would be accomplished by adding a new

paragraph (k) to § 561.15 providing that a financing lease would be treated as a loan secured by the leased property for purposes of the definition. The Board specifically requests comment on whether other types of leases also should be included within the definition of scheduled items.

Other Amendments

Passive Trusts. The Board proposes to permit a Federal association to serve as the trustee for passive trusts such as funeral trusts without requiring it to apply for trust powers under 12 CFR 550.2. This authority will be available to Federal associations only if it is granted by state law to other financial institutions. Since the only duties of the trustee of such trusts are to invest funds in savings accounts or certificates of deposit and to disburse the funds upon the termination of the trust, the Board believes it is unnecessary to apply the requirements of Part 550 to associations that wish to engage in this limited activity.

Escrow Accounts. The proposal would amend the Board's regulations (currently at 12 CFR 545.8–3 (b), (c)) governing the establishment of, and payment of interest on, escrow accounts. These regulations currently restate the requirements of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601–2617) ("RESPA"). The amendments would reference rather than incorporate the requirements of RESPA, thus simplifying the regulation. The regulations also currently require the payment of interest on escrows in connection with owner-occupied single-family dwellings if state law requires state-chartered lenders to pay interest. The amendments would liberalize these requirements by permitting Federal associations full discretion to contract to pay interest on escrow accounts. In addition to these amendments, the Board solicits comments on how the terms governing escrow accounts should be disclosed to borrowers.

Late Charges. The proposal would amend the regulations governing the imposition of late charges (12 CFR 545.8–3 (d), (e)) that currently limit the assessment of late charges on owner-occupied single-family dwellings. In part, the regulations require a 15-day grace period after the due date of a periodic installment payment before a late charge may be imposed and limit late charges to a dollar amount not exceeding 5 percent of the aggregate amount of principal and interest included in the delinquent payment. The amendments would delete these restrictions and permit associations to specify the duration of the grace period, if any, and the amount of the late charge in the loan contract. In addition to comments on these specific amendments, the Board solicits comments on how late charge provisions should be disclosed to borrowers.

Due-on-Sale Clause. The proposal would amend the regulations (currently at 12 CFR 545.8–3 (f), (g)) governing the use of due-on-sale clauses by Federal associations to conform them to the Federal preemption provided by section 341 of the Act.

Prepayment Penalties. The proposal would amend the regulations (currently at 12 CFR 545.8–5) governing the imposition of a penalty on the prepayment of loans to provide that a Federal association may impose a penalty on prepayment of a loan as provided in the loan contract, provided that the association complies with certain disclosure requirements. On any adjustable-rate mortgage, however, the borrower would be entitled to prepay without penalty within 90 days of the notice of adjustment. An association wishing to include a prepayment penalty in the loan contract must disclose to the applicant, in plain language and prior to accepting the application, the existence of the penalty provision and the manner in which the penalty will be calculated. Specifically, the disclosure must include the maximum amount of the penalty that could be imposed under the contract. For penalties based on a fixed percentage of the outstanding loan balance, the percentage to be used must be specified. If the penalty is to be determined according to an interest-rate index, the disclosure must include a table or similar guide that shows the extent to which the penalty may vary as the index changes, and the minimum penalty, if specified in the contract.

Liquidity Base Amendments. The proposal would amend the definition of net withdrawable accounts contained in § 523.10(d) to exclude specifically accounts to the extent that security has been given upon them. The Board believes that since such deposits are collateralized, an additional liquidity requirement is not necessary.

Agencies. Section 545.16 of the regulations currently permits a Federal association to establish agencies to service and originate loans and contracts and to manage or sell real estate owned by the association. Establishment of agencies within the same state as the association's home office requires only approval of the board of directors of the association and not Board approval. Since in certain circumstances Federal associations may now operate branches outside the state where the home office is located, the proposal would amend § 545.16 to permit associations to establish agencies without Board approval in the same state as the home office of the association or in which any branch office approved by the Board was located.

General Solicitation of Comments

The Board has solicited comments from the public concerning various specific questions arising from this proposal. In addition, the Board affirmatively requests comments on any other apsects of these proposed amendments or existing Part 545 that would be of aid in producing a unified, clear, concise, logical body of regulations that incorporates as much of the spirit of deregulation as is commensurate with the Board's responsibility to ensure safe and sound operation of Federal institutions.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–35, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the proposed rules.* These elements have been incorporated elsewhere into the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules will apply.* The proposed rule would apply only to Federal savings and loan associations and institutions the accounts of which are insured by the FSLIC.

3. *Impact of the proposed rules on small institutions.* The proposal would permit institutions to expand their services and investment activities regardless of size. There would be no disproportionate effect on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rules.* To the extent that there are alternatives to any elements of the proposed rule, discussion of them has been incorporated into the supplementary information.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80–584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposal.

List of Subjects

12 CFR Part 523

Federal Home Loan banks, Savings and loan associations, Applications.

12 CFR Part 526

Federal Home Loan banks.

12 CFR Parts 541, 545, 555, 561 and 563

Savings and loan associations.

CROSS-REFERENCE TABLE

Proposal (section)	Title	Present (section)
523.10	Definitions for purposes of this section, § 523.11 and § 523.12.	523.10.
526.1	Definitions used in this part	526.1.
541.3	Combination of residential real estate and business property involving only minor or incidential business use.	541.3.
541.12	Improved residential real estate	541.12, 541.17(b).
541.14	Loans secured by liens on real estate	541.14.
541.16	Other dwelling unit	541.16.
541.17	Other improved real estate	541.17.
541.29	Unimproved real estate	541.29.
541.31	Residential real estate	[None.]
541.32	Nonresidential real estate	[None.]
541.33	Improved nonresidential real estate	541.17(a), 541.17(c).
545.0	Federal preemption	545.6a.
545.1	Insured accounts	545.1, 545.1-1, 545.1-2, 545.1-3.
545.1-1	Account records	545.2.
545.1-2	Distribution of earnings	545.3.
545.1-3	Withdrawls	545.4.
545.1-3(e)	Payments to third parties	545.4-1.
545.1-4	Give-aways	545.5.
545.1-5	Public deposits, suretyship, depositaries, and fiscal agents.	545.24-2, 545.24-3.
545.1-6	Funds transfer services	545.4-1.
545.2	Issuance of stock	[None.]
545.2-1	Issuance of mutual capital certificates	545.5-1.
545.3	Issuance of net worth certificates	[None.]
545.4	Borrowing	545.24.
545.4-1	Borrowing from a state-chartered central reserve institution.	545.24a.
545.5	Election regarding classification of loans or investments.	545.7-10.
545.6	Real estate loans	545.6, 545.8-2, 545.6-5, 545.6-6, 545.8-4.
545.6-1	Insured and guaranteed loans	545.6-1, 545.6-11, 545.6-13, 545.6-14, 545.7-2.
545.6-2	Home improvement loans	545.8-3.
545.6-3	Loans on low-rent housing	545.6-9.
545.6-4	Community development loans and investments	545.6-10.
545.6-5	State housing corporation investment-insured	545.7-3a.
545.6-6	Insured loans for title purchase	545.7-5.
545.6-7	General provisions respecting loans	545.8-2, 545.8-3, 545.8-5, 545.8-8.
545.6-8	Mortgage transactions with the Federal Home Loan Mortgage Corporation.	545.6-10.
545.7	Manufactured home financing	545.7-6.
545.8	Commercial loans	545.6-6.
545.8-1	Overdraft loans	545.4-1.
545.8-2	Letters of credit	[None.]
545.8-3	Loans on securities	545.7-1.
545.8-4	Loans to and investments in business development credit corporations.	545.7-3.
545.9	Consumer loans	545.7-10.
545.9-1	Credit cards	545.7-7.
545.9-2	Educational loans	545.7-4.
545.9-3	Loans on savings accounts	545.7.
545.10	Financing leases	545.7-10a.
545.10-1	Collateral loans	545.7-9.
545.11	Equalization of interest rates	545.8-9.
545.12	Securities and other investments	545.9.
545.12-1	Service corporations	545.9-1.
545.12-2	Investment in savings and demand accounts	545.9-2.
545.12-3	Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.	545.9-3.
545.12-4	Commercial paper and corporate debt securities	545.9-4.
545.12-5	Real estate for office and related facilities	545.10.
545.12-6	Leasing	[None.]
545.12-7	Gold transactions	545.8-11.
545.13	Home office	545.13.

CROSS-REFERENCE TABLE—Continued

Proposal (section)	Title	Present (section)
545.14	Branch offices	545.14.
545.14–1	Upgrading of approved branch office	545.14–1.
545.14–2	Closing a branch office	545.14–2.
545.15	Change of office location and redesignation of offices.	545.15.
545.16	Agency	545.16.
545.17	Fiscal agency	545.17.
545.17–1	Trustee	545.17–1.
545.18	Adjustments to book value of assets	545.18.
545.19	Real estate owned	545.19.
545.20	Accounting records	545.20.
545.21	Monthly reports	545.22.
545.22	Statement of condition	545.23.
545.23	Indemnification of directors, officers and employees	545.25.
545.23–1	Employment contracts	545.25–1.
545.24	Advisory boards and committee	545.26.
545.25	Referral of insurance business	545.27.
545.26	Communication between members of a Federal mutual association.	545.28.
545.27	Financial futures transactions	545.29.
545.28	Financial options transactions	545.29–1.
545.29	Data-processing services	545.16–1.
545.30	Insurance of GNMA-guaranteed, mortgage-backed securities.	545.24–1.
545.31	Correspondent services and accounts	545.30.
545.32	Remote Service Units (RSUs)	545.4–2.
555.3	Real estate	555.3.
555.11	Loans for acquisition and development of land	555.11.
555.15	Prepayment penalty on mortgage loans	555.15.
555.19	Receipt of interest expressed as a percentage of the income from the security property.	[None.]
561.15	Scheduled items	561.15.
563.3–3	Eurodollar deposits	563.
563.8	Borrowing limitations	563.8.
563.8–2	Corporation's right of purchase	[None.]
563.9–3	Loans to one borrower	563.9–3.

Accordingly, the Board hereby proposes to amend Parts 523 and 526 of Subchapter B, Parts 541, 545 and 555 of Subchapter C, and Parts 561 and 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS LIQUIDITY

1. Revise paragraphs (d), (g)(6) and (9), and (h)(3) and (5) of § 523.10, as follows:

§ 523.10 Definitions for purposes of this section, § 523.11 and § 523.12.

* * * * *

(d) *Net withdrawable accounts.* All withdrawable accounts less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to § 563.8–2 of this Chapter, United States Treasury General Accounts, or United States Treasury Time Deposit-Open Accounts.

* * * * *

(g) *Liquid assets.* * * *

(6) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof, including any agency, corporation or instrumentality of a state, territory, possession or political subdivision: *Provided,* That a member's investment in the obligations (other than general obligations) of any one issuer shall not exceed 10 percent of the sum of its regulatory net worth, as defined in § 561.13 of this Chapter, excluding the amount of regulatory net worth attributable to appraised equity capital, plus reserves for loan losses, and that:

* * * * *

(9) Corporate debt obligations and commercial paper issued by a non-governmental entity, but not including investments in the commercial paper or corporate debt obligations of a single issuer in amounts in excess of one percent of such institution's assets, if:

(i) Such corporate debt obligations (*a*) continue to be rated in one of the four highest grades by the most recently published rating of such obligations by a nationally recognized investment rating service, (*b*) are marketable as defined by § 545.12–4(b)(2) of this Part, (*c*) will mature in three years or less, and (*d*) are not convertible to common stock;

(ii) Such commercial paper (*a*) continues to be rated in one of the two highest grades by the most recently published rating of such paper by a nationally recognized investment rating service, or, if unrated, is issued by a company or subsidiary of a company having outstanding paper that is so rated, (*b*) will mature in 270 days or less; and

* * * * *

(h) *Short-term liquid assets.* * * *

(3) Savings accounts, including loans of unsecured day(s) funds, that qualify as liquid assets under paragraph (g)(4) of this section, and, in the case of negotiable savings accounts, will mature in six months or less;

* * * * *

(5) Obligations specified in paragraph (g)(6)(i)(*b*) of this section that will mature in 6 months or less;

* * * * *

PART 526—LIMITATIONS ON RATE OF RETURN

2. Amend § 526.1 by removing the word "notice" from the first sentence of paragraph (e) thereof and adding in its place the word "note", and revising paragraph (l) thereof, as follows:

§ 526.1 Definitions used in this Part.

* * * * *

(l) *NOW (negotiable order of withdrawal) account.* A savings account on which interest is paid subject to the rate limitation in § 526.3 of this Part, and from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. The entire beneficial interest in a NOW account must be held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, or with respect to public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof. For purposes of the preceding sentence,

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes * * * and not for profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code, and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

* * * * *

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

3. Revise § 541.3 as follows:

§ 541.3 Combination of residential real estate and business property involving only minor or incidental business use.

Residential real estate for which no more than 20 percent of the total value of the real estate is attributable to the business use.

4. Revise § 541.12 as follows:

§ 541.12 Improved residential real estate.

Any of the real estate defined in §§ 541.3, 541.4, 541.5, or 541.11 of this Part or any real estate containing offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

5. Remove § 541.14 as follows:

§ 541.14 Loans secured by liens on real estate.

(Removed effective_____.)

6. Remove § 541.16 as follows:

§ 541.16 Other dwelling unit.

(Removed effective_____.)

7. Remove § 541.17 as follows:

§ 541.17 Other improved real estate.

(Removed effective_____.)

8. Revise § 541.29 as follows:

§ 541.29 Unimproved real estate.

Real estate that will be improved, as defined in §§ 541.12 or 541.33 of this Part.

9. Add a new § 541.31 as follows:

§ 541.31 Residential real estate.

The terms "residential real estate" or "residential real property" mean homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

10. Add a new § 541.32 as follows:

§ 541.32 Nonresidential real estate.

The terms "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate," as that term is defined in § 541.31 of this Part.

11. Add a new § 541.33 as follows:

§ 541.33 Improved nonresidential real estate.

Nonresidential real estate: (a) Containing a permanent structure(s) constituting at least 25 percent of its value, or (b) containing improvements which make it usable by a business or industrial enterprise; or (c) used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

12. Revise Part 545 in its entirety as follows:

PART 545—OPERATIONS

Sec.

Authority: Title III, Pub. L. No. 97–320, 96 Stat. 1469, amending 12 U.S.C. 1461 *et seq.*; Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947; 3 CFR 1943–48 Comp., p. 1071

§ 545.0 Federal preemption.

The regulations in this Part 545 are promulgated pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations, as set forth in section 5(a) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 ("the Act"), as amended. This exercise of the Board's authority is preemptive of any state law purporting to address the subject of the operations of a Federal association as set forth in this Part.

Capital Formation

§ 545.1 Insured accounts.

(a) *General.* A Federal association may issue insured accounts as defined in § 561.3 of this Chapter in the form of demand deposit accounts and savings accounts for indefinite or fixed terms ("certificate accounts") as authorized by its charter in the form of shares of

deposits. Payments on insured accounts may be in cash or property in which the association is authorized to invest. The authority of an association to issue insured accounts pursuant to this Part is subject to any applicable provisions of Parts 526 and 563 of this Chapter and Part 1204 of this title.

(b) *Eligibility*—(1) *NOW accounts.* A Federal association may issue savings acounts subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties ("NOW accounts") only to persons described in § 526.1 of this Chapter.

(2) *Demand deposit accounts.* A Federal association may issue non-interest-bearing demand accounts only to persons or organizations that have a business, corporate, commercial, or agricultural loan relationship with the association. An association also may issue non-interest-bearing demand accounts to a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments thereto by nonbusiness customers.

(i) For purposes of this paragraph (b)(2) of this section, a business, corporate, commercial or agricultural loan is any loan other than a home loan on property occupied or to be occupied by the borrowers; a loan to a natural person for personal, family, or household use; or a participation interest in such loans.

(ii) A loan relationship is established where there is any outstanding loan, the establishment of a line of credit, or a previous loan and a reasonable expectation of the renewal of a lending relationship based on the usual and customary activities and needs of the borrower.

(c) *Rates of return*—(1) *Savings accounts.* An association may issue accounts earning interest at different rates of return. The annual rate of return paid on a savings account either may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted.

(2) *Demand deposit accounts.* Demand deposit accounts shall not earn interest.

(d) *Premiums.* An association may pay premiums to account holders in the form of merchandise, credit or cash, subject to the limitations of § 545.1–4 of this Part on give-aways.

(e) *Classes of accounts.* An association may establish classes of insured accounts distinguished on any reasonable basis that does not violate otherwise applicable law.

(f) *Fees.* An association may charge fees in connection with the administration of insured accounts.

(g) *Sales commissions.* An association may pay commissions or fees in cash or merchandise for soliciting insured accounts to any employee of the association or to any broker or agent as determined by the association.

(h) *Eurodollar certificates.* An association may issue Eurodollar certificate accounts in conformity with § 563.3–3 of this Chapter.

§ 545.1–1 Account records.

(a) *Evidence of ownership.* When a Federal association issues an insured account, it shall obtain and preserve in its records evidence of ownership sufficient to identify the accountholder.

(b) *Evidence of account.* At the time of issuing an acount, an association shall present to the accountholder evidence of the accountholder's interest in the account and written evidence of the terms of the account contract. Accounts in statement, book-entry, or other form may be evidence by a written agreement with transactions confirmed by issuance of a receipt or advice.

(c) *Filing.* Prior to issuing any form of savings account, an association shall comply with the applicable filing requirements of § 563.1 of this Chapter.

(d) *Ownership of record.*—(1) *General rule.* An association may treat the holder of record of an insured account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's books. Insured accounts shall be transferable only on the association's books on proper application by the transferee and acceptance of the transferee as a member on terms approved by the board of directors.

(2) *Exception.* Paragraph (d)(1) of this section notwithstanding, an association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the association: *Provided,* that any provisions of the association's charter regarding membership and voting shall not apply to such certificates.

(e) *Duplicate evidence of accounts.* Except for accounts issued in negotiable instrument form, an association may issue a new evidence of account in the name of the holder of record, if the holder of record, or the legal representative of the holder, files an affidavit with the association that the accountholder's evidence of account was lost or destroyed, and that no part of the account has been pledged or assigned except as disclosed to the association. The association's board of directors may require bond sufficient to indemnify the association against any loss that might result from issuance of the new evidence of account.

(f) *Use of collecting agent.* An association may authorize any bank that is a member of the Federal Deposit Insurance Corporation or any institution that is a member of the Federal Savings and Loan Insurance Corporation to prepare, sign and deliver evidence of accounts and to collect and transmit funds obtained from those accounts. The association may provide for issuance of duplicate certificates, bond, security and other protection in connection with such issuance.

§ 545.1–2 Distribution of earnings.

(a) *Time of distribution.* A Federal association may distribute earnings on savings accounts, or designated classes thereof, as provided in its charter and bylaws and the terms of the account. No distribution of earnings on share accounts may be made under this paragraph until provision has been made for payment of expenses and for the *pro rata* portion of credits to reserves required by the association's charter and by Part 563 of this Chapter.

(b) *Small accounts.* An association may establish minimum balance requirements for savings accounts to be eligible for distribution of earnings.

(c) *Amounts withdrawn between distribution dates.* An association may provide for distribution of earnings on amounts withdrawn from savings accounts between regular distribution dates.

(d) *Determination date.* With regard to insured accounts for indefinite terms, an association may prescribe a determination date, not later than the 20th of the month, and while the resolution is in force, pay earnings on savings accounts received on or before that date as if the account was received on the first of the month, and payments received after that date will receive earnings from the first of the next month.

(e) *Compounding of earnings.* An association may compute earnings for distribution on its savings accounts on a compounded basis.

§ 545.1–3 Withdrawals.

(a) *Withdrawal of certificate accounts prior to expiration of term.* (1) A Federal association may assess a penalty upon withdrawal of any part of the principal or accrued interest on a savings account with a fixed term before expiration of the term except as provided by § 526.7(c). If earnings were distributed on the account before the withdrawal, deduction shall be made from the amount withdrawn to adjust for the applicable penalty.

(2) An association may provide that an account owner cannot withdraw any part of a savings account with a fixed term before its term expires except in the event of death, or adjudication of incompetence, of an account owner or under such other emergency circumstances as may be set forth in the certificate evidencing the account.

(b) *Travelers' convenience withdrawals.* Subject to the requirements of otherwise applicable law, a Federal association may permit an accountholder to make a withdrawal from an insured account through a disbursing institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The withdrawal may be made only after the association receives a specific withdrawal request (oral or electronic) from the accountholder, and the amount paid shall be immediately withdrawn from the account. The association permitting the withdrawal may charge a fee to the accountholder, limit the amount of such withdrawal, or pay a fee to the disbursing institution. A Federal association may act as the disbursing institution in such a withdrawal from a savings account in an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, and may collect a fee for that service.

(c) *Payment of withdrawal requests.* Unless otherwise specified in its charter, when a Federal association cannot pay withdrawal requests within 14 days of the date of receipt of written request therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than 14 days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of $1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the association shall so notify the accountholder by registered mail to his last address as recorded on the association's books and, unless the holder, within 14 days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding $200 to any accountholder in any calendar month; and

(2) The association shall allot to the payment of withdrawal requests the remainder of the association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than 20 percent of the association's receipts from its accountholders and its borrowers.

(d) *Grace period with respect to withdrawals.* As association may compute earnings on amounts withdrawn from its insured accounts having an indefinite term during the last 3 business days of any period for which earnings are distributable as if the withdrawal had been made immediately after the close of that period.

(e) *Payments to third parties.* An association may permit withdrawals and transfers from an account by means of orders and authorizations, pursuant to § 545.1–6 of this Part.

§ 545.1–4 Give-aways.

(a) *Definitions used in this section.* (1) "Give-away" means any thing of value, or service performed in any part outside an association's premises, given without adequate payment, but not including (i) providing safety deposit facilities at reduced rental to members of the association, or (ii) repaying to members of any part of amounts paid by them for safe deposit facilities located outside the association's facilities.

(2) "Doing business" has the meaning it has in the statute described in paragraph (c), and "domestic association" means any savings and loan, building and loan, homestead association, or cooperative bank which is a domestic association under that statutory provision.

(b) *Prohibition.* No Federal association doing business in a state which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall (1) condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or maintaining a minimum balance therein; (2) except under paragraph (d) of this section, refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding $2.50; or (3) enter any agreement with, or accept funds for investment in a savings account from, any person engaging in such activities.

(c) *Reciprocal statutory provision.* The statutory provision referred to in paragraph (b) of this section must authorize a specified state official to impose by regulation restrictions on domestic associations of the state equivalent to those imposed on Federal associations by paragraphs (b) (1) and (2) of this section if, while the restriction is in force, Federal associations doing business in the state are likewise restricted.

(d) *Exception.* Notwithstanding paragraph (b) of this section, a Federal association may advertise give-aways during a single period of 30 days ending not more than one year after it opens its first office.

§ 545.1–5 Public deposits, suretyship, depositaries, and fiscal agents.

(a) *Definitions.* As used in this section—

(1) "Moneys" includes "monies" and has the meaning it has in applicable state law;

(2) "State law" includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) "Surety" means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety.* (1) A Federal association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the association of in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Savings and Loan Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(3) An association may also be surety to the extent that (i) it could have been surety if section 5(b) of the Act had not been amended by section 101(e) of Public Law 93–495, and (ii) the Board

otherwise authorizes in writing or by regulation.

(c) *Depositaries and fiscal agents.* Subject to regulation of the U.S. Treasury Department, a Federal association may serve as a depositary for Federal taxes, as a Treasury tax and loan depositary, as a depositary of public money and fiscal agent of the Government, or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Board, and satisfy any requirement in connection therewith, including: (1) Maintaining accounts described in § 526.1(n), (o), (p) and (q) of this Chapter, (2) pledging collateral, and (3) performing the services outlined in 31 CFR 202.3(b) (1981), or any section that supersedes or amends § 202.3(b).

§ 545.1–6 Funds transfer services.

A Federal association may transfer its customer's funds from any account (including a line of credit) of the customer at the association or at another financial intermediary to third parties or to other accounts of the customer on the customer's order or authorization by any mechanism or device conforming with applicable laws and established commercial practices. An association may assess fees for providing any service authorizes by this section. An association also may use cashier's checks or any other mechanism or device to effectuate transfers of its own funds in connection with any activities authorized under its charter or Board regulations.

§ 545.2 Issuance of stock.

A Federal association with a stock charter may raise capital by issuance of stock as provided by its charter and applicable provisions of this Chapter.

§ 545.2–1 Issuance of mutual capital certificates.

A Federal mutual association may issue mutual capital certificates as its charter permits, subject to the requirements of § 563.7–4 of this Chapter or as the Board may otherwise authorize in writing.

§ 545.3 Issuance of net worth certificates.

A Federal association may issue net worth certificates as its charter permits, in accordance with Part 572 of this Chapter or as the Board may otherwise authorize in writing.

§ 545.4 Borrowing.

A Federal association may borrow, issue notes, bonds, debentures, obligations or securities and give security as authorized by its charter or approved in writing by the Board, subject to the requirements of §§ 563.8 and 563.8–2 of this Chapter.

§ 545.4–1 Borrowing from a State-chartered central reserve institution.

A Federal association which has amended its charter under § 544.2(d) of this Subchapter may borrow from a state-chartered central reserve institution, including a state mortgage finance agency, if:

(a) The association's general reserves, surplus, and undivided profits aggregate over 5 percent of its withdrawable accounts;

(b) The reserve institution is located in the state where the association's home office is located;

(c) The amount borrowed does not exceed the amount a state-chartered savings and loan in that state could borrow from that institution;

(d) The association does not use the loan proceeds to make loans at an interest rate exceeding by one and three-quarters percent per year the interest rate paid for the borrowed funds; and

(e) The association maintains any documentation required by the state regarding use of the loan proceeds or other matters.

Investments

§ 545.5 Election regarding classification of loans or investments.

If a loan or other investment is authorized under more than one section in this Part, an association may designate under which section the loan or investment has been made.

§ 545.6 Real estate loans.

(a) *General.*—(1) *Authorization.* A Federal association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) real estate loans or interests therein, subject to the restrictions of this Part. A real estate loan is any loan made on the security of residential or nonresidential real estate where the association relies substantially upon that real estate as the primary security for the loan. A loan secured by a lien on real estate is (i) a loan secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically at the option of the holder or the Federal association for 5 years after maturity of the loan, (ii) a loan secured by assignment of such loans, or (iii) any real-estate-related loan purchased from the Federal Savings and Loan Insurance Corporation and guaranteed by the Corporation under a guaranty contract made by the Corporation with the purchasing association.

(2) *Determination of loan-to-value ratios.* (i) In determining compliance with maximum loan-to-value limitations in this Part, at the time of making a loan an association shall add together the unpaid amount of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the association's loan, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed applicable maximum loan-to-value limitations prescribed in this Part.

(ii) In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means market value.

(b) *Residential real estate loans.* A Federal association may make loans on the security of residential real estate, subject to the following restrictions:

(1) *Home loans.* A home loan is a loan made on the security of homes (including condominiums and cooperatives), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate, including non-amortized, partially-amortized and line-of-credit loans. The interest rate, the payment, the loan balance or the term to maturity may vary as provided in paragraph (b)(1) (i) of this paragraph (b)(1). Home loans shall have a term not to exceed 40 years, with interest payable at least semi-annually, except as expressly authorized in this paragraph (b)(1).

(i) *Adjustments to rate, payment, balance or term; refinancing.* Subject to such limitations on adjustment as are set forth in the loan contract:

(*a*) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association: *Provided,* that an association may decrease the interest-rate at any time, and: *Provided further,* That an association may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase and the time at which it may be made, and which is set forth in the loan contract;

(*b*) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (*i*) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, or (*ii*) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment and set forth in the contract;

(*c*) Any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan;

(*d*) A loan contract may provide for the deferral and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, and may provide that a portion of the consideration to be received by the association in return for making the loan shall be interest in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value or as provided in § 555.19 of this Subchapter;

(*e*) At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the expected maturity of a non- or partially-amortized loan (including a loan with a "call" provision pursuant to subparagraph (b)(1)(i)(*f*) of this section, an association shall provide the borrower with notice of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. (For purposes of notification, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment.) In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule;

(*f*) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan; and

(*g*) If, at maturity of a loan that provides for adjustments pursuant to this paragraph (b)(1)(i), the ratio of the loan balance to the current market value of the security property exceeds 95 percent, the association may offer to refinance the loan, subject to the requirements of paragraphs (b)(ii)(*a*) and (ii)(*c*) of this paragraph (b)(1) and other applicable provisions of this Part.

(ii) *Loan-to-value ratio.* A home loan shall not at the time of origination exceed 90 percent of the value of the security property, except as provided in paragraph (b)(1)(i)(*g*) of this section and this paragraph (b)(1)(ii). During the term of the loan, the loan-to-value ratio may increase above 90 percent if the increase results from a change authorized by paragraph (b)(1)(i) of this section.

The Board will assume continued compliance with the loan-to-value ratio limitations where the original ratio met the requirements of this paragraph (b)(1)(ii), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term loan unless pursuant to paragraph (b)(1)(i)(*b*)(*f*) of this section or unless the loan contract provides that the payment shall be adjusted at least once each five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125-percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to paragraph (b)(1)(i)(*d*) of this section. Nothwithstanding the foregoing, the loan-to-value ratio at the time of origination may be up to 95 percent if:

(*a*) The loan contract requires that, in addition to full or partial amortization of the loan, the *pro rata* portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment;

(*b*) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower occupies, or in good faith intends to occupy, the property (or one dwelling on the property) as the borrower's principal residence; and

(*c*) During the time that the unpaid balance of the loan exceeds 90 percent of the value of the security property, determined at the time of origination, the part of such balance exceeding 80 percent of value is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer": *Provided,* That any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(iii) *Loans on cooperatives.* A loan made on the security of a cooperative under this paragraph (b)(1) of this section shall comply with the following requirements:

(*a*) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(*b*) *Loans on individual cooperative units.* Such loans may be made on the security of (i) a security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and (ii) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(iv) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exced 90 percent of value shall be repayable within 18 months.

(v) *Pledged-account loans.* Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (b)(1) with such excess secured by savings accounts: *Provided,* that loans that exceed 90 percent of the value of the combined security are subject to the following restrictions:

(*a*) The loan shall not exceed the appraised value of the real estate;

(*b*) The savings account shall consist of only of funds belonging to the borrower, members of his family, or his employer; and

(*c*) The association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings accounts and a loan secured by real estate alone.

(vi) *Disclosure.* Prior to accepting an application for a home loan, an association must disclose to each loan applicant, in one or more documents other than the loan documents and in plain language, the terms of the type(s)

of loan(s) offered to the applicant. The purpose of this disclosure requirement is to ensure full understanding of the operation of the loan for which the individual is applying; the disclosures do not constitute a commitment on the part of an association to make a loan to a loan applicant. The disclosure material provided to an applicant shall include at least such of the following information as is relevant to the type of loan being offered:

(*a*) A general explanation of the fact that (*1*) the association and the applicant become bound by the terms of the loan contract upon signing it, (*2*) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (*3*) since normally the loan contract and mortgage (or deed of trust) establish the rights of the borrower, the borrower should become familiar with and understand the provisions of those documents;

(*b*) The term to maturity;

(*c*) The intial interest rate, if known, or the manner in which the initial interest rate will be established;

(*d*) The amount of the initial payment, if known, and an explanation of how the association establishes an amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest;

(*e*) A full explanation of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others;

(*f*) What information will be contained in each notice of an adjustment and, in the case of a non- or partially-amortized loan (including a loan giving the association the right to call the loan due and payable after a number of years or upon the occurrence of an event external to the loan), on the notice of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(*g*) A description of all contractual contingencies under which the loan may become due or which may result in a forced sale of the home;

(*h*) In the case of a non- or partially-amortized loan, unless the association unconditionally obligates itself to refinance the loan, a statement that a large payment will be due at maturity of the loan and that the association is under no obligation to refinance the loan; if the loan gives the association the right to call the loan due and payable after a number of years or upon the occurrence of an event external to the loan, a statement that a large payment may be due at such time and that the association is not obligated to refinance the loan;

(*i*) A description of any prepayment penalty provided for by the loan contract;

(*j*) Whether the loan contract will produce for escrow payments, the purpose of requiring escrow payments, how the amount of an escrow payment is established and whether interest will be paid on escrow accounts; and

(*k*) An example of the interaction of all variable features of the loan over any period of time.

(2) *Multi-family dwelling loans.* A multi-family dwelling loan is a loan made on the security of real estate that is not a home (but which may include homes) and that is used primarily for residential purposes, or combinations of such real estate and business property that involves only minor or incidental business use. A multi-family dwelling loan shall not exceed 90 percent of the value of the security property and shall be repayable within 30 years: *Provided,* That nonamortized loans shall be repayable within 5 year. Interest shall be payable at least semi-annually except to the extent that the loan contract provides for the deferral and capitalization of interest: *Provided,* That the ratio of the loan balance to the current appraised value of the security property may not at any time during the loan term exceed 90 percent as a result of the deferral and capitalization of interest. The loan contract may provide that a portion of the consideration for making the loan shall be in the form permitted by § 555.19 of this Subchapter.

(c) *Nonresidential real estate loans.* (1) A Federal association may make loans on the security of nonresidential real estate: *Provided,* That any such loan shall not exceed 90 percent of the value of the security property, and shall be repayable within 30 years, except that construction loans and non-amortized loans shall be repayable within 5 years. Interest shall be payable at least semi-annually except to the extent that the loan contract provides for deferral and capitalization of interest: *Provided,* That the ratio of the loan balance to the current appraised value of the security property may not at any time during the loan term exceed 90 percent as a result of deferral and capitalization of interest. The loan contract may provide that a portion of the consideration for making the loan shall be in the form permitted by § 555.19 of this Subchapter.

(2) An association's aggregate investment under this paragraph shall not exceed 40 percent of assets.

(d) *Loans to acquire or to improve real estate.* (1) Subject to the limitations in paragraphs (b) and (c) of this section, a Federal association may make real estate loans for the purpose or acquiring unimproved real estate, for financing the development of real estate, on the security of building lots and sited, for construction of structures on real estate, or for the rehabilitation of real estate. The interest on any such loan shall be payable at least semi-annually.

(2) Loans authorized by this paragraph (d) shall not exceed the following loan-to-value ratios:

(i) Seventy-five percent of the value of the security property for land acquisition loans, loans to finance the development of real estate, or loans of the security of building lots and sites;

(ii) Ninety percent of the value of the security property for construction loans and rehabilitation loans.

(3) Loans authorized by this paragraph (d) shall be repayable within the following terms:

(i) Two years: loans for the construction or rehabilitation of an individual single-family dwelling;

(ii) Three years: loans for the acquisition of land;

(iii) Five years: loans for the construction or rehabilitation of nonresidential real estate;

(iv) Six years: loans for the construction or rehabilitation of multi-family dwellings, or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(v) Eight years: loans to finance the development of real estate;

(vi) Fifteen years: loans on the security of building lots and sites for single-family dwellings to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used);

(4) For loans made to finance the development of real estate, loans on the security of building lots and sites, and construction loans; upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the value fixed at the time the loan was made.

(5) Loan documentation for development loans shall contain a

preliminary development plan that is satisfactory to the association. In addition, the limitation on loans to one borrower as defined in § 563.9–3 of this Chapter shall be 2 percent of an association's assets with regard to loans on any one development project made under this paragraph (d). A development project includes all primarily residential, recreational, or other facilities in an integrated development plan. With respect to construction loans, associations shall reserve the right to impose limits on the number of structures under construction at a given time.

(e) *Combination loans.* (1) Any loans authorized by this section may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable paragraphs of this section.

(2) With respect to a combination of loans to finance development and loans on building lots and sites and/or construction loans, whether or not development has been completed, (i) beginning not more than 3 years after the initial disbursement of loan proceeds for construction purposes, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the principal loan balance applicable to any improvement, including the building site, over the remaining term of the loan, and (ii) beginning not more than 4 years after such disbursement, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the loan balance not applicable to the construction of any improvement and its building site, over the remaining term of the loan.

(3) If the development or construction to be financed by a loan made pursuant to paragraph (e) of this section has not commenced by the end of the third year from the initial disbursement the loan proceeds, the loan balance outstanding shall be due and payable.

(4) Notwithstanding any other provisions of this section, a combination loan for construction inclusive of acquisition and/or development shall be repayable within 11 years.

(f) *Leeway authority for loans relating to residential real estate and farms.* (1) In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding the greater of its surplus, undivided profits, and reserves or 5 percent of its assets in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate, where the association relies substantially for repayment on: (i) the borrower's general credit standing and forecast of income, with or without other security, or (ii) other assurances of repayment, including but not limited to a third-party guaranty or similar obligation.

(2) In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding 5 percent of its assets in loans, advances of credit, and interests therein, secured by real estate for primarily residential use or real estate used or to be used for commercial farming that are not otherwise authorized under this Part: *Provided,* that home loans made under this authority must conform to the notice and disclosure requirements of § 545.6(b)(1) (i) and (vi) of this Part.

§ 545.6–1 Insured and guaranteed loans.

Without regard to any of the limitations in § 545.6 of this Part pertaining to loan amounts or terms and conditions of repayment, a Federal association may make or invest in any of the following loans guaranteed or insured by a government agency;

(a) Loans on the security of residential real estate that are insured or guaranteed by a public mortgage insurer, provided the amounts, terms, and conditions of repayment are acceptable to the insuring or guaranteeing agency. A loan is insured or guaranteed by a public mortgage insurer if: (1) It comes within the definitions of §§ 541.10 or 541.13 of this Subchapter, or within the provisions of Title X of the National Housing Act, or (2) it is insured or guaranteed by an agency or instrumentality of a state (i) whose full faith and credit is pledged to support the insurance or guarantee, or (ii) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b)(1) Loans on residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program: *Provided,* (i) FmHA guarantees at least 80% of the principal amount and accrued interest of each loan made under the program; (ii) the loan terms must be acceptable to FmHA; and (iii) the association invests not more than the greater of 2.5 percent of its assets or one-half of its net worth in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

(2) An association shall maintain records to verify compliance with the requirements for each investment made under this paragraph including the loan note guarantee, lender's agreement, and documentation that the investment limitation has not been exceeded.

(c)(1) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969; loans with any guaranty under section 224 of that Act, as in effect before December 30, 1969; or loans with any guaranty under section 221 or 222 of that Act, as in effect after December 29, 1969.

(2) No association may invest in any loans, or interests therein, under this paragraph, unless (i) the loan agreement specifies what constitutes an event of default, and provides that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and (ii) the contract of guaranty covers 100 percent of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresnetation for which the party seeking payment is responsible, and provides that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment;

(3) No association shall invest in any loan, or interest therein, under this paragraph if, as a result, the aggregate outstanding principal amount of such investments of the association and investments made under § 545.12(h) of this Part would exceed 1 percent of its assets.

(d) Loans on the security of non-residential real estate that are guaranteed by one of the following agencies under the authority specified herein, provided the loan terms are acceptable to the guaranteeing agency: (1) Economic Development Administration (under the Public Works and Economic Development Act of 1965, as amended, or the successor to that Act, or the Trade Act of 1974, as amended); (2) Farmers Home Administration (under the Consolidated Farm and Rural Development Act of 1974, as amended); (3) Small Business Administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

(e) Loans or obligations, or interests therein, guaranteed in whole or in part or as to which a commitment or agreement for any such guaranty has been made under the New Communities Act of 1968 or under Part B of the Urban Growth and New Community Development Act of 1970, as amended.

§ 545.6–2 Home improvement loans.

A Federal association may invest in loans, with or without security, for residential real property alteration, repair or improvement, or for equipping or furnishing residential real property, with installments payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under § 545.6(b)(1) of this Part.

§ 545.6–3 Loans on low-rent housing.

(a) *General.* Limitations in this Part relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of (1) an annual contributions contract for low-rent housing under former Sections 23 or 5 of the United States Housing Act of 1937, as amended, or (2) a Housing Assistance Payment (HAP) contract for low-income housing under Section 8 of the United States Housing Act of 1937, as amended, which the borrower has agreed in writing to enter into for the maximum term available for the particular project type and financing: *Provided*, That no loan by a Federal association pursuant to the authority of this section shall exceed 90 percent of the appraised value of the security property or, in lieu of such appraisal, 90 percent of the purchase price if the security property is to be purchased by a local public housing authority, and in no event, shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.6–1 of this Part.

(b) *Appraisals.* The appraisals of any real estate required by § 545.6–7(e) shall be rendered in accordance with the general appraisal guidelines issued by the Office of Examinations and Supervision.

§ 545.6–4 Community development loans and investments.

(a) *General.* A Federal association may invest in real property, or in interests in real property, located within any of the following areas, and in loans on the security of liens, and in other obligations secured by liens, on real property so located: (1) Any neighborhood stategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974, as amended; (2) Any general location (as specified in 24 CFR 570.306(b)(3) (ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance; (3) Any urban renewal area (as defined in section 110(a) of the Housing Act of 1949, as amended) receiving such concentrated assistance in order to finish uncompleted urban renewal projects; and (4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) *Investment in loans and other obligations secured by liens on real estate.* Such investments shall conform to all limitations in this Part 545 applicable to the type of real estate securing the investments.

(c) *Investments in real estate.* An association may invest up to 2 percent of assets in real property or interests therein described in paragraph (a) of this section. Investments may not exceed the appraised value of the property plus usual settlement costs. In determining the 2-percent investment limit, the following rules shall apply:

(i) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the association;

(ii) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be 10 percent; and

(iii) The investment in improvements to land in which the association has a leasehold interest shall be the cost to the association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

(d) *Amount of Investment.* Total investment under this section shall not exceed 5 percent of assets.

§ 545.6–5 State housing corporation investment-insured.

(a) A Federal association may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8 of this Chapter), provided that such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds.

(b) The aggregate outstanding direct investment and investment in loans and loan commitments under paragraph (a) of this section shall not exceed 30 percent of the association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the association's home state.

§ 545.6–6 Insured loans for title purchase.

Without regard to any other provision of this Part, a Federal association may invest in loans, or interests therein, made for financing the purchase by homeowners of fee simple title to property on which their homes are located and as to which the association has benefit of insurance under section 240 of the National Housing Act, as amended, or of a commitment or agreement for such insurance.

§ 545.6–7 General provisions respecting loans.

(a) *Initial loan fees and charges.* A Federal association may charge fees in connection with a commitment to make a real estate loan (whether or not the making of a loan follows the commitment), or in connection with the acquisition, making, refinancing or modification of a loan. Subject to § 563.35(d) of this Chapter, an association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs. The association may collect initial charges from the borrower and pay the persons rendering services.

(b) *Contract provisions.*—(1) *Required and authorized provisions.* Each loan shall be evidenced by note, bond, or other debt instrument and be secured by a security instrument which is consistent with sound lending practices. Loan instruments shall comply with applicable provisions of law, governmental rules and regulations, and the association's charter and bylaws,

and provide for full protection to the Federal association. They shall be recorded and, among other protections, shall provided specifically for full protection with respect to insurance, taxes, assessments, other governmental levies, maintenance, and repairs. They may provide for an assignment or rents. The association may pay taxes, assessments, insurance premiums, and other similar charges for protection of its interest in the security property. If such payments are consistent with this Part, they may be added to the unpaid balance of the loan. The association may require life insurance to be assigned to it by the borrower as additional collateral for a loan on the security of real estate. It may advance premiums on such life insurance and, if consistent with this Part, add the premiums so advanced to the unpaid balance of the loan. A Federal association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate on which it has loans or which it owns.

(2) *Escrow accounts.—General.* (i) Subject to the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617), an association may require that all or any Part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the association to enable the association to pay such charges as they become due. If the association determines there will be a deficiency on the due date of such charges, it may require that additional deposits, sufficient to make up the deficiency, be submitted in equal amounts with each payment up to the date upon which such charges become due and payable. After giving the borrower notice of such deficiency and of the additional deposits required to make up the deficiency, the association may deduct the necessary amounts from the borrower's regularly scheduled installment payments if the borrower fails to make the additional deposits.

(ii) *Payment of interest on escrow accounts.* Unless obligated by contract, an association shall have no obligation to pay interest on escrow accounts.

(3) *Late Charges.—General.* (i) An association's loan instruments may, as a matter of contract between it and the borrower, provide for assessment, imposition, and collection of a late charge respecting payment of any delinquent periodic installment payment. The charge may be in any form necessary and appropriate to full protect the association. No form of such late charge shall be considered as interest to the association. The association shall not deduct late charges from regular periodic installment payments on the loan, but shall collect them as such from the borrower. Except as provided in this paragraph (b)(3), assessment, imposition, and collection of such late charges shall be exclusively governed by the terms of the loan contract. Collection of a late charge shall not impair, alter, or abrogate any other right of the association granted by contract or law respecting delinquent installment payments.

(ii) *Limitations on late charges.* With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by an association, unless any monthly billing, coupon, or notice the association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed; or more than one time for late payment of the same installment. Any installment payment made by the borrower shall be applied to the longest outstanding installment due. An association, in an appropriate case, may elect to waive all or any portion of an authorized late charge.

(4) *Due-on-sale clauses.* An association may include a provision in its loan instrument whereby the association may, at its option, declare immediately due and payable sums secured by the association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the association's prior written consent. Subject to the provisions of 12 U.S.C. 1701j–3, exercise by the association of such option shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the association and borrower shall be fixed and governed by that contract.

(c) *Initial payments on real estate loans.* Payments on real estate loans shall begin not later than 60 days after the loan is disbursed: *Provided,* That if such loans are for construction, substantial alteration, repair or improvement loans, payments may begin not later than 36 months (18 months for loans secured by real estate consisting solely of one or more homes or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semi-annually until regular periodic payments become due.

(d) *Loan payments and prepayments.* Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. An association may impose a penalty of prepayment of a loan as provided in the loan contract: *Provided,* That prior to accepting an application for a real estate loan an association must disclose to each applicant, in one or more documents other than the loan documents and in plain language, the existence of the penalty provision in the loan contract and the manner in which the penalty would be calculated. The documents must disclose the amount of the maximum possible penalty that could be incurred by the applicant pursuant to the penalty provision. If the penalty is to be calculated as a fixed percentage of the outstanding loan balance, the disclosure must include a statement identifying that percentage. If the penalty is to be calculated by reference to an index that measures the change in interest rates, the disclosure must include a table or similar guide that indicates the extent to which the amount of the penalty may vary as interest rates (as measured by the index) change, as well as the amount of the penalty to be imposed if the index decreases or remains unchanged. Notwithstanding the above, for any mortgage instrument on which the yield may be adjusted an association may not impose a penalty on any prepayment made within 90 days of the notice of an adjustment.

(e) *Appraisals.* A Federal association may make a real estate loan only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency. The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan unless the borrower specifically requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

§ 545.6–8 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this Part, a Federal association may enter into and perform

any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

§ 545.7 Manufactured home financing.

(a) *Definitions used in this Part.*

(1) "Manufactured home" shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(2) "Manufactured home chattel paper"—a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(3) "Manufacturer's invoice price"—a manufacturer's itemized charges, shown on its invoice, for a specifically identified manufactured home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

(b) *General investment authority.* An association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

(c) *Sound investment practices.* Appraisals or other generally accepted systems of valuation of used manufactured homes shall substantiate the term to maturity of loans made. Chattel paper shall have provisions to protect the association, specifically regarding insurance, taxes, other governmental levies, and maintenance and repairs, and may include any other protection provision which is lawful and appropriate. The association may pay taxes or other governmental levies, and insurance premiums or other similar charges to protect its security interest, and may, when lawful, add such payments to the debt evidenced by the chattel paper. The association shall seasonably perfect its security interest. The association is responsible for current knowledge of regulations and requirements pertaining to Federal insurance and guarantee programs for manufactured home loans in which it invests, including portfolio limitations on coverage, and is expected to make underwriting decisions as carefully for such loans as for conventional loans.

(d) *Inventory financing.* An association may invest in manufactured home chattel paper which finances a manufactured home dealer's acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of business;

(2) The loan evidenced by the chattel paper is the dealer's obligation; and

(3) The loan amount does not exceed the following:

(i) For new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(ii) For used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including installed equipment.

(e) *Retail financing.* (1) *Insured and guaranteed loans.* An association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in § 541.10 or § 541.13 of this Subchapter, or that has a commitment for such insurance or guarantee.

(2) *Conventional loans.* An association may invest in conventional retail manufactured home chattel paper if:

(i) The manufactured home is located at a manufactured home park or other permanent or semi-permanent site;

(ii) The manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.6(b)(1)(i) of this Part; and

(iii) The financed amount (excluding time-price differential or interest, however computed) does not exceed;

(*a*) In the case of a new manufactured home, 90 percent of buyer's total costs, including freight, itemized set-up charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or

(*b*) In the case of a used manufactured home, 90 percent of the appraised market value or other generally accepted valuation of the manufactured home plus sales and other taxes, filing and recording fees imposed by law, premiums for related insurance, and freight and itemized set-up changes, if any.

(3) *Combination loans.* An association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(i) *Affixed manufactured homes.* If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a residential real estate loan under § 545.6(b) of this Part.

(ii) *Unaffixed manufactured homes.* If the manufactured home is not affixed in the manner described in (e)(3)(i) of this section, an association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of paragraphs (e)(2)(i), (ii) and (iii) of this section and the loan-to-value ratio does not exceed 75 percent of the appraised value of the lot and lot improvements and 90 percent of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in paragraph (e)(2)(iii) of this section.

(iii) *Insured and guaranteed loans.* Notwithstanding the other provisions of this paragraph (e)(3), an association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in §§ 541.10 or 541.13 of this Subchapter, or that has a commitment for such insurance or guarantee.

(4) *Purchase of retail paper.* With regard to purchase of an interest in retail mobile home chattel paper where the security property is or will be located outside the association's normal lending territory (as defined in § 561.22), the seller of the interest (unless the seller is the association's service corporation) shall retain at least a 25 percent interest in each document evidencing a loan secured by the chattel paper.

(f) *Sale of paper.* (1) All manufactured home chattel paper sold by an association shall be sold without recourse, as defined in § 561.8 of this Chapter.

(2) No association may sell manufactured home chattel paper if, at the close of its most recent semi-annual period, it has manufactured home chattel paper scheduled items (other than assets acquired in a supervisory merger) in excess of 5 percent of its total portfolio in such paper: *Provided,* That application may be made to the Board for a waiver of this restriction.

§ 545.8 Commercial loans.

(a) *Definition.* As used in this section, the term "commercial loan" means a secured or unsecured loan to any person or organization for commercial, corporate, business, or agricultural purposes. In determining whether a loan to a natural person is a commercial loan, a Federal association may rely on the borrower's statement of purpose if accepted in good faith.

(b) *Investment authority.* (1) An association may invest in, sell, purchase, participate in, or otherwise deal in commercial loans: *Provided,* That at any

one time the total investment made under this section shall not exceed 5 percent of the association's assets (or 7½ percent in the case of a savings bank) prior to January 1, 1984, and 10 percent thereafter.

(2) Notwithstanding the provisions of § 545.5 of this Chapter, the percentage-of-assets limitations in paragraph (b)(1) of this section shall apply to:

(i) Overdraft loans on demand accounts;

(ii) Standby letters of credit; and

(iii) Commercial loans not secured by real estate that are made by a service corporation of the association: *Provided*, That, in the case of a service corporation with multiple stockholders, the amount of such loans attributed to one stockholder association will be calculated *pro rata* on the basis of the percentage of the service corporation's stock owned by the association.

(3) Loans sold to a third party will be included in the percentage-of-assets calculation required by paragraph (b)(1) of this section only if they are sold with recourse.

(4) Loan commitments will not be subject to the percentage-of-assets limitation in paragraph (b)(1) of this section. A "loan in process" is not a loan commitment for purposes of this exception.

§ 545.8–1 Overdraft loans.

Associations may extend secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn. Overdraft credit relating to demand accounts is subject to specific limitations set forth in § 545.8 of this Chapter.

§ 545.8–2 Letters of credit.

An association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

(a) Each letter of credit must conspicuously state that it is a letter of credit;

(b) The issuer's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(c) The issuer's obligation to pay must be solely dependent upon the presentation of confirming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

(d) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

§ 545.8–3 Loans on securities.

A Federal association may invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in § 523.10(g)(3) of this Chapter, if:

(a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or is a broker or dealer registered with the Securities and Exchange Commission; and

(b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

§ 545.8–4 Loans to and investments in business development credit corporations.

Notwithstanding any other provisions of this Part, a Federal association whose general reserves, surplus, and undivided profits aggregate more than 5 percent of its withdrawable accounts may invest in, lend to, or commit itself to lend to any business development credit corporation incorporated in the state in which the association's home office is located, in the same manner and to the same extent as the statutes of that state authorize a savings and loan association organized under the laws of that state to so invest, lend, or commit itself to lend: *Provided*, That the aggregate amount of investments, loans, and commitments to such a corporation outstanding at any time shall not exceed the lesser of one-half of one percent of the total outstanding loans of the association or $250,000.

§ 545.9 Consumer loans.

(a) *General.* A Federal association may originate, purchase, sell, service and participate in direct or indirect consumer loans and loans to dealers in consumer goods to finance inventory and floor-planning. Consumer loans are loans for personal, family or household purposes and loans reasonably incident thereto, including overdrafts on NOW accounts.

(b) *Limitations.* (1) At any one time, the total investment made under this section shall not exceed 30 percent of an association's assets.

(2) The total balances of all outstanding loans, as defined in § 563.9–3(a), of this Chapter, that may be made under this section in unsecured loans to one borrower, as defined in § 563.9–3(a), may not exceed the limitations contained in § 545.8 of this Part concerning commercial loans. For purposes of the loans-to-one-borrower calculation, inventory and floor planning loans shall be treated as commercial loans.

§ 545.9–1 Credit cards.

An association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations. Such operations may be subject to § 545.16–1 of this Part. If a personal security identifier, as defined in § 545.16–1(a)(2), is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

§ 545.9–2 Educational loans.

A Federal association may invest in loans, obligations, and advances of credit (all referred to herein as "loans") made for the payment of educational expenses, if the principal amount of the investment and of all other investments in loans under this section, exclusive of any investment which is, or which at the time of its making was, otherwise authorized, would not exceed 5 percent of the association's assets. The borrower shall certify to the association that the loan proceeds are to be used solely by a student for payment of such expenses. The loan may be secured, partly secured, or unsecured, and the association may require a co-maker(s), insurance, guaranty under a governmental student loan guarantee plan, or other protection.

§ 545.9–3 Loans on savings accounts.

A Federal association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, if the association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the association has any unpaid application for withdrawal on file more than 30 days.

§ 545.10 Financing leases.

(a) *General.* (1) A Federal association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if (i) the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early

termination of the lease and (ii) at the expiration of the lease, the association's interest in the property shall be liquidated or released on a net basis as soon as practicable.

(2) A lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in commercial loans. A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in real estate loans.

(b) *Definitions.* For the purposes of this section:

(1) A "net lease" is a lease under which the association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property: *Provided,* That improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration or filing for the property unless such action by the association is necessary to protect its interest as an owner or financer of the property.

(2) A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease. The estimated residual value of the property shall not exceed 25 percent, in the case of personal property, or 20 percent, in the case of real property, of the acquisition cost of the property to the lessor *unless* the estimated residual value is guaranteed by a manufacturer, the lessee, or a third party not an affiliate of the association and the association makes the determination that the guarantor has the resources to meet the guarantee. In all cases, however, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee and of any guarantor of the residual value, and on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(c) *Salvage powers.* If, in good faith, an association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of paragraphs (a) and (b) of this section shall not prevent the association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (c) (1) and (2) of this section.

§ 545.10–1 Collateral loans.

An association may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loan(s).

§ 545.11 Equalization of interest rates.

Any loan contract entered into by a Federal association may provide for charging any time/price differential or any interest (whether on an add-on, discount, gross charge, or other similar basis) permitted to be charged on the same type of loan by a building and loan, savings and loan, homestead association, cooperative bank, or mutual savings bank organized under the laws of the State, District, Commonwealth, territory, or possession in which the home office of the lending Federal association is located.

§ 545.12 Securities and other investments.

A Federal association may invest in:

(a) Assets that qualify as liquid assets, as defined in § 523.10(g) of this Chapter, and assets,other than time deposits and bankers' acceptances, that would so qualify except for their maturities: *Provided,* That any investment in corporate debt obligations and commercial paper shall be subject to the limitations of § 545.12–4 of this Part;

(b) Obligations fully guaranteed as to principal and interest by the United States;

(c) Securities guaranteed by the Government National Mortage Association under section 306(g) of the National Housing Act, as amended;

(d) Obligations of, or participations or other instruments fully guaranteed as to principal and interest by, the Federal Home Loan Mortgage Corporation;

(e) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality), without regard to investment-grade rating, if the association's home office or a branch office is located in such state, territory, possession or political subdivision, and the association's aggregate investment in such obligations does not exceed 1 percent of its assets;

(f) The stock of a Federal Home Loan Bank and the Federal National Mortgage Association;

(g) Obligations or other instruments or securities of the Student Loan Marketing Association;

(h) The share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to the following conditions:

(1) The association's net worth meets the requirements of § 563.13 of this Chapter, its scheduled items do not exceed 2.5 percent of its specified assets, and all appraised losses have been offset by specific loss reserves to the extent required by § 563.17–2 of this Chapter;

(2) The association's aggregate investment pursuant to this parapraph, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (callable capital), will not, as a result of such investment, exceed one-quarter of one percent of its assets or $100,000, whichever is less; and

(3) The association's aggregate investment under this paragraph and its aggregate outstanding principal amount of investment under § 545.6-1(c) of this Part, will not, as a result of such investment, exceed one percent of its assets; and

(i) Shares or certificates in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to investments that an association is authorized, without limitation as to percentage of assets, to invest in, sell, redeem, hold, or otherwise deal with. The authority to invest in such companies includes the authority to redeem or hold the shares or certificates of such companies.

§ 545.12-1 Service corporations.

(a) *Definitions.* As used in this section—

(1) "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

(2) "Conforming loan" means a loan or portion thereof which a Federal association may make under any provision of this Part other than this section, except a loan made under § 545.6(f). A guarantee or take-out commitment of a loan which could have been made by a Federal association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal association complies with all requirements of this Chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.

(3) "Insured institution" has the meaning prescribed in § 561.1 of this Chapter.

(4) "Joint venture" means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

(5) "Scheduled items" and "specified assets" have the meanings prescribed in §§ 561.15 and 561.17 of this Chapter.

(6) "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof (i) owns, controls, or holds with power to vote more than 25 percent of the capital stock, (ii) is a general partner, or (iii) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

(7) "Unsecured debt" and "unsecured loan" exclude accounts payable incurred in the ordinary course of business and paid within 60 days.

(b) *Qualified service corporations.* A Federal association may invest in the capital stock, obligations, or other securities of the following types of service corporations organized under the laws of the State (including District, Commonwealth, territory or possession) in which the association's home office is located:

(1) A statewide service corporation in which:

(i) All of the capital stock is available for purchase by, any only by, any and all savings and loan associations with a home office in such state;

(ii) No savings and loan association owns, or may own, more than 10 percent of the service corporation's outstanding capital stock, except that in any state in which the home offices of fewer than 15 savings and loan associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings and loan association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement; and

(iv) Substantially all of the service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section;

(2) A multi-owned service corporation in which:

(i) All of the capital stock is held by at least five savings and loan associations with a home office in such state, and no one association holds more than 40 percent of such stock; and

(ii) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section; or

(3) A solely owned or multi-owned service corporation in which:

(i) All of the capital stock is held by fewer than five savings and loan associations, or more than 40 percent of such stock is held by one savings and loan association, with a home office in such State;

(ii) The consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and its subsidiaries does not exceed:

(*a*) Ten times the total of the service corporation's consolidated net worth and its unsecured debt to holders of at least 25 percent of its capital stock; or

(*b*) Twenty times such total if the service corporation is engaged solely in the activities set forth in paragraph (c)(1)(i) of this section. The consolidated debt of the service corporation and its subsidiaries shall include the entire amount of any obligation of the service corporation or subsidiary resulting from the sale of loans with recourse;

(iii) Approval of the Board is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint venture;

(iv) Approval of the Board is obtained for any investment by:

(a) A Federal association in a service corporation or in a corporation which will become a service corporation as a result of that investment, or

(b) A service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures, if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of a Federal association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the Federal association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee;

(v) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section.

(c) *Permitted activities.* A service corporation in which a Federal association may invest is permitted to engage in activities reasonably related to the activities of Federal associations as the Board may approve. In addition, a service corporation may engage in the

following activities without prior Board approval:

(1) *Loans.* Originating, investing in, selling, purchasing, servicing, or otherwise dealing in (including brokerage or warehousing), any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on manufactured homes;

(ii) Loans, and participations in loans with or without security, for altering, repairing, improving, equipping, or furnishing real estate;

(iii) Loans and participations in loans for business purposes secured in part by real estate and insured or guaranteed by an agency of the United States;

(iv) Educational loans and participations therein;

(v) Consumer loans and participations therein;

(vi) Commercial loans and participations therein: *Provided,* That: such loans together with commercial loans made by the parent association pursuant to § 545.8 of this Part do not exceed five percent of the assets of the parent, or 7.5 percent if the parent is a Federally chartered savings bank, prior to January 1, 1984, or ten percent thereafter. Where a service corporation is owned by more than one association, each parent for purposes of this calculation shall include a portion of the subsidiary's commercial loans in the proportion of that parent's investment in the service corporation.

(2) *Services primarily for financial institutions.* Performing any of the following services, primarily for financial institutions:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Developing and operating storage facilities for microfilm or other or other duplicate records;

(v) Advertising, brokerage and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts;

(vi) Serving as escrow agent or as trustee under deeds of trust, including executing and delivering conveyances, recoveyances, and transfers of title;

(vii) Providing liquidity management, investment, advisory and consulting services;

(viii) Providing clerical, accounting, data processing and internal auditing services;

(ix) Establishing, owning, leasing, operating or maintaining remote service units;

(3) *Real estate services.* (i) Maintaining and managing real estate, including real estate used for agricultural purposes;

(ii) Managing owners' associations for condominium, cooperative, Planned Unit Development or other rental real estate projects;

(iii) Providing homeownership and financial counseling;

(iv) Providing relocation services;

(v) Providing real estate brokerage services for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not for property owned by third parties;

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided,* That any development, subdivision, and construction of improvements is to be completed within three years after commencement of development of the real estate and within five years after acquistition of the real estate, unless such period is extended by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter) upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction: and *Provided further,* That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this subparagraph;

(vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(viii) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities: *Provided,* That without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth.

(4) *Other investments.*

(i) Making investments in securities and in corporations or partnerships authorized by title IX of the Housing and Urban Development Act of 1968 specified in § 545.12–3 of this Part;

(ii) Investing in savings accounts in an insured institution that is a stockholder of the service corporation: *Provided,* That the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Investing in the capital stock or in the accounts of an interim Federal association or an interim state institution that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company;

(iv) Investing in tax-exempt bonds of state governments or political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies and issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended; and

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 301(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (c) (1)–(5) of this section.

(5) *Other services.* (i) Preparing state and Federal tax returns for individuals or organizations that are not corporations operated for profit;

(ii) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance, but not private mortgage insurance;

(iii) Providing fiduciary services upon application to the Board pursuant to § 550.2, and subject to the conditions provided in §§ 550.1–550.16, of this Subchapter;

(iv) Issuing notes, bonds, debentures, or other obligations or securities;

(v) Issuing credit cards, extending credit in connection therewith, and

otherwise engaging in or participating in credit card operations;

(vi) Acquiring real or personal property for the purpose of leasing such property or obtaining an assignment of a lessor's interest in a lease of such property: *Provided,* That the estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor. A service corporation may sell real or personal property in connection with its leasing activities;

(6) Activities reasonably incident to those listed in subparagrphs (c) (1)–(5) of this section.

(d) *Amount of investment.* (1) An association may invest under this section in the capital stock, obligations, or other securities of service corporations: *Provided,* That its aggregate outstanding investment does not exceed 3 percent of assets, and any investment in excess of 2 percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this paragraph shall include all loans, secured and unsecured, and all guarantees or take-out commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of 2 percent of assets shall designate investments that serve primarily community, inner-city or community development purposes which shall include the following:

(i) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(ii) Investments for the preservation or revitalization of either urban or rural communities;

(iii) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(iv) Other community, inner city or community development-related investments approved by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter).

(2) In addition to amounts which it may invest under paragraph (d)(1) of this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, and that has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in paragraph (d)(4) of this section), may loan additional amounts as follows:

(i) An aggregate outstanding amount not to exceed 20 percent of the association's net worth may be invested in conforming loans made to service corporations, or subsidiaries thereof, and to joint ventures of such service corporations and subsidiaries; and

(ii) An aggregate outstanding amount, including loans included in paragraph (d)(2)(i) of this section, not to exceed 50 percent of such Federal association's net worth may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than 10 percent of the capital stock or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations, (*a*) own or hold with power to vote not more than a total of 10 percent of the capital stock, or (*b*) are limited partners and have contributed not more than 10 percent of such joint venture's capital.

(3) The limitation in paragraph (d)(1) of this section does not apply to conforming loans to any service corporation in which the lending association does not have any investment made under authority of this section.

(4) An association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, may apply to the Board for an exception from the scheduled-items limitation in paragraph (d)(2) of this section. The application shall be supported by information evidencing the association's sound investment, lending, appraisal, and underwriting policies and favorable operating results. The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of Examinations and Supervision. The application is approved if, within 30 calendar days after the date the Principal Supervisory Agent receives it, he has not notified the applicant that approval is withheld. If approval is withheld, the Principal Supervisory Agent shall promptly cause the application to be submitted to the Board for its decision. The Principal Supervisory Agent may request additional information from the applicant, but need not consider such additional information received less than 5 calendar days before the end of the 30-day period.

(e) *Examination.* A Federal association may invest in the capital stock, obligations, or other securities of a service corporation only if the service corporation has executed and filed with the Supervisory Agent a written agreement, in a form prescribed by the Board, that:

(1) If the service corporation is described in paragraph (b) of this section, it will permit and pay the cost of examination of it by the Board to determine the propriety of any investment by a Federal association under this section; and

(2) If the service corporation is described in paragraph (c) of this section, it will permit and pay the cost of such examination and/or audit by the Board as the Board deems necessary.

(f) *Disposal of investment.* Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Board mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

(g) *Corporate name.* No Federal association may invest in, or retain any investment, the capital stock, obligations, or other securities of any service corporation whose corporate name or the designation of whose subsidiary or office (1) includes the words "National", "Federal", or "United States", or the initials "U.S." or (2) could identify it with any insured institution which has not invested in it.

(h) *Applications.* Any application made to the Board under this section shall be in the form it prescribes and filed with the Supervisory Agent. One or more Federal associations which propose investment in a service corporation which is not yet organized may make any application required by this section.

(i) *Revision of specified activities and limitations.* Activities and limitations specified in this section may be revised from time to time.

(j) *Limitation on activities.* Service corporations in which Federal associations may invest shall not be used to acquire scheduled items from an

insured institution, except that such a service corporation may, for the purpose of providing housing, acquire real estate owned by an insured institution.

§ 545.12-2 Investment in savings and demand accounts.

A Federal association may invest in the savings and demand accounts of any institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. In addition, a Federal association may maintain a non-interest-bearing account at an institution whose accounts are insured pursuant to a state deposit insurance program if the account is necessary or incidental to a correspondent relationship.

§ 545.12-3 Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.

Without regard to any other provision of this Part, a Federal association may invest an aggregate amount not exceeding 1 percent of its assets in:

(a) Shares of stock issued by the National Corporation for Housing Partnerships or by any other corporation created under title IX of the Housing and Urban Development Act of 1968;

(b) Limited partnership interests in the National Housing Partnership or in any other limited partnership formed under section 907(a) of that Act; and

(c) Any partnership, limited partnership, or joint venture formed under section 907(c) of that Act.

§ 545.12-4 Commercial paper and corporate debt securities.

(a) *General.* A Federal association may invest in, sell, or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b) of this section. An investment under this section includes the investing in, redeeming, or holding shares of any open-end management investment company which has registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to invest in pursuant to this section and paragraph (i) of § 545.12 of this Part.

(b) *Limitations.* (1) Commercial paper must be of investment quality. Investment quality paper is paper that (i) as of the date of purchase, as shown by the most recently published rating made of such investments by at least one nationally recognized investment rating service, is rated in either one of the two highest grades or (ii) if unrated, is issued by a company or a subsidiary of a company having outstanding paper that is rated as provided in paragraph (b)(1)(i) of this paragraph.

(2) Corporate debt securities must be marketable. To be considered marketable for purposes of this regulation, a security must be one that may be sold with reasonable promptness at a price which corresponds reasonably to its fair value. A corporate debt security must be rated in one of the four highest grades by at least one nationally recognized investment rating service at its most recent published rating before the date of purchase of the security.

(3) An association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with other commercial loans, shall not exceed the limitations on loans to one borrower contained in § 563.9-3: *Provided,* That this provision shall not apply to investments in the shares of an open-end management investment company. In such cases, an association's total investment in the shares of any one such company shall not exceed five percent of the association's assets.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations: (i) The purchase of securities convertible into stock at the option of the issuer is prohibited; (ii) at the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature; (iii) such securities must be traded on a national securities exchange; and (iv) associations are prohibited from exercising the conversion feature.

(5) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

(6) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(c) Notwithstanding other limitations contained in this section, an association may invest up to one percent of its assets in commercial paper and corporate debt securities if in the exercise of its prudent business judgment it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with such securities, including all debt service requirements.

§ 545.12-5 Real estate for office and related facilities.

(a) *General.* A Federal association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs or its reasonable future needs for office and related facilities. The association shall obtain Board approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.12-1(c)(3)(viii) of this Part) to exceed its net worth. The association shall also obtain Board approval before investing in real estate which the Board has not approved for the establishment or maintenance of an office facility, if the investment, together with the association's other investments in real estate lacking such approval, would exceed 25 percent of its net worth.

(b) *Requests for Board approval of exceptions.* An association shall send requests for Board approval of exceptions to limitations in this section to the Supervisory Agent, with a copy to the Director, Office of Examinations and Supervision.

§ 545.12-6 Leasing.

(a) *General.* A Federal association may become the legal or beneficial owner of tangible personal property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may take such actions and incur such obligations as are incidental to its position as the lessor, legal or beneficial owner, or assignee: *Provided,* That the estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor. An association also may sell tangible personal property if such sales are incidental to its leasing activities.

(b) *Limiation on investment.* An association's total investment under this section shall not exceed ten percent of its assets.

§ 545.12-7 Gold transactions.

No Federal association shall engage in any transaction or activity involving gold (including gold coins) or gold-related instruments or securities.

General Operations

§ 545.13 Home office.

All operations of a Federal association shall be subject to direction from the home office.

§ 545.14 Branch offices.

(a) *General.* A branch office of a Federal association is any office other than its home office, agency office, data processing or administrative office, or a remote service unit. Except as limited by this section, any business of a federal association may be transacted at a branch office. Except as provided in paragraph (j) of this section, a Federal association shall not establish a branch office without prior written approval of the Board or its Principal Supervisory Agent.

(b) *Eligibility.* A Federal association may apply for a branch regardless of the number of branch applications it has pending before the Board, unless otherwise currently restricted under an agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain Board-approved application and notice forms and related instructions from the Supervisory Agent. An application is filed when four copies are delivered to the Supervisory Agent; the application is complete when the Supervisory Agent determines that all required information has been submitted. The Board shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The Supervisory Agent shall determine that the application is complete, the applicant is eligible, and that as a preliminary matter there is no basis for supervisory objection to the application, before giving direction for publication of notice.

(d) *Processing of application.* Processing of an application under this Part shall follow the procedures set forth in § 543.2(d), (e), and (f) of this Subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed branch office.

(e) *Approval by the Board or the Principal Supervisory Agent.* (1) The Board shall approve an application only if, in its opinion: (i) The branch can be established without undue injury to properly conducted existing local thrift and home-financing institutions; (ii) the policies, condition, and operation of the applicant afford no basis for supervisory objection; and (iii) the proposed branch will open with 12 months of approval unless otherwise allowed by the Board or the Supervisory Agent. In addition, in considering whether to approve an application, the Board will assess and take into account an institution's record of helping to meet the credit needs of its entire community, including low-and moderate-income neighborhoods, pursuant to Part 563e of this Chapter; assessment of an institution's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed by the Board pursuant to an existing agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an application for permission to establish a branch office if no substantial protest based on undue injury or Part 563e of this Chapter has been filed. Such application shall be deemed to be approved by the Board 30 days after notification that the application is complete, unless the applicant is notified by the Principal Supervisory Agent that objection has been taken on grounds set forth in paragraph (e)(1) of this section.

(f) *Approval of temporary or permanent location.* The Supervisory Agent may approve a temporary and/or permanent location of an approved branch office if the new location is in the immediate vicinity of the approved location and would not be more strongly competitive to any other properly conducted existing thrift and home-financing institution than at the approved location.

(g) *Offices not requiring prior written approval.* A Federal association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other FSLIC-insured institution, and the functions of which are limited to the ordinary functions performed at a teller-window.

(h) *Application for and maintenance of branch office after conversion, consolidation, purchase of bulk assets, or merger.* (1) An existing institution which converts to a Federal association may not maintain an existing office, and a Federal association which acquires offices through consolidation, purchase of bulk assets, or merger, may not maintain any acquired office, without written Board approval.

(2) A Federal association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least six months.

(3) The Board may deny a branch application if it determines that the applicant will not in fact operate such branch as an office of a Federal association.

(i) *Exclusive agreements prohibited.* A Federal association may not enter into any kind of agreement(s) that would result in the exclusive right to operate a branch office in a regional shopping center, as defined in § 571.11(b) of this Chapter, or in a majority of all locations of a chain store, or enter into an agreement under which other financial institutions would be excluded from operating offices ina regional shopping center or any location of a chain store where the Federal association does not have an office.

(j) *Effective date; effect on existing applications.* (1) This regulation applies to any branch application published for its first required notice on or after January 1, 1981; all other pending applications will be evaluated under the regulations in effect immediately prior to such date.

(2) An applicant may withdraw a pending application at any time without prejudice.

§ 545.14-1 Upgrading of approved branch office.

(a) *General.* A branch office is upgraded if the association is relieved of any of the restrictions imposed on operation of the office when it opened.

(b) *Notice.* A Federal association operating a limited, mobile, or satellite facility approved before January 1, 1981, or a branch office with conditions imposed on its operation shall notify the Supervisory Agent at least 30 days before upgrading the facility.

(c) *Approval.* If, within 30 days of receipt of the notice, the Supervisory Agent does not notify the association of supervisory objection which would require the association to submit an application or additional information before upgrading, the association may upgrade the facility.

(d) *Upgrading with change of location.* Any upgrading which involves a permanent change of location must be approved under § 545.15 of this Part.

§ 545.14-2 Closing a branch office.

A Federal association shall notify the Supervisory Agent not less than 60 days

or, in the case of an emergency, as early as circumstances permit, before closing a branch office.

§ 545.15 Change of office location and redesignation of offices.

(a) *General.* A Federal association shall not change the permanent location of its home office or any approved branch office, or redesignate a home or branch office, without prior approval of the Board or the Supervisory Agent.

(b) *Processing of application.* Processing of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 545.14 (c), (d), (e), (f), (g), (h), and (i) of this Part, except that (1) the applicant shall publish the required newspaper notice of application in (i) the applicant's home office community, (ii) the community to be served by the new office, and (iii) the community where the office is to be closed or the home office is to be redesignated as a branch; and (2) the applicant shall post notice of the application for 17 days from the date of first publication in a prominent location in the office to be closed or redesignated.

(c) *Approval by the Board.* An application shall be approved only if the applicant complies with the standards of § 545.14(h) of this Part.

(d) *Short-distance relocations.* (1) Notwithstanding paragraph (a) of this section, an association may change the permanent location of a home or branch office, without applying for Board approval, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.14 of this Part or paragaph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Standard Metropolitan Statistical Area ("SMSA") designated by the U.S. Department of Commerce:

(ii) The area within a one-mile radius of the site if it is located-within a SMSA designated by the U.S. Department of Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within an SMSA.

(2) An association shall notify the Supervisory Agent in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the Supervisory Agents notifies the association that the relocation does not satisfy the criteria in the first sentence of this paragraph (d), in which case the association must file an application and obtain Board approval in accordance with paragraphs (b) and (c) of this section. The Supervisory Agent shall provide a timely written acknowledgment to the association stating when notice was received. The Supervisory Agent's determination of whether the proposed relocation is within the market area and the short-distance relocation area of the former site shall be final.

(3) This paragraph (d) does not permit an office relocation that would violate a restriction imposed by the Board pursuant to an agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

§ 545.16 Agency.

(a) *General.* A Federal association may, without approval of the Board, to the extent authorized by its board of directors, establish or maintain, within the same state as the home office of the association or the same state as any branch office approved by the Board, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the association.

(b) *Additional services.* Except for payment of savings accounts and loan approval services, offering of any services not listed in paragraph (a) of this section may be approved by the Principal Supervisory Agent.

(c) *Records.* An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the association.

(d) *Notice.* A Federal association shall notify the Supervisory Agent when it opens or closes an agency.

§ 545.17 Fiscal agency.

A Federal association designated fiscal agent by the Secretary of the Treasury or, with Board approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

§ 545.17-1 Trustee.

A Federal association may act (a) as a trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954, and (b) as trustee or custodian of an individual retirement account within the meaning of section 408(a) of the Code, if the funds of the trust or account are invested only in the association's savings accounts or deposits or its obligations or securities. If state law authorizes a financial institution to hold funds in a trust capacity involving no active fiduciary duties a Federal association may so act. The association may receive reasonable compensation for acting in any such capacity.

§ 545.18 Adjustments to book value of assets.

If the Supervisory Agents determines that an asset's stated book value exceeds its value or that documentation in the association's loan file is inadequate to demonstrate that an investment made under §§ 545.6(f) is sound, the Supervisory Agent may require the association to charge off the asset immediately or establish and maintain a special reserve(s) equalling the overvaluation.

§ 545.19 Real estate owned.

A Federal association may not carry real estate on its books for a sum in excess of the total amount invested by the association on account of such real estate, including advances, costs, and improvements, but excluding accrued but uncollected interest.

§ 545.20 Accounting records.

(a) *Accounting practices.* Each Federal association shall use such forms and follow such accounting practices as the Board may require, and shall close its books at least annually as of the end of such month(s) as the association's board of directors may designate. The date of the association's annual closing shall be not less than 15 days or more than 3 months and 15 days before its annual meeting.

(b) *Maintenance of records.* An association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records, including control records, of its business transactions. The association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has (1) by resolution authorized the transfer or maintenance and (2) sent a certified copy of the resolution to the District Director—Examinations of its district. An association which determines to maintain any of its records by means of data processing services shall so notify the District Director—Examinations, in writing, at least 90 days before such maintenance will begin. Notification

shall include identification of the records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

§ 545.21 Monthly reports.

A Federal association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Board and available from any Federal Home Loan Bank. The association shall send a copy of the report to the Bank of which it is a member and two copies to the Board.

§ 545.22 Statement of condition.

Within the month after the annual closing of a Federal association's books, the association shall mail to all of its members, or if it is a Charter S association to all of its depositors and borrowers, at their last address appearing on the association's books, or publish in an English-language newspaper of general circulation in the county in which the association's home office is located, a statement of the association's condition as of such closing, on forms prescribed by the Board and available from any Federal Home Loan Bank or from the Board. Within 5 days after mailing or publishing the statement, the association shall send a certification to that effect signed by one of its executive officers, and a copy of the statement, to the Bank of which it is a member. This section shall not apply in a year in which the association sends to its voting members an annual report as required by § 563.45(a) of this Chapter.

§ 545.23 Indemnification of directors, officers and employees.

A Federal association shall indemnify its directors, officers, and employees in accordance with the requirements in § 522.72 of this Chapter regarding indemnification of persons by Federal Home Loan Banks. In applying that section "Federal association" shall be read for "Bank" and "Supervisory Agent" shall be read for "Secretary". Before making advance payment of expenses under § 522.72(e), the association shall obtain an agreement that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification. The requirements of § 522.72(f) notwithstanding, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by § 522.72(d) of this chapter.

§ 545.23-1 Employment contracts.

(a) *General.* A Federal savings and loan association with bylaws amended under § 544.6(k), a Federal mutual savings bank or a Charter S or Charter T association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

(b) *Contracts with other entities or persons.* An officer of an association shall have no other written or oral agreement concerning employment as an officer of the association with any entity or person other than the association.

§ 545.24 Advisory boards and committees.

A Federal association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

§ 545.25 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in § 555.17(a)(1) and (3) of this Subchapter.

(b) No Federal association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless:

(1) A specific state statute or regulation precludes Federal associations' service corporations (or wholly-owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a bona fide attempt to obtain any necessary approval (with or without instituting legal proceedings against state officials to compel approval) has been denied permission by the appropriate state licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the insurance business;

(3) Such state authorities follow an established and well-known policy of refusing to accept or approve such applications (the association need not demonstrate existence of such a policy by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such state law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate state agencies and/or the Board.

§ 545.26 Communication between members of a Federal mutual association.

(a) *Disclosure of membership list prohibited.* (1) As used in this section, "membership lists" means any document of the association containing: (i) A list of members of the association; (ii) their addresses; (iii) their savings account or loan balances or records; or (iv) any data from which that information reasonably could be constructed.

(2) Federal mutual associations may not disclose in any manner, directly or indirectly, their membership lists to any person (other than officers of the association, or others employed by them, in the usual course of conducting the association's business) except with prior written approval of the Board.

(3) The Supervisory Agent may approve of disapprove requests made under paragraph (a)(2) of this section, and may specify terms and conditions of approval.

(b) *Right of inspection of member's own records.* A member of a Federal mutual association has the right to inspect the association's books and records pertaining solely to the member's own savings or borrowing account(s).

(c) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (d) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (e) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(d) *Member communication procedures.* If a member of a Federal mutual association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the association's members, the request shall be given at least 30 days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The association shall reply to the request within either—

(i) 14 days;

(ii) 10 days, if the communication is in connection with the annual meeting; or

(iii) 3 days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the association's members and the estimated reasonable cost to the association of mailing to them the proposed communication; or

(ii) Notification that the association has determined not to mail the communication because it is "improper", as defined in paragraph (e) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within 14 days;

(ii) Within 7 days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the Supervisory Agent two copies each of the requesting member's materials, the association's written statement, and any other relevant material. The materials shall be sent within (i) 14 days, (ii) 10 days if the communication is in connection with the annual meeting, or (iii) 3 days, if the communication is in connection with a special meeting, after the association receives the request for communication.

(e) *Improper communication.* A communication is an "improper communication" if it contains material which: (1) At the time and in the light of the circumstances under which it is made (i) is false or misleading with respect to any material fact or (ii) omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading; (2) relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party; (3) relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the association or is not within the control of the association; or (4) directly or indirectly and without expressed factual foundation (i) impugns character, integrity, or personal reputation, (ii) makes charges concerning improper, illegal, or immoral conduct, or (iii) makes statements impugning the stability and soundness of the association.

§ 545.27 Financial futures transactions.

A Federal association may engage in financial futures transactions in compliance with § 563.17–4 of this Chapter.

§ 545.28 Financial options transactions.

A Federal association may engage in financial options transactions in compliance with § 563.17–5 of this Chapter.

§ 545.29 Data-processing services.

(a) *Definition.* As used in this section, "data-processing services" means maintenance of bookkeeping, accounting, or other records primarily by mechanical or electronic methods.

(b) *Data-processing office.* (1) An association may establish or maintain a data-processing office with functions limited to providing data-processing services for its own use and/or primarily for other depository institutions without observing the application and approval procedures for branch offices set forth in this Part. Data processing services may be provided to others on a for-profit basis only if they are authorized by § 545.31(a) of this Part.

(2) An association may participate with others in establishing or maintaining a data-processing office: *Provided,* That the association may participate in establishing or maintaining a data-processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Board that it will permit and pay for such examination of the office as the Board deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

§ 545.30 Issuance of GNMA-guaranteed, mortgage-backed securities.

Without regard to any other provision of this part, a Federal association may, in accordance with regulations prescribed by the Government National Mortgage Association (GNMA) in 24 CFR Part 1665, Subpart A:

(a) Issue and sell trust certificates or other securities: (1) Backed by a trust or pool composed or mortgages insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, and (2) guaranteed as to principal and interest by GNMA under section 306(g) of the National Housing Act; and

(b) Do all things necessary and proper for carrying out such issuance and sale.

§ 545.31 Correspondent services and accounts.

(a) *General.* A Federal association may provide correspondent services primarily to other depository institutions to the extent such activity is consistent with the purposes set forth in the Act and does not violate other regulations in this Chapter or any other provisions of law.

(b) *Correspondent accounts.* An association may receive noninterest-bearing deposits from correspondent institutions for use as compensating balances, for settlement purposes, or for other purposes incidental to a correspondent relationship. Such deposits may be payable on demand and subject to withdrawal by negotiable or transferable instrument, order, or authorization. Such deposits shall not give rise to voting rights or other rights of membership in a Federal mutual association.

§ 545.32 Remote Service Units (RSUs)

(a) *Definitions.* As used in this section—

(1) "Generic data" means statistical information which does not identify any individual accountholder.

(2) "Personal security identifier" (PSI) means any word, number, or other security identifier essential for an

accountholder to gain access to an account.

(3) "Remote service unit" (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal association under § 545.14 *et seq.* of this Part.

(4) "RSU account" means a savings or loan account that may be accessed through use of an RSU.

(b) *General.* Subject to the requirements of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account or establish a loan account.

(c) *RSU access techniques.* A Federal association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activate an RSU shall bear the words "Not Transferable" or their equivalent. A passbook may not be such a device.

(d) *Service charges.* A Federal association may impose service charges for RSU financial services.

(e) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties, other than the Board or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552(a). A Federal association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

(f) *Bonding.* A Federal association shall take all steps necessary to protect its interest in financial services processed at each RSU, including obtaining available fidelity, forgery, and other appropriate insurance.

(g) *Security.* A Federal association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 563a of this Chapter as though such units were offices, as defined in § 563a.1 of said Part, except to the extent that an association satisfies the Board's Supervisory Agent that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Board's Supervisory Agent must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(h) *Board supervision.* A Federal association may share an RSU controlled by an institution not subject to examination by a Federal regulatory agency only if such institution has agreed in writing that the RSU is subject to such examination by the Board as its deems necessary.

PART 555—BOARD RULINGS

13. Amend § 555.3 by removing paragraph (b) thereof, redesignating paragraph (c) as paragraph (b) and revising the first sentence of paragraph (a) as follows:

§ 555.3 Real estate.

(a) For lending purposes, a motel is generally considered "improved nonresidential real estate." * * *

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14. Revise § 555.11 as follows:

§ 555.11 Loans for acquisition and development of land.

A Federal association may make a loan under § 545.6(c) of this Subchapter to finance development of land to which the borrower already has title, but it may not make a development loan under that section to finance the purchase of land already completely developed into building sites.

15. Amend § 555.15 by removing all refernces to "§ 545.8–5(b)" and inserting in their place "§ 545.6–7(d)", and by amending the first sentence to read as follows:

§ 555.15 Prepayment penalty on mortgage loans.

Section 545.6–7(d) makes clear that, with the exception of certain instances enumerated therein, the charging of a prepayment penalty is a matter of contract between a Federal association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. * * *

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16. Add a new § 555.19 as follows:

§ 555.19 Receipt of interest expressed as a percentage of the income from the security property.

Pursuant to § 545.6 of this Subchapter a Federal association may make loans on the security of residential or nonresidential real estate. With limited exceptions, Federal associations lack the statutory authority to acquire an equity interest in real estate and, accordingly, cannot, as part of a loan transaction, acquire an ownership interest in the security property. The issue has arisen as to whether the receipt of a share of the income generated by the security property, or any similar participation with the borrower in the project, would constitute the acquisition of an equity interest in the security property.

The Board has determined that the receipt of such income should not be considered an equity interest if the income in substance constitutes no more than a part of the compensation received for the use of the association's funds. Accordingly, if an association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest in the form of a share of the income. The means by which an association calculates its share of the income (i.e., a percentage of the gross or net receipts, or of the appreciation of the property) would therefore not be a material consideration in determining whether the share consititutes an equity interest in the property.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

17. Amend § 561.15 by revising paragraphs (g) through (i) paragraph (k) and the introductory text of paragraph (j) as follows:

§ 561.15 Scheduled items.

* * * * *

(g) Assets acquired in exhange for any of the scheduled items described in this section except (1) securities, if the market value of a security when it is acquired at least equals its unpaid principal balance, or (2) securities that qualify as liquid assets under § 523.10(g) of this Chapter.

(h) Assets transferred by an insured institution to a service corporation referred to in § 545.9–1 of this Chapter, or to any other corporation in which an insured institution has an investment, to the same extent that they, or the amount invested therein, would be counted as scheduled items if not transferred.

(i) The amount invested in personal property acquired through enforcement of a security interest, including manufactured homes and any personal property in the possession of any servicing company or dealer acting on behalf of an insured institution but excluding personal property owned pending transfer to an issuing or guaranteeing agency of the U.S. Government.

(j) The unpaid principal balance of any loan secured by, and any contract for the sale of, personal property described in paragraph (i) of this section, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value, including any installed equipment, of the personal property as established at the time of sale in a dealer's market or by appraisal; except that, with respect to loans secured by or contracts for the sale of manufactured homes, only 20 percent of the unpaid principal balance of any such loan or contract will be included in "scheduled items" if all of the following requirements are met:* * *

(k) For purposes of this section, a lease made or otherwise invested in by an insured institution that conforms to the description of a financing lease, as set out in § 545.10 of this Chapter, shall be treated as if it were a loan secured by the type of property leased.

* * * * *

PART 563—OPERATIONS

18. Amend § 563.3–3 by revising paragraph (c) as follows:

§ 563.3–3 Eurodollar deposits.

* * * * *

(c) *Collateralization of certificates.* An institution may give security for Eurodollar deposits subject to the provisions of § 563.8–2 of this Part.

* * * * *

19. Amend § 563.8 by revising paragraph (c) as follows:

§ 563.8 Borrowing limitations.

* * * * *

(c) An institution may give security for borrowings other than from a Federal Home Loan Bank or state-chartered central reserve institution subject to the provisions of § 563.8–2 of this Part.

* * * * *

20. Add a new § 563.8–2 as follows:

§ 563.8–2 Corporation's right of purchase.

(a) *General rule.* For any security given by an insured institution other than for borrowings from a Federal Home Loan Bank or state-chartered central reserve institution, the terms of the security agreement or other documentation shall provide that the Corporation receive prompt written notification of any default on the obligation and, before a sale or other disposition of any portion of the collateral, that the Corporation shall have thirty (30) days after receipt of written notice of the proposed sale or other disposition to exercise a right to repurchase the collateral at the price to be paid at the sale or to acquire the collateral at the value to be assigned to it in any other disposition.

(b) *Exceptions.* The notice and right of purchase required by paragraph (a) of this section shall not apply to collateral consisting of liquid assets as defined in § 523.10 of this Chapter or collateral that would qualify as liquid assets but for its remaining term to maturity.

21. Revise paragraphs (a) and (b) of § 563.9–3 as follows:

§ 563.9–3 Loans to one borrower.

(a) *Definitions used in this section.* (1) The term "one borrower" means (i) any person or entity that is, or that upon the making of a loan will become, obligor on a loan, (ii) nominees of such obligor, (iii) all persons, trusts, partnerships, syndicates, and corporations of which such obligor is a nominee or a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, and (iv) if such obligor is a trust, partnership, syndicate, or corporation, all trusts, partnerships, syndicates, and corporations of which any beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock of such obligor.

(2) *Outstanding loans.* The term "outstanding loans" means the original amounts loaned by an insured institution plus any additional advances and interest due and upaid, less repayments and participating interests sold and exclusive of any loan of the security of such institution's savings accounts or real estate the title to which has been conveyed to a bona fide purchaser of such real estate. The term does not include loan commitments.

(3) *Outstanding commercial loans to one borrower.* (i) The term "outstanding commercial loans to one borrower" means: (*a*) outstanding loans to one borrower for commercial, corporate, business, or agricultural purposes, unless fully secured by real estate or one or more deposit accounts; (*b*) investments in commercial paper and corporate debt securities of one issuer; (*c*) financing leases, to one lessee made for commercial, corporate, business, or agricultural purposes and satisfying the criteria set forth in § 545.10(a)(1) of this Chapter; and (*d*) standby letters of credit issued for one account party for commercial, corporate, business, or agricultural purposes.

(ii) For purposes of this definition, the terms "one issuer," "one lessee," and "one account party" shall be construed in accordance with the principles used to define "one borrower" in subparagraph (1) of this paragraph.

(iii) The term "commercial loans to one borrower" includes the portion of commercial loans to one borrower by an institution's service corporation affiliate calculated *pro rata* on the basis of the percentage of the service corporation's stock owned by the institution.

(4) *Unimpaired capital and unimpaired suplus.* The term "unimpaired capital and unimpaired surplus" means regulatory net worth plus specific reserves for loan losses, less appraised equity capital, as set forth in an institution's most recent Semiannual Financial Report.

(5) *Standby letter of credit.* The term "standby letter of credit" means any letter of credit, or similar arrangement however named or described, that represents an obligation of the issuer to the beneficiary to repay money borrowed by or advanced to or for the account of the account party, to make payment on account of any indebtedness undertaken by the account party, or to make payment on account of any default by the account party in the performance of an obligation. A letter of

credit is not a "standby letter of credit" if, prior to or at the time of issuance:

(i) The issuer is paid an amount equal to its maximum liability under the letter of credit; or

(ii) The issuer has set aside sufficient funds in a segregated deposit account, clearly designated for that purpose, to cover the issuer's maximum liability under the letter of credit.

(b) *Limitations.*—(1) *Aggregate loans.* No insured institution shall have outstanding any loan to one borrower, as defined in paragraph (a) of this section, if the sum of (1) the amount of such loan and (2) the total balances of all outstanding loans owed to such insitution and its service corporation affiliates by such borrower exceeds an amount equal to 10 percent of such institution's withdrawable accounts or an amount equal to such institution's net worth, whichever amount is less: *Provided,* That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of paragraphs (b) (1) and (2) of this section does not exceed $200,000 and, beginning on January 1, 1982, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous 12 months as shown in the November-to-November index, or if such loan is secured by a first lien on real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended.

(2) *Commercial loans.* No insured institution may have outstanding at one time commercial loans to one borrower in excess of the amount a national bank having an identical unimpaired capital and unimpaired surplus could lend such borrower. The general rule stated in section 5200 of the Revised Statutes (12 U.S.C. 84) is that total loans and extensions of credit by a national bank to one borrower are limited to 10 percent of the bank's unimpaired capital and unimpaired surplus prior to April 14, 1982, and 15 percent, plus an additional 10 percent for fully secured loans, thereafter. Several exceptions to these limits are set forth in section 5200; and additional limitations on loans to one borrower are found in sections 11(m) and 13 of the Federal Reserve Act (12 U.S.C. 248(m), 372). All investments in commercial paper of one issuer shall be included for purposes of calculating the loans-to-one-borrower limitations of section 5200 of the Revised Statutes, notwithstanding the exception stated therein.

* * * * *

(Title III, Pub. L. No. 97-320, 96 Stat. 1469, amending 12 U.S.C. 1461 *et seq.*; Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947; 3 CFR 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-1021 Filed 1-18-83; 8:45 am]

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12 CFR Parts 545, 556, 590, and 591

[No. 83-17]

Preemption of State Due-on-Sale Laws

January 13, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") proposes to revise its regulations pertaining to preemption of state laws restricting the use of due-on-sale clauses with regard to both federally and non-federally chartered lenders, to implement section 341 of the Garn-St Germain Depository Institutions Act of 1982 ("Act"). The Act provides for federal preemption of all state laws restricting the right of any lender to exercise its contractual option to declare immediately due and payable sums secured by the lender's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the lender's prior written consent. The revisions would: (1) Describe real property lenders subject to the statute and regulations; (2) restate the right of federally-chartered associations and savings banks to exercise such option, with the option governed exclusively by the terms of the loan contract; (3) provide for preemption of state law with regard to all other lenders of real property loans; (4) provide, as to lenders other than federally-chartered savings and loan associations and savings banks, a "window period" where preemption would not apply, for loans made or assumed during the period beginning on the date a state law or judicial decision prohibited exercise of due-on-sale clauses and ending October 15, 1982; (5) provide, as to all lenders, a list of circumstances, involving transfers otherwise subject to the general preemption, in which lenders shall not exercise the due-on-sale clause; and (6) provide notice that the Board will issue interpretations of the statute upon written request and explain the procedure for filing such requests.

DATES: Comments must be received by March 18, 1983.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Gwenn Hibbs, Deputy Director, Legislative Counsel (202–377–6448), Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: As authorized under section 341(e)(1) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469, 1507, the Board is proposing revisions to its regulations governing the preemption of state laws restricting the exercise of due-on-sale clauses by federal associations, and is proposing to adopt new regulations regarding preemption of such laws with regard to all other lenders.

The Board's current due-on-sale clause regulations are codified in 12 CFR 545.8–3(f), (g) and 556.9. Section 545.8–3(f), promulgated in 1976 (initially codified at 12 CFR 545.8–11(f)), expressly affirmed the continued right of federal associations to exercise due-on-sale clauses notwithstanding restrictive state laws, and § 545.8–3(g) set out four circumstances in which a federal association could not exercise the due-on-sale option with regard to future loans on homes occupied or to be occupied by the borrower. 41 FR 18288; *see also,* 4 FR 39124 (1981).

The express language of section 545.8–3(f) was deemed a desirable clarification of pre-existing Board policy on the due-on-sale issue, due to increasing controversy as to the rights of federal associations regarding due-on-sale clauses. *See* 41 FR 6283, 6285 (1976). Prior to 1976, the Board had no regulation which specifically mentioned due-on-sale clauses. However, the Board had affirmed the right of federal associations to use such clauses, notwithstanding restrictive state law, pursuant to a regulation in effect since 1948 which specifically required that each "loan contract" of a federal savings and loan association "shall provide for full protection to the Federal association." 12 CFR 545.6–11 (1975); Advisory Opinion of Federal Home Loan Bank Board, Resolution No. 75–647, *In the Matter of Scott v. Mission Federal Savings and Loan Association.*

The preemptive effect and validity of the 1976 Board regulation as to federal

associations were upheld by the Supreme Court in *Fidelity Federal Savings and Loan Association* v. *de la Cuesta*, 102 S. Ct. 3014 (1982).

Aside from the *de la Cuesta* ruling on the Board's regulations governing federal associations, there are no judicial decisions construing the authority of other federal financial institutions' supervisors to preempt state laws restricting the use of due-on-sale clauses. However, the National Credit Union Administration (NCUA) Board did promulgate a preemptive regulation for federally-chartered credit unions (12 CFR 701.21–6(d) (1982)), which included restrictions on exercise on due-on-sale clauses parallel to those contained in § 545.8–3(g). The Office of the Comptroller of the Currency (OCC) issued proposed preemptive regulations for national banks in September 1981, but has not yet taken final action on the proposal. 46 FR 46964 (1981). The proposal contained no limitations on exercise of the clause by national banks parallel to those applicable to federal associations under § 545.8–3(g).

Prior to enactment of the Garn-St Germain Act on October 15, 1982, there was no uniform national policy governing the use of due-on-sale clauses by either federally or non-federally chartered lenders. Section 341 of the Act established such a uniform policy, affirming the federal preemption of state due-on-sale prohibitions or restrictions (by statute or judicial decision) afforded federal associations, and generally extended that preemption to all other lenders making real property loans, whether such loans were commercial or residential. Act section 341(b)(1), (c)(2)(C).

The statutory federal preemption is not, however, a "blanket" federal preemption for all financial institutions. S. REP. NO. 536, 97th Cong. 2d Sess. 22 (1982) (hereafter "S. REP."). For loans originated by financial institutions other than federal associations and federal savings banks, Congress created a "window period" exception to the federal preemption for mortgages originated or assumed after state action prohibited the enforcement due-on-sale clauses.

The statutory language defines the window period as beginning on the date state law prohibited the exercise of the clause, and ending on October 15, 1982. Act section 341(c)(1). Loans originated by a state-chartered institution or assumed on or after the opening date of the window period will generally be subject to state law prohibitions for three years from the date of enactment of the new legislation, *unless* the state legislature (or, in the case of national banks, the OCC, and in the case of federal credit unions, the NCUA) takes action to regulate such window-period loans during a three-year period commencing on the effective date of the new legislation. States that do not have window periods may not take action to restrict due-on-sale enforcement, and states with window periods may take action only with respect to the window-period loans. S. REP. at 23. If a state, the OCC, or NCUA elects to take no action during the three-year period, the federal preemption would become effective three years after the date of enactment and due-on-sale clauses in window-period loans would become fully enforceable upon the *transfer* of such loans on or after October 15, 1985. Act section 341(c)(1). Subsequent to passage of the Act, the NCUA Board issued regulations regarding window-period loans made by federal credit unions and preempted state law applicable to such loans in cases of transfers made after November 18, 1982. 47 FR 54425, 54428 (1982).

The proposed regulations are designed to restate and clarify, where necessary, the basic statutory framework set out in Act section 341. With regard to current Board regulations on due-on-sale, the revisions also consolidate and simplify the provisions of §§ 545.8–3(f), (g) and 556.9, which are overlapping to some extent.

A description of each of the most significant revisions proposed by the Board follows: The Board requests comments on the appropriateness of the proposed clarifications and amplification of the statutory framework, and whether the proposals adequately serve the stated regulatory objectives.

Definitions

1. *Lender.* The proposed regulation reflects Congressional intent that the statutory definition of lender, which speaks in terms of "a person or government agency making a real property loan," is to be interpreted expansively to include individuals and all manner of corporate and governmental entities extending mortgage credit. The entities listed in the regulation follow the language of the legislative history; however, the enumeration is intended to be representative rather than exhaustive.

2. *Loan secured by a lien on real property; Loan secured by a lien on stock in a residential cooperative housing corporation; Loan secured by a lien on a residential manufactured home, whether real or personal property.* The definitions of these terms are adapted from definitions in § 590.2 (Usury Preemption) relating to certain loans secured by first liens on various loans. The proposed definitions vary significantly from Part 590 only in the omission of the "first lien" requirement.

3. *Residential manufactured home.* This definition incorporates the language of § 590.2(g), which the proposed amendments would revise to follow the definition in section 603(6) of the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5402(6), as amended in 1980. The revision is necessary to update § 590.2(g), which currently follows the language of 42 U.S.C. 5402(6) as originally enacted in 1974.

4. *Reverse mortgage.* Act section 341(e)(2) provides that, notwithstanding the general prohibitions on the exercise of a due-on-sale clause set out in Act section 341(d), Board regulations may permit exercise of such clauses with respect to a real property loan and related agreement "pursuant to which a borrower obtains the right to receive future income." The Board believes that this language is most appropriately used to authorize exercise of the due-on-sale clause in the case of "reverse mortgages," as explained in more detail below. The definition proposed here closely follows the language describing "reverse annuity mortgage" used in prior § 545.6–4(c)(1) (removed August 16, 1982, 47 FR 36620 (1982)), and provides sufficient flexibility to include instruments based on the same principle which may evolve in the future.

5. *Window-period loan.* The definition clarifies that state laws "prohibiting" the exercise of due-on-sale clauses, as set out in Act section 341(c)(1), are those which prohibit the unrestricted exercise of such clauses upon outright transfers of the property subject to the lien. This language follows legislative history concerning window-period loans. S. REP. at 22.

The definition also clarifies that the window-period does not apply to any loan originated by a federal association. The express language of Act section 341(c)(2)(C) and the legislative history of the Act § 341 provide that due-on-sale practices of federal thrifts will continue to be governed exclusively by the regulatory authority of the Board. However, the history also provides that the identity of the lender at the time the loan was originated determines whether a loan is subject to the window-period restrictions. Thus, where a loan is originated by a state-chartered savings and loan association, during the window period, and that association subsequently converts to a federally-chartered thrift, that loan will be subject to any applicable state due-on-sale

restrictions for three years, unless state action provides other treatment for such loans. S. REP. at 24, 57–58.

Finally, it should be noted that, consistent with the express statutory language of Act section 341(c)(1), the regulation recognizes that window periods are created and state law which may affect real property loans originated in the state pursuant to section 341(c)(1)(A) is limited to the adoption of state statutes or constitutional provisions, and certain judicial decisions. Restrictions adopted by state voters through the referendum process do not create window periods.

Preemption—Federal Associations

Regulations providing for preemption of state due-on-sale laws as applied to federal associations are currently found in §§ 545.8–3(f), (g) and 556.9 of the Federal Savings and Loan System Regulations. Section 545.8–3(f) provides the basic preemption authority as to due-on-sale clauses, while § 545.8–3(g) lists certain circumstances applicable to loans made after July 31, 1976, in which a federal association may not exercise its due-on-sale option, prohibits the assessment of a prepayment fee when the due-on-sale clause is invoked, and provides for a waiver of the due-on-sale option as to a specific transfer if, prior to the transfer, the association and prospective transferor agree in writing that the transferor's credit is satisfactory and that the transferor will pay an interest rate requested by the association.

Section 556.9 sets forth additional non-mandatory policy guidelines regarding disclosure of imposition of late charges, prepayment charges, and due-on-sale clauses; sets forth additional circumstances in which federal associations should refrain from exercising the due-on-sale option, and restates and reaffirms the Board's position regarding preemption of state due-on-sale restrictions for federal associations.

The Board proposes to consolidate and simplify the current regulations, which are overlapping to some degree, by eliminating paragraphs (f) and (g) of § 545.8–3 and paragraphs (c) through (f) of § 556.9.[1] The text of paragraph (f) of § 545.8–3 would be recodified as § 591.3 (a) and (b). The language would be changed in two ways. The first sentence of new § 591.3(a) would be revised by adding language clarifying that the preemption applies with regard to all loans which have been or will be originated by a federal association. This change reflects the language of the Act, as discussed earlier in this proposal. Since the Act also expressly provides that the various window-period and retroactive transfer provisions of section 341(c) do not apply to loans "originated" by federal associations and federal savings banks (Act section 341(c)(2)(C)), the premption authority previously codified in § 545.8–3(f) would be amended to clarify that any insured institution or other lender holding a mortgage loan originated by a federal association may exercise a due-on-sale clause contained in the contract without regard to restrictive state law.

This result is appropriate for two reasons. First, the express statutory language and legislative history compel such treatment. Second, such a result fully comports with underlying Congressional intent to allow unrestricted exercise of due-on-sale clauses based on the borrower's expectations and reliance on contract terms as they existed at the time of origination. Where a borrower has entered a loan contract with a federal association containing a due-on-sale clause, he or she cannot rely upon the status of the contract changing simply because the loan may be sold subsequently to a state-chartered association or other lender in the secondary market. Conversely where the borrower's original contract was with a state-chartered association, there is a protected reliance on the fact that the due-on-sale clause cannot be exercised if state law would have prevented it at the time of origination.

Second, the second sentence of paragraph (f) of § 545.8–3 would be revised to clarify that exercise of the clause is limited by the restrictions set out in new § 591.5, which incorporates the statutory proscriptions on the exercise of due-on-sale clauses of the Act section 341(d) and the regulatory restrictions contained in § 545.8–3(g).

Preemption—All Other Lenders

Proposed new § 591.4 provides for preemption of state due-on-sale restrictions for lenders holding loans not originated by federal associations. The provisions setting out restrictions on retroactive exercise of such clauses, and limiting the use of the clauses during the window period, basically follow the statutory language of Act section 341(c), with minor additions to clarify that the restrictions apply only to loans not originated by a federal association.

The Board's proposal does not contain language paralleling the statutory "encouragement" of allowing "blended rate" assumptions for federal associations or other lenders. Neither does it provide language paralleling the statutory proviso that a lender subject to window-period provisions may nevertheless invoke a due-on-sale clause if a prospective transferor fails to meet the lender's customary credit standards. The Board has tentatively determined that implementing language in these two instances is not necessary in view of the self-explanatory nature of Act sections 341(b)(3) and 341(c)(2)(B). The Board seeks comments on whether specific procedures or clarification in either case would be helpful for lenders.

Due-on-Sale Restrictions

New paragraph (a) of proposed § 591.5 recodifies with some revisions the second sentence of paragraph (f)(2) of current § 556.9. In view of the vesting of rulemaking authority regarding Act section 341 solely in the Board (in consultation with the NCUA Board and the OCC) pursuant to Act section 341(e)(1), the language has been recodified to reflect the fact that Board regulations regarding restrictions on due-on-sale practices are the exclusive authority governing all loans covered by the statutory due-on-sale preemption. An exception from the preemptive effect of Board regulations is made for "window period" state laws affecting nonfederally chartered entities, and for regulations affecting national banks which may be promulgated by the OCC and for regulations already promulgated for federal credit unions by the NCUA Board pursuant to Act section 341(c)(1)(B) and implementing proposed § 591.4(b)(1)(ii).

Paragraph (b) of proposed § 591.5 sets out a list of statutory restrictions on the exercise of a due-on-sale option, which would apply to loans originated by all lenders, including window period loans. While the list of restrictions is substantially similar to the circumstances listed in Act section 341(d), the Board proposes to make three modifications to the statutory scheme.

First, the restrictions listed in the statute would apply only to loans made on homes occupied or to be occupied by the borrower. Thus, construction, development, and other loans made for commercial purposes would not be subject to the list of restrictions. The Board believes this exclusion is

[1] The removal of paragraphs (f) and (g) of § 543.8–3 would become unnecessary if the Board takes final action regarding extensive revisions to Part 545 proposed on December 16 in Federal Home Loan Bank Board Resolution No. 82–813. The December 16 resolution would recodify the substance of paragraph (f) at proposed new § 545.6–7(b)(4), subject to the statutory requirements of Act § 341.

consistent with the Congressional purpose of providing restrictions on due-on-sale exercise to protect consumers. S. Rep. at 24–25.

In addition, the Board proposes that certain transfers rearranging ownership rights should be protected only where the transferee is a person who is currently occupying, or will occupy, the property. The occupancy requirement would also be mandated in the case of a borrower who transfers the property subject to the lien into an *inter vivos* trust. These limitations generally are intended to protect borrowers while preventing a transferee from withdrawing from occupancy and using the property for investment purposes. The Board does not believe that any legitimate consumer protection goals would be served in the latter case.

It should be noted that proposed subparagraphs (i)–(iv) of paragraph (b)(1) are substantially similar to the provisions of current § 545.8–3(g)(1) (i)–(iv), while proposed subparagraph (v) is substantially similar to the current policy statement in paragraph (c) of current § 556.9.

Paragraph (b)(1) of proposed § 591.5 represents a clarification of Act section 341(e)(2), which literally provides that regulations implementing the Act may, notwithstanding the restrictions list in section 341(d), permit a lender to exercise its due-on-sale option with respect to "a real property loan and any related agreement pursuant to which a borrower obtains the right to receive future income." The Board has determined that this authority can most appropriately be used to permit the exercise of a due-on-sale clause upon the transfer of a reverse annuity mortgage.

The regulatory limits set out in proposed new § 591.5(b) (2) and (3) simply recodify the portions of current regulations which restrict use of the due-on-sale clauses by federal associations and make them applicable to other lenders as well. Thus, paragraphs (b)(2) and (b)(3) recodify the proscription on assessment of prepayment charges and waiver of the due-on-sale clause pursuant to a written agreement with a prospective transferor which now appear at paragraphs (g) (2) and (3) of current § 545.8–3. As under current regulations, these limits would continue to apply only to loans made after July 31, 1976, with respect to federal associations, and to other lenders beginning with loans made after the effective date of any final action on this proposal.

Paragraph (c) of proposed § 591.5 incorporates the advisory language of current § 556.9(e). Paragraphs (c) and (d) of § 556.9 have been eliminated because generally superseded by the statutory restrictions in Act section 341(d) and proposed corresponding regulations at new § 591.5(b)(1).

Interpretations

Proposed § 591.6 would implement Act section 341(e)(1), which authorizes the Board, in consultation with the OCC and the NCUA Board, to issue rules and regulations and publish interpretations governing the implementation of Act section 341. Accordingly, pursuant to this process, the Board believes that it is appropriate to establish, either through interpretation or an expanded definition in proposed new paragraph 591.2(p), an exclusive list of those broad categories of laws which are of a type that, as a matter of federal law, can be said to be those "prohibiting the exercise" of due-on-sale clauses within the meaning of Act section 341(c)(1). Consistent with the legislative history of Act section 341, the Board solicits comment on whether the following types of laws should be regarded as the exclusive list of those which create window periods by virtue of prohibiting the "unrestricted exercise" of a due-on-sale clause upon outright transfer of the liened property (S. REP. at 23): (1) Those which allow use of the due-on-sale clause only where the lender's security interest is impaired; (2) those which permit use of the due-on-sale clause only where the person assuming the loan fails to meet customary credit standards; (3) those which condition use of the due-on-sale clause on the existence of "legitimate grounds" or similar circumstances; (4) those which restrict or disallow interest-rate changes during the term of the loan, or upon assumption; and (5) those which limit the fee a lender may charge for transfer of a loan. Any other types of burdens on the exercise of a due-on-sale clause would not be viewed as "prohibiting the exercise" of such clause, although they would be preempted pursuant to the broad express language of Act section 341(b) (1)–(2), which states that the rights and remedies of the parties shall be "exclusively" governed by the loan contract, except as provided in Act section 341(d). *See also,* 128 CONG. REC. S12235 (1982). The Board solicits comment on the appropriateness of such an approach to the "window period" issue, and as to the effectiveness of such an approach in providing additional certainty to lenders.

Balloon Payment Loans

Act section 341(g) provides that Board regulations restricting the use of a balloon payment loan shall not apply to any loan within the scope of section 341. In view of this language, the Board is proposing to revise § 590.4(e), which currently prohibits a creditor from making a balloon payment loan in connection with financing a residential manufactured home, if the creditor seeks to use the usury preemption authority of § 590.4(b). Under the proposed regulation, federal associations would be authorized to make "balloon payment" non-amortized or partially-amortized loans on residential manufactured homes subject to the cumulative consumer protection provisions governing such loans made by federal associations in § 545.6–2 [1] and those generally applicable in cases of usury preemption under § 590.4.

Lenders other than federal associations may make balloon payment loans subject to the general provisions of § 590.4 only to the extent authorized by other applicable federal or state law or regulation.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the proposed rule.* These elements have been incorporated elsewhere into the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule will apply.* The proposed rule will apply to all federally-chartered and insured depository institutions, all state-chartered and state-insured depository institutions, and all other government or corporate entities who fall within the definition of "lender" in Pub. L. 97–320, section 341(a)(2).

3. *Impact of the rule on small businesses.* The rule would not have a disproportionate effect on small businesses. By creating competitive parity between all lenders as to the use of due-on-sale clauses, the rule will benefit small lenders. Thus, it is expected that the proposed rule would have no significant economic impact on a substantial number of small entities.

4. *Overlapping or conflicting federal rules.* Any inconsistent state or federal law or regulation is superseded by the Board's proposed rule, and in particular by the regulatory authority granted exclusively to the Board under subsection (e)(1) of Pub. L. 97–320. That subsection grants the Board broad

[1] Proposed to be recodified at § 545.6(b)(1) under Federal Home Loan Bank Board Resolution No. 82–813 (December 16, 1982).

authority to promulgate regulations governing preemption of due-on-sale clauses by all lenders making real property loans. It is expected that any overlapping or inconsistency will be eliminated through revisions of other law after final consideration of this proposal.

5. *Alternatives to the proposed rules.* Most of the proposed provisions are mandated by statute; moreover, to the extent that any alternatives to the proposed rules were able to be considered, they are discussed elsewhere in the supplementary information regarding the proposal.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80-584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposal.

List of Subjects in 12 CFR Parts 545, 566, 590, and 591

Savings and loan associations, Banks, Banking, Mortgages.

Accordingly, the Board hereby proposes to amend Parts 545 and 556, Subchapter C, and Part 590, Subchapter G, and to add new Part 591 to Subchapter G, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

§ 545.8-3 [Amended]

1. Amend § 545.8-3 by removing paragraphs (f) and (g).

PART 556—STATEMENTS OF POLICY

§ 556.9 [Amended]

2. Amend § 556.9 by removing from the first sentence of paragraph (b)(1) thereof the phrase "§ 545.8-3(g) of this subchapter" and inserting in its place "§ 591.5(b)(2) of Subchapter G of this Chapter", and by removing paragraphs (c), (d), (e) and (f) thereof.

3. Revise the title of Subchapter G to read as follows:

SUBCHAPTER G—PREEMPTION OF STATE LENDING RESTRICTIONS

4. Amend § 590.2 by revising paragraph (g), as follows:

§ 590.2 Definitions.

* * * * *

(g) "Residential manufactured home" shall mean a manufactured home as defined in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. § 5402(6), which is or will be used as a residence.

* * * * *

5. Revise paragraph (e) of § 590.4 to read as follows:

§ 590.4 Consumer protection rules for Federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

* * * * *

(e) *Balloon payments.*

(1) *Federal associations.* Federal association creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes, and such loans shall be governed by the provisions of this section and 545.6-2 of this Chapter.

(2) *Other creditors.* All other creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residental manufactured homes to the extent authorized by applicable federal or state law or regulation.

* * * * *

6. Add a new Part 591 to read as follows:

PART 591—PREEMPTION OF STATE DUE-ON-SALE LAWS

Sec.

Authority: Sec. 5, 48 Stat. 132 (12 U.S.C. § 1464), as amended by Sec. 401, 94 Stat. 160, Sec. 311, 97 Stat. 1496; Sec. 341, Pub. L. 97-320, 96 Stat. 1469, 1505-1507.

§ 591.1 Authority, purpose, and scope.

(a) *Authority.* This part contains regulations issued under section 5 of the Home Owners' Loan Act of 1933, as amended, and under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1505-1507.

(b) *Purpose and scope.* The purpose of this permanent preemption of state prohibitions on the exercise of due-on-sale clauses by all lenders, whether Federally or State chartered, is to reaffirm the authority of Federal savings and loan associations to enforce due-on-sale clauses, and to confer on other lenders generally comparable authority with respect to the exercise of such clauses. This Part applies to all real property loans, and all lenders making such loans, as those terms are defined in § 591.2 of this Part.

§ 591.2 Definitions.

For the purposes of this Part, the following definitions apply:

(a) "Assumed" includes transfers of real property subject to a real property loan by assumption, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers.

(b) "Due-on-sale clause" is a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent.

(c) "Federal association" has the same meaning as provided in § 541.8 of this Chapter.

(d) "Federal credit union" means a credit union chartered under the Federal Credit Union Act.

(e) "Home" has the same meaning as provided in § 541.11 of this Chapter.

(f) "Insured institution" has the same meaning as provided in § 561.1 of this Chapter.

(g) "Lender" means a person or government agency making a real property loan, including without limitation individuals, Federal savings and loan associations, state-chartered savings and loan associations, national banks, state-chartered banks and state-chartered mutual savings banks, mortgage banks, finance companies which make real property loans, manfactured-home retailers who extend credit, agencies of the Federal government, any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, and any assignee or transferee, in whole or part, of any such persons of agencies.

(h) "Loan secured by a lien on real property" means a loan on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real property (whether in fee, or in a leasehold or subleasehold extending, or renewable, automatically or at the option of the holder or the lender, for a period of at least five years beyond the maturity of the loan) specific security for the payment of the obligation secured by the instrument.

(i) "Loan secured by a lien on stock in a residential cooperative housing corporation" means a loan on the security of: (1) a security interest in stock or a membership certificate issued to a tenant stockholder or resident

member by a cooperative housing organization; and (2) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(j) "Loan secured by a lien on a residential manufactured home, whether real or personal property," means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(k) "Loan originated by" a Federal association or other lender means any loan for which the lender makes the first advance of credit thereunder, provided that such lender then held a benefical interest in the loan, whether as to the whole loan or a portion thereof, and whether or not the loan is later held by or transferred to another lender.

(l) "Real property loan" means any loan, mortgage, advance or credit sale secured by a lien on real property, the stock or membership certificate allocated to a dwelling unit in cooperative housing corporation, or a residential manufactured home, whether real or personal property.

(m) "Residential manufactured home" has the same menaning as provided in § 590.2(g) of this Subchapter.

(n) "Reverse mortgage" is any instrument providing periodic payments to homeowners based on accumulated equity, whether the payments are made directly by the lender, through purchase of an annuity through an insurance company or in any other manner. The loan may be due either upon a specific date or when a specified event occurs, such as the sale of the property or death of the borrower.

(o) "State" means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(p) A "window-period loan" is a real property loan, not originated by a Federal association, which was made or assumed during a window period created by state law. Such window period begins on the date a state adopted a constitutional provision or statute prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property subject to real property loans, or the date on which the highest court of such state has rendered a decision prohibiting such exercise (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment which applies statewide), and ends on October 15, 1982.

§ 591.3 Loans originated by Federal associations.

(a) With regard to any real property loan originated or to be originated by a Federal association, as a matter of contract between it and the borrower, an association may include a provision in its loan instrument allowing it, at its option, to declare immediately due and payable sums secured by the association's security instrument if all or any part of the real property (or an interest therein) securing the loan is sold or transferred by the borrower without the association's prior written consent.

(b) Except as provided in § 591.5 of this Part with respect to any such loan made on the security of a home occupied or to be occupied by the borrower, exercise by any lender of a due-on-sale clause in a loan originated by a Federal association shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the association and borrower at any and all times, shall be fixed and governed by that contract.

§ 591.4 Other lenders.

(a) Except as otherwise provided in paragraph (b) of this section and § 591.5 of this Part, the exercise of due-on-sale clauses in loans originated by lenders other than Federal associations shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by that contract.

(b)(1) In the case of a window-period loan, the provisions of paragraph (a) of this section shall apply only in the case of a transfer of the property subject to the real property loan and only if such transfer occurs on or after October 15, 1958: *Provided*, That: (i) with respect to real property loans originated in a state by lenders other than national banks, Federal associations, and Federal credit unions, a state may otherwise regulate such contracts by state law enacted prior to October 16, 1985, in which case paragraph (a) of this section shall apply only if such state law so provides; and (ii) with respect to real property loans originated by national banks and Federal credit unions, the Comptroller of the Currency or the National Credit Union Administration Board, respectively, may otherwise regulate such contracts by regulations promulgated prior to October 16, 1985, in which case paragraph (a) shall apply only if such regulation so provides.

(2) A lender may not exercise its option pursuant to a due-on-sale clause contained in a window-period loan in the case of a transfer of such a loan where the transfer occurred prior to October 15, 1982.

§ 591.5 Limitation on exercise of due-on-sale clauses.

(a) *General.* Except as provided in § 591.4(b) of this Part, due-on-sale practices of Federal associations and other lenders shall be governed exclusively by the Board's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) *Specific limitations.* With respect to any loan on the security of a home occupied or to be occupied by the borrower, a lender:

(1) Shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-or-sale clause upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of occupancy of the property;

(ii) The creation of a purchase-money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law or the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of greater than three years or a lease with an option to purchase will allow the exercise of a due-on-sale clause);

(v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is: (A) A transfer to a relative resulting from the death of the borrower; (B) a transfer where the spouse or child(ren) becomes an owner of the property; or (C) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property;

(vi) A transfer into an *inter vivos* trust in which the borrower is and remains the beneficiary and occupant of the property;

(2) Shall not impose a prepayment charge or equivalent fee for acceleration of the loan by exercise of a due-on-sale clause;

(3) Waives its option to exercise a due-on-sale clause as to a specific transfer if, before the transfer, the lender and the existing borrower's prospective

successor in interest agree in writing to an assumption of the loan and that interest on sums secured by the lender's security interest will be payable at a rate the lender shall request.

(4) Paragraphs (b) (2) and (3) of this section apply to all loans made by a Federal association after July 31, 1976, and to all loans made by other lenders after the effective date of this regulation.

(c) *Policy considerations.* Paragraph (b) of this section does not prohibit a lender from requiring, as a condition to an assumption, continued maintenance of mortgage insurance by the existing borrower's successor in interest, whether by endorsement of the existing policy or by entrance into a new contract of insurance.

§ 591.6 Interpretations.

The Board periodically will publish Interpretations under Section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1505-1507, in the **Federal Register** in response to written requests sent to the Secretary to the Board, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Sec. 341, 96 Stat. 1469, 1505-1507; Reorg. Plan No. 3 of 1947; 3 C.F.R., 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch.VII

Corporate Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: The purpose of this action is to solicit comments on a set of proposed bylaws for corporate Federal credit unions. Corporate Federal credit unions provide credit union services to other credit unions rather than to individuals. By establishing separate bylaws for corporate Federal credit unions, NCUA will be in a better position to address the needs of this type of credit union. This action is consistent with the provisions of the recently passed Garn-St Germain Depository Institutions Act of 1982 which authorized the NCUA Board to differentiate the activities of corporate credit unions from natural person credit unions through rules, regulations, and orders of the NCUA Board.

DATE: Comments must be received on or before March 3, 1983.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Mike Fischer, Director, Division of Supervision, Department of Supervision and Examination, telephone number (202) 357-1065.

SUPPLEMENTARY INFORMATION: Since corporate Federal credit unions provide services to other credit unions rather than to individuals, the operation of a corporate Federal credit union can differ greatly from that of a natural person credit union. Many of the provisions of the standard Federal Credit Union Bylaws, as they now exist, are not applicable to corporate credit unions and, conversely, the standard bylaws do not fully address the needs of the corporate credit unions. There is, then, a need for a set of bylaws that specifically addresses the operations of a corporate Federal credit union. For instance, the wording in the proposed Corporate Federal Credit Union Bylaws has been modified from that present in the standard Federal Credit Union Bylaws so that the aim and the mission of a corporate Federal credit union is clearly defined. This is set out in Article I, section 2, which states:

> The purpose of this credit union is to foster and promote the economic well-being, growth and development of its members through effective funds management, interlending, investment service and such other activities and services which may be of benefit to its members and are authorized either directly or indirectly by the Federal Credit Union Act and/or rules and regulations.

In addition to the above change, several other significant changes have been made, including:

(1) Wording changes to clarify that natural person members and designated representatives of member credit unions can serve as board and committee members. This change would enable a corporate Federal credit union to function without any natural person members.

(2) Wording changes to permit the board to establish the par value of shares. Under the proposed wording the board could establish a par value of shares tied to the asset size or to some other characteristic of the subscribing member.

(3) Wording changes to replace nominations from the floor with nominations by petition for vacancies on the board and the committees. The board would have the authority to specify the petition process.

(4) Wording changes to permit the board to establish the titles of board officers and management officials and to specify which board member can be compensated.

(5) Wording changes to replace the specific duties of the financial officer (treasurer) with general duties and to provide the financial officer with the authority to hire employees.

(6) Wording changes were also made or wording eliminated which pertained exclusively to natural person members, such as the requirement that loans must be for provident and productive purposes and be of benefit to the borrower and that the credit union should assist applicants in solving their financial problems.

By establishing separate bylaws for corporate credit unions, the National Credit Union Administration will be in a better position to address the needs of this type of institution. This action is consistent with the provisions of the recently passed Garn-St Germain Depository Institutions Act of 1982, which authorized the Board to differentiate the activities of corporate credit unions from natural person credit unions through rules, regulations, and orders of the Board.

The NCUA Board recognizes that there has been extensive coordination and communication between NCUA staff and the corporate credit union community in developing these proposed bylaws. The NCUA Board further recognizes and appreciates the efforts of several corporate credit union managers in preparing the initial draft of the proposed corporate bylaws.

However, the NCUA Board believes that there are significant issues which are of interest and concern to the credit union community at large. Therefore, the NCUA Board requests comment from all interested parties on the proposed bylaws as a whole, on specific provisions of the bylaws, and particularly on the changes identified above.

Accordingly, the NCUA Board requests comments on the Corporate Federal Credit Union Bylaws as set forth below.

Dated: January 11, 1983.

Authority: Sec. 526, Pub. L. 97-320, 96 Stat. 1535 (12 U.S.C. 1766(a)); 12 U.S.C. 1758.

Rosemary Brady,
Secretary of the NCUA Board.

Corporate Federal Credit Union Bylaws

December 1982.

Table of Contents

Article and Title

Bylaws

Article I. Name—Purposes

Section 1. The name of this credit union is as stated in Section 1 of the charter (approved organization certificate) of this credit union.

Section 2. The purpose of this credit union is to foster and promote the economic well-being, growth and development of its members through effective funds management, interlending, investment service and such other activities and services which may be of benefit to its members and are authorized directly or indirectly by the Federal Credit Union Act and/or rules and regulations.

Article II. Qualifications for Membership

Section 1. The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. Applications for membership eligibility under Section 5 of the charter shall be signed by the applicant on forms approved by the board. Upon approval of such an application by a majority of the directors or a majority ot the members of a duly authorized executive committee or by a membership officer and upon subscription to a share with par value as established by the board in Article III and the payment of a uniform entrance fee if required by the board, the applicant is admitted to membership. If a membership application is denied, the reasons therefor shall be furnished in writing to the applicant, upon written request.

Section 3. A number shall be assigned to each member as a means of identifying the member's account with the credit union.

Section 4. Membership of any member whose account contains less than the minimum required in Section 2 of this article is automatically terminated.

Section 5. The membership of members who are no longer within the field of membership on the day this bylaw is effective or thereafter is terminated.

Article III. Shares of Members

Section 1. The par value of each share shall be ———. Subscriptions to shares are payable at the time of subscription or in installments of at least ——— per month.

Section 2. The maximum amount of shares which may be held by any one member may be established from time to time by resolution of the board.

Section 3. Shares of a member may be transferred between the member's accounts or to another member in such manner as the board may prescribe. This section shall not be construed as a limitation on, or prohibition of, share drafts or other payment systems or programs.

Section 4. Unless otherwise provided by the board, shares may be withdrawn on any day when payment on shares may be made; *Provided, however,* That:

(a) No member may withdraw shareholdings that are pledged as required security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exeed the member's total primary and contingent liability to the credit union.

(b) Shareholdings may not be reduced below the amount of the member's primary or contingent liability to the credit union if that member is delinquent as a borrower, or if borrowers for whom that member is a comaker, endorser, or guarantor are delinquent, without written approval of the credit committee or loan officer, except that shares issued in trust are not subject to restrictions upon withdrawals except as stated in the trust agreement.

Section 5. Subject to applicable law, shares may be issued in a revocable or irrevocable trust with or without the credit union serving as trustee. Trusts may be established only by members but may be established for the benefit of nonmembers. Every trust shall be evidence by a trust agreement, a copy of which must be retained in the files of the credit union.

Section 6. The board shall have the right, at any time, to require members to give, in writing, not more than 60 days' notice of intention to withdraw the whole or any part of the amounts so paid in by them except for those amounts paid into share draft accounts and daily balance share accounts.

Article IV. Receipting for Money.

Section 1. Transactions involving the members of this credit union, including money paid in or out on accounts, shall be evidenced by a statement of account.

Section 2. Statement of accounts shall be presumed to be accurate unless a member objects in writing within ten (10) days of receipt of the statement.

Article V. Meeting of Members.

Section 1. The annual meeting of the members shall be held at such time and place as the board shall determine and announce in the notice.

Section 2. At least ten (10) days before the date of any annual or special meeting of the members, the recording officer shall cause written notice to be mailed to each member at the address that appears on the records of this credit union. Any meeting of the members, whether annual or special, may be held without prior notice, at any time or place, if all members entitled to vote and who are not present at such meeting shall, in writing, waive notice thereof, before, during, or after such meeting. At any meeting of the members, either annual or special, attendance at the meeting by the member, or a duly authorized representative of the member, shall constitute a waiver of notice of such meeting by the member.

Section 3. Special meetings of the members may be called by the executive officer or the supervisory committee as provided in these bylaws or by applicable law or regulation and may be held at any place permitted for the annual meeting. A special meeting shall be called by the executive officer within 45 days of receipt of a written request of at least 25 members or 5 percent of the members as of the day of request, whichever number is larger, provided, however, that a request of no more than 100 members shall be required. Notice shall be given as provided in Section 2 of this article and shall state the purpose for which it is to be held, and no business other than that related to this purpose shall be transacted at the meeting.

Section 4. Fifteen (15) members shall constitute a quorum at any annual or special meeting. If a quorum is not present on the date first designated for the meeting, said meeting shall be

adjourned for not less than seven (7) days or more than thirty (30) days, and a second notice shall be given to all members setting forth the date, time, and place of the adjourned meeting. The members then present shall constitute a quorum, regardless of the number of members present.

Article VI. Elections

Section 1. At least 30 days prior to each annual meeting, the executive officer shall appoint a nominating committee of not fewer than three from among the members and/or designated representatives of member credit unions. It shall be the duty of the nominating committee to nominate at least one eligible candidate for each vacancy, including any unexpired-term vacancy, for which elections are being held.

Section 2. After the nominations of the nominating committee have been placed before the members, the executive officer shall report any nominations by petition, submitted in accordance with procedures established by the board of directors. Such procedures shall be made available to any member upon request. Nominations shall then be closed; tellers shall be appointed by the executive officer; ballots shall be distributed; the vote shall be taken and tallied by the tellers; and, the results shall be announced. All elections shall be determined by plurality vote and shall be by ballot except where there is only one nominee for the office.

Section 3. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through a voting representative designated for the purpose. No voting representative may serve as a voting representative of more than one member. A trustee shall not be entitled to vote. Irrespective of the number of shares held, no member shall have more than one vote.

Section 4. The names and addresses of members of the board, executive officers, executive committee, and members of the credit and supervisory committees shall be forwarded to the Administration in accordance with the Act and regulations in such manner as may be required by said Administration.

Article VII. Board of Directors

Section 1. The board shall consist of ——— members elected from among the members and/or designated representatives of member credit unions. The number of directors may be changed to an odd number not fewer than five nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaw. A copy of the resolution of the board covering any increase or decrease in the number of directors shall be filed with the official copy of the bylaws of this credit union.

Section 2. Regular terms of office for directors shall be for periods of either 2 or 3 years as the board shall determine; provided, however, that all regular terms shall be for the same number of years and until the election and qualification of successors. The regular terms shall be so fixed at the beginning, or upon any increase or decrease in the number of directors, that approximately an equal number of regular terms shall expire at each annual meeting.

Section 3. Any vacancy on the board, credit committee, or supervisory committee shall be filled by vote of a majority of the directors then holding office. Directors and credit committee members so appointed shall hold office only until the next annual meeting, at which any unexpired terms shall be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee so appointed shall hold office until the first regular meeting of the board following the next annual meeting of members at which the regular term expires and until the appointment and qualification of their successors.

Section 4. A regular meeting of the board shall be held each month at the time and place fixed by resolution of the board; provided, however, that conference-telephone-call meetings may replace a regular meeting of the board under the conditions described in this section. Conference-telephone-call meetings may replace the regular monthly board meetings for 2 months during a calendar quarter. At least 7 days prior to each conference-telephone-call meeting, the recording office shall cause the following information to be distributed to each director:

(a) Minutes of the last meeting;

(b) Reports of officers, standing committees, or of any special committees;

(c) Special orders, or matters which have been assigned priority; and,

(d) Any written information on unfinished business or new business that has been given to the recording officer by any director.

Minutes of conference-call meetings must be signed by each conferee at the next regularly convened meeting of the board at which the conferee is present.

The executive officer or, in his absence, the ranking assistant executive officer may call a special meeting of the board at any time and shall do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the executive officer or, in his absence, the ranking assistant executive officer shall fix the time and the place of special meetings. Notice of all meetings shall be given in such manner as the board may from time to time by resolution prescribe.

Section 5. The board shall have the general direction and control of the affairs of this credit union and shall be responsible for establishing programs to achieve the purposes of this credit union as stated in Article I, section 2, of these bylaws.

Section 6. A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting thereof, but fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 7. If a director or a credit committee member fails to attend three consecutive regular meetings of the board or credit committee, respectively, or otherwise fails to perform any of the duties devolving upon him/her as a director or a credit committee member, his/her office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of his/her office, the board may, by resolution, designate another member of this credit union to act temporarily in his/her place. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 8. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union shall decide, at a special meeting held not fewer than 7 nor more than 14 days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee.

Section 9. No member of the board of directors may receive any compensation or benefit solely as a result or by virtue of service as a member of the board of directors. Notwithstanding the foregoing, a member of the board may be reimbursed for reasonable expenses

incurred in the performance of official duties.

Section 10. The board of directors shall determine that monthly financial statements are prepared showing the condition of this credit union. These financial statements shall be made available to members on a monthly basis in a manner deemed appropriate by the board.

Article VIII. Board Officers, Executive Committee, Investment Committee and Management Staff

Section 1. The board officers of this credit union shall be an executive officer, one or more assistant executive officers, a financial officer, and a recording officer, all of whom shall be elected by the board and from their number. The board shall determine the title and rank of each board officer and shall record them in the addendum to this article. One board officer, the ———, may be compensated for his services to such extent as may be determined by the board. If more than one assistant executive officer is elected, the board shall determine their rank as first assistant executive officer, second assistant executive officer, et cetera. The offices of financial officer and recording officer only may be held by the same person. Unless sooner removed as herein provided, the officers elected at the first meeting of the board shall hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. Board officers elected at the meeting of the board next following the annual meeting of the members, which shall be held not later than 7 days after the annual meeting, shall hold office for a term of 1 year and until the election and qualification of their respective successors; provided, however, that any person elected to fill a vacancy caused by the death, resignation, or removal of an officer shall be elected by the board to serve for the unexpired term of such officer and until his successor is duly elected and qualified.

Section 3. The executive officer shall preside at all meetings of the members and at all meetings of the board unless disqualified through suspension by the supervisory committee. He shall countersign all notes of this credit union and all checks, drafts, and other orders for disbursement of its funds unless the board, by resolution, has eliminated the requirement of countersigning. The executive officer shall also perform such other duties as customarily appertain to the office of the executive officer or as he may be directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. The ranking assistant executive officer available shall have and exercise all the powers, the authority, and the duties of the executive officer during the absence of the latter or his inability to act.

Section 5. Unless the board employs a separate management official, the financial officer shall be responsible for the day-to-day management of the credit union and shall have such authority and such powers as are necessary to conduct business from day to day. In addition, the financial officer shall have such other powers as may be specifically designated by the board of directors. If actually managing the credit union, the financial officer may be compensated as may be determined by the board. The financial officer may employ or designate one or more assistants, as well as other employees, and may authorize them to perform any of the duties devolving on the financial officer, including the signing of checks. When so designated by the financial officer or the board, any assistant may also act as financial officer during the temporary absence of the financial officer or in the event of the financial officer's inability to act.

Section 6. The board may employ a management official who shall not be a member of the board and who shall be under the direction and control of the board, and who shall have all of the duties, powers, rights and responsibilities of the financial officer described in Section 5. The board is empowered to enter into a management agreement, and the persons or entities with whom the board contracts may be compensated in accordance with the agreement. The board shall determine the title and the rank of each management official and shall record them in the addendum to this article.

Section 7. The recording officer shall cause to be prepared and maintained full and correct records of all meetings of the members and of the board, which records shall be prepared within 7 days after the respective meetings. The recording officer shall promptly inform the Administration in writing of any change in the address of the office of this credit union or the location of its principal records. The recording officer shall give, or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and shall perform such other duties as he/she may be directed by resolution of the board not inconsistent with the Act and regulations and these bylaws.

The board may employ one or more assistant recording officers, none of whom may also hold office as executive officer, assistant executive officer, or financial officer, and may authorize them under direction of the recording officer to perform any of the duties devolving on the recording officer.

Section 8. The board may appoint an executive committee of not fewer than three directors to act for it with respect to specifically delegated functions and subject to such limitations as prescribed by the board.

Section 9. The board may appoint one or more membership officers to approve applications for membership under such conditions as the board and these bylaws may prescribe. Such membership officer or officers may not be a person authorized to disburse funds.

Section 10. The board may appoint an investment committee composed of not less than two to have charge of making investments under rules and procedures established by the board.

Section 11. No member of the executive committee or investment committee, or membership officer may be compensated as such. Members of the executive committee, investment committee, and membership officers shall serve at the pleasure of the board of directors.

Addendum. The title and rank of the board officers and management officials of this credit union are as follows:

(a) The executive officer is to have the title of ————.

(b) The assistant executive officer is to have the title of ————.

(c) The financial officer is to have the title of ————.

(d) The assistant financial officer is to have the title of ————.

(e) The recording officer is to have the title of ————.

(f) The assistant recording officer is to have the title of ————.

(g) The management official is to have the title of ————.

(h) The assistant management official is to have the title of ————.

Article IX. Credit Committee

Section 1. The credit committee shall consist of —— members. Members of the credit committee shall be selected from among the members of the credit union and/or the designated representatives of member credit unions. The number of members of the credit committee may be changed to not fewer than three nor more than seven by resolution of the board. No reduction in

the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other action provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members shall be filed with the official copy of the bylaws of this credit union.

Section 2. Regular terms of office for credit committee members shall be for periods of either 2 or 3 years as the board shall determine; provided, however, that all regular terms shall be for the same number of years and until the election and qualification of successors. The regular terms shall be so fixed at the beginning, or upon any increase or decrease in the number of committee members, that approximately an equal number of regular terms shall expire at each annual meeting.

Section 3. The credit committee shall choose from their number a chairman and a secretary. The secretary of the committee shall prepare and maintain full and correct records of all actions taken by it, and such records shall be prepared within 3 days after the action. The offices of chairman and of secretary may be held by the same person.

Section 4. The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure and delegate its powers to such loan officers.

Section 6. The credit committee or loan officer shall inquire into the financial condition of each loan applicant. No loan or line of credit shall be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 7. Subject to the limits imposed by law, these bylaws, and the general policies of the board, the credit committee, or a loan officer, shall determine the security, if any, required for each application and the terms of repayment.

Article X. Supervisory Committee

Section 1. The supervisory committee shall be appointed by the board from among the members and/or from among the member credit unions' designated representatives. The board shall determine the number of members on the committee, which shall not be fewer than three nor more than five. No member of the credit committee or any employee of this credit union may be appointed to the committee. Regular terms of committee members shall be for periods of 1, 2, or 3 years as the board shall determine; provided, however, that all regular terms shall be for the same number of years and until the appointment and qualification of successors. The regular terms shall expire at the first regular meeting of the board following each annual meeting.

Section 2. The supervisory committee members shall choose from among their number a chairman and a secretary. The secretary of the supervisory committee shall prepare, maintain, and have custody of full and correct records of all actions taken by it. The offices of chairman and of secretary may be held by the same person.

Section 3. The supervisory committee shall cause to be made such audits and to prepare and submit such written reports as are required by the Act and regulations.

Section 4. The supervisory committee shall verify or cause to be verified the accounts of members in accordance with the Act and regulations.

Section 5. By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, executive officer, or member of the credit committee. In the event of any such suspension, the supervisory committee shall call a special meeting of the members to act on said suspension which meeting shall be held not fewer than 7 nor more than 14 days after such suspension. The chairman of the committee shall act as chairman of the meeting unless the members select another person to act as chairman.

Section 6. By the affirmative vote of a majority of its members, the supervisory committee may, after notification to the board, call a special meeting of the members to consider any violation of the provisions of the Act or of the regulations, or of the charter, or of the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

Article XI. Loans and Lines of Credit

Section 1. Loans shall be made in accordance with applicable law. Loans or lines of credit to a member, other than a member credit union, shall not be in excess of its shareholdings in this credit union unless otherwise authorized by applicable law.

Section 2. Within the limitations prescribed by applicable law, the board shall fix from time to time the interest rates on loans; the rate of interest refund, if any, to be made to members; the maximum maturities and terms of payment or amortization of loans to members; the security; and, the maximum amount which may be loaned.

Section 3. Lines of credit may be extended to members in accordance with applicable law. The board shall fix from time to time the interest rates, the maximum maturity, terms of payment or amortization, the security, and the maximum amount which may be loaned under a line of credit agreement within the limitations prescribed by applicable law.

Section 4. The aggregate amount of loans and lines of credit to any one member and the terms and conditions of such loans and lines of credit shall not exceed the limits permitted by applicable law.

Section 5. Subject to any limitations of applicable law, any member whose loan is delinquent may be required to pay a late charge in accordance with the loan agreement.

Article XII. Reserves

Section 1. All amounts as required by the Act and regulations shall be set aside as a regular reserve; provided, however, that, when the regular reserve thus established shall reach the minimum balance required by the Act and regulations, no further transfers shall be required except up to such amounts permitted by law and as may be needed to maintain such minimum balance. Amounts in excess of the above requirements may be transferred to the regular reserve by authorization of the board. The regular reserve shall be used only for losses as authorized by law.

Section 2. In addition to the regular reserve, special reserves to protect the interests of members shall be established in accordance with the Act and regulations. The board may also authorize the establishment of any additional reserves which it deems necessary.

Article XIII. Dividends

The board shall establish dividend periods and declare dividends as permitted by law.

Article XIV. Deposit and Disbursement of Funds—Investments and Borrowing

Section 1. All funds of this credit union shall be deposited in such qualified depositories as the board may from time to time by resolution designate.

Section 2. All disbursements of funds of this credit union shall be made by means authorized by the board of directors.

Section 3. The funds of this credit union shall be invested in such manner as to obtain the best return while preserving any necessary liquidity and avoiding any unnecessary or excessive risk; provided, however, that the funds

of this credit union may not be placed in investments which are not authorized by law.

Section 4. The board may authorize borrowing and discounting operations on behalf of this credit union within the limitations of applicable law.

Article XV. Expulsion and Withdrawal

Section 1. A member may be expelled only in the manner provided by the Act. Expulsion or withdrawal shall not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, prior to their expulsion or withdrawal, shall be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting therefrom any amounts due from such members to this credit union.

Article XVI. Definitions

Section 1. When used in these bylaws the terms:

(a) "Act" means the Federal Credit Union Act, as amended.

(b) "Administration" means the National Credit Union Administration.

(c) "Regulation" or "regulations" means rules and regulations issued by the National Credit Union Administration.

(d) "Net earnings," for a given period, means the balance remaining after deducting from the gross income actually received during such period all expenses paid or payable during such period, and any losses sustained therein (as determined by the board) for which no specific reserve has been set aside. Amounts set aside during such period as a reserve shall not be deemed items of expense.

(e) "Paid in and unimpaired capital," as of a given date, means the balance of the paid-in shares account as of such date, less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings.

(f) "Surplus," as of a given date, means the credit balance of the undivided earnings account on such date after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom, as the case may be. Reserves shall not be considered as a part of the surplus.

(g) "Share" or "shares" means any amount deposited for the credit of a member or other account holder and includes, but is not limited to, share accounts, share certificate accounts, share draft accounts, and nonmember accounts (however denominated) as permitted by law.

Section 2. If included in the definition of the field of membership in the organization certificate (charter) of this credit union, the term or expression "organization of such members" means an organization or organizations composed of entities which are within the field of membership of this credit union.

Article XVII. General

Section 1. The officers, directors, members of committees, and employees of this credit union shall hold in confidence all transactions of this credit union with its members and all information respecting their business affairs, except to the extent deemed necessary by the board.

Section 2. No director, committee member, officer, agent, or employee of this credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he is directly or indirectly interested. In the event of the disqualification of any director respecting and matter presented to the board for deliberation or determination, such director shall withdraw from such deliberation or determination and, in such event, the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified director or directors, may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee or the supervisory committee, such committee member shall withdraw from such deliberation or determination.

Section 3. The board shall have the right, at any time, to impose fees for such services and activities as it deems necessary or desirable.

Article XVIII. Operations Following an Attack on the United States

Section 1. In the event of an attack upon the United States, the officers and employees of the credit union shall continue to conduct the affairs of the credit union under such guidance from the directors as may be available and subject to conformance with any governmental directives during the emergency.

Section 2. In the event of an attack upon the United States of sufficient severity to prevent the conduct and management of the affairs and business of the credit union by its regularly elected directors, officers, and properly constituted committees as contemplated by these bylaws, any three available members of the then incumbent board of directors shall constitute a quorm of the board of directors for the full conduct and management of the affairs and business of the credit union including the approval of loans to members if the regularly elected credit committee is not available. In the event of the unavailability at such time of three members of the board, the vacancies, in order to provide a quorum of three, shall be filled as follows:

(a) If the regularly elected executive officer or a regularly elected assistant executive officer is not available, the available person who is highest on the succession list for executive officer last authorized by the board of directors shall automatically become an acting director if he is not a member of the board and acting executive officer.

(b) If the regularly elected financial officer is not available, the available person who is highest on the succession list for financial officer last authorized by the board of directors shall automatically become an acting director if he is not a member of the board and acting financial officer.

(c) If a third director is necessary to make a quorum, he shall be the next highest available person on the succession list for executive officer or upon the exhaustion of such list, the next highest available person on the succession list for financial officer.

The quorum of the board of directors as regularly constituted or as constituted above shall appoint additional directors as necessary to provide for a full board of five members, provided that: If there is available an even number of regularly elected directors in excess of five, the board shall appoint one additional director, in which case, a quorum shall then be a majority of the full board thus constituted. Persons selected as provided in this section shall hold office only until their successors are elected at the next annual meeting or at a special meeting called for that purpose and until the qualification of their successors; provided that the person selected pursuant to subsection (a) shall hold office as acting executive officer and as acting director only until the regularly elected executive officer or a regularly elected assistant executive officer becomes available; and that the person selected pursuant to subsection (b) shall hold offices as acting financial officer and as acting director only until the regularly elected financial officer becomes available. This bylaw shall be subject to implementation by resolutions by the board of directors passed from time to time for that purpose, and any

provisions of these bylaws (other than this section) and any resolutions which are contrary to the provisions of this section or to the provisions of any such implementary resolutions shall be suspended until a regularly constituted board of directors can be obtained.

Section 3. In the event that the office of the credit union becomes unusable, as a result of an attack upon the United States, the credit union shall, if possible, establish temporary substitute quarters. The office of the credit union shall be established as soon as practicable thereafter at a suitable permanent location within the limits permitted by the charter of this credit union.

Article XIX. Amendments of Bylaws and Charter

Section 1. Amendments of these bylaws may be adopted and amendments of the charter may be requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter shall become effective, however, until approved in writing by the Administration.

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CIVIL AERONAUTICS BOARD

14 CFR Part 223

[EDR-452; Econ. Regs. Docket: 41193.]

Free and Reduced-Rate Transportation

Dated: December 30, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to reorganize its rule that allows airlines to charge less than tariff rates in specified situations. This action is taken in light of recent regulatory changes and the "sunset" of domestic tariffs on January 1, 1983. The proposal would eliminate obsolete portions of the rule and codify various exemptions concerning free and reduced-rate transportation.

DATES: Comments by: March 18, 1983.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: February 1, 1983.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41193, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Section 403(a) of the Federal Aviation Act, 49 U.S.C. 1373(a), has required all airline fares and rates to be set forth in tariffs filed with the Board. These tariffs must also specify any conditions or restrictions applicable to the fares. Section 403(b)(1) of the Act prohibits airlines from charging a lesser or greater amount than that reflected in their tariffs on file with the Board. Section 403(b)(1), however, contains several exceptions to this prohibition, listing groups that are eligible to receive air transportation at less than tariff rates. These include airline employees and their immediate families, attorneys and witnesses attending legal proceedings involving the airline, and ministers, retirees, and the handicapped on a space available basis. In addition, section 416 of the Act authorizes the Board to grant exemptions from section 403 to permit airlines to offer free or reduced-rate air transportation to other groups. The Board has done so on several occasions. Most of these groups are listed in Part 223 of the Board's rules, 14 CFR Part 223.

The Board is now proposing to revise Part 223. In 1978 Congress enacted the Airline Deregulation Act, Pub. L. 95-504, 92 Stat. 1705, for the purpose of phasing out most of the Act's regulatory requirements. Under this statute, the tariff filing and compliance requirements for domestic fares will end on January 1, 1983. Section 1601(a)(2)(A), 49 U.S.C. 1551(a)(2)(A). Airlines will no longer file tariffs and will be able to charge any fare they wish for domestic travel. To allow for a gradual transition to domestic fare freedom, the Board exempted air carriers and travel agents from the Act's tariff requirements to the extent necessary to allow them to charge less than the tariff rate for domestic tickets. ER-1246, 46 FR 46787, September 23, 1981, *Aff'd per curiam, American Express Co.* v. *CAB*, D.C. Cir. No. 81-2067 (decided February 3, 1982). This effectively made everyone eligible for free and reduced-rate domestic travel, notwithstanding the limited number of exemptions in Part 223.

In light of these statutory and regulatory changes, much of Part 223 is obsolete. Part 223 is presently divided into three subparts. Subpart A contains definitions of key terms and a series of exemptions from the certification and tariff requirements that permit airlines to provide free and reduced-rate transportation to members of the designated groups. Subparts B and C list those for whom airlines are required to provide free transportation, as well as air traffic transportation on a limited basis.

As revised, Subpart A would continue to include the definitions that are still relevant. The exemption from section 401 of the Act that is now in § 223.2(e) would remain in Subpart A and would become § 223.2. The mandatory free transportation now in Subparts B and C would be moved to a new § 223.3 in Subpart A.

Subpart B, as revised, would cover only domestic air transportation. It would state that airlines are free to charge any fare for domestic travel. This conforms Part 223 to the changes in Part 221 that were made of ER-1246 as discussed above, and to the sunset of section 403 of the Act for domestic transportation at the end of 1982.

Neither ER-1246 nor the sunset provision of the Act apply to foreign air transportation. The exemptions from section 403 that are now in Subpart A of Part 223 therefore are still necessary to allow free and reduced-rate international travel. These would be moved to the new Subpart C. Section 223.22 in Subpart C would continue the exemptions allowing free and reduced-rate transportation that are now in current § 223.2 Paragraphs (k) (transportation in return for goods or services) and (l) (promotional transportation) of that section would be carried forward to the new § 223.22 without change except that they would be redesignated paragraphs (d) and (e) respectively. The others would be eliminated or combined, as explained below.

Currently, there are several paragraphs in § 223.2 that authorize a carrier to provide free or reduced-rate transportation to directors, officers, and employees and members of their immediate families of other carriers. Paragraph (b)(1) authorizes such transportation in overseas or foreign markets to the affiliates of any carrier

engaged in overseas or foreign air transprotation. The affiliate must be included on the list of affiliates filed by the carrier under § 223.7. Paragraph (b)(2) authorizes such transportation in overseas or foreign markets to a carrier operating in a foreign country. This authorization also applies only to flights in overseas and foreign air transportation. Parpagrph (i) extends the authorization to flights in interstate markets. Paragraph (h) authorizes free and reduced-rate transportation to intrastate carriers. It authorizes such discounts for the retirees of these carriers as well as for their directors, officers, and employees.

As revised, § 223.22(a) would combine the current paragraphs (b), (h), and (i). It would authorize free or reduced-rate transportation to the directors, officers, and employees and members of their immediate families of any carrier and the affiliates of any carrier. "Carrier" is broadly defined as including air taxis, certificated air carriers, foreign air carriers as defined by section 101(22) of the Act, and any person operating as a common carrier by air in a foreign country. The reference to "overseas or foreign air transportation," and the requirement that a list of affiliates be filed with the Board, would be eliminated as no longer necessary. The inclusion of retirees would be made applicable to all carriers.

Present § 223.2(b)(3) permits any carrier engaged in overseas or foreign air transportation to provide such transportation free or at reduced rates to persons to whom the carrier is required to provide free or reduced-rate transportation by a foreign government. The provision requires that the foreign government's directive be filed with the Board and gives the Board the power to disapprove it. The provision was the subject of controversy in Docket 35392. In that proceeding the Board proposed to add a new paragraph (1) to § 223.2 to allow airlines to carry persons involved in promoting air transportation free or at reduced rates if the transportation was undertaken for a promotional purpose. EDR-391, 44 FR 64429, November 7, 1979. Several commenters raised the question whether free or reduced-rate travel under this new paragraph should be made available to government officials. Pan American asked that government officials be excluded from eligibility for such transportation because carriers operating in foreign countries are "virtually powerless to deny free or reduced-rate transportation to these officials, and their immediate families, if the Board does not expressly exclude this category of travel."

In ER-1181, 45 FR 46797, July 11, 1980, the Board adopted the new paragraph (1) without excluding government officials from eligibility for free and reduced-rate promotional travel. The Board noted that § 223.2 allowed carriers to provide such travel to foreign government officials. This provision had been in effect since 1940. Regulation 81, 5 FR 2015, June 1, 1940. "Thus, the carrying of government officials at free or reduced rates is now a widespread practice." ER-1181 at p. 8. Although the Board made no change with respect to government officials, it did state that it was "considering issuing a proposed amendment to alter this practice, as Pan American suggested."

The Board is proposing to continue the exemption for reduced-rate travel at the directive of a foreign government, redesignated § 223.22(b). Comments are invited on whether government officials should be excluded from this provision and from the promotional travel exemption in proposed § 223.22(e).

Present paragraphs (c) and (d) of § 223.2 authorize carriers to provide free transportation to representatives of companies that have been engaged in the manufacture, development, or testing of a particular type of aircraft or aircraft equipment. The provision of this transportation is subject to several conditions. One of these conditions is that the details of the transportation be reported to the Board within 10 days after the end of the calendar month in which that transportation took place. The Board is proposing to continue to authorize this free transportation, but to eliminate the reporting requirement. Paragraphs (c) and (d) would be combined and redesignated § 223.22(c).

Section 223.2(f) of the present rule grants exemptions to carriers to permit them to provide free and reduced-rate transportation to travel agents on familiarization tours. A "familiarization tour" is currently defined in § 223.1 as "a tour organized by one or more carriers for the purpose of promoting the sale of air transportation by familiarizing a travel agent with tourist attractions, accommodations, and recreational facilities."

In the Board's view, the travel agent exemption has been fully subsumed by the exemption allowing carriers to offer free and reduced-rate transportation to promoters of air transportation when the transportation is undertaken for a promotional purpose. (present § 223.2(l) and proposed § 223.22(e)). A travel agent is clearly a promoter of air transportation and a familiarization tour is transportation undertaken for a promotional purpose. The Board is therefore proposing to eliminate the separate travel agent exemption as no longer necessary. This will not affect in any way the ability of carriers to offer free and reduced-rate transportation to travel agents.

The Board is also proposing to eliminate present § 223.2(g). This paragraph authorizes any air carrier to provide reduced-rate air transportation to students who are citizens of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. It only applies to transportation between one of these islands and one of the fifty States. As such, it is domestic transportation and is therefore covered by proposed Subpart B of this rule. Furthermore, air carriers now have the discretion under § 221.3(e) of the Board's rules to carry students from these islands at a discount so that the specific authorization in § 223.2(g) is no longer needed.

In addition to reorganizing the free and reduced-rate travel exemptions now in Part 223, the Board is proposing to codify similar exemptions that are now in various orders. Order 78-12-49 (December 7, 1978) as interpreted by Order 80-2-155 (February 28, 1980) permits an airline to provide free or reduced-rate transportation to passengers that file a claim or complaint against it. This exemption would be § 223.22(h).

Order 80-10-83 (October 17, 1980) permits airlines to provide transportation rather than cash as a contribution to a charitable organization. This exemption would be § 223.22(i).

Under present § 223.8, a carrier may apply for permission to carry free or at reduced-rate persons not covered by the Act or this rule. This section would be retained as proposed § 223.23, except that the required statement that the carrier intends to furnish the requested transportation if the application is granted would be eliminated.

Present § 223.9 sets forth the standards that the Board follows in deciding whether to grant applications filed under § 223.8 for free and reduced-rate transportation on inaugural flights. It states that free transportation may be authorized on an aircraft type that is being introduced for the first time by a carrier "on its system of routes or a part thereof." Paragraph (c) of that section sets out in great detail what is considered to be the carrier's system of routes. The Board finds this detailed requirement to be unnecessary now. The proposed rule (§ 223.22(f)) merely authorizes free transportation of persons

on an inaugural flight as defined in proposed § 223.1.

Section 223.21 of the present rule requires airlines to carry security guards who are guarding against hijacking and permits airlines to carry bodyguards of foreign government officials. The security guard requirement would be moved to proposed § 223.3(a). The permission to carry bodyguards would be moved to proposed § 223.22(g) and broadened to include any law-enforcement official.

Section 223.23 permits the carriage of air traffic controllers, aircraft communicators of the FAA, and weather forecasters without charge "for the purpose of more fully and adequately acquainting such persons with the problems affecting in flight use of air traffic control and communications and weather forecast services provided by the U.S. Government." This authorization would be continued (proposed § 223.22(j)) but would be broadened to include any person in an aviation-related occupation when the transportation is provided for technical in-flight observation. This would include, for example, civilian air traffic controllers of the Department of Defense under P.L. 96-347, as well as those now listed in § 223.23. The current restrictions on their eligibility for free transportation (no more than one trip per year unless specifically authorized) would no longer be in effect.

Proposed § 223.25 incorporates and enlarges upon the earlier Board proposal to modify or withdraw the exemptions granted by this Part when that would be in the public interest. EDR-428, 46 FR 36714, July 15, 1981.

The only wholly new provision being proposed would be a new § 223.4. This section would give carriers the discretion to allow recipients of free and reduced-rate travel passes to transfer them to unrelated third parties. The question of transferring passes first arose in the context of ER-1181, where the Board permitted airlines to provide free and reduced-rate transportation in return for goods and services. It deferred action at that time on whether the transportation received could be transferred or sold to a third person. In Order 81-1-107 (January 21, 1981), however, the Board decided that a person may resell scrip or other representations of value, other than actual tickets, that it receives in a barter transaction with an airline. In ER-1269, 47 FR 30236, July 13, 1982, the Board, in response to inquiries from airline employees, interpreted ER-1181 as permitting airline employees to direct the transportation they receive, as incidents of their employment, to a friend or other third party.

Although the decisions summarized above were all made in the context of the "for goods or services" exemption in present § 223.2(k), there does not appear to be any reason to limit the permission to transfer free travel passes to such transactions. For example, employees may receive their travel passes as gifts rather than as compensation for their services or as fringe benefits. It could be argued that ER-1269 does not cover this situation. Yet, for purposes of transferability, there is little practical difference between a travel pass received as a fringe benefit and a pass received as a gift. Proposed § 223.4 would therefore permit persons receiving any pass under this rule to give or sell that pass to third parties. This would be permissive in nature; nothing would prevent the issuing carrier from putting restrictions on the transfer or prohibiting it altogether.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. It primarily codifies and reorganizes existing requirements and exemptions for certificated air carriers. Most of the reporting and record-keeping requirements of the present rule would be eliminated.

List of Subjects in 14 CFR Part 223

Air rates and charges, Handicapped, Travel agents.

Accordingly, the Board proposes to revise 14 CFR Part 223, *Free and Reduced-Rate Transportation*, to read as follows:

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Subpart A—General Provisions

Sec.
223.1 Definitions.
223.2 Exemption from section 401 of the Act.
223.3 Mandatory free transportation.
223.4 Transferability of passes.
223.5 Responsibility of agencies.

Subpart B—Domestic Travel

223.11 Free and reduced-rate transportation permitted.

Subpart C—International Travel

223.21 Free and reduced-rate transportation authorized by statute.
223.22 Other persons to whom free and reduced-rate transportation may be furnished.
223.23 Applications for authority to carry other persons.
223.24 Transportation of empty mail bags.
223.25 Withdrawal of exemptions.

Authority: Secs. 204, 403, 404, 405(j), 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 766, 771, 49 U.S.C. 1324, 1373, 1374, 1375, 1377, 1386, sec. 2 of the Postal Reorganization Act, 84 Stat. 767, 39 U.S.C. 5007.

Subpart A—General Provisions

§ 223.1 Definitions.

As used in this part, unless the context otherwise requires:

An "affiliate" of a carrier means a person:

(a) Who controls that carrier, or is controlled by that carrier or by another person who controls or is controlled by that carrier; and

(b) Whose principal business in purpose or in fact is:

(1) The holding of stock in one or more carriers;

(2) Transportation by air or the sale of tickets therefor;

(3) The operation of one or more airports, one or more of which are used by that carrier or by another carrier who controls or is controlled by that carrier or that is under common control with that carrier by another person; or

(4) Activities related to the transportation by air conducted by that carrier or by another carrier that controls or is controlled by that carrier or which is under common control with that carrier by another person.

"Air carrier" means the holder of a certificate of public convenience and necessity issued by the Board under section 401 of the Act authorizing the carriage of persons.

"Attendant" means any person required by a handicapped person in order to travel, whether or not that person's services are required while the handicapped passenger is in an aircraft.

"Carrier" means:

(i) An air carrier;

(ii) An all-cargo air carrier operating under section 401 or section 418 of the Act;

(iii) A foreign air carrier;

(iv) An intrastate carrier;

(v) An air taxi (including a commuter air carrier) operating under Parts 294 or 298 of this chapter; and

(vi) Any person operating as a common carrier by air, or in the carriage of mail by air, or conducting transportation by air, in a foreign country.

"Control," as used in this section, means the beneficial ownership of more than 40 percent of outstanding capital stock unless, in a specific case, the Board determines under section 408 of the Act that control does not exist.

Control may be direct or by or through one or more intermediate subsidiaries likewise controlled or controlling through beneficial ownership of more than 40 percent of outstanding voting captial stock.

"Foreign air carrier" means the holder of a permit issued by the Board under section 402 of the Act authorizing the carriage of persons.

"Free transporation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by that carrier) in air transportation without compensation therfor.

"Handicapped passenger" means any person who has a physical or mental impairment (other than drug addiction or alcoholism), that substantially limits one or more major life activities.

"Inaugural flight" means a flight on an aircraft type being introduced by a carrier for the first time on a route, even if that aircraft type has been used by that carrier on other routes or on that route by other carriers.

"Pass" means a written authorization, other than actual ticket stock, issued by a carrier for free or reduced-rate transportation of persons or property.

"Reduced-rate transportation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by such carrier) in air transportation for a compensation less than in the tariffs of that carrier on file with the Board and otherwise applicable to such carriage.

"Retired" means not regularly working at a full-time paying job, and not intending to do so in the future.

§ 223.2 Exemption from section 401 of the Act.

Any carrier not authorized to carry persons is exempted from section 401 of the Act to the extent necessary to carry, for purposes of in-flight observation, technical representatives of companies that have been engaged in the manufacture, development, or testing of aircraft or aircraft equipment.

§ 223.3 Mandatory free transportation.

Every carrier shall carry, without charge, on any aircraft that it operates, the following persons:

(a) Security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration;

(b) Safety inspectors of the National Transporation Safety Board or of the Federal Aviation Administration who have been assigned to the duty of inspecting during flight such aircraft or its equipment, route facilities, operational procedures, or airman competency upon the exhibition of credentials or a certificate from the agency involved in authorizing such transportation; and

(c) Postal employees on duty in charge of the mails or traveling to or from such duty, upon the exhibition of the credentials issued by the Postmaster General.

§ 223.4 Transferability of passes.

Any pass issued by an air carrier or foreign air carrier under this part may, at the discretion of that carrier, be sold or otherwise transferred by the holder of that pass to any other person.

§ 223.5 Responsibility of agencies.

The Federal Aviation Administration, National Transportation Safety Board, National Weather Service, and the Postal Service shall be responsible for the following:

(a) The issuance of any credentials or certificates to personnel eligible for free or reduced-rate transportation under this part; and

(b) The promulgation of any internal rules that are necessary to obtain compliance by such personnel with this part.

Subpart B—Domestic Travel

§ 223.11 Free and reduced-rate transportation permitted.

Air carriers may charge any rate or fare for interstate and overseas air transportation.

Subpart C—International Travel

§ 223.21 Free and reduced-rate transportation authorized by statute.

(a) Any air carrier or foreign air carrier may provide free or reduced-rate foreign air transportation to any classes of persons specifically named in section 403(b) of the Act.

(b) Carriers offering reduced fares on a space-available basis to ministers of religion, the elderly, retired, and handicapped passengers, and to attendants required by handicapped passengers, in accordance with subsection 403(b)(1) of the Act, shall file tariffs for such fares. Carriers may establish reasonable tariff rules to assist in identifying those who qualify for reduced fares. A carrier's rule need not entitle all passengers falling within the definition of handicapped in § 223.1 to reduced fares if the differences between the Board's definition and the scope of the carrier's rules are reasonably related to the carrier's administrative needs.

§ 223.22 Other persons to whom free and reduced-rate transportation may be furnished.

Air carriers and foreign air carriers are exempted from sections 403 and 404(b) of the Act and Part 221 of this chapter to the extent necessary to provide free or reduced-rate foreign air transportation, including passes, to the following:

(a) Directors, officers, employees, and retirees, and members of their immediate families, of any carrier or of any affiliate of such carrier;

(b) Persons to whom the carrier is required to furnish such transportation by law or government directive or by a contract or agreement between the carrier and the government of any country served by the carrier. The Board may, without prior notice, direct the carrier to file a tariff covering such transportation if it finds that the law or government directive in question requires the provision of such transportation. This transportation may be provided only if:

(1) The contract or agreement is filed with the Board, and it is not disapproved by the Board; and

(2) The law or government directive does not require the furnishing of such transportation to the general public or any segment thereof.

(c) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purposes of in-flight observation;

(d) In return for goods or services provided by a person, whether the transportation is used by that person or any designees of such person. This exemption includes free or reduced-rate transportation furnished as an employee fringe benefit;

(e) Persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose;

(f) Persons being transported on an inaugural flight of the carrier;

(g) Any law-enforcement official, including any person who has the duty of guarding government officials traveling on official business against unlawful interference;

(h) As compensation to persons that file a complaint or claim against the carrier;

(i) Charitable organizations; and

(j) Any person in an aviation-related occupation when the transportation is provided for the purpose of technical in-flight observation.

§ 223.23 Applications for authority to carry other persons.

(a) Any carrier desiring special authorization to provide free or reduced-rate foreign air transportation to persons to whom the carrier would not otherwise be authorized to furnishing such transportation under the previous provisions of this part may apply to the Board, by letter or other writing, for such authorization.

(b) The application shall include the following information:

(1) The identity of the persons to whom the transportation is to be furnished;

(2) The points between which the transportation is to be furnished;

(3) The approximate time of departure; and

(4) The carrier's reasons for desiring to furnish such transportation.

(c) No transportation for which approval is required shall be furnished by the carrier until that approval is received by the carrier.

§ 223.24 Transportation of empty mail bags.

Any carrier authorized to engage in foreign air transportation may transport in foreign air transportation empty air mail bags from any country to the country of origin of such bags, free of charge, on a voluntary space-available basis.

§ 223.5 Withdrawal of exemptions.

The exemptions granted to any air carrier or foreign air carrier by this subpart may be modified or terminated by the Board at any time without hearing as the public interest may require.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-1244 Filed 1-18-83; 8:45 am]

BILLING CODE 6320-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Advance Notice of Proposed Rulemaking and Notice of Opportunity for Oral Presentations

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking

SUMMARY: The Commission may decide to amend its child-resistant packaging requirements, under the Poison Prevention Packaging Act, for certain household substances. Since the existing requirements were developed before the widespread use of such packaging, there may be ways to improve their effectiveness and efficiency. This notice solicits suggestions and comments on all possible changes. In addition to (or instead of) submitting written comments, interested parties may present their comments to the Commission orally.

DATE: Written suggestions and comments are due no later than March 21, 1983. The opportunity for presentation of oral comments will be on March 10, 1983, at 10:00 am.

ADDRESS: Written suggestions and comments should be sent, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. The oral presentations will be in the third floor conference room at 1111 18th Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia White, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6957.

SUPPLEMENTARY INFORMATION:

I. Introduction and Purpose.

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471 *et seq.*, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant packaging. Under the PPPA, the Commission has defined and established standards for such "special" packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15 and 1700.20. (The Commission has also determined which household substances require the special packaging. 16 CFR 1700.14.)

To comply with the special packaging requirements, a package must resist entry by most young children and must not be difficult for most adults to open and properly resecure, within specified time periods. The existing requirements were developed before the widespread use of child-resistant packaging and, therefore, without the benefit of the actual use experience and test data that have since become available.

Information now available, including recent consumer surveys, reveals that many consumers find child-resistant packaging to be either too difficult or too inconvenient to use. When given the choice, therefore, many consumers purchase products in conventional packaging rather than child-resistant packaging. [1] Consumers are also making a substantial number of child-resistant packages ineffective after bringing them home.[2]

The Commission believes that the special packaging requirements can be amended so they will be more effective in achieving child resistance. Special packaging should make the contents as inaccessible to children and as accessible to adults as possible. Increased consumer acceptance and use of special packaging would likely result in fewer childhood poisonings and deaths due to accidental ingestions of hazardous household substances.[3] Further, the requirements should impose the smallest econmic burden on the industry that is necessary to achieve the objective of child resistance. They should be made as quick, easy, and inexpensive to administer as possible, without causing any reduction in special packaging effectiveness.

The purpose of this advance notice is to explore whether the special packaging requirements should be amended to achieve these, or perhaps other, objectives. It discusses some of the Commission's specific ideas for amendments and solicits public comments on them. In addition, this advance notice is designed to obtain, from the public, ideas and supporting data on other possible methods to improve the effectiveness of child-resistant packaging and to provide for more efficient testing.

II. Current Special Packaging Requirements

A. Child Test and Criteria

The current child test protocol (16 CFR 1700.20(a) (1), (2) and (3)) specifies the use of 200 children, ages 42 through 51 months, distributed in ten groups by specific age. Each age group consists of approximately one-half boys and one-half girls. The test period is ten minutes. The children are given test packages and asked to open them. After the first five minutes, the test is stopped, and the children are given a single visual demonstration of the method of opening the package. The children are also told that they may use their teeth to open the package, if they wish. The test is started

[1] The PPPA permits conventional packaging under specified conditions. In general, the physician or patient may order conventional packaging of prescription drugs and one size of a non-prescription product subject to a PPPA standard may be sold in conventional packaging. 15 U.S.C. 1473 (a), (b) and (c).

[2] A Pilot Study of Effectiveness and Functionality of Child-Resistant Continers and Related User Attitudes. Final Report—August 1980.

[3] A Special Study of Ingestions to Children Under 5 Years of Age Treated in NEISS Hospital Emergency Departments. February 1—April 30, 1980.

again and continues for another five minutes.

For a package to meet the PPPA effectiveness criteria, at least 85 percent of the children must be unable to open the package within the first five minutes, and at least 80 percent of the children must be unable to open the package by the end of the second five minutes. 16 CFR 1700.15(b)(1).

B. Adult Test and Criteria

The current adult test protocol (16 CFR 1700.20(a) (4) and (5)) specifies the use of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females, and 30 percent must be males. The test period is five minutes. The adults are given the test package and asked to open, then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and properly close the package within the five minute test period. 16 CFR 1700.15(b)(2). The present PPPA regulations contain no specific procedure to determine whether or not a package has been properly closed.

III. Possible Approaches for Amendments to Packaging Requirements

The Commission is considering the following approaches to make the child-resistant packaging requirements more effective and more efficient.

A. Use of Sequential Child Test

Experience has shown that most of the 200 children needed to determine the effectiveness of a child-resistant package can be located and tested within a reasonable amount of time. However, a disproportionately longer time may be required to locate and test the remaining few children needed to meet the very specific age and sex criteria. This causes a delay in obtaining test results, and also tends to increase testing costs.

To address this problem, the Commission is considering whether the test might be conducted initially on 50 children, divided equally between the sexes, with five children in each of ten age intervals from 42 through 51 months. Depending on the results of this test of 50 children, the package would be determined to be child-resistant; the package would be determined not to be child-resistant; or the results would be inconclusive for making the determination. If the results are inconclusive, a second group of 50 children would be tested. Testing would continue by groups of 50 children until a determination concerning child resistance can be reached. If testing goes to 200 children, a final determination will be reached in the same manner as with the present test protocol.

Table 1 is an example of the acceptance and rejection criteria that might be used. At the completion of any test of 50 children, if the number of packages opened (failures) is in the "pass" range, the package would meet the effectiveness criteria. If the number is in the "fail" range, the package would not meet the effectiveness criteria. Whenever the number of packages opened falls within the "continue" range, another group of 50 children is tested (until four groups, 200 children, have been tested).

An advantage of sequential testing is that decisions regarding the effectiveness of child-resistant packaging frequently can be made before all 200 children are tested. The rationale is that a relatively small sample is required to determine that a package is extremely child-resistant or extremely non-child-resistant.

B. Use of Fewer Age Groups in Child Test

The number of age groups might be reduced from the present ten, with about 20 children in each of the age intervals from 42 through 51 months. For example, the ten groups could be combined into three groups of ages 42 to 44 months, 45 to 48 months, and 49 to 51 months. The number of children in each group could be 60, 80, and 60, respectively, with approximately the same number of boys and girls in each group.

An advantage of reducing the number of age groups is that, generally less time is required to locate and test a child within a three or four month age bracket than to locate a child whose age falls within a specific month. After examining the theoretical consequences of reducing the number of age groups tested, the Commission staff believes that the selection of children at random within each age group, without concentrating them toward the high or low ages within the group, will provide test results essentially the same as those provided under the prersent test protocol.

C. Use of Test Limitations and Uniform Instructions for Testers

A possible problem associated with both child and adult testing may be the introduction into the final results of unwanted variability due to differences in the testers. Another possible problem of unwanted variability may be associated with differing test results among test sites (but only if one site is sampled too heavily and dominates the final results).

If these are problems, the Commission could modify the child test protocol to (a) limit any one tester to no more than 30 percent of the children tested, and (b) limit any one site to no more than 20 percent of the total number of children tested. In addition, the Commission could modify the adult test protocol to (a) limit any one tester to no more than 35 percent of the total number of adults tested and (b) limit any one site to no more than 35 percent of the total number of adults tested. The purpose of these limitations would be to protect against biasing the test results due to non-representative testers or due to too much weight being given to one site.

Unwanted variability resulting from tester differences, if it exists, might also be reduced if all the testers are given the same instructions. Therefore, the Commission is making available to the public a set of instructions that can be used by testers who conduct child testing and another set for use in adult testing. These instructions, Appendix 1 and Appendix 2 to this advance notice, follow the procedures used in the Commission's compliance testing. They are being provided as suggested guidelines that supplement the existing test protocols of 16 CFR 1700.29. They are not requirements and they do not change the test requirements contained in the existing protocols. The Commission is seeking comments on the content of the instructions. If they are changed in response to any comments or otherwise, the public will be informed.

The Commission is also seeking comments on the possible tester and site limitations that are discussed above. Before any such limitations are established as requirements, they would be incorporated into the protocols following notice and comment rulemaking.

D. Use of More Stringent Effectiveness Specifications

Currently, at least 90 percent of the adults tested must be able to open and properly close a package within five minutes. At least 85 percent of the children tested must be unable to open the package within five minutes and 80 percent must be unable to open the package within ten minutes. If these specifications were made more stringent, some currently-used packages would probably have to be replaced with packages that are more resistant to children and easier for adults to use. For example, the specifications could be changed to 95 percent for adults and to 90/85 percent for children. The Commission believes that some packages on the market already comply

with these more stringent specifications and that some do not.

The Commission seeks comments on whether more stringent specifications would be likely to increase the effectiveness of child-resistant packaging. Comments are also sought on the specific percentages that might be appropriate, if changes are made.

E. Shortening of Adult Test Time

The current five minute time period in the adult test may not realistically represent the length of time an adult is willing to spend attempting to open a package during home use. The Commission has conducted a statistical analysis of data from a limited number of adult tests to estimate the length of time required for adults to open child-resistant packaging. The results indicate that it may be possible to reduce the test time, but they do not provide sufficient evidence to determine a particular length of time that would be appropriate. Any change in the time period would require additional analysis and refinement to assure that certain package concepts will not be unfairly affected and that the child resistance of the packages will not be reduced. The Commission is seeking both general and specific comments on this issue.

F. Extending the Age Range of Adults Tested

The current adult protocol specifies the testing of adults aged 18 through 45 years because that is the age range of adults who generally have young children in the home. However, older adults are also exposed to child-resistant packaging, and poison control center data indicate that accidental ingestions do occur when children visit or are visited by adults over the age of 45. Extending the age range to include older adults would provide a means of evaluating the ability of older adults to use child-resistant packaging.

The results of preliminary Commission-conducted tests indicate that fewer of the older adults (65–70 years of age) were as successful at opening and closing the child-resistant packaging as the adults aged 18–45. These tests results are scant, however, and additional data need to be evaluated before the appropriateness of extending the age range can be fully determined. (If the age range were extended, it would be possible to establish lower effectiveness specifications—80 percent for example—for adults aged 46–70 years.) For now, the Commission believes that the inclusion of older adults in the testing could result in new or revised child-resistant packaging designs that are easier for most adults to use properly. Comments on this issue and any available data are solicited.

G. Adding a Test for Adult Resecuring

At present, any reliable scientific technique can be used to determine whether a child-resistant package has been properly resecured. In many cases, a visual or mechanical determination is reliable. For some types of packages, however, neither visual observation nor mechanical testing is reliable. For such packages, the Commission has devised a procedure to evaluate resecuring: Packages which have been opened and appear to have been resecured in the adult test are given to a panel of children to determine if they are, in fact, properly resecured and thus child-resistant. To eliminate bias, the panel of children is evenly distributed by age and sex, in conformance with the existing test procedure.

The adult resecuring test used by the Commission is described in Appendix 3. While that test is based on the most likely household situation, there may be other suitable and acceptable scientific methods for determining if a package has been properly resecured.

If children are used to test for proper resecuring, it might be appropriate to combine the child and adult tests into a complete special packaging protocol series.

The Commission is soliciting all possible comments and suggestions on whether an adult resecuring test should be added to the existing protocols and, if so, what the test should be.

IV. Solicitation of Comments

As described above, the Commission is considering how to make the child-resistant packaging requirements more effective and more efficient. While some specific ideas for improvements are discussed above, the Commission is not limiting itself to those possibilities.

Therefore, the Commission is seeking suggestions and comments from all interested members of the public on how to improve the special packaging requirements. This includes (a) comments on the possibilities discussed; (b) suggestions for other ideas to achieve the same or other objectives; and (c) any data that relate to the adequacy or inadequacy of the existing requirements, to the need for improvements in specific areas, or generally to child-resistant packaging issues.

All written suggestions and comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 no later than March 21, 1983.

In addition to accepting written comments, the Commission is providing an opportunity for the presentation of oral comments. The presentations will be made on March 10, 1983, beginning at 10:00 a.m. in the third floor conference room at 1111 18th Street NW., Washington, D.C. Any members of the public who want to make oral presentations should write to Sheldon Butts, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 or telephone him at (301) 492–6800, no later than March 1. The Commission requests that they provide Mr. Butts with a written text or summary of their presentations by the same date.

The oral presentations will be informal, with an opportunity for questions by the Commissioners, and will generally be conducted in accordance with the regulations at 16 CFR Part 1109. Depending on the number of presentations, the Commission may limit the length of some or all of them. In addition, the Commission reserves the right to place limits on duplicative presentations.

List of Subjects in 16 CFR Part 1700

Consumer protection, Toxic substances, Packaging and containers, Poison prevention, Infants and children.

(15 U.S.C. 1472)

Dated: January 13, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

TABLE 1

Sample	Sample size	Cummulative sample size	Acceptance and rejection criteria (based on number of openings)		
			Pass	Continued	Fail
First	50	50	1 to 5	6 to 14	15 or more.
Second	50	100	6 to 15	16 to 24	25 or more.
Third	50	150	16 to 25	26 to 34	35 or more.
Fourth	50	200	26 to 40		41 or more.

Appendix 1—Instructions for Child Testing

1. The testing shall be done in a location that is isolated from all outside distractions and is well-lighted.

2. The children shall participate in the test in pairs. They are to be seated so that they can watch each other and so that the tester can observe them both at the same time.

3. The paired children shall each receive an identical package from the tester with the verbal instruction: "When I tell you to start, I want you to try to open this package for me."

4. Each child is allowed up to five minutes to open his/her package.

a. The children are not to be given the impression that they are in a race or contest. They are not to be offered a reward for participating. On the other hand, they are not to be discouraged in any way.

b. If a child refuses to participate after the test has started, the tester shall gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package and just to stay in his/her seat until the other child is finished. This pair of children should not be eliminated from the results.

c. The children are to be allowed freedom of movement to work on their packages (e.g., they can get down on the floor, bang, or pry the package under the table).

d. If a child is endangering himself/herself or others at any time, the test should be stopped and the pair of children eliminated from the final results.

e. The children are not to be allowed to trade packages.

f. If a child is successful, he/she should not be asked to try to open the package again.

g. The paired children are to be allowed to talk to each other about opening the packages and observe each other's actions.

5. After five minutes, the paired children are given a single visual demonstration on how to open the package (unless both have already open it).

a. A separate identical package is to be used for the demonstration so that any progress a child may have made on his/her package is not negated.

b. Before the demonstration is given, the tester shall secure the children's full attention. The tester shall take the packages from the children and put them in front of each child. The tester shall then say "I have a package just like yours and I want you to watch me open it."

c. The demonstration shall be conducted in a normal opening fashion and at a normal speed for the type closure, as if the tester were going to be using the contents. There shall be no exaggerated motions.

d. The demonstration shall be conducted at a distance no closer than two feet from the children. The maximum distance shall be dictated by package size and testing conditions.

6. Following the demonstration, an additional five minute period is allowed for those children who were unsuccessful in the first five minutes. If one or both of the paired children have not tried to open the package with their teeth during the first five-minute period, they shall be told: "When I tell you to start, I want you to try to open your package; you can use your teeth if you want to." No further encouragement regarding use of teeth is to be given after this statement.

7. If the same child or pair of children tests a second package, it shall be a different type. In other words, two snap closures cannot be tested by the same child or children.

Appendix 2—Instructions for Adult Testing

1. Each adult shall participate in the test individually and not in the presence of adults other than the tester(s).

2. The test area shall be isolated from all outside distractions.

3. Verbal instructions that the tester gives to the adult shall be "When I say begin, you will have 5 minutes to open and properly close this package according to the instructions on the cap (specify other location if appropriate)". No other instructions shall be given.

4. Each adult is then allowed 5 minutes to open and, for all packages that are not single use, resecure the package. The tester shall not remind the adult to close the package, except in cases where the adult asks or is clearly waiting for further instructions.

5. The adult is allowed to remove and replace the closure more than once during the test if these actions are intiated on his/her own. After the adult has finished resecuring the package or at the end of 5 minutes (whichever comes first), the tester shall take the package from the adult. After the tester has taken the package, the adult shall not be allowed to handle it again.

Appendix 3—Procedure for Calculating Adult-Use Effectiveness

To calculate adult-use effectiveness	Sample calculation
1. Test normal adults between the ages of 18–45; 70 percent female.	100 – 95 = 5.
2. Subtract the number of packages that were opened and *appeared* to be resecured by the adults (95) [1] from 100 to determine the number of packages that were not opened or resecured by the adults.	
3. Use children to test only packages that were opened and appeared to be resecured by the adults. Determine the number of packages that were opened by the children (21).	21 out of 95 packages opened.
4. Multiply the number of packages from the adult test that were opened and appeared to be resecured by 20% [2].	95 × .20 = 19.
Subtract this number (19) from the total number of packages that were opened by the children (21) to determine the number of failures in excess of 20% (2).	21 – 19 = 2.
5. Add failures in excess of 20% (2) to the adult failures (5).	5 + 2 = 7.
Subtract this total (7) from 100 to determine the number of packages opened and *properly* resecured.	100 – 7 = 93.
6. Calculate the percent of packages opened and properly resecured to determine the adult-use effectiveness.	93 ÷ 100 × 100 = 93%.

[1] Numbers in parentheses correspond to sample calculation only.

[2] This takes into consideration that one out of five children (20%) may be able to open even a properly resecured child-resistant package and the package would still be considered to be child-resistant by the current effectiveness specifications.

[FR Doc. 83-1370 Filed 1-19-83; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM79-76-135 (West Virginia-3); and RM79-76-134 (West Virginia-2)]

High-Cost Gas Produced From Tight Formations; West Virginia Technical Conference

January 14, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule related notice.

SUMMARY: At the request of West Virginia and several commenters, a technical conference will be held to review the recommendations of West Virginia that certain formations described in the above-captioned dockets be designated as tight formations under § 271.703 of the Federal Energy Regulatory Commission's regulations.

DATE: The conference will be held on March 1, 1983 at 10:00 a.m.

ADDRESS: The conference will be held in Room 6200, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Elisabeth Y. Pendley, (202) 357–8571, or Matthew Charsky, (202) 357–8311.

SUPPLEMENTARY INFORMATION:

In the matter of High-Cost Gas Produced From Tight Formations; Docket No. RM79–76–134 (West Virginia–2) (47 FR 53740, November 29, 1982; and Docket No. RM79–76–135 (West Virginia–3) (47 FR 43986, October 5, 1982).

Notice of Technical Conference

January 14, 1983.

Take notice that on Tuesday, March 1, 1983, a conference will be held in the above-captioned docket. The conference was requested by West Virginia and several interested commenters. The conference will convene at 10:00 a.m. in Room 6200, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

The conference is opened to the public and all interested persons are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–1385 Filed 1–18–83; 8:45 am]

BILLING CODE 6717–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM83–5]

Automatic Participant Status

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Current commission rules, 39 CFR 3001.20 and 19a require interested persons seeking to participate in Commission proceedings pursuant to 39 U.S.C. 3624(a) to petition the Commission and obtain a Commission ruling granting intervention. This process is time consuming and inefficient, as almost without exception such requests are non-controversial, and granted without objection. It is proposed to amend these rules to grant participant status automatically, subject to reconsideration for good cause shown.

DATES: Comments responsive to this Notice should be filed on or before February 18, 1983.

ADDRESSES: Comments and correspondence relating to this Notice should be sent to David F. Harris, Secretary of the Commission, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254–3880).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Assistant General Counsel, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254–3836).

SUPPLEMENTARY INFORMATION: Requests to change postal rates or mail classifications, and certain complaints against the Postal Service, are subject to the requirements of 39 U.S.C. 3624(a), that the Postal Rate Commission shall not issue a recommended decision "until the opportunity for a hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mails, and a Officer of the Commission who shall be required to represent the interests of the general public." Commission rules presently provide that persons who wish to participate in such a proceeding are to petition to become a party or participant. 39 CFR 3001.20; 3001.19a. Interested persons have no status before the Commission pending action on their petition.

It is proposed that this procedure be changed. Interested persons would be able to file a notice of intervention indicating whether they wish full party or limited participator status. The notice of intervention would include an explanation of why party status was appropriate, and would serve to enable the prospective intervenor to participate immediately in Commission procedures.

This change has two major benefits. First, it will enable the Commission to more efficiently utilize its time and develop a more complete record. The Commission is obligated to issue a recommended decision within 10 months of initiation of rate requests and certain classification proposals with significant rate impact, 39 U.S.C. 3624(c). Commission proceedings are extremely complex and it is difficult to develop a complete record and prepare a comprehensive decision within this time frame. Under present rules, interested persons cannot fully participate in developing an administrative record for the Commission's use until after a petition for party status has been granted. This proposal would encourage interested persons to file a notice of intervention, and begin discovery, at an early date.

The second major benefit of this proposal is its elimination of largely unnecessary procedural steps. It is clear that title 39 was drafted to encourage the Commission to hear from a broad spectrum of interests. The language of 39 U.S.C. 3624(a) specifically provides that the opportunity for a hearing shall be accorded to "users of the mails," a category which encompasses the vast majority of individual citizens and businesses within the country. Only under extraordinary circumstances will the Commission have cause to reject a petition for intervention. Under these circumstances it is far more efficient to allow persons wishing to participate to immediately begin to do so, rather than requiring the filing of numerous individual requests, which require formal, albeit automatic, action by the Commission. This proposal preserves the right of any participant to file in opposition to a notice of intervention, and the Commission retains the right to determine that intervenor status is not appropriate should it be convinced that the Act does not contemplate participation by the particular interest in question.

There are additional factors which support this proposal. In a recent proceeding, Docket No. MC83–2, service of a legal objection was not effected on all interested persons because several had not yet been officially accorded party status. These rule changes would prevent reoccurrence of that problem. Further, it has been noted that the statutory praticipants, the Postal Service and the Officer of the Commission, can be active before persons who must petition for party status. Our proposal will significantly reduce any inequity in that situation.

In sum, the proposal will enable interested persons to immediately gain party status and participate in the process of evaluating rate and classification change proposals without waiting for the formalistic grant of a petition to intervene. The Commission's docket section will maintain an update service list, and as now, it will periodically distribute an updated version to all parties. The proposed changes should enable parties to more effectively utilize the 10-month period for decision provided to the Commission by Congress, and eliminate the need for several meaningless procedural orders.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information, Postal service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

For the reasons set out above, the Commission proposes to revise §§ 3001.19a and 3001.20 of the rules of practice [39 CFR 3001.19a, 3001.20] as follows:

§ 3001.19a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is notice for a proceeding pursuant to § 3001.17, in accordance with the following provisions.

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the requestor's interest in the proceeding, shall include the name and full mailing address of the person or persons who are to receive service of documents by the Secretary, and shall be served on the Postal Service (and on the complaintant in a complaint proceeding) pursuant to § 3001.12. Except where good cause for late filing is shown, notices of intervention as a limited participator shall be filed not later than the date fixed for the filing of notices of intervention pursuant to § 3001.20(c).

(b) *Oppositions.* Oppositions to notice to intervene as a limited participator may be filed by any participant or limited participator in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Sections 3001.25 through 3001.28 shall not be applicable to limited participators. However, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of thier claims will be taken into account in determining the weight to be placed on their evidence and arguments.

§ 3001.20 Formal interventions.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17 for any person claiming an interest of such nature that his intervention is allowed by the Act, or appropriate to its administration.

(b) *Contents.* A notice of intervention shall clearly and concisely set forth the nature and extent of the petitioner's interest in the issues to be decided, including the classifications of postal serivce utilized by the petitioner giving rise to his interest in the proceeding, and the position of the petiioner with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding Such notice shall state whether or not the petitioner requests a hearing or in lieu thereof, a conference, and whether or not the petitioner intends to actively participate in a hearing. Such petition shall also include on page one thereof the name and full mailing address of the person or persons who are to receive service of any documents relating to such proceeding.

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filings in any notice or order with respect to the proceeding isued by the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of intervention shall conform to the requirements of §§ 3001.9 to 3001.11 and shall be served on the Postal Service and the complaintant in a complaint proceeding pursuant to § 3001.12.

(d) *Oppositions.* Oppositions to notices of intervention may be filed by any participatn in the proceeding no later than 10 days after the notice of intervention is filed.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a party to the proceeding subject, however, to a determination by the Commission, wither in response to an opposition, or sua sponte, that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3001.24 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of ducuments, presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision that the intervening party has such an interest in the proceeding that he would be aggrieved by an ultimate decision by order of the Commission.

David F Harris,

Secretary.

[FR Doc. 83-1488 Filed 1-18-83; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 461

[WH-FRL 2287-1]

Battery Manufacturing, Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On November 10, 1982, EPA proposed a regulation under the Clean Water Act to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in battery manufacturing operations (47 FR 51052). EPA is extending the period for comment on the proposed regulation from January 10, 1983 to January 24, 1983. Furthermore, EPA is extending the period for comment on the proposed requirements for the Lead Subcategory to February 7, 1983.

The extension is needed to allow the battey manufacturing industry additional time to fully comment and to supply data supporting their comments. Also, the lead manufacturers have raised specific issues respecting their ability to modify water use practices and to treat wastewaters, therefore a longer comment period is appropriate.

DATES: Comments on the proposed regulation for the battery manufacturing category (47 FR 51052) must be submitted to EPA by January 24, 1983, or, in the case of requirements for the Lead Subcategory, by February 7, 1983.

ADDRESSES: Send comments to Ms. Mary L. Belefski, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: Docket Clerk, Proposed Battery Manufacturing. The supporting information and all comments on this proposal are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. The comments will be added to the record as they are received. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall (202) 382-7126.

SUPPLEMENTARY INFORMATION: On November 10, 1982, EPA proposed a regulation to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in battery manufacturing operations (47 FR 51052). The November 10, 1982, notice stated that comments on the proposal were to be submitted on or before January 10, 1983.

The Agency has received numerous comments from the battery manufacturing industry, and from lead battery manufacturers in particular, that additional comment time is needed to allow them to comment fully and to supply data to support their comments. Given the size and diversity of the industry and the complexity of issues raised by this rulemaking, EPA has determined that it is necessary to extend the comment period fourteen (14) days to allow the public adequate time to review and comment on this proposed regulation. Due to specific issues raised by the lead battery manufacturers with respect to their ability to modify water use practices and to retreat their wastewaters to proposed levels, a longer extension of twenty-eight (28) days is appropriate for the lead subcategory.

EPA believes that the comment period, as extended provides sufficient time (74 days in general, and 88 days for the lead subcategory) for diligent commenters to review and comment upon the proposed rule. Much of the background information for the proposed rule was made publicly available in a draft background document in September 1980.

The extension of time should be sufficient for commenters to complete their analyses of new information and concepts contained in the proposed rule.

Dated: January 10, 1983.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 83-1434 Filed 1-18-83, 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 302

Withholding of Unemployment Benefits for Support Purposes

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rule making.

SUMMARY: These proposed regulations would implement section 454(20) of the Social Security Act as required by section 2335 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1081. Section 2335 requires child support enforcement (IV-D) agencies to determine on a periodic basis whether individuals receiving unemployment compensation owe support obligations that are not being met. It further requires IV-D agencies to enforce unmet support obligations in accordance with State developed guidelines for obtaining an agreement with the individual to have a specified amount of support withheld from unemployment compensation otherwise due the individual or, in the absence of an agreement, by bringing legal process to require the withholding. The IV-D agency must reimburse the State employment security agency (SESA) for the administrative costs attributable to enforcing support obligations by withholding, unemployment compenastion.

DATE: Consideration will be given to comments received by March 21, 1983.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 P.M., in Room 1010 of the Department's office at the address above.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (301) 443-5350.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 2335 of Pub. L. 97-35, which provides for withholding of unemployment compensation for support purposes, contains provisions affecting both IV-D agencies and SEASs. These proposed regulations would implement only those provisions of section 2335 that affect IV-D agencies. The remaining provisions have been implemented under instructions issued by the Department of Labor. (See Unemployment Insurance Program Letter No. 15-82, dated April 8, 1982.) Although these proposed regulations affect only the Child Support Enforcement Program under title IV-D of the Social Security Act (the Act), all of the provisions of the statute are discussed here to provide a complete picture of the roles of the IV-D agency and the SESA in relation to the withholding of unemployment compensation for the purpose of paying unmet support obligations.

With respect to the Child Support Enforcement program, section 2335 amends section 454 of the Act by adding a new paragraph (20). The new subparagraph 454(20)(A) provides that, under the IV-D State plan, the IV-D agency must determine on a periodic basis whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable under any agreement under a Federal unemployment compensation law) owe support obligations that are being enforced by the IV-D agency. This periodic determination is to be made from information supplies by the SESA under section 508 of the Unemployment Compensation Amendments of 1976. The information available to the IV-D agency under section 508 is discussed later in this preamble under the heading "Regulatory Provisions". Also discussed below is the related requirement in section 2335 that the SESA notify the IV-D agency if an individual discloses to the SESA that he or she owes child support.

The new subparagraph 454(20)(B) provides that, under the IV-D State plan, the IV-D agency must enforce support obligations that are not being met by individuals identified as described above. In enforcing an obligation under this process, the IV-D agency must first attempt to obtain an agreement with the individual to have a specified amount withheld from the unemployment compensation otherwise due the individual. If an agreement is obtained, the SESA is entitled to receive a copy of it. In the absence of an agreement, the IV-D agency must bring legal process in appropriate cases, pursuant to State or local law, to require the withholding of unemployment compensation, The applicable legal process is defined in paragraph 462(e) of the Act as a a writ, order, summons, or other similar process in the nature of a garnishment.

With respect to the Department of Labor's unemployment insurance program under title III of the Act, section 2335 amends paragraph 303(e) of the Act to impose several requirements on SESAs. Subparagraph 303(e)(1) is amended to specify that the provisions for withholding unemployment compensation for support purposes are applicable only to "child support obligations" being enforced pursuant to the IV-D State plan described in section 454 of the Act. Because section 454 now permits collection of certain spousal support obligations, the withholding of

unemployment compensation is permissible for child support and for spousal support that has been included in the same support obligation, if the State IV-D agency elects to collect spousal support. However, section 2335 does not require the SESA to collect spousal support or to inquire whether the individual owes spousal support.

A new subparagraph 303(e)(2) specifies that the SESA will (i) ask each new applicant for unemployment compensation whether he or she owes a child support obligation being enforced under the IV-D State plan; (ii) notify the State of local IV-D agency when an eligible applicant discloses that he or she owes support being enforced under the IV-D State plan; (iii) withhold an amount from unemployment compensation when asked to do so by the applicant, or when notified to do so by the IV-D agency as a result of an agreement the IV-D agency has obtained from the individual or as a result of legal process; and (iv) pay any amount withheld to the appropriate State or local IV-D agency. Subparagraph 303(e)(2) also defines unemployment compensation as any compensation payable under State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law). Finally, subparagraph 303(e)(2) requires the IV-D agency to reimburse the SESA for the administrative costs incurred in the withholding process which are attributable to support obligations being enforced by the IV-D agency.

Under the new subparagraph 303(e)(3), the Secretary of Labor, after giving the SESA reasonable notice and opportunity for hearing, may cease to certify payments to the States under section 302 of the Act if the State fails to comply with subparagraphs 303(e)(1) and (2).

Section 2335 requires both IV-D agencies and SESAs to engage in activities resulting in the withholding of unemployment compensation for support purposes beginning October 1, 1982. Between August 13, 1981 and the required implementation date, it is optional for a State to engage in the withholding process.

Regulatory Provisions

OCSE believes that care must be taken to ensure that this new program activity is implemented in a cost-effective manner in order to avoid situations in which administrative costs outweigh collections made. We have developed proposed regulations specifying that IV-D agencies shall agree to pay only for SESA activities they believe will be cost-effective (i.e., cost-effective in relation to the collections that will result from the process) and to periodically review overall program operations and costs in relation to collections for the purpose of identifying modifications to improve program and cost effectiveness.

These proposed regulations at 45 CFR 302.65 begin at paragraph (a) with three definitions that are applicable to this regulation section. The first, legal process, is based on the definition in paragraph 462(e) of the Act. Legal process is defined as a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law. We believe this definition is broad enough to encompass the pertinent legal processes in all States, since it does not require garnishment action per se, but permits legal action by "similar process." We are interested in receiving comments on this point from any States that consider the definition too limiting. The second term, State employment security agency or SESA, is defined as the agency charged with the administration of State unemployment compensation laws in accordance with title III of the Act. The third and final definition characterizes unemployment compensation as any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law) and then lists, by name, the specific categories of benefits that qualify as unemployment compensation.

Paragraph (b) of the proposed §302.65 specifies that the State IV-D agency shall enter into a written agreement with the SESA in its State to carry out the process of withholding unemployment compensation from individuals with unmet support obligations that are being enforced by the IV-D agency. The agreement may specify direct contacts between the SESA and local IV-D agencies, as permitted by the statute. To keep requirements at the absolute minimum, we have not specified what the agreement must contain, although we suggest that States include the functions to be performed by each agency, the SESA's charges as agreed upon, and the duration of the agreement. We would expect agencies to expand their agreements to cover other important points as necessary. For a comprehensive treatment of the provisions that might be addressed in a IV-D/SESA agreement for the process of withholding unemployment compensation, the State IV-D agency may wish to review the guidelines issued as an attachment to OCSE-AT-82-2, dated March 30, 1982. Because we believe it is important to establish a withholding program that is expected to be cost-effective, we have specified cost-effectiveness as a key consideration in negotiation IV-D/SESA agreements under paragraph (b) of the proposed regulations.

Section 1102 of the Social Security Act authorizes the Secretary of HHS to publish regulations necessary to efficiently administer his functions under the Act. We believe that paragraph (b) of the proposed § 302.65 is necessary to administer the process of withholding unemployment compensation efficiently and effectively. Also, section 454 of the Act provides the Secretary with the authority to prescribe requirements and standards necessary to establish an effective title IV-D program.

Paragraph (c) of the proposed § 302.65 contains the functions that the IV-D agency must perform with respect to the process of withholding unemployment compensation. Three of these functions are set forth in section 2335 of Pub. L. 97-35 and four are being proposed by OCSE to improve the administration and management of the withholding process.

The statutorily imposed functions are the following. First, under paragraph (c) the IV-D agency must periodically determine whether individuals applying for, or receiving unemployment compensation owe support obligations which are being enforced by the IV-D agency. This determination is to be made from information available from the SESA under section 508 of Pub. L. 94-566, the Unemployment Compensation Amendments of 1976. Under section 508, the IV-D agency may obtain (1) information about whether an individual is receiving, has received, or has made application for, unemployment compensation and the amount of any compensation being received; (2) the individual's current or most recent home address; and (3) information about whether an individual has refused an offer of employment and, if so, a description of the employment offered, including terms, conditions and rate of pay.

The second statutory requirement incorporated in paragraph (c) is that the IV-D agency must enforce *unmet* support obligations via the process of withholding unemployment compensation through a voluntary agreement with the individual who owes the support, or if an agreement cannot be obtained, through legal process. The IV-D agency should pursue cases which meet the specific case selection criteria

established under paragraph (c)(3) and discussed below. Under section 2335, the IV–D agency must give the SESA a copy of the voluntary agreement.

The third statutory requirement in paragraph (c) is that the IV–D agency reimburse the SESA for the administrative costs that are attributable to the process of withholding unemployment compensation for support purposes. We have added the provision that reimbursement must be made only insofar as the actual, incremental costs have been agreed upon by the SESA and the IV–D agency. The purpose of this stipulation is to ensure that the IV–D agency maintains control over expenditures related to the withholding process. In practice, we believe this provision will be protective of both parties to the agreement by precluding unnecessary and/or unauthorized expenditures for which the SESA will not be reimbursed.

To complement the IV–D functions specified by the statute, we are proposing four additional functions in paragraph (c) of § 302.65 that we believe are necessary for proper implementation of the withholding process. First, we are proposing that the IV–D agency provide a receipt at least annually to an individual who requests a receipt for the amount of unemployment compensation withheld for purposes of support. The intent of this measure is to guarantee that the individual can verify to appropriate authorities, such as a court or the Internal Revenue Service, that support has been paid in the amount of the unemployment compensation withheld.

Second, we are proposing that the IV–D agency must process its withholding cases through the SESA in its own State or through the IV–D agencies in other States. The SESA will forward all amounts it withholds to the appropriate State of local child support enforcement agency in its own State. Therefore, we are also proposing that, if a IV–D agency receives a payment on behalf of a IV–D agency in another State, it must forward that payment to the appropriate IV–D agency. The purpose of these provisions is to place primary reliance for withholding activity on the IV–D agency and the SESA in the same State, thus precluding the need for interstate IV–D/SESA agreements and costly variations in procedures.

Third, we are proposing that States must establish and use written criteria for the selection of cases for withholding. We do not plan to impose specific requirements concerning cases the IV–D agency must refer to the SESA under this paragraph, nor do we wish to specify how often the IV–D agency must make the referrals. However, the IV–D agency must design and implement case selection criteria to insure maximum referral of cases and to avoid uncertainty and excessive discretion on the part of the selecting case worker because of the lack of clear guidance. Case selection criteria might include, for example, that the individual whose unemployment compensation will be withheld will be eligible for continued receipt of benefits for a specified period of time, or, that withholding of any amount of unemployment compensation should not reduce the amount of benefits below a spedified amount per week. Case selection criteria should also address cases which may *not* be excluded solely on the basis of one particular circumstance, for example, the fact that the individual has a current responsibility to a spouse and additional children. The purpose of this requirement is to insure that States establish and implement specific case selction criteria to maximize case selection and to provide clear, complete instructions to be used in the selection process.

Finally, we are proposing that the IV–D agency review and document at least annually program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus amounts collected. Based on this review, the IV–D agency must modify its procedures and renegotiate the services provided by the SESA, as necessary, to improve program and cost effectiveness. The purpose of this provision is self-evident. It is our contention that such a review is necessary to assure that the IV–D agency takes advantage of any obvious modifications that will, as a result of new conditions or cost considerations, result in a more efficient withholding process.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the State plan amendment that is required by this regulation has been approved by the Office of Management and Budget (OMB) under existing OMB number 0960–0253.

List of Subjects in 45 CFR Part 302

Child welfare, Grant programs/social programs.

PART 302—[AMENDED]

45 CFR Part 302 is amended by adding a new § 302.65 to read as follows:

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

"Legal process" means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

"State employment security agency" or "SESA" means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

"Unemployment compensation" means any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law). It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Redwood National Park Expansion Act.

(b) *Agreement.* The State IV–D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV–D agency. The IV–D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SESA's actual, incremental costs of providing services to the IV–D agency.

(c) *Functions to be performed by the IV–D agency.* The IV–D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being enforced by the IV–D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the case selection criteria established under paragraph (c)(3), through legal process pursuant to State or local law, if a voluntary agreement cannot be obtained. The IV–D agency must give the SESA a copy of the voluntary agreement.

(3) Establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum, case selection and minimal discretion in the selection process.

(4) Provide a receipt at least annually to an individual who requests a receipt for the support paid via the withholding of unemployment compensation, if receipts are not provided through other means.

(5) Maintain direct contact with the SESA in its State:

(i) By processing cases through the SESA in its own State or through IV–D agencies in other States; and

(ii) By receiving all amounts withheld by the SESA in its own State and forwarding any amounts withheld on behalf of IV–D agencies in other States to those agencies.

(6) Reimburse the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV–D agency.

(7) Review and document, at least annually, program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness.

Note.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980.

(Section 1102 of the Social Security Act (42 U.S.C. 1302) and Section 454(20) of the Social Security Act (42 U.S.C. 654(20))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: September 29, 1982.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: December 3, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-1407 Filed 1-18-83; 8:45 am]

BILLING CODE 4190-11-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-200)]

Contract Implementation Date

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The question of whether a rail contract under 49 U.S.C. 10713 may be implemented prior to Commission approval pursuant to section 10713(e) is of substantial interest to contracting parties. In the past we have interpreted section 10713(e) as a requirement for a 30-day public notice before transportation under the contract may begin. However, numerous parties have questioned the propriety of this view and point to the delay it causes. This notice proposes rules at 49 CFR 1039.2 to implement, upon filing, rail contracts made under 49 U.S.C. 10713. Transportation could begin if compliance is made with the rules. The contracts would remain under Commission jurisdiction and subject to Commission approval or disapproval.

DATES: Comments are due by February 18, 1983.

ADDRESS: Send original and 15 copies of any comments to: Ex Parte No. 387 (Sub-No. 200), Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278,

or

Thomas Smerdon, (202) 275–7277

SUPPLEMENTARY INFORMATION: The question of whether a rail contract under 49 U.S.C. 10713 may be implemented prior to Commission approval pursuant to section 10713(e) is of substantial interest to contracting parties.

In the past we have interpreted section 10713(e) as a requirement for a 30-day public notice before transportation under the contract may begin. However, numerous parties have questioned the propriety of this view and point to the delay it causes. In light of our experience with section 10713 and the needs of the contracting parties, we are instituting this proceeding on our own motion to propose rules allowing the contracting parties to implement the rail contract provisions before formal Commission approval provided certain conditions are met.

The proposed rules would eliminate delayed implementation without affecting the 30-day statutory notice period, and are designed to accommodate legitimate shipper-requirements for prompt contract performance.

Whether transportation may begin under a contract before Commission approval is not apparent on the face of the statute.[1] Section 10713(e) discusses only the date when approval of the contract is effective,[2] but the statute does not refer to the effective date of the contract itself. Pursuant to section 10713(i), the result of Commission approval is that the transportation performed under the contract is removed from Commission jurisdiction and is not subject to Subtitle IV of 49 U.S.C. However, the legislation does not address the status of the contract during the time between the date of filing and the date of Commission approval.

The document which is filed constitutes a contract, since section 10713(b) states that each "contract entered into under this section shall be filed * * *" The only remaining element is to obtain Commission approval under the limited review standards of section 10713.

The proposed rules are compatible with section 10713. They allow the contract to become effective on the date of filing and the transportation or services thereunder to begin immediately; however, the effective date for Commission approval will not change. Potential complainants are still afforded the 30-day notice period. The contract summary provides notice to others who may be affected by the contract so that they may have the opportunity to complain. Under the proposed rules, the potential complainant still retains the right to file a petition and to obtain any remedies which are warranted. All interests remain protected.

The proposed rules are consistent with congressional intent. Congressional authorization of rail contracts was "a significant aspect of the new freedom allowed carriers to market transportation more effectively," H.R. Rep. No. 1430, 96th Cong., 2d Sess. 100 (1980). Section 10713 is intended to encourage contracting parties to make widespread use of such agreements. H. Rep. No. 1430, *supra*, at 98–99.

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[1] The common carrier regulatory concepts used in exigent circumstances are not appropriate as governing principles, because contract carrier service is a separate and fundamentally distinct class of service [Section 10713(1)]. Common carrier tariff rules, such as special permission regulations and the 10-day notice period for rate reductions, do not apply to contracts.

[2] Under 49 U.S.C. 10713(e), not earlier than 30 days after the contract is filed, nor later than 60 days.

Congressional encouragement of contracts, when considered in conjunction with the relatively short time frames for Commission approval or disapproval after a contract is filed [section 10713(e)], also indicates an intent for the transportation to commence as soon as possible.

The proposed rules are set out at 49 CFR 1039.2. Section 1039.2(a) states that performance under the contract may begin on the date of filing of the appropriate documents, subject to certain conditions.

The first condition, set out in paragraph (a)(1), is that both the contract and contract summary (or contract amendment and supplement) must specifically state that performance under the contract may begin on the filing date and that performance is subject to these rules. This requirement is to provide adequate public notice of the intended duration of the contract.

Paragraph (a)(2) does not allow implementation of a contract or amendment under these rules if the rail equipment required by the contract exceeds the 40-percent equipment capacity limitations of section 10713(k), unless prior relief from this section has been granted. If prior relief has been obtained, it must be identified in the contract summary. The purpose of paragraph (a)(2) is to restrict the application of the proposed rules when they would be in direct conflict with the statutory requirements for limiting equipment used in rail contracts.

Paragraph (a)(3) states that the otherwise applicable tariff rates will apply in the event the contract is disapproved or rejected. This reflects the fact that performance prior to approval is predicated on the lawfulness of the contract. Consequently, a contract which is subsequently disapproved cannot provide the legally applicable transportation charges and other governing terms between the purchaser of rail services and the carrier. Application for reparations or waiver of undercharges could be made in these circumstances; thus adequate safeguards exist to remedy inequities.[3]

Paragraph (a)(4) permits transportation under the contract prior to Commission approval, with the explicit provision that the Commission still retains jurisdiction. This is consistent with section 10713(i) which prevents challenge to contractual matters only after approval of the contract.

Paragraph (a)(5) provides that the implementation date for a contract or amendment is the date either is filed.

Regulatory Flexibility Statement

Pursuant to section 605(b), we certify that the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, including both purchasers of transportation and carriers. No statutory rights to file complaints under 49 U.S.C. 10713 are foreclosed, and the identical remedies remain available under the proposal. Accordingly, a Regulatory Flexibility Analysis under 5 U.S.C. 601 et seq. is unnecessary.

It does not appear that this decision will significantly affect the quality of the human environment or the conservation of energy resources. Comments on these (as well as all other) matters, however, are invited.

List of Subjects in 49 CFR Part 1039

Railroads, Transportation.

Decided: January 10, 1983.

(49 U.S.C. 10321 and 10713; 5 U.S.C. 553)

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

[3] Application for reparations or waiver of undercharges is available through a petition for exemption under 49 U.S.C. 10505. See No. 38865, *Denver and Rio Grande Western Railroad Company—Petition For Authority to Pay Reparations*, decided December —, 1982.

Commissioner Gradison concurred. Vice Chairman Gilliam did not participate.

James H. Bayne,

Acting Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 CFR would be amended by revising § 1039.2 to read as follows:

§ 1039.2 Contract implementation date.

Transportation or service performed under a contract or amendment may begin, without specific Commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before Commission approval as defined at 49 CFR 1039.3(f), subject to the following conditions:

(a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of 49 CFR 1039.2. The contract summary or supplement shall separately reflect the date of commencement of service under this provision under "duration of the contract," 49 CFR 1300.313(a)(4).

(b) If the rail equipment standards of 49 U.S.C. 10713(k) are exceeded, prior relief shall be obtained from the Commission and shall be specifically identified in the contract summary.

(c) If the Commission disapproves or rejects the contract or amendment, the appropriate non-contract tariffs in effect during the period before Commission action will be applicable.

(d) Before Commission approval, the contract or amendment and transportation are subject to Commission jurisdiction, 49 U.S.C. 10713, and applicable regulations.

(e) Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

[FR Doc. 83-1441 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 48, No. 13
Wednesday, January 19, 1983

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

Office of the Secretary

Forms Under Review by Office of Management and Budget

January 14, 1983.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (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 provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Charles E. Caudill, Acting Statistical Clearance Officer, (202) 447-6201.

Revised

• Agricultural Marketing Service
Oregon-Washington-California Winter Pears—Marketing Order 927
On occasion, monthly
Farms, business: 6,757 responses; 3,713 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5875

Extension

• Food and Nutrition Service
Evaluation of the Food Stamp Work Registration and Job Search Demonstration
Monthly
Individuals of households: 7,785 responses; 3,289 hours; not applicable under 3504(h)
Boyd Kowal (703) 756-3115

Charles E. Caudill,
Acting Statistical Clearance Officer.

[FR Doc. 83-1420 Filed 1-18-83; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modification No. 3 to Permit No. 336

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 336 issued to Dr. Richard H. Lambertsen, Department of Physiological Sciences University of Florida on May 19, 1981, is modified to include the importation of specimens of all species. Accordingly, Section A-1 is deleted and replaced by:

"1. An unspecified number of specimen materials from all species of cetaceans in the North Atlantic Ocean may be imported when taken legally in the country of origin."

Section B-1 is deleted and replaced by:

"1. The specimens to be imported shall have been collected from animals taken according to the schedule of the International Whaling Commission and as permitted under the laws of the country of origin."

This modification became effective on January 13, 1983.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W. Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and
Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 13, 1983.

R. B. Brumsted,
Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-1505 Filed 1-18-83; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Extension of Coverage of the Hong Kong Export Visa To Include Certain Textiles and Textile Products of Cotton, Wool, and Man-Made Fibers

January 14, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Extending coverage of the existing Hong Kong export visa requirement to include cotton, wool, and man-made fiber textiles and textile products in Categories 300-320 and 360-369, 400-429 and 464-469, and 600-627 and 665-669, produced or manufactured in Hong Kong.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong, provides for extension of coverage of the existing export visa requirement to include cotton, wool, and man-made fiber textiles and textile products. This coverage is in addition to the previously established coverage of cotton, wool, and man-made fiber apparel products in Categories 330-359, 431-459, and 630-659.

EFFECTIVE DATE: March 1, 1983 for cotton, wool, and man-made fiber textiles in Categories 300-369, 400-469, and 600-669, produced or manufactured in Hong Kong and exported on and after

January 1, 1983. Cotton, wool, and man-made fiber apparel products in Categories 330–359, 431–459, and 630–659, which have been exported before January 1, 1983 will not be denied entry for consumption, or withdrawal from warehouse for consumption in the United States, if visaed in accordance with previously established procedures.

FOR FURTHER INFORMATION CONTACT: Cordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On January 5, 1978 a letter dated December 30, 1977 from the Chairman of the Committee for the Implementation of Textile Agreements was published in the **Federal Register** (43 FR 993), which established an export visa requirement for cotton, wool, and man-made fiber apparel products, produced or manufactured in Hong Kong and exported to the United States on and after Janaury 1, 1978. Under the terms of the amended bilateral agreement of June 13, 1982, the Governments of the United States and Hong Kong have agreed to extend coverage of the existing export visa requirement to include cotton, wool, and man-made fiber textiles and textile products, in addition to apparel. In the interest of clarity and efficiency of administration, the letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs cancels the directive of December 30, 1977, as amended, and establishes an export visa requirement for both textiles and apparel exported from Hong Kong on and after January 1, 1983 which are subject to the terms of the amended bilateral agreement, effective on March 1, 1983. Facsimiles of the visa stamps that are currently valid are published as enclosures to that letter.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This letter cancels and supersedes the letter of December 30, 1977, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber apparel products in Categories 330–359, 431–459, and 630–659, produced or manufactured in Hong Kong and exported on and after January 1, 1978, for which the Government of Hong Kong had not issued an appropriate export visa.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1972, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on March 1, 1983 and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in Categories 300–369, 400–469, and 600–669, produced or manufactured in Hong Kong and exported on and after January 1, 1983, for which the Government of Hong Kong has not issued an appropriate export visa, fully described below. Cotton, wool, and man-made fiber apparel in Categories 330-359, 431–459, and 630–659, which has been exported before January 1, 1983 shall not be denied entry, provided the merchandise has been visaed in accordance with previous requirements.

The visa will be a signed copy of a Hong Kong export license with a stamp on the front side. A facsimile of the currently valid visa stamp is enclosed. The category or categories and quantities shall be correctly indicated on the visa, i.e., the export license; otherwise, the goods are to be denied entry. The only exceptions will be instances in which the quantity indicated on the visa exceeds the actual quantity of the shipment or in which categories are merged, as described in the following paragraph.

Visas covering cotton, wool, and man-made fiber textile and apparel products classified in categories which have been merged without subcategories under the terms of the bilateral agreement, e.g., Categories 333/334, 445/446, 447/448, 633/634, 638/639, and 645/646, shall cite either or both of the categories comprising the merger. Part categories 338/339 and 338/339 (1) shall be treated in accordance with the instructions set forth in the directive of December 29, 1982 concerning correct subcategory designations and parts of categories to be shown on visas.

Visas for textile and apparel products of cotton, wool, and man-made fibers, valued at U.S. $250 or less need not show the correct category or quantity but shall indicate: "Approved for export to the U.S.A. goods valued at U.S. $250 or less and not debited against restraint limits." A facsimile of this visa stamp is also enclosed.

A description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

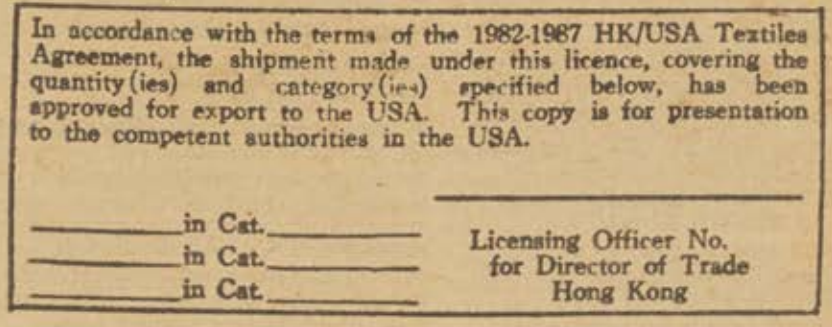
The action taken with respect to the Government of Hong Kong and with respect to imports of cotton, wool, and man-made fiber textiles and textile products from Hong Kong has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Enclosures.



Approved for export to the USA
Goods valued at US$250 or less and not debited against restraint limits.

for Director of Trade
Hong Kong

[FR Doc. 83-1436 Filed 1-18-83; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF EDUCATION

National Commission on Execellence in Education; Amended Notice of Meeting

AGENCY: National Commission on Excellence in Education, Education Department.

ACTION: Amended Notice of Meeting.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (FR 11-10-82, Page 50945)

SUMMARY: This notice amends the schedule of the seventh full meeting of the National Commission on Excellence in Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: January 21, 1983 (9:30 a.m. until 12:00 noon); January 22, 1983 (9:00 a.m. until 10:00 a.m.) (*Tentative:* Anyone planning to attend this session should confirm this schedule by calling the Commission office (202-254-7920) on Friday or the hotel (202-543-6000) on Saturday.)

LOCATION: January 21 & 22, 1983, Capitol Hill Hotel, Conference Center, 200 C Street, SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Milton Goldberg, Executive Director, or Betty Baten, Administrative Officer, (202) 254-7920, 1200 19th St., N.W., Washington, D.C. 20208.

The National Commission on Excellence in Education is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 et seq.) and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of advisory committees. The Commission is established to advise and make recommendations to the nation and to the Secretary of Education.

The session on January 21 will include a discussion of issues for possible treatment in the Final Report.

The session *tentatively* scheduled for January 22, will address the same topics.

All meetings of the Commission are open to the public.

Records are kept of all Commission meetings and are available for public inspection at the office of the National Commission on Excellence in Education, 1200 19th Street, N.W., Room 222, from 8:00 a.m. until 5:00 p.m.

Dated: January 14, 1983.

Fred W. Decker,

Deputy Assistant Secretary for Educational Research and Improvement.

[FR Doc. 83-1483 Filed 1-18-83; 8:45 am]
BILLING CODE 4000-01-M

National Commission on Excellence in Education; Cancelled Meeting

AGENCY: National Commission on Excellence in Education; Education Department.

ACTION: Cancellation of meeting.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (FR 11-10-82, Page 50945).

DATES AND TIMES: The following meeting has been *cancelled.* February 18 & 19, 1983.

FOR FURTHER INFORMATION CONTACT: Milton Goldberg, Executive Director, or Betty Baten, Administrative Officer, (202) 254-7920, 1200 19th St., N.W. Washington, D.C. 20208.

Dated: January 14, 1983.

Fred W. Decker,

Deputy Assistant Secretary for Educational Research and Improvement.

[FR Doc. 83-1484 Filed 1-18-83; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Muddy Ranch Point of Delivery; Finding of No Significant Impact

AGENCY: Bonneville Power Administration, DOE.

ACTION: Finding of No Significant Impact (FONSI) for Bonneville Power Administration's (BPA's) proposed Muddy Ranch Point of Delivery.

SUMMARY: BPA, an Administration within the DOE, in cooperation with the Bureau of Land Management (BLM) and Rural Electrification Administration (REA), has prepared an environmental assessment (EA), DOE/EA-0198, evaluating a proposal to provide a new point of delivery of electricity near the town of Antelope in north-central Oregon. A complete description of the proposed action is presented in the EA.

Based on the EA, and after consideration of public comment, the Department of Energy has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement is not required.

SUPPLEMENTARY INFORMATION: The purpose of this proposal is to maintain electrical system reliability and to meet future load growth in the Clarno Basin. The Wasco Electric Cooperative (WEC, a preference customer of BPA) would build a new substation and a 6.8-mile tapline, built at 115-kV standards and operated at 69-kV, with a tower voltage 12.5-kV circuit underbuild for local distribution of power. The proposed line would be built mainly in an existing right-of-way and would replace an existing distribution line, beginning at a point along Oregon Highway No. 218 approximately one and one-half miles east of the John Day River crossing (see Figure 2 on page 6 of the EA) and continuing south and southwest to the proposed Muddy Ranch Substation. Most of the line will follow field roads, either along the road or cross country, and either on private right-of-way or BLM right-of-way. Much of the line will follow the route of an existing 7.2/12.5-kV distribution line and will replace this line. Single wood-pole structures will be used for the length of the line, except for several wooden H-frame structures.

The proposed tapline and the alternative both call for crossing the John Day River and locating structures in portions of the Muddy Creek, John Day River, and Pine Creek floodplains for the following reasons: (1) The environmental impact of using the existing 12.5-kV distribution line rights-of-way which cross the floodplains would be much less than the impact of establishing new rights-of-way and access roads in separate locations; (2) after a field survey of the area, it was determined that the 30 to 32 poles which would be located in the floodplains would not change the natural and beneficial values served by the floodplains; (3) the use of an existing right-of-way would be less costly than establishing a new right-of-way; and (4) electrical service from the existing distribution line has not been disrupted as a result of past floods. The Wasco County Planning Department confirmed that the proposed action does not conflict with State or local floodplain

control standards. The complete floodplain assessment is contained in the EA (pages 28–29).

Environmental impacts which could be caused by construction and/or operation of the proposed project and reasons why they would not be significant are as follows:

(1) The proposed action will not affect any listed or proposed endangered or threatened species or their habitats. This was determined through consultation with the U.S. Fish and Wildlife Service (see page 27 of the EA).

(2) The proposed action will not affect any properties eligible for inclusion in the National Register of Historic Places or any other protected resources. This was determined through consultation with the Oregon State historic Preservation Office (see page 27 of the EA).

(3) The proposed action is consistent and compatible with State and local plans and programs. The EA was distributed to appropriate A–95 State and local clearinghouses for review and comment.

The proposed action has been found to be consistent or compatible with each of the Oregon statewide planning goals: citizen involvement (Goal 1), by preparing and distributing the EA; agricultural lands (Goal 3), by using an existing right-of-way and converting no more than a few square feet of farmland where new poles will be erected; green spaces, scenic and historic areas, and natural resources (Goal 5), by avoiding significant areas and consulting with agencies having special expertise; areas subject to natural disasters and hazards (Goal 7), by building those few poles in the floodplain to strengths that will withstand floods; economy of the State (Goal 9), by responding to demand for additional electrical power; energy conservation (Goal 13), by reducing line losses caused by the overload system as it presently exists.

(4) Substation and tapline/distribution-line construction activities will cause short-term increases in noise, soil erosion, stream turbidity, and soil compaction. Impacts from tapline construction will be minor as they will result from replacing old poles with new poles along an existing right-of-way and therefore will not require clearing of land. Substation construction impacts will also be minor as ground disturbance during construction will be kept to a minimum and sites will be returned to natural ground contours to prevent excessive soil erosion. The cut and fill areas outside the substation yard will be graded and seeded to avoid soil erosion (see pages 14–17 of the EA).

(5) At most, 25 square feet of farmland will be converted to new use to support the tapline poles. Removing this small amount of soil from cultivation will not significantly lessen the productivity of the farmland in the area (see pages 29 and 30 of the EA).

(6) There may be short-term disturbance of existing wildlife habitat during construction. This habitat is expected to return to near existing conditions after construction (see pages 14–17 of the EA).

(7) The substation transformer will cause an increase in the noise level surrounding it, but the level will be kept well within State standards. Noise levels of the substation transformer will be approximately 60 dB at the transformer, diminishing outward to approximately 48 dB at the property line of the substation (see pages 18 and 32 of the EA).

(8) The taller poles of the new tapline will reduce visual quality in the area. The 15-foot increase in the height of new poles will only slightly reduce the existing visual quality of the area as poles are already part of the landscape (see pages 16, 17, and 30 of the EA).

The following measures will be taken to mitigate the environmental impacts as part of the proposed action. More detailed mitigation procedures are identified on pages 15 and 20 of the EA.

(a) 12.5-kV distribution line will be underbuilt on 115-kV structures as much as possible to avoid impacts of constructing two lines.

(b) No chemicals will be used for vegetation control on the line route.

(c) Beaded creosote will be removed from replaced poles and placed in barrels for disposal according to Federal, State, and local regulations.

(d) Narrow profile 114-kV single-pole line structures with post insulators and 12.5-kV underbuild will cause less visual impacts than if multiple-pole structures were used. A single lattice structure with mounted switches will be used for the Clarno tap structure; this will have less visual impact than the stand-mounted switches which are often standard utility practice.

(e) Power-pole design and conductor arrangements will conform to suggested practices for raptor protection (see page 20 of the EA).

(f) To reduce impacts in the unlikely event of an oil spill from the substation transformer and regulators, the substation site will be surfaced with a layer of 6-inch crushed rock which would serve as an absorbant. The transformer will use non-PCB oils for cooling. A berm will surround and contain the area. In case of spills, the contaminated switchyard rock will be properly disposed of and replaced (see pages 12, 20, and 32 of the EA).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and further information are available from Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland Oregon 97208; telephone (503) 230–5136.

Issued in Washington, D.C. December 30, 1982.

William A. Vaughan,

Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 83–1416 Filed 1–18–83; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–80–002; FC Case Nos. 61020–9140–01–12, 61020–9140–05–12, and 61020–9140–06–12]

Proposed Modification of an Order Granting Permanent Fuels Mixture Exemptions to Convent Chemical Corporation, Convent Plant, Convent, Louisiana

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and Proposed Modification of an Order Granting Permanent Fuels Mixture Exemptions to Convent Chemical Corporation, Convent Plant, Convent, Louisiana.

SUMMARY: In response to a request dated December 6, 1982 from Convent Chemical Corporation (Convent), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. ("FUA" or "the Act"), and 10 CFR Part 501, Subpart G, to modify the permanent fuels mixture exemptions granted by Order ("Order") to three major fuel burning installations (MFBI's), identified as boilers Nos. 1, 5, and 6, owned and operated by Convent at its Convent, Louisiana industrial chemical plant. The modification would delete an annual reporting requirement, consistent with current applicable regulations.

Based upon its review of Convent's modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the original exemptions. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written

response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see DATE section, below). If no responses are received within this period, the Order modification, as proposed, for each boiler shall become final upon the expiration of the period, without further action by ERA.

A detailed discussion of the Order and Convent's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed modification of the Convent Order must be received by ERA no later than February 18, 1983.

ADDRESS: Written responses must be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–093, 1000 Independence Avenue, SW., Washington, D.C. 20585. The case numbers, FC 61020–9140–01–12, 05–12, and 06–12, should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–073, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–8162.

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B–222, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–2967.

SUPPLEMENTARY INFORMATION: On October 2, 1980, ERA exempted, by Order, Convent's boilers Nos. 1, 5 and 6 located at Convent, Louisiana from the prohibitions of Section 202 of FUA, which prohibits the use of natural gas or petroleum as a primary energy source by certain MFBIs (45 FR 67124, October 9, 1980). Subject to the terms and conditions set forth in the Order, the permanent exemptions permitted the use of a fuels mixture of coal and natural gas or No. 2 fuel oil in boiler No. 1; a fuels mixture of natural gas and industrial waste-gas in boiler No. 5; and a fuels mixture of natural gas or No. 2 fuel oil with industrial waste-gas in boiler No. 6. Convent's exemption petition was filed and granted under Section 505.28 of ERA's interim rules for new facilities and Section 212(d) of FUA.

By letter dated December 6, 1982, Convent requested that ERA modify the Order to delete the reporting requirement that Convent must, pursuant to 10 CFR 503.38(g), annually file with ERA a certified statement identifying the actual quantities of coal, waste-gas, natural gas, and No. 2 fuel oil used in each boiler during the preceding year as well as the heating value (in Btu's) of each of these fuels and the percentage of total annual heat input of each fuel used in each boiler.

Convent based its request on the fact that since the issuance of the Order with its annual reporting requirements, DOE has revised its final rules so as to eliminate such annual reporting requirements for any facility granted a fuels mixture exemption uner 10 CFR 503.38 (46 FR 59872, December 7, 1981).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to modify the Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G, (46 FR 59872, 59898, December 7, 1981). Based upon the information contained in Convent's modification request and upon the record as a whole, ERA proposes:

(1) To find that the revision of 10 CFR 503.38, so as to eliminate the annual reporting requirements from any order granting a permanent fuels mixture exemption, constitutes significantly changed circumstances that warrant a modification of the Order, as provided by 10 CFR 501.102(b); and

(2) To modify the Order to delete therefrom term and condition number 7, relating to the annual reporting requirement.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days of the publication of this Notice in the **Federal Register**. If ERA receives no responses within this period, the Order modification shall become final as proposed, without further ERA action, upon expiration of the period.

Issued in Washington, D.C., January 13, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83–1470 Filed 1–18–83; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. G–18907–001]

Valero Interstate Transmission Co. (South Texas Natural Gas Gathering Co.); Notice of Filing

January 13, 1983.

Take notice that on December 17, 1982, Valero Interstate Transmission Company (Vitco) tendered for filing its FERC Gas Rate Schedule No. 17 for service to Edwin L. Cox (Cox). Vitco states that the rate schedule be made effective February 1, 1983, the effective date of Vitco's contract with Cox for the transportation of shrinkage. It is stated that the rate for such service is the transportation rate approved by the Commission in Vitco's Docket Nos. RP81–60–000, RP82–25–000 and RP82–26–000.

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 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 January 20, 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 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. 83–1475 Filed 1–18–83; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 14, 1983.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-SHELL OIL CO				RECEIVED:	12/14/82	JA: MI			
8313420		2114100000		102-2		STATE ALLIS 2-29	ALLIS 29A	64.0	MICHIGAN CONSOLID
8313419		2113735374		102-2		STATE CORWITH 1-14	CORWITH 14	195.0	MICHIGAN CONSOLID
NORTH DAKOTA INDUSTRIAL COMMISSION									
-GULF OIL CORPORATION				RECEIVED:	12/14/82	JA: ND			
8313440		3303300097		102-2		BARKLAND 1-18-2A	UNDESIGNATED	25.0	
-PENNZOIL COMPANY				RECEIVED:	12/14/82	JA: ND			
8313434		3305301386		102-2		BOWLINE CREEK #35-24BN	NORTH BRANCH	70.9	KERR-MCGEE CORPOR
8313439		3305301299		102-2		BULL MOOSE SOUTH #33-43BN	SOUTH BULL MOOSE	52.8	KOCH HYDROCARBON
8313436		3305301487		102-2		BURNING MINE BUTTE #9-21BN	BURNING MINE BUTTE	53.5	KERR-MCGEE CORPOR
8313435		3305301345		102-2		FLAT TOP BUTTE #15-34BN	FLAT TOP BUTTE	20.2	KOCH HYDROCARBON
8313438		3305300969		102-2		PENNZOIL-DEPCO #27-31BN	BULL MOOSE	20.8	KOCH HYDROCARBON
8313437		3305301120		102-2		SATERSTOL #22-43	BULL MOOSE	10.2	KOCH HYDROCARBON
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED:	12/15/82	JA: NM			
8313416		3002527515		103		TONI NO 1	NADINE DRINKARD ABO	70.0	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO				RECEIVED:	12/16/82	JA: NM			
8313433		3004511741		108		STATE GAS COM "BI" NO 1	BASIN DAKOTA	20.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	12/20/82	JA: NM			
8313451		3004511650		108		GALLEGOS CANYON UNIT NO 212 (3RD)	BASIN - DAKOTA	19.0	EL PASO NATURAL G
-C & E OPERATORS INC				RECEIVED:	12/15/82	JA: NM			
8313415		3004525388		103		FEE #7-A (PICTURED CLIFFS)	AZTEC-PICTURED CLIFFS	40.0	EL PASO NATURAL G
-CALVIN PETROLEUM CORPORATION				RECEIVED:	12/16/82	JA: NM			
8313425		3004500000		108		# 1 APPERSON	BASIN DAKOTA 1850' FW	15.0	EL PASO NATURAL G
-CITIES SERVICE COMPANY				RECEIVED:	12/20/82	JA: NM			
8313449		3001524151		102-3		YARBRO A COM #1	OTIS LOVING ATOKA	183.0	
-CONSOLIDATED OIL & GAS INC				RECEIVED:	12/16/82	JA: NM			
8313432		3004500000		108-PB		CHAVEZ #1	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	12/16/82	JA: NM			
8313423		3004510366		108		ATLANTIC A #6	BLANCO - MESA VERDE	15.0	EL PASO NATURAL G
8313424		3004521601		108		HUBBELL #19 FARM	BLOOMFIELD FARMINGTON	1.0	EL PASO NATURAL G
8313422		3003921793		108		LINDRITH UNIT #94	SOUTH BLANCO - PICTUR	22.0	EL PASO NATURAL G
-ELK OIL COMPANY				RECEIVED:	12/15/82	JA: NM			
8313417		3002527611		103		STATE P H #1	DEAN PERMO PENN	29.0	WARREN PETROLEUM
-EXXON CORPORATION				RECEIVED:	12/16/82	JA: NM			
8313429		3000561565		102-2	107-TF	NEW MEXICO "CS" STATE #1	WILDCAT ABO	61.0	
-EXXON CORPORATION				RECEIVED:	12/20/82	JA: NM			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313448		3001523942		103		NEW MEXICO "DC" STATE #1	UNDESIGNATED CISCO CA	219.0	CONOCO INC
-GRACE PETROLEUM CORPORATION				RECEIVED:	12/20/82	JA: NM			
8313446		3002524070		108		PARKS #7	DRINKARD	0.0	EL PASO NATURAL G
-JEROME P MCHUGH				RECEIVED:	12/20/82	JA: NM			
8313445		3003922497		103		FULLERTON'S FOLLIE #12	SOUTH BLANCO PICTURED	115.0	EL PASO NATURAL G
-LAURITSEN R E				RECEIVED:	12/20/82	JA: NM			
8313453		3004500000		103		HATCH #1	CHA-CHA GALLUP	11.0	INTRASTATE GATHER
-LIVELY ENERGY & DEVELOPMENT CORP				RECEIVED:	12/20/82	JA: NM			
8313441		3000500000		103		CONOCO #1	CHAVEROO SA	13.1	WARREN PETROLEUM
8313443		3000500000		103		CONOCO #2	CHAVEROO SA	15.0	WARREN PETROLEUM
8313444		3000500000		103		CONOCO #3	CHAVEROO SA	26.6	WARREN PETROLEUM
8313442		3000500000		103		CONOCO #4	CHAVEROO SA	3.2	WARREN PETROLEUM
-MANANA GAS INC				RECEIVED:	12/15/82	JA: NM			
8313418		3004522683		108		ANNE B #1	BASIN DAKOTA	17.0	EL PASO NATURAL G
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED:	12/16/82	JA: NM			
8313428		3002506590		108-SA		H CORRIGAN NO 3	EUMONT YATES 7 RVRS Q	19.4	NORTHERN NATURAL
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	12/15/82	JA: NM			
8313414		3002524387		108		E VAC GB/SA U TR 3315 NO 011	VACUUM GB/SA	2.8	EL PASO NATURAL G
8313413		3002523552		108		E VAC GB/SA UNIT TR 0449 NO 115	VACUUM GB/SA	1.0	EL PASO NATURAL G
8313412		3002511478		108		WOOLWORTH GP3 #2	JALMAT - YATES - 7 RI	19.0	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	12/16/82	JA: NM			
8313426		3002509677		108		C D WOOLWORTH NO 14	JALMAT YATES-7 RIVERS	1.0	EL PASO NATURAL G
8313427		3002501268		108		NEW MEX A NO 1	KEMNITZ LOWER-WOLFCAM	6.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO				RECEIVED:	12/20/82	JA: NM			
8313450		3004320450		108		DON EVANS #1	BLANCO	11.0	EL PASO NATURAL G
-STEVENS OPERATING CORP				RECEIVED:	12/20/82	JA: NM			
8313452		3000561633		103		CITGO STATE #7	TWIN LAKES - SAN ANDR	5.0	MAPCO PRODUCTION
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	12/20/82	JA: NM			
8313447		3001524158		103		NEW MEXICO "Z" STATE NO 1	MILLMAN (O-G) EAST	12.0	PHILLIPS PETROLEU
-TEXACO INC				RECEIVED:	12/16/82	JA: NM			
8313431		3002500000		103		C H WEIR "A" NO 14	UNDESIGNATED ABO	395.7	
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	12/16/82	JA: NM			
8313430		3002506902		108		H T MATTERN (NCT-B) #5	EUMONT GAS & PENROSE	6.4	EL PASO NATURAL G
**********									
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
**********									
-ABARTA OIL & GAS INC				RECEIVED:	12/14/82	JA: NY			
8313508	4228	3102917828		103		EDIE #1 E-82-013 ABARTA	LAKE SHORE	12.0	NATIONAL FUEL GAS
8313512	4224	3102917622		103		EVANS LAND #1 E-82-012 ABARTA	LAKE SHORE	6.0	NATIONAL FUEL GAS
8313507	4225	3102917176		103		LAMBRIX#1 02325	LAKE SHORE	12.0	NATIONAL FUEL GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	12/14/82	JA: NY			
8313519	2838	3101316821		107-TF		A WINTON #1	WILDCAT	9.0	COLUMBIA GAS TRAN
8313517	2836	3101316822		107-TF		A WINTON UNIT #2	WILDCAT	12.0	COLUMBIA GAS TRAN
8313516	2891	3101316881		107-TF		BARGAR UNIT #6	WILDCAT	9.0	COLUMBIA GAS TRAN
8313521	2867	3101316823		107-TF		CHAUTAUGUA COUNTY #1	WILDCAT	6.0	COLUMBIA GAS TRAN
8313520	2824	3101316824		107-TF		CHAUTAUGUA COUNTY #2	WILDCAT	12.0	COLUMBIA GAS TRAN
8313515	2889	3101316878		107-TF		CHAUTAUGUA COUNTY UNIT #5	WILDCAT	12.0	COLUMBIA GAS TRAN
8313518	2869	3101316880		107-TF		H OAG #1	WILDCAT	9.0	COLUMBIA GAS TRAN
8313465	2871	3101316886		107-TF		HALLER UNIT #4	WILDCAT	9.0	COLUMBIA GAS TRAN
8313522	2379	3101316257		107-TF		N Y S CHAUT REF AREA #1 WELL #8	CHERRY CREEK	30.0	COLUMBIA GAS TRAN
-BOUNTY OIL & GAS INC				RECEIVED:	12/14/82	JA: NY			
8313458	3200	3101317084		107-TF		ENOS/FRANKSON #1	WILDCAT	0.0	NATIONAL FUEL GAS
8313469	2949	3101315722		107-TF		JOHNSON UNIT #1	BUSTI	0.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313514	3605	3101317085	107-TF		MAZZARISI #1	BUSTI	0.0	COLUMBIA GAS TRAN
-CLOVER OIL CO			RECEIVED:	12/14/82	JA: NY			
8313506	4294	3103715848	103		ANSBROW #1	ALDEN-DARIEN	0.0	NATIONAL FUEL GAS
-DORAN & ASSOCIATES INC			RECEIVED:	12/14/82	JA: NY			
8313466	3764	3101317119	107-TF		W BURGETT UNIT #1 KV-19	CARROLL	30.0	COLUMBIA GAS TRAN
-ENVIROGAS INC			RECEIVED:	12/14/82	JA: NY			
8313471	4314	3101313346	108		ALDAY #1	LAKESHORE	6.0	NATIONAL FUEL GAS
8313481	4364	3101313216	108		BOSTWICK #1	LAKESHORE	8.0	NATIONAL FUEL GAS
8313490	4295	3101313218	108		CALDWELL #2	LAKESHORE	3.0	NATIONAL FUEL GAS
8313487	4299	3101313021	108		COCHRANE FARMS INC #1	LAKESHORE	11.0	NATIONAL FUEL GAS
8313480	4315	3101313118	108		COCHRANE FARMS INC #2	LAKESHORE	5.0	NATIONAL FUEL GAS
8313489	4365	3101313119	108		COCHRANE FARMS INC #3	LAKESHORE	5.0	NATIONAL FUEL GAS
8313486	4300	3101313120	108		COCHRANE FARMS INC #4	LAKESHORE	13.0	NATIONAL FUEL GAS
8313485	4298	3101313121	108		COCHRANE FARMS INC #5	LAKESHORE	3.0	NATIONAL FUEL GAS
8313472	4313	3101314362	108		D BABO #1	LAKESHORE	4.0	NATIONAL FUEL GAS
8313476	4309	3101313086	108		ELLIS #1	LAKESHORE	11.0	NATIONAL FUEL GAS
8313475	4310	3101313088	108		ELLIS #2	LAKESHORE	8.0	NATIONAL FUEL GAS
8313479	4306	3101313547	108		J ORTON #1	LAKESHORE	2.0	NATIONAL FUEL GAS
8313527	4316	3101313548	108		J ORTON #2	LAKESHORE	3.0	NATIONAL FUEL GAS
8313477	4308	3101314363	108		J ORTON #3	LAKESHORE	10.0	NATIONAL FUEL GAS
8313528	4317	3101313219	108		JONES #1	LAKESHORE	16.0	NATIONAL FUEL GAS
8313529	4318	3101313220	108		JONES #2	LAKESHORE	4.0	NATIONAL FUEL GAS
8313478	4307	3101313022	108		LITTLE #1	MINA-RIPLEY	11.0	NATIONAL FUEL GAS
8313488	4297	3101312952	108		MCCUTCHEON #1	LAKESHORE	13.0	NATIONAL FUEL GAS
8313473	4312	3101312953	108		MCCUTCHEON #2	LAKESHORE	12.0	NATIONAL FUEL GAS
8313482	4303	3101313544	108		MCDONALD #1	LAKESHORE	8.0	NATIONAL FUEL GAS
8313462	2346	3101315938	107-TF		NYS REFORESTATION AREA 3/ #6	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8313461	2342	3101315939	107-TF		NYS REFORESTATION AREA 3/ #7	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8313464	2340	3101315940	107-TF		NYS REFORESTATION AREA 3/ #8	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8313483	4302	3101313087	108		OSSKAN #1	LAKESHORE	8.0	NATIONAL FUEL GAS
8313509	2495	3101315389	103		R HAYES #1	LAKESHORE	18.0	NATIONAL FUEL GAS
8313460	2226	3101316582	107-TF		R HEWES #3-A	STEBBINS CORNERS	18.0	COLUMBIA GAS TRAN
8313463	2348	3101316308	107-TF		R MORRIS #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8313474	4311	3101312842	108		THORPE #1	LAKESHORE	4.0	NATIONAL FUEL GAS
8313489	4296	3101313221	108		WAKELEY #1	LAKESHORE	7.0	NATIONAL FUEL GAS
8313484	4301	3101313222	108		WAKELEY #2	LAKESHORE	5.0	NATIONAL FUEL GAS
-KEYSTONE ENERGY OIL & GAS PRODUCTIO			RECEIVED:	12/14/82	JA: NY			
8313496	4347	3100916918	103		ARTHUR EUGENHAGEN #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313492	4339	3100916927	103		CHARLES VAN ETTEN #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313511	4220	3100916422	103		CLIFFORD GIBBS #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313495	4333	3100916963	103		CLIFFORD SCHUELER #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313510	4222	3100916407	103		DONALD WILLIAMS #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313493	4337	3100917706	103		EUGENE BISSELL #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313498	4353	3100916922	103		FRANK HUBER #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313497	4351	3100917050	103		GARY SARGENT #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313500	4355	3100917704	103		HOWARD EATON #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313501	4357	3100916413	103		LARIMER/NORTON #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313494	4335	3100916830	103		MCDONALD #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313499	4349	3100916831	103		MCDONALD #2	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
8313513	4218	3100916410	103		WALTER WILDER #1	SKINNER HOLLOW	18.0	NATIONAL FUEL GAS
-MAYNARD OIL COMPANY			RECEIVED:	12/14/82	JA: NY			
8313524	4325	3102917674	103		ARTHUR MONTGOMERY #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS
8313526	4329	3102917768	103		GARY MILLER #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS

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JD NO	JA DAT	API NO	T	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313525	4327	3102917735		103		HARRISON #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS
8313523	4323	3102917707		103		NANCY SMITH #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS
8313530	4321	3102917762		103		RICHARD H SHELDON #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS
8313531	4319	3102917767		103		WILLIAMPAC #1	CONCORD PROSPECT	0.0	NATIONAL FUEL GAS
-NRM PETROLEUM CORPORATION				RECEIVED:	12/14/82	JA: NY			
8313459	3108	3100916335		107-TF		PARKER #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
-NYS NATURAL GAS COMPANY				RECEIVED:	12/14/82	JA: NY			
8313503	4367	3101317863		103		BEST #1	LAKESHORE	2.0	NATIONAL FUEL GAS
8313502	4369	3101317862		103		NORTHROP #1	RIPLEY	20.0	NATIONAL FUEL GAS
-SEIS-EX GEOPHYSICAL LTD				RECEIVED:	12/14/82	JA: NY			
8313467	2988	3101315908		107-TF		R RETTIG #1	WILDCAT	18.0	COLUMBIA GAS
-SUBSEA OIL & GAS INC				RECEIVED:	12/14/82	JA: NY			
8313491	4331	3103717339		103		ZINTER NO 1	ALDEN LANCASTER	25.0	NATIONAL FUEL GAS
-TRAHAN PETROLEUM INC				RECEIVED:	12/14/82	JA: NY			
8313505	3277	3101317195		107-TF		BENTLEY 3	ELLINGTON	36.0	COLUMBIA GAS TRAN
8313455	2639	3101312514		107-TF		ERNEST CHASE NY #46	LEON	36.0	COLUMBIA GAS TRAN
8313457	3278	3101316511		107-TF		KENNEY 1 31-013-16511	ELLINGTON	36.0	COLUMBIA GAS TRAN
8313504	3121	3101312487		107-TF		PIERROTT NY 25	LEON	36.0	COLUMBIA GAS TRAN
8313468	3129	3101312495		107-TF		RICE CHAUTAUQUA #2	LEON	36.0	COLUMBIA GAS TRAN
8313456	2641	3101316371		107-TF		RICHARD ALNATT NY #24	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8313454	2637	3101315522		107-TF		W COWEN #1 31-013-15522	WILDCAT	36.0	COLUMBIA GAS TRAN
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OKLAHOMA CORPORATION COMMISSION									
**********									
-ANADARKO PRODUCTION COMPANY				RECEIVED:	12/09/82	JA: OK			
8313384	18357	3505320521		108		KENNEDY A 1-31	RENFROW	18.0	PANHANDLE EASTERN
-ARGONAUT ENERGY CORPORATION				RECEIVED:	12/09/82	JA: OK			
8313400	15860	3505921053		103		BILLINGS #2	MOCANE-LAVERNE	497.0	NORTHERN NATURAL
-BAMCO OIL & GAS INC				RECEIVED:	12/09/82	JA: OK			
8313374	18017	3504722740		103		POSPISIL NO 34-1	CANEY DEL	73.0	PANHANDLE EASTERN
-BEARD OIL COMPANY				RECEIVED:	12/09/82	JA: OK			
8313411	18129	3507323492		103		#2 BOECKMAN	SOONER TREND-DOVER WE	21.0	PHILLIPS PETROLEU
8313408	18128	3507323406		103		#2 WENDT	SOONER TREND-DOVER WE	21.0	PHILLIPS PETROLEU
-BECK PRODUCTION CO				RECEIVED:	12/09/82	JA: OK			
8313404	17687	3503723805		103		J J #1	OLIVE	0.0	ARCO OIL & GAS
-BENTLEY & LAING				RECEIVED:	12/09/82	JA: OK			
8313409	18107	3501900000		108		RUPERT MARTIN #1		14.0	AMINOIL USA INC
-BOGERT OIL CO				RECEIVED:	12/09/82	JA: OK			
8313366	17996	3507323553		103		CAPPIE 1-8	SOONER TREND	270.0	CONOCO INC
-BROOKS HALL OIL CORP				RECEIVED:	12/09/82	JA: OK			
8313351	16578	3501320055		103		CANARD NO 1	WILDCAT	0.0	LONE STAR GAS COM
-CHARLES NESBITT TRUSTEE				RECEIVED:	12/09/82	JA: OK			
8313401	07809	3507100000		108		D B MCCORGARY NO 2	DILWORTH DISTRICT	3.7	CITIES SERVICE GA
-CN OPERATING CO				RECEIVED:	12/09/82	JA: OK			
8313377	18025	3503700000		103		HOLEMAN NO 1	OLIVE	3.0	ARCO OIL & GAS CO
8313407	18033	3503700000		108		JESSIE BRUNER NO 15	CUSHING	0.3	ARCO OIL & GAS CO
8313378	18026	3503700000		103		MARY CLARK NO 4	CUSHING	3.8	ARCO OIL & GAS CO
8313375	18021	3503700000		103		MCGEEHEE NO 1	CUSHING	4.6	ARCO OIL & GAS CO
8313376	18024	3503700000		103		PATTY NO 2	CUSHING	5.8	ARCO OIL & GAS CO
-CONOCO INC				RECEIVED:	12/09/82	JA: OK			
8313362	17954	3507323388		103		BETTY TRIPLETT NO 1	N E DUNLAP	22.8	PHILLIPS PETROLEU
-COOK OPERATING CO				RECEIVED:	12/09/82	JA: OK			
8313386	18245	3511720692		108		STATE "B" - B-3	UNKNOWN	14.3	H J D CATTLE COMP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313387	18244	3511720542		108		STATE "B" B-1	UNKNOWN	7.2	H J D CATTLE COMP
8313388	18243	3511720662		108		STATE "B" B-2	UNKNOWN	12.1	H J D CATTLE COMP
8313385	18246	3511720743		108		STATE "B" B-4	UNKNOWN	7.3	H J D CATTLE COMP
-CRAWLEY PETROLEUM CORPORATION				RECEIVED:	12/09/82	JA: OK			
8313361	17943	3509322396		103		J O HOWELL HEIRS #1	DANE	75.0	PHILLIPS PETROLEU
-GENZER J W				RECEIVED:	12/09/82	JA: OK			
8313406	17972	3511123564		102-4		PINE NO 1		107.7	PHILLIPS PETROLEU
-HAMILTON BROTHERS OIL CO				RECEIVED:	12/09/82	JA: OK			
8313394	18095	3514920236		102-2		BROOKS NO 1-14		0.0	EL PASO NATURAL G
8313395	18094	3514920231		102-2		KAUGER NO 1-16		0.0	EL PASO NATURAL G
-HAWKINS OIL & GAS INC				RECEIVED:	12/09/82	JA: OK			
8313393	18101	3500722328		103		SWAN #1-8	LORENA EXTENSION	91.0	
-JAMES C MEADE				RECEIVED:	12/09/82	JA: OK			
8313383	18507	3507920426		102-4		EBERLY & MEADE GREAT NATL #1-10	SHADY POINT	0.0	ARKANSAS LOUISIAN
8313398	18508	3507920419		102-4	103	EBERLY & MEADE JARRETT #1-2	PANAMA	0.0	ARKANSAS LOUISIAN
-JICO EXPLORATION INC				RECEIVED:	12/09/82	JA: OK			
8313365	17993	3507323343		103		JICO-DEANNA #1	SOONER TREND	0.4	PHILLIPS PETROLEU
-KIRKPATRICK OIL CO				RECEIVED:	12/09/82	JA: OK			
8313373	18010	3509322383		103		KLIEWER #2-15	CHEYENNE VALLEY	0.0	AMINOIL USA INC
-LADD PETROLEUM CORPORATION				RECEIVED:	12/09/82	JA: OK			
8313363	17958	3504320812		103		SCHAFER B-3	CANTON S W	0.0	TRANSOK PIPE LINE
-LRF CORP				RECEIVED:	12/09/82	JA: OK			
8313391	18113	3506300000		103		ELLIS #1	N HILLTOP	102.2	HILL TOP INVESTME
-NATIONAL COOP REFINERY ASSOC				RECEIVED:	12/09/82	JA: OK			
8313372	18006	3509322456		103		DIRKS #2	ORIENTA	80.0	UNION TEXAS PETRO
-NRM PETROLEUM CORPORATION				RECEIVED:	12/09/82	JA: OK			
8313371	18007	3500722150		103		DAVIS #1	MOCANE-LAVERNE	0.0	MICHIGAN WISCONSI
-ONYX ENERGY CORP				RECEIVED:	12/09/82	JA: OK			
8313356	17927	3510300000		103		CHAMP #1-19	CHAMP	45.6	AMINOIL U S A INC
-OXXO INC				RECEIVED:	12/09/82	JA: OK			
8313399	17592	3513300000		102-3		V V HARRIS NO 1		190.9	
-PAUL WALKER				RECEIVED:	12/09/82	JA: OK			
8313405	17680	3503320467		102-2	103	ROBERTS B-1	HULEN	40.0	ARKANSAS-LOUISIAN
8313402	17678	3503320569		102-2	103	URICE C #1	HULEN	50.0	ARKANSAS-LOUISIAN
-RED EAGLE OIL CO				RECEIVED:	12/09/82	JA: OK			
8313390	18148	3509322497		103		WINTER NO 1	FAIRVIEW	160.0	PIONEER GAS PRODU
-RODMAN PETROLEUM CORP				RECEIVED:	12/09/82	JA: OK			
8313397	18576	3508321837		102-2		STATE 36-1	MERIDIAN	270.0	BUCKEYE NATURAL G
-SAMSON RESOURCES COMPANY				RECEIVED:	12/09/82	JA: OK			
8313352	17402	3504321388		103		ZIEBER NO 1	SOUTH TALOGA	140.3	DELHI GAS PIPELIN
-SENECA OIL COMPANY				RECEIVED:	12/09/82	JA: OK			
8313403	17625	3504321400		102-2		MCNEILL #1-26		689.0	TRANSOK PIPE LINE
-SILVAN SUPPLY CO				RECEIVED:	12/09/82	JA: OK			
8313382	17937	3503722370		103		DAILEY #3B		5.0	ARCO OIL AND GAS
8313360	17938	3503722509		103		DAILEY #5-B		5.0	ARCO OIL AND GAS
8313359	17929	3563723014		103		DAILEY B #6		5.0	ARCO OIL AND GAS
8313358	17930	3503722371		103		DAILEY TR 2 #11		2.8	ARCO OIL AND GAS
8313357	17931	3503722736		103		DAILEY TR 2 #12		2.8	ARCO OIL AND GAS
8313379	17932	3503722739		103		DAILEY TR 2 #14		2.8	ARCO OIL AND GAS
8313380	17933	3503721725		103		DAILEY TR2 #10		2.8	ARCO OIL AND GAS
8313381	17935	3503721979		103		JONES HEIRS TR 4 #3		2.8	ARCO OIL AND GAS
-TENNECO OIL COMPANY				RECEIVED:	12/09/82	JA: OK			
8313389	18174	3509322516		103		JANZEN #1-15	N W OKEENE	366.0	OKLAHOMA NATURAL

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JD NO	JA DKT	API NO	T	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313392	18108	3504722980		103		THOMAS #2-7	EAST KREMLIN	13.0	ARKANSAS LOUISIAN
-TRANS-WESTERN EXPLORATION INC				RECEIVED:	12/09/82	JA: OK			
8313364	17969	3500722157		103		DICKINSON NO 1-33	UNKNOWN	75.0	PHILLIPS PETROLEU
-W P LERBLANCE JR				RECEIVED:	12/09/82	JA: OK			
8313368	14867	3512112060		103		W R LEE #1	FEATHERSTONE	180.0	SOUTHEAST TRANSMI
-WALKER CORP				RECEIVED:	12/09/82	JA: OK			
8313410	18130	3501722235		103		BROADY 9-2	YUKON	160.0	CONOCO INC
-WAYMAN W BUCHANAN				RECEIVED:	12/09/82	JA: OK			
8313369	18061	3504722823		103		BAYLOR NO 1	WILDCAT	91.2	EXXON COMPANY U S
8313396	18063	3513921546		103		RICE NO 1	UNDESIGNATED (MORROW	195.9	PHILLIPS PETROLEU
8313370	18062	3513921562		103		THRASHER NO 1	WILDCAT	73.0	PHILLIPS PETROLEU
-WESTERN PACIFIC PETROLEUM INC.				RECEIVED:	12/09/82	JA: OK			
8313367	18003	3507323539		103		OPECKER #1-30	NORTHEAST OKARCHE	15.3	SID RICHARDSON CA
-WOODS PETROLEUM CORPORATION				RECEIVED:	12/09/82	JA: OK			
8313354	17797	3501722242		103		HICKMAN #A-2	EAST NILES	1095.0	CITIES SERVICE GA
8313353	17786	3504921536		103		MCDANIEL NO 15-1	E ANTOICH	100.0	BUCKEYE NATURAL G
8313355	17798	3500722151		103		WINCHELL #10-1	EAST BOYD	354.0	PHILLIPS PETROLEU

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-ADOBE OIL & GAS CORPORATION				RECEIVED:	12/10/82	JA: PA			
8313217	18035	3703321392		103		KENNETH HARCHICK #1	HASTINGS	24.0	COLUMBIA GAS TRAN
8313218	18038	3703321394		103		KENNETH HARCHICK #3	HASTINGS	22.0	COLUMBIA GAS TRAN
-ASHTOLA PRODUCTION CO				RECEIVED:	12/10/82	JA: PA			
8313220	18221	3705120311		103		CHARLES MISYANKO #1	HIGHHOUSE	17.3	UGI DEVELOPMENT C
8313223	18224	3705120297		103		CURTIS COTTOM #1	WALTERSBURG	30.0	UGI DEVELOPMENT C
8313224	18225	3705120298		103		CURTIS COTTOM #2	WALTERSBURG	31.0	UGI DEVELOPMENT C
8313222	18223	3705120296		103		H SHIROCKY #1	WALTERSBURG	50.0	UGI DEVELOPMENT C
8313219	18217	3705120303		102-3		HERMAN AND PATRICK #1	WALTERSBURG	34.8	UGI DEVELOPMENT C
8313221	18222	3705120310		103		WENDELL N HUSTEAD #2	HIGHHOUSE	5.8	UGI DEVELOPMENT C
-ATLAS RESOURCES INC				RECEIVED:	12/10/82	JA: PA			
8313225	10802	3708520325		102-2		LINN NO 1		0.0	COLUMBIA GAS TRAN
8313230	10810	3708520309		102-2		MACIEJEWSKI NO 1		0.0	COLUMBIA GAS TRAN
8313232	10813	3708520280		102-2		MCCANN NO 1		0.0	COLUMBIA GAS TRAN
8313228	10808	3708520334		102-2		MORRISON NO 1		0.0	COLUMBIA GAS TRAN
8313227	10807	3708520326		102-2		NYSTROM NO 1		0.0	COLUMBIA GAS TRAN
8313226	10805	3708520282		102-2		PALM NO 1		0.0	COLUMBIA GAS TRAN
8313233	10814	3708520279		102-2		SIMMONS NO 1		0.0	COLUMBIA GAS TRAN
8313229	10809	3708520302		102-2		UNANGST NO 1		0.0	COLUMBIA GAS TRAN
8313231	10811	3708520327		102-2		WILSON NO 1		0.0	COLUMBIA GAS TRAN
-BEREA OIL AND GAS CORPORATION				RECEIVED:	12/10/82	JA: PA			
8313234	18283	3703921831		102-2		W BLACK #2	WILDCAT	14.0	COLUMBIA GAS TRAN
8313235	18282	3703921831		107-TF		W BLACK #2	WILDCAT	14.0	COLUMBIA GAS TRAN
-CASTLE GAS CO INC				RECEIVED:	12/10/82	JA: PA			
8313244	18050	3706324921		108		A C IRWIN #1 (C-478) IND-24921	WHITE TOWNSHIP	5.0	COLUMBIA GAS TRAN
8313245	18051	3706324922		108		A C IRWIN #2 (C-479) IND-24922	WHITE TOWNSHIP	5.0	COLUMBIA GAS TRAN
8313246	18052	3706324923		108		A C IRWIN #3 (C-480) IND-24923	WHITE TOWNSHIP	5.0	COLUMBIA GAS TRAN
8313236	18042	3706324979		108		A P BRACKEN #1 (C-510) IND-24979	CENTER TOWNSHIP	16.0	COLUMBIA GAS TRAN
8313237	18043	3706324980		108		A P BRACKEN #2(C-511) IND-24980	CENTER TOWNSHIP	5.0	COLUMBIA GAS TRAN
8313238	18044	3706324496		108		A W COCHRAN #2 (C-521) IND-24496	WHITE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313239	18045	3706324519		108		A W COCHRAN #3(C-520) IND-24519	WHITE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313247	18053	3706324988		108		D KRIBBS #1(C-544) IND-24988	CENTER TOWNSHIP	4.9	COLUMBIA GAS TRAN
8313248	18054	3706324615		108		D KRIBBS #2 (C-547)IND-24615	CENTER TOWNSHIP	5.7	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313249	18055	3706324936		108		D KRIBBS #3 (C-549) IND-24936	CENTER TOWNSHIP	4.9	COLUMBIA GAS TRAN
8313250	18056	3706324748		108		D KRIBBS #4 (C-560) IND-24748	CENTER TOWNSHIP	4.9	COLUMBIA GAS TRAN
8313251	18057	3706324937		108		D KRIBBS #5 (C-561) IND-24937	CENTER TOWNSHIP	4.9	COLUMBIA GAS TRAN
8313252	18058	3706324709		108		D KRIBBS #8 (C-562) IND-24709	CENTER TOWNSHIP	4.9	COLUMBIA GAS TRAN
8313240	18046	3706324785		108		J FEATH #1(C-517) IND-24785	WHITE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313253	18060	3706324475		108		J R PANTALL #1(C-518) IND-24475	WHITE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313241	18047	3706324518		108		S W GETTY #1(C-527) IND-24518	RAYNE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313243	18049	3706324495		108		S W GETTY #3 (C-529) IND-24495	RAYNE TOWNSHIP	5.5	COLUMBIA GAS TRAN
8313242	18048	3706324494		108		S W GETTY#2(C-528) IND-24494	RAYNE TOWNSHIP	5.5	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:		12/10/82 JA: PA			
8313257	18085	3706327153		103		DEAN J LEARN ET AL WN-1946	GREEN	4.0	GENERAL SYSTEM PU
8313256	18266	3706326937		102-4		EDWARD GOSS NO 2 WN-1908		36.0	GENERAL SYSTEM PU
8313254	18264	3706324970		102-2		J CLYDE JOHNS WN-1755	GREEN	3.0	GENERAL SYSTEM PU
8313258	18267	3702120172		103		LORETTA PAWLOWSKI WN-1917	SUSQUEHANNA	96.0	GENERAL SYSTEM PU
8313255	18265	3706325437		102-3		T M BERRINGER WN-1791	PINE	15.0	GENERAL SYSTEM PU
-DELTA DRILLING CO				RECEIVED:		12/10/82 JA: PA			
8313260	15945	3706300000		103		GRESKO #4 IND 26929	CHERRYHILL FIELD	0.0	COLUMBIA GAS TRAN
8313261	16102	3706326914		103		R ST CLAIR #6 IND 26914	CHERRYHILL FLD	0.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC				RECEIVED:		12/10/82 JA: PA			
8313262	18260	3706326839	D	102-2		LEONARD GOSS #1 KA-126	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
8313264	18262	3706324316	D	102-2		MEARS COAL COMPANY #1 KL-103	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
8313263	18261	3703320783	D	102-2		PHILIP CHURA #1 KA-13	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
-ENVIROGAS INC				RECEIVED:		12/10/82 JA: PA			
8313302	18293	3704920575		108		A PHILLIPS #1	NORTH EAST DEEP	11.0	NATIONAL FUEL GAS
8313311	18307	3704920645		108		ALLISON #1	ERIE DEEP	6.0	NATIONAL FUEL GAS
8313295	18286	3704920428		108		ARCHER #1	NORTH EAST DEEP	7.0	NATIONAL FUEL GAS
8313296	18287	3704920436		108		ARCHER #2	NORTH EAST DEEP	0.4	NATIONAL FUEL GAS
8313268	18162	3704920451		108		ARCHER #3	NORTH EAST DEEP	7.0	NATIONAL FUEL GAS
8313297	18288	3704920476		108		ARCHER #4	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313274	18168	3704920506		108		ARCHER #5	NORTH EAST DEEP	11.0	NATIONAL FUEL GAS
8313298	18289	3704920671		108		ARCHER #8	NORTH EAST	8.0	NATIONAL FUEL GAS
8313281	18176	3704920595		108		BARD #1	NORTH EAST DEEP	5.0	NATIONAL FUEL GAS
8313318	18314	3704920623		108		BAUER #1	NORTH EAST DEEP	0.8	NATIONAL FUEL GAS
8313319	18315	3704920650		108		BAUER #3	ERIE DEEP	0.5	NATIONAL FUEL GAS
8313312	18308	3704920718		108		BLASKO #1	ERIE DEEP	7.0	NATIONAL FUEL GAS
8313313	18309	3704920708		108		BLASKO #2	ERIE DEEP	5.0	NATIONAL FUEL GAS
8313316	18312	3704920758		108		BOWSER #1	NORTH EAST	1.0	NATIONAL FUEL GAS
8313317	18313	3704920590		108		BURNHAM #2	NORTH EAST DEEP	2.0	NATIONAL FUEL GAS
8313275	18169	3704920487		108		C LUKE #2	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313266	18160	3704920548		108		CHIZEWICK #1	NORTH EAST DEEP	10.0	NATIONAL FUEL GAS
8313283	18178	3704920484		108		COLETTA #1	NORTH EAST DEEP	0.6	NATIONAL FUEL GAS
8313286	18181	3704920501		108		D MOORHEAD #1	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313287	18182	3704920499		108		D MOORHEAD #2	NORTH EAST DEEP	6.0	NATIONAL FUEL GAS
8313280	18175	3704920510		108		DESIN #1	NORTH EAST DEEP	2.0	NATIONAL FUEL GAS
8313303	18294	3704920596		108		E ORTON #1	NORTH EAST DEEP	0.9	NATIONAL FUEL GAS
8313276	18170	3704920488		108		F LUKE #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313314	18310	3704920731		108		FALKOWSKI #1	ERIE DEEP	0.1	NATIONAL FUEL GAS
8313305	18296	3704920444		108		FELTON #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313306	18297	3704920445		108		FELTON #2	NORTH EAST DEEP	9.0	NATIONAL FUEL GAS
8313269	18163	3704920465		108		HARRIS #1	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313279	18174	3704920517		108		J BARTLETT #1	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313278	18173	3704920490		108		J MOORHEAD #2	NORTH EAST DEEP	7.0	NATIONAL FUEL GAS
8313320	18316	3704920928		108		L BRUMAGIN #1	NORTH EAST	12.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313272	18166	3704920592		108		LECHTNER #1	NORTH EAST DEEP	16.0	NATIONAL FUEL GAS
8313270	18164	3704920468		108		LICK #1	NORTH EAST DEEP	7.0	NATIONAL FUEL GAS
8313265	18304	3704921961		107-TF		M CAPLAN #1	WATERFORD	18.0	COLUMBIA GAS TRAN
8313307	18298	3704920446		108		MASSEY #1	NORTH EAST DEEP	8.0	NATIONAL FUEL GAS
8313282	18177	3704920620		108		MAYNARD #1	NORTH EAST DEEP	6.0	NATIONAL FUEL GAS
8313308	18299	3704920454		108		MCCORD #2	NORTH EAST DEEP	4.0	NATIONAL FUEL GAS
8313294	18285	3704920497		108		MCCORD VINEYARDS #2	NORTH EAST DEEP	8.0	NATIONAL FUEL GAS
8313293	18284	3704920498		108		MCCORD VINEYARDS #3	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313310	18301	3704920452		108		MEAD #1	NORTH EAST DEEP	8.0	NATIONAL FUEL GAS
8313289	18184	3704920485		108		MEEHL #1	NORTH EAST DEEP	2.0	NATIONAL FUEL GAS
8313284	18179	3704920502		108		MOORHEAD VINEYARDS #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313291	18186	3704920660		108		NORDER #1	ERIE DEEP	8.0	NATIONAL FUEL GAS
8313315	18311	3704920784		108		PASTORE INC	ERIE DEEP	0.1	NATIONAL FUEL GAS
8313304	18295	3704920629		108		PECK #1	NORTH EAST DEEP	3.0	NATIONAL FUEL GAS
8313309	18300	3704920438		108		PETERS #1	NORTH EAST DEEP	6.0	NATIONAL FUEL GAS
8313271	18165	3704920514		108		R BARTLETT #2	NORTH EAST DEEP	8.0	NATIONAL FUEL GAS
8313292	18187	3704920495		108		RAHAL #1	NORTH EAST DEEP	2.0	NATIONAL FUEL GAS
8313273	18167	3704920466		108		SANDHOFF #1	NORTH EAST DEEP	5.0	NATIONAL FUEL GAS
8313300	18291	3704920439		108		SOUTHWICK #1	NORTH EAST DEEP	8.0	NATIONAL FUEL GAS
8313301	18292	3704920448		108		SOUTHWICK #2	NORTH EAST DEEP	7.0	NATIONAL FUEL GAS
8313288	18183	3704920483		108		SUL #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313321	18317	3704920661		108		SUL #2	ERIE DEEP	2.0	NATIONAL FUEL GAS
8313290	18185	3704920579		108		SZKLENSKI FARMS #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
8313285	18180	3704920544		108		SZKLENSKI FARMS #2	NORTH EAST DEEP	14.0	NATIONAL FUEL GAS
8313299	18298	3704920426		108		VALONE #1	NORTH EAST DEEP	4.0	NATIONAL FUEL GAS
8313267	18161	3704920447		108		VALONE #2	NORTH EAST DEEP	6.0	NATIONAL FUEL GAS
8313277	18171	3704920469		108		W SEMELKA #1	NORTH EAST DEEP	1.0	NATIONAL FUEL GAS
-FAIRMAN DRILLING CO				RECEIVED:	12/10/82	JA: PA			
8313322	18214	3703321356		103		JAMES G BEATTY #1 F-3474	BIG RUN	20.0	CONSOLIDATED GAS
8313323	18215	3706326847		103		LINDSEY COAL MINING CO NO 2 F-3488	MARION CENTER	60.0	CONSOLIDATED GAS
8313324	18216	3706326848		103		LINDSEY COAL MINING CO NO 3 F-3489	MARION CENTER	60.0	CONSOLIDATED GAS
-FLEMING FRANK				RECEIVED:	12/10/82	JA: PA			
8313326	17990	3700500000		108		FRANK FLEMING #1	PLUMCREEK TWP	1.7	PEOPLES NATURAL G
8313325	17989	3700500000		108		FRANK FLEMING #2	PLUMCREEK TWP	1.7	PEOPLES NATURAL G
-FORBESERV INC				RECEIVED:	12/10/82	JA: PA			
8313259	18125	3706326927		103		JOSEPH DASKIVICH-CARNEY #1	HOMER CITY	36.0	COLUMBIA GAS TRAN
-GLENDALE GAS VENTURE				RECEIVED:	12/10/82	JA: PA			
8313327	18226	3706326530		103		DASKIVICH NO 4	JOSEPH DASKIVICH PROP	36.0	COLUMBIA GAS TRAN
-HANLEY & BIRD				RECEIVED:	12/10/82	JA: PA			
8313328	18257	3700522739		103		R MCKISSICK #2 SN1713 SHB11	GASTOWN	55.8	T W PHILLIPS
-JENNINGS THOMAS F				RECEIVED:	12/10/82	JA: PA			
8313329	18318	3700720057		108		EDWIN H TOBIAS #1	COAL BANK RUN	4.8	PEOPLES NATURAL G
-KEPCO INC				RECEIVED:	12/10/82	JA: PA			
8313331	18070	3705921680		102-4		JOHN L BRADLEY NO 2 (PK-17)	RUFF CREEK	14.0	NEW JERSEY NATURA
8313330	18069	3705921750		102-4		MARY J & GEORGE E HOGE NO 1 (PK-48)	RUFF CREEK	9.5	NEW JERSEY NATURA
-KEYSTONE ENERGY OIL & GAS PRODUCTIO				RECEIVED:	12/10/82	JA: PA			
8313332	17758	3706327084		103		BERGMAN #1	CARL BERGMAN	44.8	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION				RECEIVED:	12/10/82	JA: PA			
8313336	18252	3708520200		107-TF		MILLER #1-74	NEW LEBANON (MEDINA &	0.0	COLUMBIA GAS TRAN
8313333	18123	3708520454		103		S C SLATER UNIT #1	NEW LEBANON (MEDINA/W	411.0	COLUMBIA GAS TRAN
8313334	18124	3708520454		107-TF		S C SLATER UNIT #1	NEW LEBANON (MEDINA/W	411.0	COLUMBIA GAS TRAN
8313335	18251	3708520224		107-TF		SROCK #1-73	JAMESTOWN - MEDINA SA	35.0	COLUMBIA GAS TRAN
-PEACOCK/DOVERSPIKE GAS VENTURE - 79				RECEIVED:	12/10/82	JA: PA			

JD NO	JA DKT	API NO	T	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313338	18274	3703321418		103		DIMELING #1 CLE-21418	BRADY	36.0	T W PHILLIPS GAS
8313337	18273	3703321419		103		DIMELING #2 CLE-21419	BRADY	36.0	T W PHILLIPS GAS
8313341	18277	3703321373		103		KORB #1 CLE-21373	BLOOM	36.0	CONSOLIDATED GAS
8313340	18276	3706326954		103		WANCHISN #1 IND-26954	GRANT	36.0	COLUMBIA GAS TRAN
8313339	18275	3706326955		103		WANCHISN #2 IND-26955	GRANT	36.0	COLUMBIA GAS TRAN
-PEOPLES NATURAL GAS CO				RECEIVED:	12/10/82	JA: PA			
8313342	18305	3712922081		103		ELEANOR G MORRIS #1 WES 22081	W PENNA LOWER DEVONIA	121.0	THE PEOPLES NATUR
-PHILLIPS PRODUCTION CO				RECEIVED:	12/10/82	JA: PA			
8313343	15679	3706326969		103		HELEN R PELES ET AL #1		25.0	
-S T JOINT VENTURE 82-C				RECEIVED:	12/10/82	JA: PA			
8313344	16127	3706522648		103		ROBOIGE #1		25.0	NATIONAL FUEL GAS
-WAINOCO OIL & GAS CO				RECEIVED:	12/10/82	JA: PA			
8313347	17724	3703921725		102-2		DANA H MARTIN #1 (W-173A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
8313349	17725	3703921725		107-TF		DANA H MARTIN #1 (W-173A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
8313345	17718	3703921777		102-2		EDWARD G FINK #1 (W-176A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
8313350	17726	3703921777		107-TF		EDWARD G FINK #1 (W-176A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
8313346	17722	3703921788		102-3		MATTHEW W FINK #1 (W-170A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
8313348	17723	3703921788		107-TF		MATTHEW W FINK #1 (W-170A)	ATHENS FIELD	35.4	COLUMBIA GAS TRAN
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
**********									
-CONSOLIDATED OIL & GAS INC				RECEIVED:	12/14/82	JA: NM 4			
8313421	NM-4210-79	3004510936		108-PB		FREEMAN #1-11	BASIN DAKOTA	0.0	EL PASO NATURAL G

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS). FOR INFORMATION, CONTACT STUART WEISMAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 357-8661.

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Categories within each MGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservior
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–CB: Geopressued brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–1478 Filed 1–18–83; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 14, 1983.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MISSISSIPPI OIL & GAS BOARD									
-CALLON PETROLEUM COMPANY				RECEIVED:	12/16/82	JA: MS			
8313685		2312720066		103		DIXON ET AL GU WELL NO 1	SOUTH OAK GROVE	438.0	SYSTEM FUELS INC
-GRACE PETROLEUM CORPORATION				RECEIVED:	12/16/82	JA: MS			
8313682		2302520030		102-2		SIMMONS 17-5	WALKER LAKE	0.0	TEXAS EASTERN TRA
-HUNT ENERGY CORPORATION ET AL				RECEIVED:	12/16/82	JA: MS			
8313684		2304520080		107-DP		GORDON BROWN #1	CATAHOULA CREEK	393.0	TENNESSEE GAS PIP
-INEXCO OIL COMPANY				RECEIVED:	12/16/82	JA: MS			
8313683		2307720021		107-DP		SMITH ESTATE NO 1	MONTICELLO FIELD SLIG	0.0	UNITED GAS PIPELI
-JOSEPH F FRITZ OPERATING CO				RECEIVED:	12/16/82	JA: MS			
8313668		2309120104		107-DP		SANDY HOOK GAS UNIT 27 NO 1	WEST SANDY HOOK FIELD	839.0	SOUTHERN NATURAL
-PRUET PRODUCTION CO				RECEIVED:	12/16/82	JA: MS			
8313673		2308720065		102-2	103	ALDRIDGE 18-9 NO 1	MAPLE BRANCH FIELD	365.0	TENNESSEE GAS PIP
8313669		2301720045		102-2	103	ASHBY 22-1 NO 1	BACON FIELD	112.0	TEXAS EASTERN
8313676		2309520344		102-2	103	DAVIS 10-15 NO 1	GREENWOOD SPRINGS FIE	354.0	UNITED GAS PIPELI
8313670		2309520356		102-2	103	EASTER 15-2 NO 1	GREENWOOD SPRINGS FIE	301.0	UNITED GAS PIPELI
8313678		2308720070		102-2	103	EGGER 18-1 NO 1	MAPLE BRANCH FIELD	0.0	TENNESSEE GAS PIP
8313671		2309520362		102-2	103	IRVIN 11-14 NO 1	GREENWOOD SPRINGS FIE	219.0	UNITED GAS PIPELI
8313674		2308720061		102-2	103	STEPHENSON 7-15 NO 1	MAPLE BRANCH FIELD	736.0	TENNESSEE GAS PIP
8313681		2309520355		102-4	103	THOMPSON 20-4 NO 1	MCKINLEY CREEK FIELD	547.0	TENNESSEE GAS PIP
8313672		2309520348		102-2	103	VAN WELLS 6-9 NO 1	MAPLE BRANCH FIELD	10.0	TENNESSEE GAS PIP
8313677		2312720078		102-4	103	YELVERTON 2-8 NO 1	MAGEE FIELD	402.0	UNITED GAS PIPELI
-SHELL OIL CO				RECEIVED:	12/16/82	JA: MS			
8313667		2311320131		102-4		MAC INTOSH ET AL UNIT NO 2	OLIVE	40.0	
-SYSTEM FUELS INC				RECEIVED:	12/16/82	JA: MS			
8313680		2306220205		107-DP		CARTER ET AL NO 1	HOLIDAY CREEK FIELD	73.0	TENNESSEE GAS PIP
8313679		2306520186		107-DP		CORENE ROWLAND 25-6 NO 1	HOLIDAY CREEK FIELD	0.2	TENNESSEE GAS PIP
-TRANSCONTINENTAL OIL CORPORATION				RECEIVED:	12/16/82	JA: MS			
8313675		2312120080		102-4		PUCKETT GU NO 5 - WELL NO 4	PUCKETT	0.0	UNITED GAS PIPELI
OKLAHOMA CORPORATION COMMISSION									
-AN-SON CORPORATION				RECEIVED:	12/13/82	JA: OK			
8313574	22062	3514920287		107-DP		JUDY #1-22		330.0	
-AN-SON CORPORATION				RECEIVED:	12/16/82	JA: OK			
8313709		3514920237		102-2		REEDER #1	WILDCAT	357.7	
-AN-SON CORPORATION				RECEIVED:	12/17/82	JA: OK			
8313752	16720	3506720439		103		DILLARD #1	E RINGLING	50.0	
8313753	16158	3501922336		103		PATRICK #1	JOINER CITY	0.0	
-ANADARKO PRODUCTION COMPANY				RECEIVED:	12/17/82	JA: OK			
8313771	17639	3500700000		108		EDWIN FISHER #1	LIGHT	20.2	PANHANDLE EASTERN
8313773	17692	3500700000		108		GREGG B #1	MOCANE	8.0	INTER NORTH INC

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ANDOVER OIL COMPANY				RECEIVED:	12/13/82	JA: OK			
8313605	18070	3501121686		103		KEPHART #18-1		180.0	OKLAHOMA GAS PIPE
8313580	18250	3501121687		103		KEPHART #32-1		0.0	OKLAHOMA GAS PIPE
8313633	18137	3501121625		102-A		SCHOOL LAND #36-1		0.0	OKLAHOMA GAS PIPE
-ANDOVER OIL COMPANY				RECEIVED:	12/17/82	JA: OK			
8313784	18352	3507323384		103		SHAFENBERG 18-1		180.0	PHILLIPS PETROLEU
-ARKOMA GAS CO				RECEIVED:	12/17/82	JA: OK			
8313718	06707	3512120481		108		W J HILSEWECK GAS UNIT #1-8	N W CABANISS	12.0	ARKANSAS LOUISIAN
-ARKOMA PRODUCTION CO				RECEIVED:	12/13/82	JA: OK			
8313660	18100	3506120517		103		FEDERAL KING #2	KINTA	365.0	ARKANSAS LOUISIAN
-AUSTIN PRODUCTION CO				RECEIVED:	12/17/82	JA: OK			
8313749	16917	3501100000		103		STATE 1-36	STATE	0.0	OKLAHOMA GAS & EL
-BARNES OIL CO				RECEIVED:	12/17/82	JA: OK			
8313772	17642	3503700000		108		MACHIR #2	OLIVE	10.2	ARCO OIL & GAS CO
-BARUCH-FOSTER CORP				RECEIVED:	12/13/82	JA: OK			
8313623	18073	3511921433		103		STATE OF OKLAHOMA "D"-1	AVERY	30.0	CITIES SERVICE GA
8313582	18260	3503723653		103		WOODROW CHILDERS "E"-1	WEST SHAMROCK	10.0	CITIES SERVICE GA
-BECK PRODUCTION CO				RECEIVED:	12/17/82	JA: OK			
8313800	18383	3503723990		103		J J #2	OLIVE	0.0	ARCO OIL & GAS CO
-BERRY PETROLEUM CORP				RECEIVED:	12/13/82	JA: OK			
8313593	18282	3504722662		103		VAVERKA #1-29	NW MARSHALL	37.0	PANHANDLE EASTERN
-BETA OIL & GAS DEVELOPMENT				RECEIVED:	12/13/82	JA: OK			
8313621	18083	3511100000		103		PINE #A-2		0.5	PHILLIPS PETROLEU
8313624	18081	3511123127		103		PINE #G-2		0.2	PHILLIPS PETROLEU
-BLAIK OIL COMPANY				RECEIVED:	12/13/82	JA: OK			
8313629	18002	3504722968		103		ESTILL UNIT #4	SOONER TREND	36.0	EXXON COMPANY USA
8313639	18147	3500320527		103		SHEPARD #2		27.0	AMINOIL USA INC
-BLUE QUAIL ENERGY INC				RECEIVED:	12/17/82	JA: OK			
8313767	18264	3501722071		103		KOERNER #1	KOERNER	175.0	PHILLIPS PETROLEU
-BOGERT OIL CO				RECEIVED:	12/13/82	JA: OK			
8313587	18291	3508322025		103		WALTER #1-19	SOONER TREND	97.0	EASON OIL COMPANY
-BOW VALLEY PETROLEUM INC				RECEIVED:	12/13/82	JA: OK			
8313637	18144	3504721489		103		A & KOKOJAN #2-3	SOONER TREND	8.3	PHILLIPS PETROLEU
-BROWN & BORELLI INC				RECEIVED:	12/17/82	JA: OK			
8313746	17314	3501722223		103		K-FARMS #1	NW YUKON	146.0	CONOCO INC
-BUD OIL CO				RECEIVED:	12/13/82	JA: OK			
8313579	18205	3513723104		103		WILK NO 1		30.0	LONE STAR GAS COM
-C J CASSELMAN				RECEIVED:	12/17/82	JA: OK			
8313764	18172	3511123852		103		BARNETT 4	MORRIS	18.3	PHILLIPS PETROLEU
8313793	18297	3511123825		103		KING 1-A	MORRIS	18.3	PHILLIPS PETROLEU
8313808	18298	3511123816		103		KING 2-A	MORRIS	18.3	PHILLIPS PETROLEU
8313763	18171	3511123724		103		ROBERTSON #3	MORRIS	18.3	PHILLIPS PETROLEU
8313765	18173	3511123722		103		ROBERTSON 2	MORRIS	18.3	PHILLIPS PETROLEU
-CALVERT DRILLING CO				RECEIVED:	12/17/82	JA: OK			
8313720	18263	3511921881		103		HELDRETH #1	SE RIPLEY	8.0	SUN GAS CO
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	12/13/82	JA: OK			
8313589	18278	3504700000		108		RANDOLPH NO 1	N E ENID	13.0	CHAMPLIN PETROLEU
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	12/17/82	JA: OK			
8313743	17538	3500300000		103		S K LEIERER "A" #2	E CHANEY DELL	66.0	CHAMPLIN PETROLEU
-CIMARRON MANAGEMENT CORP				RECEIVED:	12/17/82	JA: OK			
8313760	18380	3511721341		103		WARD #3-B	HALLETT	11.0	EMPIRE PIPELINE C
-CLARK RESOURCES INC				RECEIVED:	12/13/82	JA: OK			
8313575	18138	3507323606		103		BERNITA29-1	SOONER TREND	40.0	CITIES SERVICE GA

JD NO	JA DKT	API NO	SEC(1)	SEC(2)	WELL NAME
8313576	18139	3509322507	103		CARL 29-1
8313603	18112	3507323466	103		PARIS 28-1
-CLARK RESOURCES INC			RECEIVED:	12/16/82	JA: OK
8313687	18211	3507323544	103		KLINNERT 10-1
-CLARK RESOURCES INC			RECEIVED:	12/17/82	JA: OK
8313783	18345	3509322489	103		CAMPBELL 22-2
8313797	18334	3507323619	103		EMERY 19-1
-CN OPERATING CO			RECEIVED:	12/13/82	JA: OK
8313596	18335	3503700000	108		FIELDS NO 1
-CN OPERATING CO			RECEIVED:	12/17/82	JA: OK
8313779	18030	3503700000	108		BOWERS #10
8313762	18032	3503700000	108		HUGHES-RICKNER #2
8313775	18023	3503700000	108		JOHNNY JACOBS #2
8313776	18027	3503700000	103		JOHNNY JACOBS #3
8313774	18022	3503700000	103		JOHNNY JACOBS #4
8313777	18028	3503722781	108		RYAN #1
8313778	18029	3503700000	108		SMITH #11
-COBRA OIL AND GAS CORPORATION			RECEIVED:	12/13/82	JA: OK
8313597	18449	3515321348	103		REGER "12" #1
-COTTON PETROLEUM CORPORATION			RECEIVED:	12/13/82	JA: OK
8313573	19970	3505121256	107-DP		ALFRED NO 1
-CROUCH PETROLEUM COMPANY			RECEIVED:	12/17/82	JA: OK
8313770	17444	3509120409	103		DICK MARTIN #1-29
-CUMMINGS OIL CO			RECEIVED:	12/13/82	JA: OK
8313659	15269	3507323455	102-A		CORBIN "A" #1
-DAVIS OIL COMPANY			RECEIVED:	12/13/82	JA: OK
8313627	18018	3508720660	103		MARCOTT #1
8313581	18251	3501700000	103		RADCLIFF #1-A
-DAVIS OIL COMPANY			RECEIVED:	12/17/82	JA: OK
8313734	18019	3508720593	103		DORA #1
-DEPCO INC			RECEIVED:	12/17/82	JA: OK
8313731	18176	3508520551	103		GRAY #1-21
8313730	18177	3508520577	103		TESTERMAN #1-21
-DIASU OIL & GAS CO INC			RECEIVED:	12/13/82	JA: OK
8313626	18071	3505320801	103		HARRIS NO 1
8313625	18072	3505320804	103		TIFFANY NO 1
-DYCO PETROLEUM CORPORATION			RECEIVED:	12/16/82	JA: OK
8313686	18204	3503920530	103		HUTCHISON #1-7
-DYCO PETROLEUM CORPORATION			RECEIVED:	12/17/82	JA: OK
8313756	18287	3513921328	103		JOLIFFEE TRUST #1
8313745	17484	3500920466	103		WHITE #1-13
-EAGLE OIL CO			RECEIVED:	12/17/82	JA: OK
8313798	18336	3510721239	103		BROOK #2
-EL PASO NATURAL GAS COMPANY			RECEIVED:	12/13/82	JA: OK
8313599	19132	3500900000	108-PP		PUCKETT A #2
-ENERGY LOCATION & DEVELOPMENT			RECEIVED:	12/13/82	JA: OK
8313585	18275	3514722797	103		HOPPER NO 1
8313586	18276	3514722684	103		HOPPER NO 2
-F C D OIL CORP			RECEIVED:	12/16/82	JA: OK
8313688	18216	3507323579	103		CROSSWHITE 1-11
8313696	18281	3509322532	103		OLGA 1-17
-FOUR CHIEFS ENERGY INC			RECEIVED:	12/17/82	JA: OK
8313713	8921	3506300000	108		ADA ID #063-38820

FIELD NAME	PROD	PURCHASER
SOONER TREND	165.0	CITIES SERVICE GA
SOONER TREND	40.0	CITIES SERVICE GA
SOONER TREND	200.0	CITIES SERVICE GA
SOONER TREND	85.0	CITIES SERVICE GA
SOONER TREND	130.0	CONOCO INC
CUSHING	6.0	ARCO OIL AND GAS
CUSHING	0.9	ARCO OIL & GAS CO
CUSHING	0.5	ARCO OIL & GAS CO
CUSHING	0.5	ARCO OIL & GAS CO
CUSHING	0.1	ARCO OIL & GAS CO
CUSHING	0.1	ARCO OIL & GAS CO
OLIVE	2.0	ARCO OIL & GAS CO
CUSHING	3.4	ARCO OIL & GAS CO
TANGIER	450.0	NORTHERN NATURAL
COTTONWOOD S W	0.0	UNITED GAS PIPELI
S E CHECOTAH	72.0	COLUMBIA GAS TRAN
SOONER TREND	0.0	CITIES SERVICE GA
CRAWFORD	18.0	SUN EXPLORATION &
EL RENO	0.0	PHILLIPS PETROLEU
CRINER CREEK	0.0	SUN EXPLORATION &
N MARIETTA	6.0	AMINOIL USA INC
N MARIETTA	22.0	AMINOIL USA INC
RED FORK FORMATION SE	21.0	SUN GAS COMPANY
RED FORK FORMATION SE	45.0	SUN GAS COMPANY
	250.0	
	40.0	PANHANDLE EASTERN
	250.0	MICHIGAN WISCONSI
W BLAKELY	84.0	PHILLIPS PET CO
	0.0	EL PASO NATURAL G
	0.0	PHILLIPS PETROLEU
	0.0	PHILLIPS PETROLEU
SOONER TREND	36.5	EXXON CO U S A
N W FAIRVIEW	127.8	PHILLIPS PETROLEU
SOUTH DUSTIN	6.0	TRANSOK PIPELINE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8313716	8918	3506300000		108		HICKS ID #063-38819
8313717	8917	3506300000		108		MEADORS ID #063-38821
8313714	8920	3506300000		108		RYAN ID #063-38822
8313715	8919	3506300000		108		TRIBAL ID #063-38818
-FUSULINA PETROLEUM CORP				RECEIVED:		12/13/82 JA: OK
8313662	18110	3509322388		103		THOMAS 2-2
-GULF OIL CORPORATION				RECEIVED:		12/13/82 JA: OK
8313578	18161	3500320181		108		EASTERLING - STATE NO 1
-GULFSTREAM PETROLEUM CORP				RECEIVED:		12/17/82 JA: OK
8313799	18378	3510321494		103		ROSA SEEGERS #2-11
-H & L OPERATING COMPANY				RECEIVED:		12/17/82 JA: OK
8313724	18202	3504521006		103		SUE HILL #1
-HAMILTON BROTHERS OIL CO				RECEIVED:		12/13/82 JA: OK
8313646	18057	3514920192		102-2		THOMPSON HEIRS #1-26
-HANOVER MANAGEMENT CO				RECEIVED:		12/17/82 JA: OK
8313811	18422	3508720640		103		GREEN #1
-HARPER OIL COMPANY				RECEIVED:		12/13/82 JA: OK
8313634	18140	3509322515		103		DAISY #2
-HAWKINS OIL & GAS INC				RECEIVED:		12/17/82 JA: OK
8313796	18321	3500722308		103		WEST #1-17
-HERNDON OIL & GAS CO				RECEIVED:		12/17/82 JA: OK
8313780	18338	3505921093		103		HOLCOMB #1
-HESTON OIL CO				RECEIVED:		12/17/82 JA: OK
8313787	18372	3504723019		103		DULICK #32-1
-HILL RESOURCES INC				RECEIVED:		12/16/82 JA: OK
8313698	18302	3508121699		103		BECK #1-A
-HUNT OIL COMPANY				RECEIVED:		12/13/82 JA: OK
8313661	18104	3509322384		103		CORNELSEN #1
-INDIANOLA OIL INC				RECEIVED:		12/17/82 JA: OK
8313725	18184	3514700000		103		FOSTER PETROLEUM #3A
-INTERNORTH INC				RECEIVED:		12/13/82 JA: OK
8313613	22001	3503920751		107-DP		THORNBROUGH 35 #1
-IREX CORP				RECEIVED:		12/13/82 JA: OK
8313612	18519	3505921123		102-4		LOGAN #1
-J & G OPERATING CO				RECEIVED:		12/17/82 JA: OK
8313748	09928	3508100000		108		MILLER #1-A
-JACKSON EXPLORATION INC				RECEIVED:		12/13/82 JA: OK
8313611	18570	3511921728		102-4	103	MCCALEB #1
-JET OIL COMPANY				RECEIVED:		12/17/82 JA: OK
8313722	18207	3504722777		103		BENNETT #2
8313723	18206	3504722758		103		DALKE #1
8313739	17608	3504722533		103		HONNOLD #2
8313740	17606	3504722787		103		IRENE #1
8313755	18305	3504722951		103		KNOPFEL #2
8313742	17604	3504723000		103		KNOPFEL "B" #1
8313741	17605	3504722750		103		MURPHY #2
-JIMMY W GRAY				RECEIVED:		12/17/82 JA: OK
8313758	18411	3504900000		103		MANESS #1
-JOHN A HENRY & CO				RECEIVED:		12/13/82 JA: OK
8313647	17988	3501722307		103		JOHN HENRY #2
-JOHN A TAYLOR				RECEIVED:		12/13/82 JA: OK
8313610	18590	3503920565		102-2		BEESON #1
8313608	18591	3503920601		102-2		BIBB #1

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FIELD NAME	PROD	PURCHASER
SOUTH DUSTIN	7.5	TRANSOK PIPELINE
SOUTH DUSTIN	15.0	TRANSOK PIPELINE
SOUTH DUSTIN	6.0	TRANSOK PIPELINE
SOUTH DUSTIN	0.6	TRANSOK PIPELINE
SOONER TREND	0.0	UNION TEXAS PETRO
OAKDALE SW	0.7	DELHI GAS PIPELIN
E BILLINGS PROSPECT (	36.0	ARCO OIL & GAS CO
MOCANE-LAVERN AREA	100.0	TRANSWESTERN PIPE
WILDCAT	0.0	EL PASO NATURAL G
	29.2	SUN EXPLORATION &
RINGWOOD	127.0	PHILLIPS PETROLEU
ALLEN & PARKER	73.0	INTER NORTH INC
LAVERNE	375.0	MICHIGAN WISCONSI
	0.0	UNION TEXAS PETRO
	185.0	MERIDIAN ENERGY I
DANE	300.0	DELHI GAS PIPELIN
OCHELATA	350.0	BARON PIPELINE
CLINTON SOUTH	0.0	NORTHERN NATURAL
N WOODWARD SECTION 17	0.0	DELHI GAS PIPELIN
MILLER #1-A	0.0	SUN GAS CO
WILDCAT	150.0	LINK SYSTEMS INC
WILSON PROSPECT	137.0	AMINOIL USA INC
WILSON PROSPECT	51.0	EASON OIL CO
WILSON	0.0	EASON OIL CO
WILSON	0.0	EASON OIL CO
BROWN-EAST	121.0	AMINOIL USA INC
BROWN EAST	0.0	EASON OIL COMPANY
WILSON	0.0	EASON OIL CO
ANTIOC	73.0	WARREN PETROLEUM
YUKON	365.0	CONOCO INC
NE MOOREWOOD FIELD	0.0	ARKANSAS LOUISIAN
NE MOOREWOOD FIELD	0.0	ARKANSAS LOUISIAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-JOHN L BROWN				RECEIVED:	12/13/82	JA: OK			
8313590	19104	3514723499		102-2		VINSON #1	VINSON FARM	73.0	MARION CORP
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	12/13/82	JA: OK			
8313656	17029	3504700000		108-ER		GOLDTRAP #1-8	E SPRING VALLEY	34.0	GRACE PETROLEUM C
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	12/16/82	JA: OK			
8313697	18290	3515121240		103		BOSWELL #1	N W AVARD	250.0	PANHANDLE EASTERN
-KEITH F WALKER				RECEIVED:	12/13/82	JA: OK			
8313615	18159	3504971105		103		JO SUE EVANS #1	MCCARTY	10.9	WARREN PETROLEUM
8313653	17696	3501972590		103		MCCRORY-WOERZ #1		73.0	MOBIL OIL CORPORA
-KETAL OIL PRODUCING CO				RECEIVED:	12/17/82	JA: OK			
8313721	18208	3504723021		103		CAUDLE #1	SOUTH HAYWARD	40.5	EASON OIL CO
8313766	18209	3504723039		103		KNOPFEL #1	SOUTH HAYWARD	36.5	EASON OIL CO
-L G WILLIAMS OIL COMPANY INC				RECEIVED:	12/13/82	JA: OK			
8313644	18167	3503920474		103		POTTER NO 1-9	CRANE	1.0	
-LANDERS & MUSGROVE				RECEIVED:	12/17/82	JA: OK			
8313768	18412	3507100000		103		ANDREWS #1	UNNAMED	25.0	CITIES SERVICE CO
-LEEDE OIL & GAS INC				RECEIVED:	12/13/82	JA: OK			
8313592	18280	3508720713		103		FALLON NO 1		100.0	TRANSOK PIPE LINE
-LEEMAN ENERGY CORP				RECEIVED:	12/16/82	JA: OK			
8313690	18229	3504921825		103		FOGELSON #1	NE ANTIOCH	36.0	WARREN PETROLEUM
-LONG ROYALTY CO				RECEIVED:	12/13/82	JA: OK			
8313654	17515	3503120967		103		ROBERT TALIAFERRO #1-5	NELLIE N FIELD	0.0	ARKLA GAS
-LUBELL OIL CO				RECEIVED:	12/16/82	JA: OK			
8313694	18253	3506321581		103		ANTHENE #1-24	YEAGER	100.0	OKLAHOMA NATURAL
-LUBELL OIL CO				RECEIVED:	12/17/82	JA: OK			
8313750	18252	3506321608		103		BLACKBURN #1-26	YEAGER	150.0	OKLAHOMA NATURAL
-MACK OIL CO				RECEIVED:	12/17/82	JA: OK			
8313795	18320	3505320902		103		HENDERSON #1	NORTHEAST HILLSDALE	26.0	
-MAGIC CIRCLE ENERGY CORP				RECEIVED:	12/13/82	JA: OK			
8313641	18154	3515121210		103		FEDERAL #1		257.0	MAGIC CIRCLE GAS
8313640	18153	3515121220		103		KELSEY #1	S E WAYNOKA	175.0	MAGIC CIRCLE GAS
8313617	18155	3508321883		103		SAM #1	WEST CRESCENT	36.5	CONOCO
-MAGIC CIRCLE ENERGY CORP				RECEIVED:	12/17/82	JA: OK			
8313810	18421	3500320947		103		DAVIS #1	WEST CARMEN	135.0	MAGIC CIRCLE GAS
-MAJOR OIL CORP				RECEIVED:	12/17/82	JA: OK			
8313744	17534	3509322335		103		BURPO 2-7	RINGWOOD	75.0	PIONEER GAS PRODU
-MAY PETROLEUM INC				RECEIVED:	12/13/82	JA: OK			
8313655	17238	3510321653		103		VANN "C" #1 (103-73608)		365.0	
-MEWBOURNE OIL COMPANY				RECEIVED:	12/13/82	JA: OK			
8313583	18261	3500722279		103		HENRY "35" NO 1	CONO S E (TONKAWA)	4.0	PHILLIPS PETROLEU
-MGF OIL CORP				RECEIVED:	12/13/82	JA: OK			
8313598	18598	3505121228		102-4		METHVIN 1-12	SOUTH NORGE	401.0	ARKANSAS LOUISIAN
-MIDCO DRILLING INC				RECEIVED:	12/16/82	JA: OK			
8313712	18203	3500722187		103		EXLINE #1	MOCANE-LAVERNE	9.0	EL PASO NATURAL G
-MONSANTO COMPANY				RECEIVED:	12/17/82	JA: OK			
8313729	18178	3504321440		103		FOX #5	S E TALOGA	25.0	MOBIL OIL CORP
8313728	18179	3504321441		103		FOX #6	S E TALOGA	25.0	MOBIL OIL CORP
-MULTISTATE OIL PROPERTIES NV				RECEIVED:	12/13/82	JA: OK			
8313604	18109	3500720936		108		BECKER #1	LIBERAL SE	5.0	MICHIGAN WISCONSI
-NATIONAL OIL COMPANY				RECEIVED:	12/17/82	JA: OK			
8313747	15584	3502720566		103		BOSWELL #1 02771881	NW NORMAN	0.2	SUN GAS CO
-NORTEX GAS & OIL CO				RECEIVED:	12/17/82	JA: OK			
8313790	18651	3505920691		102-4		CRAWFORD 32 #1	MOCANE - LAVERNE	198.0	INTERNORTH INC

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JD NO	JA DAT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313791	22152	3505121144		107-DP		DAVIS 7 #1		0.0	EL PASO NATURAL G
-NORTHWEST EXPLORATION COMPANY				RECEIVED:	12/13/82	JA: OK			
8313628	18008	3509322512		103		KNOPP 1-A	NW OKEENE	200.0	CITIES SERVICE CO
-NU-HOPE OIL CO				RECEIVED:	12/13/82	JA: OK			
8313650	17762	3503700000		108		PUCKETT -SELLERS #4	EAST DRUMRIGHT	1.4	ARCO OIL & GAS CO
8313651	17761	3503700000		108		PUCKETT-SELLERS #3	EAST DRUMRIGHT	0.7	ARCO OIL & GAS CO
-NU-HOPE OIL CO				RECEIVED:	12/17/82	JA: OK			
8313751	17760	3503700000		108		PUCKETT-SELLERS WELL #1	EAST DRUMRIGHT	1.5	ARCO OIL & GAS CO
-OIL LIFT INC				RECEIVED:	12/13/82	JA: OK			
8313658	16851	3510500000		108-ER		SMITH #1-16		0.0	PELICAN PIPELINE
8313657	16852	3510500000		108-ER		TITUS #1		0.0	PELICAN PIPELINE
-PELTO OIL CO				RECEIVED:	12/17/82	JA: OK			
8313809	18410	3510721146		103		COLLINS #1	IRON POST	300.0	KERR-MCGEE CORP
-PENNACO RESOURCES CORP				RECEIVED:	12/13/82	JA: OK			
8313622	18082	3508371965		103		ELLISON #16-2		0.0	EASON OIL COMPANY
-PETRO-ENERGY EXPLORATION INC				RECEIVED:	12/13/82	JA: OK			
8313636	18143	3512120573		103		LOGAN #1-9	WEST CROWDER - NW REA	100.0	ARKLA GAS COMPANY
8313635	18142	3512100000		103		WALKER #1-2	NORTHWEST REAMS - NW	100.0	ARKLA GAS COMPANY
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	12/13/82	JA: OK			
8313577	18157	3513900000		108		IRENE #1	GUYMON HUGOTON	0.0	MICHIGAN WISCONSI
8313606	18068	3504721052		108		STEPHENSON A #1	SOONER TREND	8.1	TRANSOK PIPELINE
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	12/16/82	JA: OK			
8313691	18237	3501722313		103		HUFNAGEL "D" #1	WEST OKARCHE	0.5	
-PIONEER PRODUCTION CORPORATION				RECEIVED:	12/13/82	JA: OK			
8313614	21233	3512920857		107-DP		PARR #1-36	UPPER MORROW	0.0	
-PLAINS RESOURCES INC				RECEIVED:	12/17/82	JA: OK			
8313786	18373	3504722991		103		KNOPFEL #1	HAYWARD	0.0	ARCO OIL & GAS CO
-PRODUCERS 88 OIL CORP				RECEIVED:	12/17/82	JA: OK			
8313792	18315	3510721218		103		MASSEY #1	LAST CHANCE	180.0	OKLAHOMA GAS & EL
-PROEX ENERGY CORP				RECEIVED:	12/13/82	JA: OK			
8313638	18146	3507323299		103		GARMS-MCCLELLAND #1		35.0	PHILLIPS PETROLEU
-PYRO ENERGY CORP				RECEIVED:	12/13/82	JA: OK			
8313616	18156	3509322470		103		F J EDWARDS 31-2	WEST CHEYENNE VALLEY	0.0	TENNESSEE GAS PIP
-QUAD OPERATING COMPANY				RECEIVED:	12/13/82	JA: OK			
8313601	18131	3511100000		108		BOHNEFELD #1	MOUNDS	0.0	PHILLIPS PETROLEU
8313602	18118	3511100000		108		BROWN #3	MOUNDS	15.0	PHILLIPS PETROLEU
8313607	18051	3511100000		108		CARL LEE #1	MOUNDS	9.0	PHILLIPS PETROLEU
-RALPH E PLOTNER OIL & GAS INVEST IN				RECEIVED:	12/17/82	JA: OK			
8313754	18324	3501722100		103		BRENDA #1	WEST PIEDMONT	100.0	PHILLIPS PETROLEU
-RAMBLER OIL CO				RECEIVED:	12/17/82	JA: OK			
8313738	17998	3504900000		103		GORDEN #1-21		0.0	
8313736	18000	3504900000		103		HINTON #1-2	BASAL OIL CREEK	0.0	WARREN PETROLEUM
8313737	17998	3504921897		103		LEDGERWOOD #1-7	GOLDENTREND	0.0	
-RICK BUCK OIL & GAS INVESTMENTS				RECEIVED:	12/16/82	JA: OK			
8313689	18219	3504722870		103		GABE #1-26	SOONER TREND	0.0	UNION TEXAS PETRO
-RICK BUCK OIL & GAS INVESTMENTS				RECEIVED:	12/17/82	JA: OK			
8313807	18400	3507323475		103		MUEGGENBORG #1-29	SOONER TREND	0.0	PHILLIPS PETROLEU
8313806	18399	3507323476		103		PAUL #1-32	SOONER TREND	0.0	PHILLIPS PETROLEU
8313759	18398	3504722650		103		RANDY #1-25	SOONER TREND	0.0	UNION TEXAS PETRO
-RICKS EXPLORATION CO				RECEIVED:	12/13/82	JA: OK			
8313645	18086	3501521200		103		MARY LOU #2	S W BINGER	95.0	PIONEER GAS PRODU
8313618	18085	3501521927		103		WILLIAMS #1	WILDCAT	42.0	PIONEER GAS PRODU
-RICKS EXPLORATION CO				RECEIVED:	12/17/82	JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313805	18390	3502720559		103		WARD 318	N W NORMAN	20.0	SUN EXPLORATION &
8313804	18389	3502720669		103		WARD 310	N W NORMAN	157.0	SUN EXPLORATION &
-ROBINSON BROS DRILLING CO INC				RECEIVED:	12/16/82	JA: OK			
8313711	22145	3501521458		107-DP		STEVENS #18-1	NORTH EAKLEY	1825.0	
-RODMAN PETROLEUM CORP				RECEIVED:	12/16/82	JA: OK			
8313692	18247	3508321888		103		ROY 27-1	MERIDIAN	183.0	CITIES SERVICE GA
-ROLLYSON CORP				RECEIVED:	12/17/82	JA: OK			
8313757	18274	3504921909		103		T S HOLLOWAY #1	MAYSVILLE	76.0	WARREN PETROLEUM
-SAMEDAN OIL CORPORATION				RECEIVED:	12/13/82	JA: OK			
8313643	18165	3515321237		103		BARANSY #2	NO NAME	700.0	NATURAL GAS PIPEL
8313649	17827	3501722132		103		LEMKE NO 1	NO NAME	150.0	PHILLIPS PETROLEU
-SAMSON RESOURCES COMPANY				RECEIVED:	12/13/82	JA: OK			
8313600	21935	3512920748		107-DP		ROWEN NO 1	SOUTH REYDON	146.0	EL PASO NATURAL G
-SEIGEL PETROLEUM CO				RECEIVED:	12/17/82	JA: OK			
8313732	18201	3511921663		103		ALVIN #1	MARKHAM	264.0	PARKS ENERGY CO
-SENECA OIL COMPANY				RECEIVED:	12/13/82	JA: OK			
8313584	18273	3509322465		103		WOODSON #1-18		156.0	PIONEER GAS PRODU
-SENECA OIL COMPANY				RECEIVED:	12/17/82	JA: OK			
8313769	17133	3501722248		102-4	103	PRUITT #1-27		21.9	PHILLIPS PETROLEU
-SHAR-ALAN OIL CO				RECEIVED:	12/16/82	JA: OK			
8313695	18259	3509322542		103		ROBERT HODGDEN #2	RINGWOOD	0.0	PANHANDLE EASTERN
-SIERRA DRILLING & EXPLORATION INC				RECEIVED:	12/16/82	JA: OK			
8313701	18310	3507122522		103		BILL ECKERT #1		0.0	CHASE GATHERING S
8313699	18308	3507122443		103		CHERI HICKEY #1		0.0	CHASE GATHERING S
8313704	18313	3507122514		103		DOUG HICKEY #1		0.0	CHASE GATHERING S
8313702	18311	3507122472		103		GENEIVE ECKERT #1		0.0	CHASE GATHERING S
8313703	18312	3507122444		103		JOANNE SPRAGUE #1		0.0	CHASE GATHERING S
8313700	18309	3507122548		103		MARGARET ECKERT #1		0.0	CHASE GATHERING S
8313705	18314	3507122481		103		WADE HICKEY #1		0.0	CHASE GATHERING S
-SIMCOE OIL CO				RECEIVED:	12/17/82	JA: OK			
8313735	18015	3507323610		103		KITTY #1	SOONER TREND	30.0	EASON OIL CO
-SITCO INC				RECEIVED:	12/17/82	JA: OK			
8313803	18387	3508321381		103		MIKE #1		35.0	EASON OIL CO
8313802	18386	3508321945		103		PFRIMMER #1	CRESCENT	60.0	EASON OIL CO
-SOONER PIPE & SUPPLY CORPORATION				RECEIVED:	12/13/82	JA: OK			
8313652	17756	3503700000		108		CATLETT #1	EAST DRUMRIGHT	3.6	ARCO OIL & GAS CO
-STEVE JERNIGAN INC				RECEIVED:	12/17/82	JA: OK			
8313761	18325	3508720748		103		BURKES #1	GOLDEN TREND	0.0	WARREN PETROLEUM
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	12/17/82	JA: OK			
8313785	18359	3508720379		103		E CRINER BROMIDE SAND UNIT 4-3	EAST CRINER	110.0	OKLAHOMA GAS & EL
8313733	18194	3510900000		108		INLAND-HARN #2	OKLAHOMA CITY	12.0	PHILLIPS PETROLEU
8313786	18360	3505320699		103		S W WAKITA #9-4	CHEROKEE	39.0	CITIES SERVICE GA
-TENNECO OIL COMPANY				RECEIVED:	12/16/82	JA: OK			
8313693	18249	3507323596		103		GALES #1-30	E CHEYENNE	59.0	PHILLIPS PETROLEU
-TENNECO OIL COMPANY				RECEIVED:	12/17/82	JA: OK			
8313781	18340	3502920303		103		HOCKETT #1-3	WILDCAT	65.0	
8313782	18341	3509322448		103		JORDAN #1-25	CHEYENNE VALLEY	220.0	MICHIGAN-WISCONSI
-TEXACO INC				RECEIVED:	12/17/82	JA: OK			
8313727	18180	3513921623		103		C N TREECE #2	S W RICE POOL	763.0	TRANSWESTERN PIPE
-TEXAS AMERICAN OIL CORP				RECEIVED:	12/13/82	JA: OK			
8313665	18123	3507322360		103		FRANK HLADIK #1	SOONER TREND	47.5	PANHANDLE EASTERN
8313632	18127	3504722345		103		J C NELSON #1	SOONER TREND	53.6	PANHANDLE EASTERN
8313631	18126	3504722187		103		J K MCGEE #1	SOONER TREND	113.5	PANHANDLE EASTERN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313664	18122	3510320798		103		JON L WEBB #1	BILLINGS EAST	96.7	ARCO OIL & GAS CO
8313630	18125	3504721596		103		LEON WALTERS #1	SOONER TREND	39.4	UNION TEXAS PETRO
8313666	18124	3504721706		103		MYRTLE WALTERS #1	SOONER TREND	90.5	UNION TEXAS PETRO
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	12/17/82	JA: OK			
8313719	18267	3509322418		103		JOHN F EDWARDS #1	SOONER TREND	0.2	PHILLIPS PETROLEU
-TRIGG DRILLING COMPANY INC				RECEIVED:	12/13/82	JA: OK			
8313642	18160	3500920405		103		HEFLEY #1	SW ELK CITY	456.0	EL PASO NATURAL G
8313595	18300	3515121252		103		MAY NO 1		145.0	
-TRISUN ENERGY CORP				RECEIVED:	12/13/82	JA: OK			
8313620	18091	3514321358		103		FRANK M SCAGGS #1	SPENCER	81.0	PHILLIPS PETROLEU
-TXO PRODUCTION CORP				RECEIVED:	12/17/82	JA: OK			
8313794	18316	3508500000		103		RAINES "A" #1	THACKERVILLE	16.0	UNION TEXAS PETRO
-UNION OIL COMPANY OF CALIF				RECEIVED:	12/13/82	JA: OK			
8313591	18279	3509520299		103		STATE #1-7	CUMBERLAND	70.0	LONE STAR GAS COM
-UNION TEXAS PETROLEUM				RECEIVED:	12/16/82	JA: OK			
8313707	18318	3509322531		103		I MOODY #2	HOOGE AREA	584.0	PANHANDLE EASTERN
8313708	18319	3509322529		103		L C NEWMAN #2	HOOGE AREA	146.0	PANHANDLE EASTERN
8313706	18317	3509322447		103		R H NASH #2	HOOGE AREA	219.0	PANHANDLE EASTERN
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	12/13/82	JA: OK			
8313609	17568	3509322011		103		L K 1-23		0.0	DELHI GAS PIPELIN
8313663	18119	3501722257		103		RUKES 1-19		0.0	DELHI GAS PIPELIN
-VIERSEN & COCHRAN				RECEIVED:	12/16/82	JA: OK			
8313710	18605	3512920683		102-2		HOLLINGSWORTH #1-35	NW HAMMOND	200.0	
-W R EARNHARDT				RECEIVED:	12/13/82	JA: OK			
8313588	18377	3503700000		108		SALMON NO 1	SW SW NW SEC 29-15N-8	5.7	KERR-MCGEE CORPOR
-WALKER CORP				RECEIVED:	12/13/82	JA: OK			
8313594	18283	3501722256		103		MAY WHITE #36-1	YUKON	262.0	CONOCO INC
-WARREN DRILLING CO INC				RECEIVED:	12/17/82	JA: OK			
8313726	18181	3509300000		103		ENSMINGER #2	RINGWOOD	77.0	PHILLIPS PETROLEU
-WESSELY ENERGY CORPORATION				RECEIVED:	12/17/82	JA: OK			
8313801	18385	3504521055		103		STATE MILLER #1-8	S HARMON	725.0	PRODUCERS GAS CO
-WESTERN OIL RESOURCES LTD				RECEIVED:	12/13/82	JA: OK			
8313619	18092	3511721013		103		NEJ 1-14	NORTHEAST JENNINGS	16.6	MID-AMERICA GAS L
-WESTERN PACIFIC PETROLEUM INC.				RECEIVED:	12/13/82	JA: OK			
8313648	17851	3510920549		102-4	103	ADAIR #1-6	EDMOND	10.0	PHILLIPS PETROLEU
-WOODS PETROLEUM CORPORATION				RECEIVED:	12/17/82	JA: OK			
8313789	18615	3512920783		102-2		PETERSON #10-1	S W LEEDEY	1095.0	DELHI GAS PIPELIN
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-BOW VALLEY PETROLEUM INC				RECEIVED:	12/13/82	JA: WV			
8313551		4710500942		103		C N WELCH #965	CLAY DISTRICT	0.0	COLUMBIA GAS TRAN
8313559		4710500942		107-DV		C N WELCH #965	CLAY DISTRICT	0.0	COLUMBIA GAS TRAN
8313549		4703902772		103		CREWS #740	UNION DISTRICT	0.0	COLUMBIA GAS OF W
8313548		4703902775		103		LILLY #761	UNION DISTRICT	0.0	COLUMBIA GAS OF W
8313550		4710500945		103		WELCH #968	BURNING SPRINGS DIST	0.0	COLUMBIA GAS TRAN
8313558		4710500945		107-DV		WELCH #968	BURNING SPRINGS DIST	0.0	COLUMBIA GAS TRAN
-CABOT OIL & GAS CORP				RECEIVED:	12/13/82	JA: WV			
8313532		4703900085		106-ER		HUNTINGTON 37-554	CABIN CREEK	30.4	TENNESSEE GAS PIP
8313546		4700501340		103		LITTLE COAL LAND C-12	WASHINGTON	20.0	TENNESSEE GAS PIP
8313567		4700501340		107-DV		LITTLE COAL LAND C-12	WASHINGTON	20.0	TENNESSEE GAS PIP
8313547		4700501339		103		LITTLE COAL LAND C-6	WASHINGTON	33.0	TENNESSEE GAS PIP
8313565		4700501339		107-DV		LITTLE COAL LAND C-6	WASHINGTON	33.0	TENNESSEE GAS PIP

JO NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313544		4700501350		103		LITTLE COAL LAND C-8	WASHINGTON	50.0	TENNESSEE GAS PIP
8313566		4700501350		107-DV		LITTLE COAL LAND C-8	WASHINGTON	50.0	TENNESSEE GAS PIP
8313545		4700501341		103		LITTLE COAL LAND C-9	WASHINGTON	35.0	TENNESSEE GAS PIP
8313543		4708100555		103		WESTMORELAND COAL CO C-2	TOWN	16.0	TENNESSEE GAS PIP
				RECEIVED:	12/13/82	JA: WV			
-CARSON PETROLEUM CORP									
8313568		4701702370		108		DROPPLEMAN #I-624 (#1)	ST CLAIR	21.0	CONSOLIDATED GAS
				RECEIVED:	12/13/82	JA: WV			
-CHESTERFIELD CORP									
8313553		4709702363		103		BAILEY #2		0.0	COLUMBIA GAS CORP
8313552		4709702394		103		HANIFAN #3		0.0	COLUMBIA GAS CORP
8313554		4709702343		103		LAW HINKLE #1		0.0	COLUMBIA GAS CORP
8313555		4709702397		103		SANDRIDGE #2		0.0	PETRO LEWIS
				RECEIVED:	12/13/82	JA: WV			
-DORAN & ASSOCIATES INC									
8313541		4703301156		108		ERNEST DUNCAN #2 KE-1	TEN MILE DISTRICT	20.0	CONSOLIDATED GAS
8313572		4703301930		108		INEZ ROBINSON KE-6	EAGLE DISTRICT	20.0	CONSOLIDATED GAS
8313542		4703301056		108		J STROTHER #3 KH-5	COAL DISTRICT	20.0	CONSOLIDATED GAS
8313540		4703301211		108		J STROTHER #4 KH-10	TEN MILE DISTRICT	20.0	CONSOLIDATED GAS
8313539		4703301928		108		JOHN DOLAN #3 KE-8	CLARK DISTRICT	20.0	CONSOLIDATED GAS
8313538		4703301929		108		JOHN DOLAN #4 KE-9	CLARK DISTRICT	20.0	CONSOLIDATED GAS
				RECEIVED:	12/13/82	JA: WV			
-HAUGHT INC									
8313537		4708505440		103		STANLEY H-1302	GRANT DISTRICT	20.0	CONSOLIDATED GAS
				RECEIVED:	12/13/82	JA: WV			
-J C BAKER & SONS INC									
8313536		4700701570		108		HARRY DYOR #1	SALT LICK DIST	18.0	CONSOLIDATED GAS
				RECEIVED:	12/13/82	JA: WV			
-KEITH CRIHFIELD									
8313569		4701300421		108		JOE CONLEY #1	CHLOE	5.0	CONSOLIDATED GAS
8313560		4701300493		108		JOE CONLEY #2	CHLOE	5.0	CONSOLIDATED GAS
8313571		4700700107		108		P S GERWIG #4	CHAPEL	12.0	CONSOLIDATED GAS
8313570		4700700229		108		P S GERWIG #7	CHAPEL	12.0	CONSOLIDATED GAS
				RECEIVED:	12/13/82	JA: WV			
-R & B PETROLEUM INC									
8313535		4700101105		108		TURNER #1	VALLEY	7.3	PARTNERSHIP PROPE
8313534		4700101072		108		WILLIAMS #1	VALLEY	10.6	PARTNERSHIP PROPE
				RECEIVED:	12/13/82	JA: WV			
-ROSS-WHARTON GAS CO									
8313564		4704103128		107-DV		BLAIR COTTRILL HEIRS NO 1	WESTON-JANE LEW	30.0	
8313562		4708300518		107-DV		BRENNAN HEIRS NO 2	ELLAMORE	50.0	COLUMBIA GAS TRAN
8313557		4700101410		103		ISAAC WARD #J-326	ELK CREEK	50.0	CONSOLIDATED GAS
8313556		4708300492		103		ROSS NO 2	ELLAMORE	30.0	COLUMBIA GAS TRAN
8313563		4708300492		107-DV		ROSS NO 2	ELLAMORE	30.0	COLUMBIA GAS TRAN
				RECEIVED:	12/13/82	JA: WV			
-TRIPPITT OIL & GAS									
8313561		4701303413		103		B B SHIMER #4	YELLOW CREEK	12.0	ROARING FORK GAS
				RECEIVED:	12/13/82	JA: WV			
-WARREN R HAUGHT AGENT									
8313533		4707301270		107-DV		PEN CUNNINGHAM H-1208	MCKIM DISTRICT	22.0	COLUMBIA GAS TRAN

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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO

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-CHANDLER & ASSOCIATES INC				RECEIVED:	12/17/82	JA: CO 1			
8313817	CD 0495-82	0510308930		103		107-TF FORK UNIT 12-11-1-2	DOUGLAS CREEK NORTH	100.0	NORTHWEST PIPELIN
8313813	CD 0491-82	0510308912		103		107-TF FORK UNIT 12-22-1-2	DOUGLAS CREEK NORTH	180.0	NORTHWEST PIPELIN
8313816	CD-494-82	0510308887		103		107-TF FORK UNIT 16-5-2-1	DRAGON TRAIL	105.0	NORTHWEST PIPELIN
8313812	CD 0496-82	0510308924		103		107-TF FORK UNIT 3-15-1-2	DOUGLAS CREEK NORTH	100.0	NORTHWEST PIPELIN
8313814	CD 0492-82	0510308922		103		107-TF FORK UNIT 4-14-1-2	DOUGLAS CREEK NORTH	73.0	NORTHWEST PIPELIN
8313815	CD 0493-82	0510308898		103		107-TF FORK UNIT 8-13-1-2	DOUGLAS CREEK NORTH	190.0	NORTHWEST PIPELIN
-EXXON CORPORATION				RECEIVED:	12/17/82	JA: CO 1			
8313824	CD-324-82	0507708411		103		107-TF ROGERS FEDERAL #1	PLATEAU	102.0	NORTHWEST PIPELIN
-FUEL RESOURCES DEVELOPMENT CO				RECEIVED:	12/17/82	JA: CO 1			

VOLUME 81E PAGE 010

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8313822	CD-484-82	0510308799		102-2	107-TF	A-21-3-101-S	CATHEDRAL	4.8	MOUNTAIN FUEL SUP
8313823	CD-483-82	0510308801		103	107-TF	0-13-3-101-S	CATHEDRAL	19.2	NORTHWEST PIPELIN
-NORTHWEST EXPLORATION COMPANY				RECEIVED: 12/17/82		JA: CD 1			
8313826	CD-346-82	0510308066		108		PHILADELPHIA CRFEK #18	PHILADELPHIA CREEK MA	0.8	NORTHWEST PIPELIN
-CHEVRON U S A INC				RECEIVED: 12/17/82		JA: UT 1			
8313820	UD 0501-82	4304731081		103		RWU #271	RED WASH	0.0	NORTHWEST PIPELIN
8313821	UD 0498-82	4304731053		103		RWU #276	RED WASH	71.9	NORTHWEST PIPELIN
8313818	UD 0499-82	4304731076		103		RWU #278	RED WASH	4.4	NORTHWEST PIPELIN
8313819	UD 0500-82	4304731080		103		RWU #282	RED WASH	5.8	NORTHWEST PIPELIN
-COASTAL OIL & GAS CORP				RECEIVED: 12/17/82		JA: UT 1			
8313829	UD-481-82	4304731697		103	107-TF	NBU 63N3 (12-9-21)	NATURAL BUTTES	173.0	COLORADO INTERSTA
-COTTON PETROLEUM CORPORATION				RECEIVED: 12/17/82		JA: UT 1			
8313828	UD-433-82	4304731179		103	107-TF	BARTON FEDERAL #1-26	NATURAL BUTTES	0.0	UNITED GAS PIPELI
-EXXON CORPORATION				RECEIVED: 12/17/82		JA: UT 1			
8313825	UD-380-82	4304730937		103		UTE #1-29 A1E	BLUEBELL	60.0	GARY ENERGY CORP
-NP ENERGY CORPORATION				RECEIVED: 12/17/82		JA: UT 1			
8313827	UD-350-82	4301930878		102-4		FEDERAL 14-4	CISCO DOME	182.5	NORTHWEST PIPELIN

SOURCE DATA FOR THIS NOTICE IS AVAILABLE ON MAGNETIC TAPE FROM THE NATIONAL TECHNICAL INFORMATION SERVICE (NTIS). FOR INFORMATION, CONTACT STUART WEISMAN (NTIS) AT (703) 487-4808, 5285 PORT ROYAL RD, SPRINGFIELD, VA 22161, OR SANDRA SPEAR (FERC) (202) 357-8681.

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Categories within each MGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–CB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PK: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-1477 Filed 1-18-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 22 Through November 26, 1982

During the week of November 22 through November 26, 1982 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Edward T. Cotham, Jr., 11/22/82, HFA–0093

Edward T. Cotham, Jr. filed an Appeal from a partial denial by the ERA's Office of Fuels Program of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). The Director of the Office of Fuels Programs had determined that a particular intra-agency memorandum was predecisional, part of the deliberative decisionmaking process of the agency, and should be withheld under Exemption 5. In considering the Appeal, the DOE found that the Director properly withheld the document under Exemption 5.

An important issue considered in the Decision and Order was the applicability of a subject matter waiver—recognized by some courts in discovery proceedings—to the withholding of intra-agency memoranda pursuant to Exemption 5 of the FOIA. The DOE determined that the concept of subject matter waiver was not applicable to FOIA proceedings and, accordingly, found that the voluntary release to Appellant of documents containing the same subject matter of the withheld document will not require release of the withheld document.

Petition for Special Redress

Crystal Oil Company, 11/24/82, BEG–0042

Crystal Oil Company filed a Petition for Special Redress in which it alleged a violation by Shell Oil Company of its obligation under 10 CFR 211.63 to supply Crystal with sufficient quantities of crude oil during the period March through November 1979. Crystal had previously filed a complaint with the Office of Special Counsel under Subpart N of the procedural regulations, which that office had declined to pursue. Since the decontrol of crude oil precluded issuance of a supply order, Crystal requested that compensatory adjustments be ordered through the Entitlements Program. In considering the Petition, the DOE determined that, in substance, Crystal was requesting that the Office of Hearings and Appeals order the enforcement arm of the agency to initiate a prosecution, a function which judicial bodies have traditionally been reluctant to assume. Finding that Crystal had been provided with a reasonable and tenable explanation for the agency's decision not to initiate an enforcement action, the DOE concluded that further administrative action was not warranted. Accordingly, Crystal's Petition for Special Redress was denied.

Request for Exception

Edgington Oil Co., Inc. 11/24/82, BEE–1555, BEX–0220

Edgington Oil Co., Inc. (Edgington) filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought entitlements benefits for crude oil purchased to increase permanent inventory to support the firm's expanded refinery capacity. In considering the request, the DOE found that the firm had failed to increase its crude oil inventory. The DOE further found that even if the firm had increased its inventory, the firm had failed to utilize its increased refinery capacity. Finally, the DOE considered the firm's contention that it was entitled to exception relief on an independent equitable ground, *i.e.*, that its expansion resulted in a restructured slate of products that furthers national energy objectives. The DOE found that any environmental benefit that might result from the firm's expansion would not of itself form the basis for the approval of inventory adjustment exception relief. Accordingly, the firm's request for exception relief was denied.

Motion for Discovery

Texaco, Inc., 11/23/82, HRD–0077

Texaco, Inc. filed a motion for Second Wave Discovery in connection with its objections to a Proposed Remedial Order which the Office of Special Counsel (OSC) issued to the firm on May 1, 1979. At a hearing on November 16, 1982, the DOE issued rulings on the Motion. On November 23, 1982, the DOE issued a written order confirming the rulings made at the hearing. The order authorizes the firm to depose an OSC audit team leader in the Texaco audit, concerning specified areas of inquiry.

Interlocutory Order

Gulf Energy & Development Corp., 11/22/82, HRZ–0068

Gulf Energy & Development Corporation filed a "Motion to Dismiss, or, Alternatively, Motion to Rescue and Grant Discovery Regarding Improper Communications" with the Office of Hearings and Appeals. That motion concerned certain improper communications between a former OHA case analyst and DOE enforcement personnel, concerning the merits of a proposed remedial order pending against the firm. The OHA had disclosed the communications to the firm and to the Economic Regulatory Administration shortly after discovering their existence.

In considering the Motion, the DOE noted, *inter alia*, that the individuals involved in the communications had already left the agency, and that those individuals had not passed on the effects of the communications to the OHA personnel currently handling the case. Based on this, the DOE found that the firm had not been prejudiced by the communications. Accordingly, the Motion to Dismiss the PRO was denied. The DOE found that the discovery sought by the firm was unnecessary. With regard to the firm's request for recusal, the DOE agreed with the firm that the individuals involved in the improper communications should be recused from the case. The DOE further found, however, that since those individuals had already left the agency, no further action was necessary with respect to those individuals. Finally, the DOE found that the firm would not be harmed by the continued participation in the case of individuals who had merely examined evidence of the improper communications. Accordingly, the firm's alternative requests for discovery and recusal were also denied.

Refund Application

Vickers Energy Corp./Koch Industries, Inc., 11/26/82, RF1–132

Koch Industries, Inc. (Koch) filed an Application for Refund pursuant to a Decision and Order issued on July 17, 1981 in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). In its Application, Koch sought a portion of a fund obtained by the DOE through a consent order entered into by the DOE and the Vickers Energy Corporation on May 11, 1979.

In considering its request, the DOE found that Koch had purchased motor gasoline from Vickers at prices below the average market prices for that product and was therefore not injured by the alleged overcharges. Accordingly, the Application for Refund filed by Koch was denied.

Dismissals

The following submissions were dismissed without prejudice:

Name and Case No.

LeClair Operating Company, HRO-0070
Standard Oil Co. (OH), DRO-0197, HRZ-0074, HRZ-0083, HRK-0056.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 10, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 83-1418 Filed 1-18-83; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Order; Week of December 27 through December 31, 1982

During the week of December 27 through December 31, 1982, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order on final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of the decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 10, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Basin, Inc., Midland, Texas; BEE-1670, Crude Oil

On July 1, 1981, Basin, Inc. filed an Application for Exception from the provisions of 10 CFR 212.131(b)(2). The exception request, if granted, would permit Basin to recertify certain crude oil sold to Cities Service Company during the period January through December 1979. On December 29, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 83-1417 Filed 1-18-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grand Portage Indian Reservation; Proclaiming Certain Lands as Part of the Grand Portage Indian Reservation; "Correction"

In FR Doc. 82-14782, appearing on page 23813, in the issue for Tuesday, June 1, 1982, the land description is hereby corrected by deleting "R. 63" on the first line of the fifth paragraph and inserting in lieu thereof "T. 64".

Dated: December 14, 1982.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-1409 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of December 20 Through December 24, 1982

During the week of December 20 through December 24, 1982, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 12, 1983.

Brassfield's Oil Company, Nampa, Idaho; HEE-0011, Reporting Requirement

Brassfield's Oil Company, Inc. (Brassfield's) filed an Application for Exception from the provisions of the EIA Filing Requirements. The exception request, if granted, would permit Brassfield's to be relieved of the obligation to file Forms EIA-172 and EIA-9A. On December 20, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Gulf States Oil Refining Company, Corpus Christi, Texas; HEE-0008, HEN-0008

On January 25, 1982, Gulf States Oil and Refining Co. filed both an Application for Exception from the provisions of 10 CFR 211.69 and a Motion for Interim Order. The exception request, if granted, would permit Gulf States to file amended ERA-49 forms with the Economic Regulatory Administration for a period prior to the October 1, 1980 cut-off date specified in § 211.69. The Motion request, if granted, would have implemented exception relief immediately upon the issuance of the Proposed Decision and Order. On December 21, 1982, the Department of Energy issued a Proposed Decision and Order

which determined that the exception request be denied, and the Motion for Interim Order be dismissed.

[FR Doc. 83-1466 Filed 1-18-83; 8:45 am]
BILLING CODE 6450-01-M

Office of the Secretary

International Atomic Energy Agreements; Proposed Subsequent Arrangement; International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material:

Contract Number WC-IA-129, to the IAEA Safeguards Analytical Laboratory, Vienna, Austria, 4 grams of plutonium oxide, for use in the evaluation of analytical capability.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 14, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-1469 Filed 1-18-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Control Techniques Guidelines; Density Adjustment for Dibasic Ester Coating Solvent

[AD-FRL-2287-3]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours and Company (Du Pont) has petitioned that the EPA allow States to permit a density adjustment for dibasic ester (DBE) coating solvent when determining compliance with State regulations for volatile organic compound (VOC) emissions from surface coating operations. On June 18, 1982, the EPA published a notice in the Federal Register (47 FR 26452) which stated that the Agency would approve Du Pont's petition unless comments giving sufficient reasons to deny it were received. Based upon the comments submitted, the EPA is denying Du Pont's petition.

ADDRESS: Docket No. A-82-25, containing material relevant to Du Pont's petition is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Berry, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD-13), U.S Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541-5605.

SUPPLEMENTARY INFORMATION: DBE coating solvent is a mixture of dimethyl adipate, dimethyl glutarate, and dimethyl succinate. Its density is about 9.0 pounds per gallon.

DBE is a relatively low-cost solvent because the raw material from which it is made, diabasic acid (DBA), is a by-product of a Du Pont manufacturing process. DBA is a mixture of adipic acid, glutaric acid, and succinic acid.

DBE is now a constituent in the solvent mixture used for some lacquer and enamel automotive topcoats, epoxy primers, polyester coil coatings, and can coatings. About 25 million pounds were so used in 1980, mostly in automotive coatings. The total amount of organic solvents used in coatings annually is about 4 billion pounds.

Du Pont believes DBE has the potential for use in any coating which contains organic solvent. This includes the higher-solids coatings which many coaters are, or soon will be, using to comply with State regulations for VOC emissions. Du Pont estimates that DBE could constitute from 10-40 percent, by weight, of such higher-solids coatings.

In spite of its low vapor pressure and cost, which Du Pont claims make DBE a very desirable solvent for higher-solids coatings, DBE has not been so used. Du Pont claims this is because State regulations, which limit the mass of VOC emitted from coating operations, have led coating formulators to seek less dense solvents.

Du Pont petitioned the EPA to provide States with the option of allowing the owners or operators of surface coating operations to make an adjustment for the relatively high density of DBE when determining compliance with State VOC emission regulations. Specifically, Du Pont requested that an assumed 7.36 pounds per gallons be used for calculations regarding the quantity of DBE in a coating rather than its actual density of 9.0 pounds per gallon.

On June 18, 1982, the EPA published a notice in the Federal Register (47 FR 26452) which stated that the Agency would approve Du Pont's petition unless comments giving sufficient reasons to deny it were received. Eleven comments were submitted in response to this notice. Four were from State air pollution control agencies (Illinois, Maryland, New Jersey and Rhode Island). Six were from manufacturers of coatings, solvents, and resins (Angus Chemical, Dow Chemical, Eastman Kodak, Glidden, Union Carbide, and the petitioner, Du Pont). One was from a consultant (Mr. John H. Daniel, Jr.).

The Comments from Illinois, Rhode Island, John Daniel, Jr., Eastman Kodak, Glidden, Dow Chemical, and Union Carbide, recommended against approving the Du Pont petition. The comments from Angus Chemical and Du Pont recommend the petition be approved. The comments from Maryland and New Jersey do not specifically state a position on the petition. A summary of the comments follows:

One State agency and three manufacturers expressed concern that EPA Reference Method 24 (particularly ASTM D-2369-81) could no longer be used to determine the VOC content of coatings which contain DBE if the petition were approved. The State agency suggested approval of the petition would create a problem of enforceability because it would render the relatively inexpensive ASTM-D-2369-81 ineffective, and force the need for a more costly and time-consuming analysis. The three manufacturers said they knew of no acceptable analytical method that could be used to determine the solvent content of a coating if the petition were approved. Two of these manufacturers added that approval of the petition would create confusion over the VOC content of coatings.

Two manufacturers commented on the discussion of the toxicity of DBE and other coating solvents in the petition. One stated that toxicity is irrelevant since the purpose of State regulations which limit VOC emissions from surface coatings is to reduce ambient ozone levels. The other took issue with the petitioner's statement that ethylene glycol monomethyl and monoethyl

ethers, two solvents for which Du Pont indicated there were some unfavorable toxicity data, are competitors with DBE in the formulation of coating solvent mixtures. This manufacturer stated that since these two solvents are more volatile than DBE, DBE is not an appropriate substitute. He suggested that ethylene glycol ethers and ether esters, which have evaporation rates comparable to that of DBE, are more likely to compete directly with DBE. The commenter knew of no data which raised any concern about the toxicity of these less volatile solvents.

Four manufacturers and the consultant commented on the possibility of similar petitions being submitted for other high-density (greater than 7.36 pounds per gallon) solvents. One manufacturer supported Du Pont's petition and named several other solvents for which he felt a similar density adjustment would be appropriate. The other three manufacturers and the consultant all suggested that approval of Du Pont's petition would lead to numerous additional requests for density adjustments. One of these manufacturers stated that EPA's use of 7.36 pounds per gallon as the average solvent density already accounts for the wide density range of coating solvents. All three of these manufacturers produce and sell solvents which would be candidates for similar waivers, yet none favored approval of the petition.

Two manufacturers and the consultant commented that there is no sound scientific foundation for approval of the petition. Another manufacturer suggested that the market place should be allowed to evaluate competitive products without interference from an artificial exemption. One State agency stated that approving DuPont's petition would result in reverse discrimination against other solvents.

Two manufacturers and three State agencies questioned the effect that approval of Du Pont's petition would have no State efforts to reduce ambient ozone levels. They asked if DBE is an ozone generator and what the effect of allowing greater mass emissions of DBE would be.

The comments on toxicity, lack of agreement on competing solvents, and possibility of similar petitions for many other solvents emphasize the competitiveness and complexity of the coating solvents market. Many different solvents and solvent mixtures can be used with the same resin system. This freedom of substitution is not unlimited in that the solvent system can affect the final appearance and performance of the dry coating. Certainly, Du Pont believes that approval of the petition would enhance the marketability of DBE. If, however, similar waivers were authorized for other high-density solvents, many of which appear to compete directly with DBE, at least part of this advantage would be lost and other factors such as solvency properties, cost and toxicity (or absence thereof) would return to preeminence as the determinants of the market demand for specific solvents. Since as DBE is formed from a by-product of another process, it likely will remain a low-cost solvent, thereby maintaining some advantage over its competition.

DBE is photochemically reactive, and when emitted to the atmosphere, contributes to the formation of ozone. Du Pont claimed in its petition that DBE forms less ozone per unit mass emitted than many other common coating solvents. This claim was based upon a theoretical reactivity scale developed by Bufalini (see "Ozone Formation Potential of Organic Compounds," *Environmental Science and Technology*, September 1976). The validity of this theoretical scale has not been proven.

The atmospheric photochemical reactions which form ozone are very complex. They depend not only on the type and quantity of VOC present, but also on meteorological conditions and the presence of other precursors. The EPA recognized these complexities and the impracticality of trying to base an ozone control program on either the rate of ozone formation or the quantity of ozone formed from each individual VOC. In its July 8, 1977, (42 FR 35314) policy statement for the control of VOC's, the EPA classified all but a few organic compounds as photochemically reactive.

Since 1977, the EPA has continued to study atmospheric photochemical reactions. These studies will continue, and, in time, may provide a better understanding of the contribution of specific organic compounds to the formation of ozone. The present state of the science, however, does not permit EPA to discriminate between the relative ozone formation potential of specific compounds other than to identify those that are of negligible photochemical reactivity.

Many different VOC's are used as coating solvents and each individual coating contains a mixture of several solvents. This wide variety of solvent mixtures adds to the impracticality of any attempt to quantify the reaction rate or total ozone potential of the solvents in an individual coating. For these reasons, both the EPA and States have chosen to restrict the total mass of photochemically reactive VOC's that can be emitted from coatings.

The June 18, 1982, **Federal Register** notice stated that EPA would approve Du Pont's petition unless comments were received giving sufficient reasons to deny it. Seven commenters recommended denying the Du Pont petition and gave several reasons for their recommendation. Because of this, the EPA is denying Du Pont's petition.

Dated: January 7, 1983.

Kathleen Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 83-1435 Filed 1-18-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee)

January 12, 1983.

TASK Group B-4 of Working Group B: Institutional Accommodations of New Services and Technologies.

Chairman: S. A. Levy (202) 331-2624

Date: Friday, January 28, 1983

Time: 9:30 A.M.—12 Noon

Location: Hogan & Hartson, 7th Floor, 815 Connecticut Avenue, NW., Washington, D.C. 20006

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-1481 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee); Meeting

January 14, 1983.

Meeting:

Main Committee

Friday, February 18, 1983, 9:30 A.M.—1:00 P.M., Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554

Agenda:

(1) Adoption of Agenda
(2) Review of Minutes

(3) Review of Plenipotentiary Conference Results—Urbany
(4) Status of BSS Conference Preparations—E. Jacobs
(5) Working Group Status Reports
(A) Working Group A—W. Schnicke
(B) Working Group B—R. Stowe
(C) Working Group C—P. Ackerman
(6) Expected Next Steps
(7) Date of Next Meeting
(8) Other Business
(9) Adjournment

Chairman: Stephen E. Doyle (916) 355-6941.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-1471 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-3, File No. 26105-CL-P-(8)-82]

American Mobile Communications of Washington and Oregon et al.; Memorandum Opinion and Order Designating Applications for Hearing

Adopted January 10, 1983.
Released January 12, 1983.

In re applications of American Mobile Communications of Washington and Oregon, CC Docket No. 83-3, File No. 26105-CL-P-(8)-82; Interstate Mobilephone Co., File No. 26148-CL-P-(9)-82; Cellular Mobile Systems of Washington, Inc., File No. 26182-CL-P-(13)-82; for a Construction permit to establish a cellular system operating on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Seattle, Washington, Standard Metropolitan Statistical Area; designating applications for consolidated hearing on stated issues.

By the Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, under delegated authority are: (a) the captioned applications of American Mobile Communications of Washington and Oregon (Amcom),[1] Interstate Mobilephone Company (Interstate), and Cellular Mobile Systems of Washington, Inc. (CMS), to construct cellular radio systems to serve the Seattle, Washington, Standard Metropolitan Statistical Area (SMSA); and (b) various petitions, pleadings and amendments related to the applications.[2]

2. As discussed below, we find that the petitions fail to raise any substantial and material issues requiring designation for hearing. However, the Amcom, Interstate and CMS applications are electrically mutually exclusive; accordingly, we are designating those applications for a comparative hearing in accordance with the Commission's *Report and Order* in CC Docket 79-318, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), and *further modified*, 90 FCC 2d 571 (1982).

Amcom's Application

3. CMS filed a Petition to Deny Amcom's[3] application alleging that Amcom has failed to demonstrate its financial qualifications. Specifically, CMS argues that Amcom has not included various application costs (preparation, filing and hearing expenses) in its financial analysis or demonstrated sufficient funds to finance these costs. CMS acknowledges that pursuant to the Amcom joint venture agreement, one joint venturer (Ram) is solely responsible for all of the application expenses. However, CMS argues that Amcom has not demonstrated Ram's ability to finance these costs.

4. We find CMS's allegations to be without merit. We agree with Amcom that the Commission's primary concern in terms of financial qualifications is to ensure that an applicant who obtains a license has sufficient funds to construct the system and provide service to the public. Therefore, costs of preparing, filing and litigating an application are only relevant to the extent that they might deplete the resources available for construction and operation of the system. Due to the structure of Amcom's joint venture, application costs will be provided from different funds than those committed to construction and system operation. Amcom has clearly demonstrated the availability of funds in excess of $19 million for construction and first year operating expenses of $14,109,000. Therefore, it appears that excess funds will be available for application costs even if Ram is remiss in meeting its financial obligation.[4]

Based on our disposition of this issue and our review of Amcom's application, we find Amcom financially qualified to be a cellular licensee.[5]

Interstate's Application

5. CMS and Amcom challenge Interstate's financial qualifications. Interstate must demonstrate the availability of $9,914,139 for its applications in two markets, Seattle, Washington, and Portland, Oregon. It is relying on (1) $1,250,000 in capital contributions from its partners[6] and (2) $8.7 million from the Seattle First National Bank or an alternative $8.7 million loan commitment from the Bank of California. Petitioners allege that Interstate has overestimated its available funds and understated its total operating costs. Specifically, they claim that three of the five partners (Skyline, Western and Pacific) cannot meet their $250,000 commitments in light of insufficient capital resources and inadequate bank letters lacking essential terms and guarantees.[7] Petitioners state further that Interstate cannot rely on either of the $8.7 million bank letters because they are contingent on conditions which have not been satisified, *i.e.*, the partners' advancing $1,250,000 porior to construction, guarantees for the bank debt by each partner and its parent company, the partners' agreeing to contribute $500,000 additional capital for five years beginning the second year after construction commences, the execution of a security agreement and the submission of a detailed and comprehensive business plan acceptable to the bank. Petitioners also argue that Interstate has underestimated its first-

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[1] Formerly American Radio Telephone Communications of Washington and Oregon (ARTCOM).

[2] Two applications were also filed requesting the wireline allocation (frequency block B) in this SMSA. The two applications subsequently filed a settlement agreement for the SMSA. *See* Public Notice, Mimeo 1072, dated November 29, 1982. We will consider the wireline allocation in a separate order.

[3] Amcom is a joint venture of Ram Cellular Communications of Washington and Oregon, Inc. (Ram), Western Union Telegraph Co., (Western) Rapid American Corp. (Rapid) and Stellar Communications Corporation (Stellar).

[4] It is well-settled that the provision of an adequate surplus of available funds in circumstances such as these obviates the need for a hearing issue. James B. Francis, *et al.*, 41 FCC 2d 303, 310 (Rev. Bd. 1973), and Home Service Broadcasting Corporation, *et al.*, 21 FCC 2d 168, 184, (Rev. Bd. 1970).

[5] On August 6, 1982, Amcom submitted an amendment pertaining to its name change and including additional financial information. We will accept the financial information as a minor amendment because it merely clarifies bank letters submitted with the application, and the name change is a minor amendment pursuant to Section 1.65 of the Commission's Rules.

[6] Interstate is a general partnership consisting of Tribune Communication Company, a subsidiary of the Tribune Publishing Company; Pacific Portaphone, Inc., a subsidiary of Pacific Paging Inc. (Pacific); Skyline Communications Service (Skyline), a subsidiary of Mobile Radio Communication Service, Inc. (Mobile); Western Telepage, Inc. (Western), a subsidiary of McCaw RCC Communication, Inc. (McCaw); and Kelley's Radio Telephone, Inc. (Kelley's), a subsidiary of Kelley's Telephone Answering Service, Inc. On November 29, 1982, Interstate proffered an Amendment No. 5 to its application proposing to add a sixth partner, The Washington Post Company. That amendment is discussed *infra*, at paras. 12 and 13.

[7] We have reviewed the financial information submitted from the two partners whose finances have not been challenged, and we find that they have sufficient funds to meet their $250,000 contributions.

year operating expenses by failing to include certain costs in its financial projections. In this regard, Amcom alleges that Interstate has substantially understated its costs by proposing to operate cellular systems which are inadequate to meet the projected subscriber demand of its own marketing experts.

6. *Partner contributions, Skyline and Western.* Both Skyline and Western are relying upon irrevocable pledges of $250,000 from their parent corporations. In turn, the parent corporations have submitted balance sheets and bank letters reflecting loan commitments for $250,000. The petitioners challenge the sufficiency of the bank letters based on (1) Interstate's failure to submit personal guarantees from the partners and their parent corporations and (2) the lack of essential terms in the bank letfers, such as amortization and interest costs.

7. We find that Interstate has provided reasonable assurance that these loans are available to the parent corporations. All of the necessary guarantees have been submitted as attachments to Interstate's reply pleading,[8] and it appears that the guarantees were executed on May 28, 1982, before the application was filed. With respect to the lack of interest terms, we agree with Interstate that these terms are not essential to the validity of this loan since the funds are committed to the parent corporation and not the the applicant itself. The interest payments of a parent corporation are irrelevant to the applicant's cost projections and financial qualifications. Therefore, we do not find that the absence of interest terms render these bank letters deficient.[9] *See Western Communications, Inc.*, 39 FCC 2d 1077 (Rev. Bd. 1973).

8. *Pacific Porta-Phone.* Pacific Porta-Phone demonstrates its ability to meet the $250,000 capital commitment by providing an irrevocable pledge of funds from its parent corporation, Pacific Paging, Inc. (Pacific). Pacific is relying on current liquid assets in excess of $125,000 and a bank letter of credit for $125,000 from the Pacific Western Bank of Oregon. Petitioners question the sufficiency of the bank letter and the liquidity of Pacific's current assets.

9. We find that Pacific has sufficiently demonstrated the availability of these funds. Although the bank letter is terse, Interstate has attached to its reply an additional bank letter which increases the amount of the loan to $250,000 and details its terms. We will not credit Pacific with the *additional* funds; however, this letter provides reasonable assurance that the $125,000 loan is available. Moreover, we find that Pacific has net liquid assets in excess of $125,000. Despite petitioner's exclusion of all accounts receivable, we will credit Pacific with 90% of these assets based upon Interstate's explanation of Pacific's receivables as of March 31, 1982 (Reply, attachment 4).[10] We will include the $13,136 labeled "other receivables" because Interstate explains that it was converted to cash in June 1982. Therefore, we find that Pacific has sufficient capital to fund its $250,000 contribution.

10. *Bank letters.* We also find that Interstate has provided reasonable assurance of the $8.7 million bank loan from the Seattle First National Bank and the alternate bank loan from the Bank of California. Contrary to petitioners' arguments, the following loan conditions have been satisified: the five partners have demonstrated the availability of $1,250,000 ($250,000 each); the partners have agreed in the partnership agreement to contribute $500,000 in future capital (Application, Exhibit 3, p. 24);[11] Interstate has attached letters from the partners and their parents evidencing their willingness to execute guarantees; and Interstate has indicated that it will submit a detailed business plan when the loan is made. With respect to the condition requiring a security agreement, CMS argues that the bank's commitment letter should have contained a notification provision, pursuant to § 22.917(f) of the Commission's Rules.[12] Interstate replies that this notification provision is unnecessary in the commitment letter - but that it will be provided for in the final loan agreement. We are satisfied that Interstate will comply with this condition at the appropriate time.

11. *Other Objections.* Petitioners argue that Interstate has underestimated its costs by failing to include certain costs such as training, promotion, cost of equipment, sales tax, property tax, etc. in its financial projection. In addition, Amcom alleges that Interstate has understated its costs by proposing to construct and operate systems that are inadequate to meet the projected subscriber demand of its own marketing experts. Contrary to petitioners allegations, we find that Interstate has adequately detailed its operating costs and included all relevant costs (Application Exhibit 7, Attachment 2.) In addition, Interstate has stated that some costs are omitted because it intends to utilize the existing equipment and personnel resources of its partners. Nothing in the Cellular Rules prohibits this type of proposal and we are satisfied with Interstate's explanation. Finally, we reject Amcom's agruments that Interstate will not be able to accommodate its first year subscriber demand. We will not analyze at this stage of the proceeding the marketing studies provided by Interstate. An applicant's need projections and ability to satisfy this demand are issues to be examined in the comparative portion of this proceeding. *Report and Order, supra*, at para. 76.

12. *Ownership Amendment.* On November 29, 1982, Interstate submitted an Amendment No. 5 pursuant to § 1.65 of the Commission's Rules to reflect the addition of the Washington Post Company (Post) as a sixth partner. Post initially contributes $400,000 and receives one-sixth ownership interest in the partnership. CMS opposed the amendment on the ground that good cause for its acceptance had not been shown. Alternatively, CMS contended

[8] We note some of the financial information which Interstate submitted with its Reply pleading was returned by the Commission on August 26, 1982. On September 23, 1982, Interstate filed a Petition for Reconsideration of the action returning the amendment and resubmitted the amendment. We hereby dismiss the Petition because our rules provide that reconsideration of interlocutory actions by delegated authority will not be entertained. *See* § 1.102, 1.106. However, on our own motion we will reconsider and accept this amendment because it contains guarantees and terms of bank loans which were already committed to in the original application. We find that this information is minor because it merely clarifies and confirms information submitted in the application. To the extent that one of the bank letters offers additional funds, this information will be disregarded because it is new financial information, and thus a major amendment.

[9] We note that Interstate has attached to its reply a letter from one of the banks outlining the parent corporation corporation's interest costs.

[10] Traditionally, the Commission credits an applicant with 75% of its accounts receivable. Kaiser Broadcasting, 62 FCC 2d 246 (1977). Interstate submits an accounts receivable liquidity report which indicates that historically 90% of Pacific Paging, Inc.'s accounts receivable are collected within 90 days of the billing date. Accordingly, we have credited Pacific Paging, Inc. with 90% of these assets.

[11] The bank letter expressly request an *agreement* by the partners to contribute future capital—$500,000 per year for five years beginning in the second year after construction—and the partners have fully satisfied this condition in the partnership agreement. It is not necessary for Interstate to demonstrate the availability of these funds since they are not relevant to first year construction and operation costs but relate to a period beginning with the second year after construction. Moreover, the bank is apparently satisfied that the partners will meet this obligation and we will not second guess its decision.

[12] Section 22.917(f) provides: (f) In addition to the disclosures required by paragraph (d) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

that, if the amendment were accepted, no comparative advantage should accrue to Interstate.

13. We will accept Amendment No. 5 as a minor amendment, but we will not accord any comparative credit for the change in ownership.[13] Interstate itself stated that it would not claim any comparative advantage. All of the precedents cited by *CMS* in its opposition deal with *post-designation* amendments and are inapposite. Interstate's amendment could have been filed as a matter of right before designation had the Commission not cut off amendments on September 13, 1982.[14] In taking that action, the Commission expressly authorized amendments reflecting "changes in ownership of an applicant which do not result in transfers of control." To the extent that a "good cause" requirement exists even for these types of amendments, as CMS argues, such amendments have been routinely accepted when they do not prejudice any other party and do not inject new parties or issues into the proceeding.[15]

CMS Application

14. *Financial qualifications.* Amcom and Interstate argue that CMS has underestimated its costs and does not have sufficient funds to contruct and operate its Seattle system, along with the costs of its other communications projects.

15. We find these arguments to be without merit. First the CMS cost estimates do not appear unreasonable, and they include the full costs of constructing its thirteen cell sites and the channel equipment necessary for the first year of operation. The Commission has long found that the general allegation that one applicant's estimated costs are lower than another's is insufficient to warrant the addition of a financial issue.[16] Second, Graphic Scanning Corp. (Graphic), CMS' parent company, has committed itself to fund $6,600,000 for the Seattle, Washington, system. The Graphic commitment letter expressly states that none of these funds have been committed to other cellular systems. We find that this satisfies the requirement of Rule Section 22.917(b) that resources used to demonstrate financial ability regarding one cellular system may not include funds committed elsewhere. Finally, in *Advance Mobil Phone Service Inc., et al. (Chicago Order)*, FCC 82-452, released November 1, 1982, the Commission found that Graphic and its cellular subsidiaries have provided reasonable assurance that they will have sufficient funds available to cover construction of 30 cellular systems in the top 30 markets. The Commission concluded further that no financial issues should be designated for hearing against any Graphic subsidiary based on the ability of Graphic to finance the construction and operation for one year of 30 cellular systems. Those findings control the disposition of the financial arguments here.

16. We have also considered the other objections made against CMS' application, and we find that they raise no substantial issues. These allegations involve (a) criticisms of CMS' direct case presentation; (b) failure to submit a frequency plan; (c) failure to conform to height/power limitations; and (d) failure to provide an antenna polar plot. With regard to these allegations, alleged deficiencies in the direct case are matters properly raised before the Administrative Law Judge; objections (b) and (c) were purely technical problems which CMS cured with minor amendments filed on July 7, and August 2, 1982, respectively; and objection (d) is not well-taken because CMS' antenna polar plot for its directional antenna at cell site #12 is included in the Application, Exhibit IV, Figure IV-3.

Conclusions

17. Based on our analysis of the applications and our resolution of the contested issues in this order, we find the applicants to be legally, technically, financially and otherwise qualified to construct and operate their proposed systems.

18. Accordingly, it is ordered pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of American Mobile Communications of Washington and Oregon, File No. 26105-CL-P-(8)-82, Interstate Mobile Phone Company, File No. 26148-CL-P-(9)-82, and Cellular Mobile Systems of Washington, Inc., File No. 26182-CL-P-(13)-82, are designated for hearing in a consolidated proceeding upon the following issues:[17]

(a) To determine on a comparative basis the geographic area and population that each applicant proposes to serve; to determine and compare the relative demand for the services proposed in said areas; and to compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;[18]

(b) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service;[19]

(c) To determine on a comparative basis the nature and extent of the service proposed by each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities);[20]

(d) To determine, in light of the evidence adduced under the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

19. It is further Ordered that the Separated Trial Staff (the Hearing Division and other individuals specifically designated) of the Common

[13] Attachment 4 to Amendment No. 5 contains a "Revised Financial showing." We have not relied on that portion of the Amendment in assessing Interstate's financial qualifications.

[14] Order FCC 82-409, 47 FR 39,685 (1982).

[15] *See, e.g.*, Gross Broadcasting Co., 46 RR 2d 1091, 1097-98 (1979).

[16] *E.g.*, Salem Broadcasting Co., Inc., 37 FCC 2d 115, 117 (Rev. Bd. 1972).

[17] There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of the applicants. Financial ability is a basic rather than a comparative qualification for cellular licensing. Cellular Communications Systems, 86 FCC 2d 469, 501-502 (1981). We have found the applicants included in the comparative hearing to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of Washington or its parent, Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing. A.S.D. Answer Service, Inc., *et al. (ASD)*, FCC 82-391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 24, *infra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Washington to hold a cellular license should ASD be resolved adversely to any of CMS's affiliate or parent companies or to any of their principals. *See* Chicago Order, at n. 19.

[18] For purposes of comparison, the geographic area that an applicant proposes to serve includes that area within the proposed 39 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area and the relevant Standard Metropolitan Statistical Area. Consideration should be given to the presence of densely populated regions, highways and areas likely to have high mobile usage characteristics as well as indications of a substantial public need for the services proposed. *See* 86 FCC 2d at 502.

[19] In making this comparison, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additional channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to coordinate the use of channels with adjacent or nearby cellular systems. *See* 86 FCC 2d at 502-503.

[20] *See* 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

Carrier Bureau is made a party to the proceeding.[21]

20. It is further Ordered, that the applicants shall file written notices of appearances under § 22.916(b)(3) of the Commission's Rules within 10 days after publication of this order in the Federal Register.

21. It is further Ordered that the hearing shall be held according to the procedures specified in § 22.916 of the Rules, except as otherwise noted herein, at a time and place and before an Administrative Law Judge to be specified in a later order.

22. It is further Ordered that exceptions to the intitial decision of the Administrative Law Judge under § 1.276 of the Commission's Rules shall be taken directly to the Commission.

23. It is further Ordered that, the Petitions to Deny filed by American Mobile Communications of Washington and Oregon, Interstate Mobilephone Company and Cellular Mobile Systems of Washington, Inc. and Interstate Mobile Phone Company's Petition for Reconsideration are denied.

24. It is further Ordered that any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold a cellular license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82–391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

25. It is further ordered, that any authorization granted as a result of this proceeding shall be conditioned upon obtaining the appropriate antenna structure clearances and Canadian coordination where needed.

26. This Order is issued under Section 0.291 of the Commission's Rules and *Order Delegating Authority*, FCC 82–435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

27. The Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission.

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc. 83–1459 Filed 1–18–83; 8:45 am]

BILLING CODE 6712–01–M

[21] Members of the Separated Trial Staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision-making and they may advise the Commission as to the ultimate disposition of any appeal of an Initial Decision in this proceeding. *See* Communications Act of 1934 as amended section 409(c) (47 U.S.C. 409(c)); Administrative Procedure Act section 554(d) (5 U.S.C. 554(d)); § 1.1221 of the Commission Rules.

[MM Docket No. 82–849, File No. BPH–810218AE; MM Docket No. 82–850, File No. BPH–810818AG]

Argonaut Broadcasting Corp. and Camden Broadcasters, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: December 28, 1982.
Released: January 13, 1983.

By the Chief, Mass Media Bureau.

In re applications of Argonaut Broadcasting Corp., Camden, Maine, Req. 102.5 MHz, Channel 273B, 9.5 kW (H&V), 1110 feet, MM Docket No. 82–849, File No. BPH–810218AE; Camden Broadcasters, Inc., Camden, Maine, Req. 102.5 MHz, Channel 273B, 9.6 kW (H&V), 1092 feet, MM Docket No. 82–850, File No. BPH–810818AG, For Construction Permit for a New FM Station.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Argonaut Broadcasting Corporation (ABC) and Camden Broadcasters, Inc. (CBI). Also under consideration is an informal objection filed by Coastal Communications, Inc. (Coastal) alleging that the proposed transmitter sites of ABC and CBI will interfere with the reception of its Marine Radio Telephone Service.[1]

2. *ABC.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that ABC published the required notice. To remedy this deficiency, ABC must publish local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order.

3. *Other matters.* The material submitted in the applications does not demonstrate the financial qualifications of ABC and CBI. ABC will require $201,600 to construct and operate the proposed facility for three months. It plans to finance construction with: $25,000 from each of the three shareholders, and a bank loan for $175,000. However, only two of the shareholders provide balance sheets demonstrating their ability to provide the required contribution, and the applicant fails to include a bank letter with the application. Accordingly, the applicant has only shown the ability to provide $50,000 toward its construction and operation costs for the proposed facility.

4. CBI will require $152,211 to construct and operate its proposed facility for three months. It plans to finance construction and operation costs with a loan, and with corporate assets. The loan for $150,000 is adequately supported by a letter and CBI has $1,000 in corporate cash. Accordingly, CBI has only $151,000 available to meet its construction and operation costs for the proposed facility.

5. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicants will be given 30 days from the date of the mailing of this Order to review their financial proposals in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to their financial qualifications. If either applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378.

6. Coastal alleges in its informal objection that the transmitter location of Ragged Mountain in Camden, Maine chosen by ABC and CBI may cause RF interference, and in turn may block reception of Coastal's receiving channels in the Marine Radio Telephone Service. The applicants, in their joint response, submit that FM, TV and two-way land mobile installations in close proximity can have a compatible co-existence. In support of their position, the applicants indicate that filters or traps normally can alleviate potential interference. Additionally, ABC and CBI state that if any interference occurs during program test authority they will

[1] Coastal's informal objection was actually filed against ABC's application, however, since ABC and CBI both propose Ragged Mountain in Camden, Maine as their transmitter sites, the objection is in essence lodged against both applicants. Accordingly, the applicants responded to Coastal's objection jointly.

alleviate it by installing the necessary filters or traps. Accordingly, a grant of either application will be conditioned upon its elimination of any harmful interference which might occur to Coastal.

7. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and population which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

8. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding.

9. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applicants are designated for hearing in a consolidated proceeding, 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 issues, which of the applications should be granted.

10. It is further ordered, That ABC shall, within 30 days of the release of this Order, inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

11. It is further ordered, That ABC and CBI shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, That the informal objection filed by Coastal is granted to the extent indicated and is denied in all other respects.

13. It is further ordered, That in the event of the grant of either the ABC or CBI application, the construction permit shall contain the following condition:

Permittee shall have responsibility for eliminating harmful interference which it causes the operations of Coastal as a result of its operation from its proposed transmitter site on Ragged Mountain in Camden, Maine.

14. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

15. It is further Ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistant with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-1463 Filed 1-18-83; 9:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 82-839; File No. BP-810728AE et al.]

Astro Enterprises, Inc., et al.; Designating Application for Consolidated Hearing on Stated Issues

In re applications of Astro Enterprises, Inc., WWBC, Rockledge, Florida, Has: 1510 kHz, 1 kW, D (Cocoa, Florida), Req: 770 kHz, 0.5 kW, 5 kW-LS, DA-2, U, MM Docket No. 82-8329, File No. BP-810728AE; Jerry J. Collins, North Fort Myers, Florida, Req: 770 kHz, 1 kW, 5 kW-LS, DA-2, U, MM Docket No. 82-840, File No. BP-811015AE; Richey Airwaves, Inc., Port Richey, Florida, Req: 770 kHz, 0.5 kW, 1 kW-LS DA-N, U, MM Docket No. 82-841, File No. BP-811015AF; Astro Enterprises, Inc., Palm City, Florida, Req: 760 kHz, 0.25 kW, 2.5 kW-LS, DA-2, U, MM Docket No. 82-842 File No. BP-811015AM; Hercules Broadcasting Co., North Fort Myers, Florida, Req: 770 kHz, 1 kW, 10 kW-LS, DA-2, U, MM Docket No. 82-843, File No. BP-811015AW; for construction permit.

Hearing Designation Order

Adopted: December 27, 1982.

Released: January 5, 1983.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned mutually exclusive applications for new standard broadcast stations and for changes in the facilities of an operating station; (b) petitions to deny the Astro Enterprises, Inc. (Astro), applications [1] filed by Hercules Broadcasting Co. (Hercules); (c) a petition to deny the Jerry J. Collins' (Collins) application filed by Hercules; (d) a petition to dismiss the Hercules application filed by Collins; (e) a petition to deny the Richey Airwaves, Inc. (Richey), application and comments concerning the Astro (Rockledge only), Collins and Hercules applications filed by American Broadcasting Companies, Inc. (ABC), licensee of station WABC, New York, New York; (f) a petition to deny the Astro (Palm City) application filed by Cox Broadcasting Corporation (Cox) licensee of station WSB, Atlanta, Georgia; and, (g) relevant pleadings.[2]

2. *Technical questions. ABC* [3] filed a petition to deny the Richey application alleging: (a) Incorrect assumptions may have been used in the directional antenna array which could invalidate the design; (b) information critical to the array calculations may not have been supplied as required by the rules; and (c) serious questions regarding the monitoring and stability of the array have not been addressed by the applicant. Specifically, ABC asserts that the theoretical radiation could exceed the standard pattern and cause interference to the WABC 0.5 mV/m 50% skywave contour. Richey in its opposition pleading denies the allegations and asserts and the computations supplied by ABC with its petition to deny do not indicate the standard pattern will be exceeded by its proposed operation. ABC in its reply pleading continues to object to the proposal based on what it considers are the undesirable engineering aspects of the proposal, the applicant's failure to make "extremely minor changes" in the proposal and the unwillingness of the

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[1] These include a petition to deny or return as unacceptable for filing against the Astro (Palm City) application and a petition to deny both Astro applications.

[2] These include comments by Collins concerning the Hercules petition to deny the Astro application and requests by Hercules for official notice of two recent Commission actions. The two are a Memorandum Opinion and Order by the Commission in *Clay Television Inc.*, FCC 82-417, released September 21, 1982, BC Docket No. 81-690 and a Hearing Designation Order pursuant to delegated authority by the Chief of the Broadcast Bureau, *Trio Broadcasters, Inc.*, BC Docket No. 82-701, released October 6, 1982. The requests are hereby granted.

[3] A showing of possible electrical interference to ABC's Class I-A station WABC by the above proposals gives it standing as a party in interest within the meaning of Section 309(d) of the Communications Act of 1934, as amended. *FCC v. National Broadcasting Co., Inc.*, 319 U.S. 239 (1943).

applicant to accept operating restrictions if found necessary by the Commission. ABC filed comments to the Astro (Rockledge), Collins and Hercules applications; it does not object to grant of any of these aplications, but asserts that the results of computer stability anlaysis show that theoretical radiation could exceed the standard patterns of these proposals and cause interference to the WABC 0.5 mV/m 50% night skywave contour. ABC requests that these three applications be designated critical arrays.

3. In examining the stability of proposed directional antenna systems it has been our policy to consider directional antenna arrays which do not exceed their radiation limits (standard patterns) with 1.0 percent and 1.0 degree current ratio and phase deviation, respectively, as being generally stable. Those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree are considered highly unstable. See *Radio Nevada Corp. (KDWN)*, BC Docket 79-313, released November 28, 1978. With regard to the Richey proposal, we find that sufficient information has been submitted to permit a thorough technical evaluation of the proposed directional antenna array. This is particularly so in light of the extensive technical information and calculations concerning the proposal supplied by petitioner. Our computer study using the data supplied by both petitioner and the applicant show that when the Richey proposal's parameters are varied by as much as one percent (1%) amplitude (current) ratio deviation and one degree (1°) phase deviation, the radiation standard values will not be exceeded. Thus ABC has failed to make a threshold showing that the Richey proposal will cause interference to its station WABC, and we will deny its petition to deny.

4. With respect to the ABC objections to the other three applications, our computer studies using the data supplied by ABC and the applicants show the proposals of Astro and Collins do not exceed their radiation limits with 1.0 percent and 1.0 degree current ratio and phase deviation and are, therefore, considered stable under our benchmarks. We will deny the ABC requests that these two proposals be designated critical arrays. With respect to the Hercules proposal our computer study shows that the proposed nighttime array is sensitive to changes in the operating parameters in that variations of one percent (1%) current-ratio deviation and one degree (1°) phase deviation could result in radiation greater than the specified standard radiation values. In order to ensure operation within the standard pattern limits we will place appropriate operating conditions on the Hercules application should it be granted. To that extent the ABC request to designate the Hercules application a critical array is granted.

5. *Character questions.* Hercules filed petitions to deny the Collins and the Astro applications. The allegations arise from the same events, and the petitions will be considered here together.

6. Jerry J. Collins is president and 51% stockholder of WKKQ, Inc., licensee of stations WKKQ AM and FM, Hibbing, Minnesota. An application to make changes in the facilities of AM station WKKQ (BP-780901AG) was designated for hearing by Memorandum Opinion and Order, released April 29, 1982, BC Docket No. 82-227. Robert A. Jones, vice president, director and 33% stockholder of Astro, was consulting engineer to WKKQ, Inc., in connection with the application, and certain field strength measurements were taken by Jones and Collins and submitted to the Commission. Paragraph 20 of the hearing order states, in part, "(t)here is * * * a substantial and material question that either the measurements were not made with sufficient care to assure their validity, or the measurements were not made as reported." Based on the WKKQ hearing order, Hercules requests that character qualification issues concerning Collins and Astro be added to the instant hearing designation order. Collins, in its opposition pleading asserts the petition is untimely and unsupported; Astro contests Hercules' standing and in addition asserts that Robert A. Jones has never been and is not proposed to be in a "management capacity" for any of its facilities. In addition, Astro states, it is taking necessary measures to sever its official relationship with Mr. Jones.

7. The Hercules petitions to deny are petitions to add issues. All predesignation issue pleadings between parties must be presented after designation to the presiding Administrative Law Judge. *Revised Procedures for the Processing of Contested Broadcast Applications*, 72 FCC 2d 202, 214 (1979). We will, therefore, dismiss the Hercules petitions.

8. The fact remains, however, that misrepresentation to the Commission is a serious offense, and the evidence adduced in the WKKQ proceeding could have an adverse impact on the basic and comparative qualifications of both Collins and Astro. Since Jones is not a party in Docket 82-227, however, the issue in that proceeding will be slightly different from what it would be in the instant proceeding. Nevertheless, we are reluctant to expend scarce Commission resources trying essentially the same facts in different hearings. Therefore, we are conditioning the Collins and Astro applications, should they be granted, on whatever action the presiding judge, upon appropriate motion, or the Commission considers warranted in light of the findings and conclusions in Docket 82-227.

9. *Astro Enterprises, Inc.* Astro has filed petitions for leave to amend its applications. On November 1, 1982, an amendment noted changes in its stockholders and officers. A November 17, 1982 amendment certified compliance with the public notice requirements of § 73.3580 of the Rules and certified as to the applicant's financial qualifications with respect to its Palm City application. A November 23, 1982 amendment certified as to the applicant's compliance with the public notice requirements and to its financial qualifications with respect to its Rockledge application. These amendments are either required by Section 1.65 of the Rules or were to cure disqualifying defects in the applications. No other applicant will be prejudiced because of these amendments and Astro will gain no comparative advantage. We will therefore, grant the petitions for leave to amend and accept the amendments. See *James River Broadcasting Corp.*, v. *F.C.C.*, 399 F. 2d 581 (D.C. Cir. 1968) *North American Broadcasting Co.*, 14 FCC 2d 617 (1968).

10. *Jerry J. Collins.* We have no evidence that Collins published the local notice of the filing of its application as required by § 73.3580 of the Rules; it must therefore publish the required notice if it has not done so and certify to the Administrative Law Judge that it has complied with the rules as required.

11. *Richey Airwaves, Inc.* This applicant has failed to describe the antenna height in its local notice as required by § 73.3580(f)(6) of the rules; it must do so and certify to the Administrative Law Judge as required.

12. Richey's environmental narrative statement failed to include information as to whether the proposed construction has been a source of controversy in the community as required by § 1.1311(a)(4) of the Rules; it must file the required information with the Administrative Law Judge.

13. Richey is the licensee of standard broadcas station WGUL, New Port Richey, Florida. The 1 mV/m will overlap in violation of § 73.37(a) of the Rules. The applicant proposes to divest

itself of station WGUL if its application is granted. We will therefore place an appropriate condition on the construction permit if the Richey application should be granted.

14. *Astro Enterprises, Inc. (Palm City).* Cox filed a petition to deny[4] this application alleging the proposal will cause objectional interference in the 0.5 mV/m 50% skywave contour of its station WSB, Atlanta, Georgia.

15. Section 73.182(c)(1) of the Commission's rule states that the secondary (skywave) service area of Class I stations are not protected from adjacent channel interference. Station WSB is authorized to operate at 750 kHz. The Astro proposal is for 760 kHz and is therefore, an adjacent channel to WSB. Station WSB will receive all the protection from the Astro proposal that it is entitled to under the rules. We will deny the Cox petition to deny.

16. Hercules timely filed a petition to deny or return as unacceptable for filing alleging that Astro has two applications on file which are mutually exclusive with each other in violation of Section 73.3518 of the Commission's Rules.

17. On March 5, 1982, Astro filed an amendment to its Palm City application. The amendment eliminated any prohibited overlap with its other pending application (Rockledge application). Since 1968, applicants have been permitted to cure minor disqualifying defects in their applications subsequent to the cut-off date. *James River Broadcasting Corp.*, v. *F.C.C.*, 399 2d 581 (D.C. Cir. 1968), *North American Broadcasting Co.*, 14 FCC 2d 617 (1968). The petition to deny is now moot and will be dismissed.

18. *Technical questions.* The March 5, 1982, amendment to the Astro Palm City) application purported to eliminate all mutual exclusivity between the Astro application and all other applicants, which initial staff review appeared to confirm. Subsequent examination of all the applications, however, shows that there is prohibited 0.5 mV/m contour overlap between the Astro (Palm City) proposal and the first adjacent channel Hercules proposal; the two applications are mutually exclusive.[5] The Hercules proposal and the Astro (Rockledge), Collins and Richey proposals, all involve 0.5–0.025 mV/m co-channel prohibited overlap, thus, all five applications are mutually exclusive.[6] The amendment did not remove all the mutual exclusivity between the Palm City proposal and the other proposal as alleged; it is however, a minor technical change in the proposal and does not prejudice the other applicants. We will accept the amendment.

19. *Hercules Broadcasting Co.* Collins timely filed a petition to dismiss the Hercules application alleging prohibited overlap with authorized co-channel station BP–801017AD at Lafayette, Louisiana. Hercules, by opposition pleading, asserts that any possible prohibited overlap has been cured with an amendment it filed November 9, 1981. Since 1968 applicants have been permitted to cure minor disqualifying defects in their applications prior to designation for hearing. *James River Broadcasting Corp.* v. *FCC*, 399 F. 2d 581 (D.C. Cir. 1968). There is now no prohibited overlap between the Hercules proposal and the Lafayette proposal. The Collins petition to dismiss is now moot and will be dismissed.

20. On January 18, 1982, the B cut-off date, Hercules filed an amendment to its application which altered the daytime directional radiation[7] pattern. Collins filed a further petition to dismiss alleging the amendment contains errors and defects which render it "totally worthless." In addition, according to Collins, the amendment either by itself or in conjunction with the November 9 amendment constitutes a major change in the Hercules application, which pursuant to § 1.227 of the Rules must be dismissed. Collins concedes that the combination of changes in the Hercules proposal does not constitute a major change under § 73.3571(a)(1) of the Rules. The rule however, gives the staff discretion to consider any application a major change application. Collins urges the staff exercise its discretion and declare the amendments to the Hercules application to be a major change requiring a new file number and dismissal as a competing applicant. In support of its contention, Collins asserts that the Hercules amended application bears no resemblance to the original application. Further, Collins asserts, its engineer has used the correct FCC graph 8 and has plotted the amended Hercules 0.5 mV/m contour which shows there is a 68.1% change in area coverage within this contour and a 69.48% change in population. Further, according to Collins, there are several communities within the gain area with populations greater than the population of North Fort Myers, the proposed city of license. Hercules, in its opposition, states it did not file tables of areas and populations within its various proposed contours because the revised Form 301 does not require this information. In addition, Hercules states, the reason petitioner's calculation of the Hercules contours varies from those submitted by Hercules in that petitioner's engineer used miles rather than kilometers as required since Janaury 4, 1981. Collins concedes, in its reply pleadings, that its engineer erroneously plotted the Hercules contours in miles. However, it asserts that its conclusion that the Hercules amendments are major amendments has not been affected.

21. Section 73.3571(a)(1) of the rules provides that for AM station facilities a major change is any increase in power, change in frequency, hours of operation or station location. Clearly the Hercules amendments, either apparently or combined, do not constitute a major change in the application, and we can find no reason to treat them in any manner other than that clearly mandated by the rule. This is particularly so when the action urged will result in the elimination of a competing applicant and is counter to well established Commission policy that the public interest is served by having a choice among many qualified applicants who appear together at a hearing. See *Trio Broadcasters, Inc.*, B.C. Docket No. 82–701, (Br. Bur., released October 6, 1982). We will deny Collins' further petition to dismiss.

22. Hercules' local notice of the filing of its application did not list the antenna height as required by § 73.3580(f)(1)(5) of the Rules; it must republish a corrected local notice and certify to the Administrative Law Judge as required.

23. The environmental narrative statement filed by Hercules does not contain information as to whether the proposal has been a source of controversy in the community as required by § 1.1311(4) of the Rules. It must file the required information.

24. Except as indicated by the issues specified below, all five applicants are qualified to construct and operate as proposed.[8] However, since the proposals

[4] Cox has standing because of the possibility of electrical interference to its Class I–A station WSB, see note three (3), supra.

[5] It should be noted that Hercules' application does not meet the exception of § 73.37(b) (as Astro Palm City does) because its proposed designated community (North Fort Myers, Florida) is inside an urbanized area and its population is less than 25,000.

[6] The two Astro applications are not mutually exclusive with each other. They are each in connected chain of mutually exclusive applications. However, they could both be granted, but for the chain, and therefore the two Astro applications are not inconsistent applications under Section 73.3518 of the Rules.

[7] The amendment also contained revised legal qualifications and financial certification from the revised FCC Form 301 and information concerning the applicant's broadcast interests.

[8] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on

are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

25. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place in to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service for each proposal and the availability of other primary aural 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 best provide a fair, efficient, and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

26. It is further ordered, That the petition to deny the Richey Airwaves, Inc., proposal and the requests that the Astro Enterprises, Inc., and the Jerry J. Collins proposals be designated critical arrays all filed by American Broadcasting Companies, Inc., are denied.

27. It is further ordered, That the request that the Hercules Broadcasting, Co., proposal be designated a critical array, filed by American Braodcasting Companies, Inc., is granted to the extent set out in paragraph four, *supra*, and in the event the Hercules application is granted the construction permit shall contain the following conditions:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degrees phase and 0.1 percent sample current ratio deviation shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the aray to insure maintenance of the radiated fields within the standard pattern values of radiation.

Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios and sample current ratio deviations for each element of the array along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional nighttime operations for a period of at least thirty days, to demonstrate that the array can be maintained within the specified tolerances.

28. It is further ordered, That the petitions to deny filed by Hercules against the Astro Enterprises, Inc., and the Jerry J. Collins applications are dismissed.

29. It is further ordered, That the petition to deny filed by Cox Broadcasting Corporation is denied.

30. It is further ordered, That in the event the Richey Airwaves, Inc., application is granted, the construction permit shall contain the following condition:

Before program test authority can be granted, Richey Airwaves, Inc., and its principals must divest all interest in AM station WGUL, New Port Richey, Florida.

31. It is further ordered, That the petitions for leave to amend mentioned above in paragraph 9 filed by Astro Enterprises, Inc. are granted, and the corresponding amendments are accepted.

32. It is further ordered, That the petition for leave to amend mentioned above in paragraph 17 filed by Astro Enterprises, Inc. is granted, and the corresponding amendment is accepted.

33. It is further ordered, That the petition to dismiss the Hercules Broadcasting Co., application filed by Jerry J. Collins is dismissed, and its further petition to dismiss, is denied.

34. It is further ordered, That Jerry J. Collins, Richey Airwaves, Inc., and Hercules Broadcasting Co., comply with the local notice provision of § 73.3580 of the Commission's Rules, as discussed in the relevant paragraphs above, and certify as to compliance with the Administrative Law Judge within forty (40) days after this order is published in the **Federal Register.**

35. It is further ordered, That Richey Airwaves, Inc., and Hercules Broadcasting Co., comply with § 1.1311 of the Commission's Rules and file the environmental statement information as discussed in the relevant paragraphs above with the Administrative Law Judge within thirty (30) days of the date this Order is published in the **Federal Register.**

36. It is further ordered, That in the event that the Astro applications are granted the construction permit shall contain the following condition:

The grant of this application is without prejudice to any action the Commission may deem necessary in light of BC Docket No. 82-227.

37. It is further ordered, That in the event that the Collins application is granted the construction permit shall contain the following condition:

The grant of this application is without prejudice to any action the Commission may deem necessary in light of BC Docket No. 82-227.

38. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules the applicants shall, within 20 days of the mailing of this order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this order.

39. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the rule, and shall advise the Commission of the publication of the notices as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-1464 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 82-837, File Nos. BL-14,185, BP-21,223, BP-820212AC]

Clovis Broadcasters; Designating Application for Hearing on Stated Issues

Hearing Designation Order

Adopted: December 27, 1982.

Released: January 12, 1983.

In re application of Clovis Broadcasters, KXQR, Clovis, California, Has: 790 kHz, 0.5 kW,D, Req: 790 kHz, 5 kW, DA-D, Req: 790 kHz, 2.5 Kw, 0.5

Medium Frequency Broadcasting in Region 2, Rio de Jeneiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

kW–LS, DA N, D; For license and construction permits.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) A petition filed by the International Church of the Foursquare Gospel (KHIS) [1] seeking reconsideration of our grant of a license to Clovis Broadcasters for station KXQR, Clovis, California; (b) an application to increase the power of KXQR to 5 kW; (c) a petition to deny this application filed by KHIS; (d) an application for nighttime authority for KXQR; (e) a petition to deny the application for nightime authority filed by KHIS; and (f) related pleadings.[2]

2. In August 1973, KXQR received a construction permit for a new AM station with daytime power of 500 watts. *Clovis Broadcasters*, 42 FCC 2d 412 (Init. Dec. 1973). A modification of this construction permit (BMP–14,177) was granted on June 11, 1976, and the station began operating pursuant to program test authority. Petitioner's former licensee. Thunderbird Broadcasting Company, sought reconsideration of the modification claiming overlap of the 0.5 mV/m contours of KHIS (then KUZZ) and KXOR in violation of § 73.37(a) of our Rules. In support the petitioner submitted groundwave field intensity measurements, the accuracy of which we accepted to a distance of approximately 16 miles. Based upon these measurements we found overlap prohibited by our Rules, set aside the construction permit accordingly and authorized special temporary operation at 330 watts, a figure which we found would eliminate any overlap, *Clovis Broadcasters*, 61 FCC 2d 362 (1976).

3. Shortly after our decision, on November 23, 1976, KHIS submitted new measurement data beyond the 16-mile distance, which indicated ground conductivity greater than that calculated with the use of our Figure M–3. KXQR then amended its directional pattern, but without taking this latest measurement data from KHIS into account. Commission staff also overlooked the November submission and on February 10, 1978, granted the amended construction permit that had earlier been set aside, authorizing the permittee to operate with power of 500 watts. No objection was received from petitioner before or after this grant; nor was one lodged against KXQR's application for a license to cover the construction permit. Only after our actual grant of the license request did petitioner seek reconsideration. Petitioner sought as well denial of two later KXQR requests, one for a daytime power to 5 kW, and a second for nightime operating authority.[3] In the first instance, petitioner maintained that prohibited overlap would increase with greater power. As for the nighttime proposal, it was KHIS' view that a grant would explicitly legitimize and approve the daytime operation.

4. Our analysis of the data before us [4] indicates significant overlap between the 0.5 mV/m contours of KHIS and KXQR, overlap which we find would be reduced but still present with the proposed 5 kW operation. [5] At issue is how to approach this overlap in light of the peculiar circumstances to be found here. It is beyond question that our staff erred in overlooking KHIS' November, 1976 submission. Had we considered these measurements when filed, we would not have awarded KXQR its original construction permit. At the same time, we are troubled by KHIS' failure to bring the omission to our attention in a timely fashion, not as KXQR suggests because of considerations of administrative finality,[6] but rather because of the public interest in the continuation of a service now over six years old. We believe on balance that the administrative hearing process is the proper vehicle for weighing and balancing these interests and equities. Hence we will authorize an inquiry into the various KXQR proposals now before us and, to the extent that these proposals would modify the operation of KHIS, into the public interest factors justifying such a change.

5. Except as indicated by the issues specified below, Clovis Broadcasters is qualified to construct and operate as proposed. However, in view of the foregoing, the Commission cannot determine whether grant would serve the public interest, convenience and necessity.

6. Accordingly, it is ordered, That pursuant to Sections 309(e) and 316 of the Communications Act of 1934, as amended, the license of Clovis Broadcasters to operate station KXQR and its applications to modify the facilities, and the license of the International Church of the Foursquare Gospel to operate station KHIS, are designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the operation of station KXQR pursuant to the license granted Clovis Broadcasters causes interference to the operation of station KHIS prohibited by § 73.37(a) of the Commission's Rules, and, if so, (1) The nature and extent thereof, (2) the areas and populations affected thereby, and (3) the availability of other primary service to such areas and populations.

2. To determine, in light thereof whether the license of station KHIS should be modified, or the license of station KXQR rescinded.

3. To determine whether the proposals of Clovis Broadcasters to modify the facilities of station KXQR would cause interference to the operation of station KHIS prohibited by § 73.37(a) of the Commission's Rules, and, if so, (1) the nature and extent thereof, (2) the areas and populations affected thereby, (3) and the availability of other primary service to such areas and populations.

4. To determine, in light thereof whether the lecense of station KHIS should be modified and the applications granted.

7. It is further ordered, That the International Church of the Foursquare Gospel is make a party to the proceeding.

8. It is further ordered, That (a) with respcet to the alleged modification of the license of Station KHIS, the burden of introducing evidence and the burden of proof shall be upon the Broadcast Bureau though the other parties may introduce evidence on this issue as well; (b) with regard to the alleged public interest benefits resulting from the existing and proposed operations of station KXQR, the burden of introducing evidence shall be upon Clovis Broadcasters: and (c) the ultimate burden of proof shall be upon Clovis Broadcasters.

9. It is further ordered, That the petition for reconsideration and the petitions to deny filed by the International Church of the Foursquare Gospel are granted to the extent indicated above and are denied in all other respects.

10. It is further ordered, That to avail themselves of the opportunity to be

[1] License of first adjacent channel station KHIS, Bakersfield, California.

[2] Both parties have requested extensions of time to file various pleadings and these requests are granted. Further, KHIS filed a petition for hearing which, since it raises no new issues but merely duplicates previous pleadings, will not be treated separately.

[3] KHIS' allegations of prohibited interference give it standing as a petitioner to deny. *FCC* v. *National Broadcasting Co., Inc.*, 319 U.S. 239 (1943).

[4] This includes additional measurements submitted by KHIS.

[5] This reduction of overlap reflects Clovis' modification of its directional antenna system.

[6] As we stated in *Clovis Broadcasters, supra* "* * * the apparent interference within the normally protected contour * * * outweighs considerations of administrative orderliness and demands that we reconsider the entire matter," 61 FCC 2d at 364.

heard and pursuant to § 1.221 (c) and (e) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, 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.

11. It is further ordered, That pursuant to Section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of its notice as reuired by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 83-1461 Filed 1-18-83; 9:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 82-84Y, File No. BPTC-820712KI; MM Docket No. 82-845; File No. BPCT—820909KI]

Lea County Television and Nathan R. Berke; Memorandum Opinion and Order

Adopted: December 30, 1982.

Released: January 5, 1983.

In re applications of Lea County Television, Gallup, New Mexico, MM Docket No. 82-844, File No. BPCT-820712KI; Nathan R. Berke, Gallup, New Mexico, MM Docket No. 82-845, File No. BPCT-820909KI; For construction permit for a new television station; designating applications for consolidated hearing on stated issues.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Lea County Television (Lea) and Nathan R. Berke (Berke) for a new commercial television station to operate on Channel 3, Gallup, New Mexico; and a petition to deny filed by Road Runner Radio, Inc. (RRR), licensee of Radio Stations KYVA(AM) and KOVO(FM), Gallup, New Mexico.

2. RRR claims standing as a party in interest under Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d), on the grounds that Lea proposes to mount its antenna on the present KYVA(AM) tower. RRR states that it will not make its site available to Lea. RRR, however, has not shown that Lea's specification of RRR's tower would inflict any economic or electrical injury on RRR, which would confer standing within the meaning of Section 309(d) of the Act. We will, however, consider RRR's pleading as an informal objection filed pursuant to § 73.3587 of the Commission's Rules.

3. The basis for RRR's informal objection to the Lea application is that, although Lea proposes to mount its antenna on KYVA(AM)'s tower, RRR is unwilling to make the tower, available for that purpose. Under these circumstances, a question is raised as to whether the site will be available to Lea and an appropriate issue will be specified.

4. On November 5, 1982, Lea filed an amendment seeking, among other things, to change the name of the applicant, to make changes in the ownership interests of the partners, and change the transmitter site in a manner which would stisfy RRR. The engineering part of the amendment, however, was so deficient that it was impossible to process the amendment and the entire amendment was, therefore, returned to the applicant as not being substantially complete. Lea will be permitted to file a proper and complete amendment (minor amendment only) to effect the changes it wishes to make in its application with the Administrative Law Judge within 30 days of the release of this Order. In no event will Lea be permitted to accrue a comparative advantage as the result of such an amendment.

5. 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 Lea has done either. If it has not already done so, Lea will be required to file a statement that he has or will comply with the public notice requirement with the Administrative Law Judge within 30 days of the release of this Order.

6. Lea proposes to mount its antenna on the existing tower of Station KYVA(AM). In the event that the problems described in paragraphs three and four, above, are resolved, any grant of a construction permit to Lea will be conditioned to assure that KYVA(AM)'s non-directional operation is not adversely affected by the construction of the proposed station.

7. Berke proposes to locate his antenna on one of the towers of the KGAK directional array. Any grant of a construction permit to Berke will be conditioned to assure that KGAK's radiation pattern is not adversely affected by the construction of the proposed station.

8. No determination has been reached that the tower height and location proposed by Berke would not constitute a hazard to air navigation. Accordingly, an issue will be specified.

Conclusion and Order

9. Except as indicated by the issues specified 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 the Petition to Deny filed by Road Runner Radio, Inc. is dismissed for lack of standing, but considered as an Informal Objection, filed pursuant to § 73.3587 of the Commission's Rules, is granted and Road Runner Radio, Inc. is made a Party respondent to this proceeding with respect to issue 1, below.

11. It is further 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 with respect to Lea County Television, whether there is reasonable assurance that its specified transmitter site will be available.

2. To determine, with respect to Nathan R. Berke, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

13. It is further ordered, That Lea County Television may, within 30 days of the release of this Order, file with the Administrative Law Judge a proper and complete minor amendment to its application in accordance with paragraph 3, above.

14. It is further ordered, That Lea County Television 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.

15. It is further ordered, That, in the event of a grant of the application of Lea County Television, the construction

permit shall contain the following condition:

During installation of the TV antenna, AM Station KYVA 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.*

16. It is further ordered, That in the event of a grant of the application of Nathan B. Berke, the construction permit shall contain the following condition:

Prior to the construction of the TV tower authorized herein, permittee shall notify AM Station KGAK so that the station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of the detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the construction of the TV tower and subsequent to the installation of all appurtenances thereon, a paritial proof of performance, as defined by § 73.154 (a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence *Limited Program Tests.*

17. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the parties 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.

18. 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.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-1465 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-1, file No. 23436-CD-P-(1)-82; CC Docket No. 83-2, File No. 24265-CD-P-(1)-82]

Radio Telephone Co. of Gainesville, Inc. and Call-Com, Inc.; Order Designating Applications for Hearing

In re applications of Radio Telephone Co. of Gainesville, Inc., CC Docket No. 83-1, File No. 23436-CD-P-(1)-82; for a construction permit to construct an additional facility for Station KFL922 to operate on frequency 454.175 MHz in the Domestic Public Land Mobile Radio Service of Ocala, Florida; and Call-Com, Inc., CC Docket No. 83-2, File No. 24265-CD-P-(1)-82, for a construction permit to establish a new two-way station to operate on frequency 454.175 MHz in the Domestic Public Land Mobile Radio Service at Silver Spring, Florida; designating applications for consolidated hearing on stated issues.

Adopted January 4, 1983.

Released January 7, 1983.

By the Common Carrier Bureau:

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Radio Telephone Company of Gainesville, Inc. (RTC) and Call-Com, Inc. RTC proposes to add an additional facility to operate on frequency 454.175 MHz for its existing two-way Station KFL922 at Ocala, Florida. Call-Com proposes to establish a new two-way station at Silver Springs, Florida, to operate on frequency 454.175 MHz. The proposals of RTC and Call-Com to use frequency 454.175 MHz in the same geographic area are electrically mutually exclusive; therefore a comparative hearing will be held to determine which applicant would better serve the public interest.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Radio Telephone Company of Gainesville, Inc., File No. 23436-CD-P-82 and Call-Com, Inc., File No. 24265-CD-P-82, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 39 dBu contours,[1] based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

3. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

4. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. It is further ordered, That the applicants may file written notices of appearances under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

6. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 83-1460 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-8, File No. 23592-CD-P-(1)-82; and CC Docket No. 83-9, File No. 23468-CD-P-(2)-82]

Southeast Mobilphone, Inc. and Telpage of Tennessee, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Southeast Mobilphone, Inc., CC docket No. 83-8, File No. 23592-CD-P-(1)-82; and for a construction permit for a new one-way Station to operate on frequency 158.70 MHz in the DPLMRS at Athens, Tennessee; and Telpage of Tennessee,

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 39 dBu contour as calculated from Section 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

Inc., CC Docket No. 83-9, File No. 23468-CD-P-(2)-82, for construction permit to operate one-way Station KLF619 on frequencies 158.70 and 152.24 MHz in the DPLMRS at Falling Water, Tennessee.

Order Designating Applications for Hearing

Adopted January 11, 1983.

Released January 13, 1983.

By the Common Carrier Bureau:

1. Presently before the Chief, Mobile Services Division pursuant to delegated authority, are the captioned applications of Telpage of Tennessee, Inc. (Telpage) for two fill-in facilities, and Southeast Mobilphone, Inc. (Mobilphone) for a new one-way station. The Mobilphone and Telpage applications are mutually exclusive on frequency 158.70 MHz; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest on that frequency. The Telpage request for frequency 152.24 MHz is not mutally exclusive.

2. We find both Mobilphone and Telpage to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that a grant of the request by Telpage to operate on frequency 152.24 MHz will serve the public interest, convenience and necessity.

3. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of Telpage of Tennessee, Inc., File No. 23468-CD-P-(2)-82 is granted in part to the extent that the request for frequency 152.24 MHz is granted, and that the applications of Southeast Mobilphone, Inc., File No. 23592-CD-P-(1)-82 and Telpage of Tennessee, Inc., File No. 23468-CD-P-(2)-82, to operate on frequency 158.70 MHz are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) to determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants shall file written notices of appearances under § 1.221(c) of the Commission's Rules within 20 days of the release date of this Order.

7. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 83-1458 Filed 1-18-83; 8:45 am]

BILLING CODE 6712-01-M

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

FEDERAL MARITIME COMMISSION

[Docket No. 83-1]

Transeurope Shipping, Inc.; Order of Investigation and Hearing

Transeurope Shipping, Inc. (Transeurope) was issued independent ocean freight forwarder license number 2064 or April 3, 1978. A routine post-licensing compliance investigation of Transeurope's operations was conducted during February, 1980. No violations of the Shipping Act, 1916 or General Order 4 were found and no questionable practices were noted during the compliance investigation. Later in 1980, however, information was received by the Commission's staff indicating that Transeurope may have been involved in misstating cargo measurements to consignees and/or various steamship lines.

As a result of an investigation of these allegations it was learned that Transeurope apparently kept two different sets of invoices and ledger sheets. It is believed that a false set of these documents was shown to the Commission's staff during the compliance check. An examination of the correct set of ledger sheets and invoices disclosed that Transeurope had billed its forwarding clients inflated ocean freight charges, bunker surcharges and currency adjustment factor charges. Thus, Transeurope appears to have violated (1) section 510.23(d) of General Order 4 (46 CFR 510.23(d)(1980)), for failure to exercise due diligence to ascertain the correctness of information imparted to a principal concerning a forwarding transaction; (2) section 510.23(e) of General Order 4 (46 CFR 510.23(e) (1980)), for withholding information relative to a forwarding transaction from its principal; (3) section 510.23(j) of General Order 4 (46 CFR 510.23(j) (1980)), for not using proper invoices; (4) section 510.23(k) of General Order 4 (46 CFR 510.23(k) (1980)), for not maintaining it files in an orderly, systematic and correct manner; and (5) section 510.23(l) of General Order 4 (46 CFR 510.23(l) (1980)), for not making all records and books of account in connection with carrying on the business of forwarding available for inspection upon request by the Commission's staff.[1]

The investigation also revealed that Transeurope was acting as a deconsolidation agent for Transworld Shipping GMBH (Transworld)[2] of Hamburg, Germany, which apparently was operating as an untariffed NVOCC in the United States inbound trades. Transeurope, as part of its functions as an agent for Transworld, billed consignees for higher measurements than the measurements declared to the underlying ocean carriers and purged its files of certain documents in an apparent attempt to cover up this practice.

Forwarders are to be held to a high standard not only in terms of technical ability, but also moral character, business intergrity and veracity. The above described allegations, if true, adversely reflect on Transeurope's continued fitness to be licensed as an independent ocean freight forwarder and may therefore warrant revoking or suspending Transurope's license.

[1] General Order 4 was revised effective October 1, 1981, 46 CFR Part 510 (1981). The corresponding sections in the revised rules to the sections cited above are (1) § 510.32(d), (2) § 510.32(c), (3) § 510.32(h), (4) § 510.34, and (5) § 510.34.

[2] Transeurope and Transworld are related in that Peter K. Laser, owner of Transeurope and its Chief Executive Officer, is also the manager and majority stockholder of Transworld.

Therefore, a proceeding will be initiated to determine whether it has violated various sections of the Commission's regulations, cited herein, and, if so, whether civil penalties should be asessed, and ultimately, whether Transeurope's independent ocean freight forwarder license should be suspended or revoked.

Therefore it is ordered that, pursuant to sections 22, 32, and 44 of the Shipping Act, 1916, as amended (46 U.S.C. 821, 831, and 841(b)), a proceeding is hereby instituted to determine:

1. Whether Transeurope Shipping, Inc. violated the Commission's General Order 4 (46 CFR Part 510 (1980)), section 510.23(e), withholding information; section 510.23(d), due diligence; section 510.23(j), invoices; section 510.23(k), records required to be kept and/or section 510.23(l), failure to make records available;

2. Whether civil penalties should be assessed against Transeurope Shipping, Inc., pursuant to section 32 of the Shipping Act, 1916, (46 U.S.C. 831(e)), if found to be in violation of the Commission's regulations and, if so, the amount of any such penalty which should be imposed, taking into consideration factors in possible mitigation of such a penalty; and

3. Whether the license of Transeurope Shiping, Inc. to act as an independent ocean freight forwarder should be revoked or suspended pursuant to Section 44(d), Shiping Act, 1916, and/or § 510.17 of Revised General Order 4 (46 CFR 510.17 (1981)) for:

a. Willfully violating section 510.23(e), 510.23(d), 510.23(j), 510.23(k), and/or 510.23(l) of General Order 4 (46 CFR 510 (1980)); or

b. Conduct which the Commission determines renders the licensee unfit or unable to carry on the business of forwarding.

It is further ordered, that a public hearing shall be held in this proceeding and that the matter shall be asssigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge, but no later than 180 days after service of this order. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are geniune issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42 (1981)), the Director of the Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, that notice of this Order shall be published in the **Federal Register**, and a copy served upon all parties of record;

It is further ordered, that any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72 (1981));

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118 (1981)), as well as being mailed directly to all parties of record.

By the Commission

Francis C. Hurney,

Secretary.

[FR Doc. 83-1450 Filed 1-18-83; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter H (Public Health Service) and Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 48 FR 1231, January 11, 1983) are amended to reflect new Statements for the Mission, Organization and Functions for the Public Health Service (H) and the Office of the Assistant Secretary for Health (HA).

Public Health Service

Under *Part H, Chapter H, Public Health Service*, delete in their entirety Section H-00, Mission; Section H-10, Organization; and H-20, Functions, and substitute the following:

Section H-00, Public Health Service—Mission. The mission of the Public Health Service is to promote the protection and advancement of the nation's physical and mental health by: Coordinating with the States to set and implement national health policy and pursue effective intergovernmental relations; generating and upholding cooperative international health-related agreements, policies and programs; conducting medical and biomedical research; sponsoring and administering programs for the development of health resources, prevention, control of diseases, and alcohol and drug abuse; providing resources and expertise to the States and other public and private institutions in the planning, direction, and delivery of physical and mental health care services; and enforcing laws to assure the safety and efficacy of drugs and protection against impure and unsafe foods, cosmetics, medical devices and radiation-producing projects.

Section H-10. Public Health Service—Organization. The Public Health Service is under the leadership and direction of the Assistant Secretary for Health (ASH), who is directly responsible to the Secretary of Health and Human Services. The Public Health Service (PHS) consists of the:

Office of the Assistant Secretary for Health (HA)
Health Resources and Services Administration (HB)
Centers for Disease Control (HC)
Food and Drug Administration (HF)
Alcohol, Drug Abuse, and Mental Health Administration (HM)
National Institutes of Health (HN)
PHS Regional Offices (HD)

Section H-20. Public Health Service—Functions. The Public Health Service functions to: Assess needs and promote national and international health; assure effective intergovernmental relations on health matters; provide scientific and technological input for the establishment of health standards and the development of quality assurance programs; provide services to the States in the development of health resources and education for the health professions; assist in the development and improvement of the delivery of mental and physical health services to all Americans; conduct and support research in the medical and related

sciences and disseminate health and scientific information; protect the health of the Nation against impure and unsafe foods, drugs, cosmetics, and other potential health hazards; provide national leadership for the prevention and control of communicable diseases; environmentally related health problems, and other preventable conditions; and, reduce and eliminate, where possible, health problems caused by the abuse of alcohol and drugs.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, delete in their entirety HA-00, Mission; and Section HA-10, Organization and substitute the following:

Section HA-00. Office of the Assistant Secretary for Health—Mission. The Office of the Assistant Secretary for Health (OASH), under the direction of the Assistant Secretary for Health, is responsible for all programs administered by PHS and provides executive leadership to PHS. The Office supports the Assistant Secretary for Health in the discharge of his/her responsibilities for planning and directing the activities of PHS; provides assistance to the States and PHS agencies in the areas of health systems planning, disease prevention and health technology assessment and transfer activities and programs. The OASH responsibilities include: conducting international health affairs; formulating health policy; maintaining relationships with other Federal, State, and local governmental and private agencies concerned with health; providing policy guidance for health-related activities throughout the Department; serving as the principal advisor and assistant to the Secretary on all policies and programs of PHS and health-related policies and activities of the Department for protecting the health of the American public, including environmental; providing leadership in biomedical and health services research; and providing leadership, coordination, and direction of a nationwide program of disease prevention and health promotion.

Section HA-10. Office of the Assistant Secretary for Health—Organization. The Office of the Assistant Secretary for Health (HA) consists of the:

1. Senior Advisor for Environmental Affairs (HA3)
2. Office of Public Affairs (HAB)
3. President's Council on Physical Fitness and Sports (HAC)
4. Office of International Health (HAE)
5. Office of Refugee Health (HAF)
6. Office of Health Legislation (HAJ)
7. Office of Equal Employment Opportunity (HAK)
8. Office on Smoking and Health (HAG)
9. Office of Population Affairs (HA5)
10. PHS Executive Secretariat (HA6)
11. National Center for Health Statistics (HAS)
12. National Center for Health Services Research (HAR)
13. Office of Intergovernmental Affairs (HA7)
14. Office of Disease Prevention and Health Promotion (HAB)
15. Office of Planning and Evaluation (HA9)
16. Office of Management (HAU)

Under *Chapter HA, Section HA-20—Functions* make the following changes by organization:

Delete the statement for the *Immediate Office of Assistant Secretary for Health (HA)* in its entirety and substitute the following:

Office of the Assistant Secretary for Health (HA). The Assistant Secretary for Health (ASH) is responsible to the Secretary of Health and Human Services for the performance of PHS in meeting its goals. The Office provides national leadership in the direction of the major PHS agencies and the administration of their programs. The immediate office of ASG supports ASH in addressing special health initiatives and provision of support to the President's Council on Physical Fitness and Sports. The major health specialty offices of ASH assist and report to ASH in carrying out the legislatively and administratively mandated PHS responsibilities.

After the statement for the *Office of the Assistant Secretary for Health (HA),* add the following title and functional statements:

President's council on Physical Fitness and Sports (HAC). The Executive Director and staff provide support to the President's Council on Physical Fitness and Sports (PCPFS) which is responsible for the following functions: (1) Develops and coordinates a comprehensive national program for physical fitness and sports, and promotes cooperative efforts with business and labor to foster employee fitness and sports programs; (2) advises the President, the Secretary and the Assistant Secretary for Health on matters pertaining to the national program; (3) serves as the advisory body and provides advice and guidelines to the Office of Health Information, Health Promotion, Physical Fitness and Sports Medicine on all physical fitness programs and activities supported by the Office as part of the national prevention strategy; (4) appoints and coordinates volunteer advisors and medical consultants to enhance the effectiveness of Council activities; (5) fosters, assists and enlists the support of State and local governments and public, private and voluntary organizations in raising the awareness of, promoting, and coordinating physical fitness and sports programs to aid in overall human development; and (6) collects and disseminates research and statistical information and stimulates research in the area of physical fitness.

Office of Refugee Health (ORH)

The *Office of Refugee Health (ORH)* in the Office of the Assistant Secretary for Health provides a central focal point for the direction and coordination of PHS efforts in all refugee and entrant health matters. Specifically, the Staff: (1) Develops and implements policy and guidelines relating to refugee and entrant health and mental health screening and care; (2) directs and coordinates camp health and mental health operations and provides guidance to PHS agencies in meeting their responsibilities for the support of these operations; (3) negotiates interagency agreements between PHS and other Federal components and between ORH and PHS agencies concerning specific assignments of program responsibility, the allocation of resources and the establishment of program accountability; and (4) represents the Assistant Secretary for Health and serves as the PHS focal point for liaison with the Office of Refugee Resettlement, ORR/DHHS, other components of the Department, the Department of Justice, other Federal components and the private sector on all matters pertaining to refugee and entrant health and mental health.

Under the heading entitled *Office of Public Affairs (HAB)* amend items (2) and (3) to read: "(2) coordinated the public affairs activities of the five health agencies with policy direction of the Assistant Secretary for Health and with the overall public affairs policies of the Department of Health and Human Services; (3) provides a focal point for the public on freedom of information; and"; add new items (4) and (5) to read: "(4) serves as the focal point for the publication of *Public Health Reports;* and (5) reviews and clears all print, audiovisual and exhibit plans and materials intended for external dissemination and, through the Assistant Secretary for Health, serves as clearance liaison with the Assistant Secretary Public Affairs."

Delete the statement for the *Office of Health Maintenance Organizations (HA2).*

Under the heading and statement for the *Office of Population Affairs (HA5)* delete the title only for the *Office of Adolescent Family Life Programs (HA52)* and substitute the title *Office of Adolescent Pregnancy Programs (HA52).*

Under the heading entitled *PHS Executive Secretariat (HA6)* delete the statement and substitute following:

PHS Executive Secretariat (HA6). The PHS Executive Secretariat: (1) maintains system of control of all correspondence for ASH; (2) makes assignments to the PHS agencies and OASH staff offices of correspondence requiring response; monitors follow up and assures completion of such assignments; assures appropriate clearances and comments are included in correspondence system; (3) provides final substantive review and quality control on all documents moving to ASH for signature or clearance; (4) monitors activities of interest to ASH and assures quality and timely completion of assignments to PHS from the Secretary of ASH; (5) develops and publishes criteria and requirements for the preparation of correspondence for signature of OASH officials.

Delete the statement for the *Office of Health Research, Statistics and Technology (HAT).*

Under the heading *National Center for Health Services Research (HAT1)* delete the title and the statement in their entirety and substitute the following:

Naational Center for Health Services Research (HAR). Provides national leadership and administration of a program of research, demonstrations, and evaluations to study: (1) The accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems; (2) the supply and distribution, education and training, quality, utilization, organization, and costs of health manpower; (3) the design, construction, utilization, organization, and cost of health facilities and equipment; (4) the role of market forces in the health care system and the appropriate role they may play in restraining cost increases and improving the availability and quality of care; (5) the factors that affect the use of health care technologies in the United States; (6) the methods for disseminating information on health care technologies; and (7) the effectiveness, cost effectiveness, and social, ethical, and economic impacts of particular medical technologies. In carrying out these responsibilities, the National Center engages in the following activities: (1) Supports by means of grants and contracts with public and private entities health services and health care technology research, demonstration, and evaluation projects; (2) conducts research, demonstrations, and evaluations through the use of staff and facilities of the Center; (3) administers and supports health services research training programs; (4) assists public and nonprofit private entities in meeting the costs of planning, establishing, and operating centers for multidisciplinary health services research, evaluations, and demonstrations; (5) coordinates all health services and health care technology research, evaluations, and demonstrations undertaken and supported through units of PHS in the Department of Health and Human Services; (6) consults with public and private organizations and individuals to identify the critical issues and problems to be addressed through the research programs; (7) publishes and disseminates the findings and the data obtained in the course of research, evaluations, and demonstrations supported or undertaken by the Center and undertakes programs to develop new and improved methods for making such information available; (8) provides technical assistance and consultation to organizations and individuals within and outside the Department engaged in or concerned with the results of health services of health care technology research, evaluations, and demonstrations; and (9) participates in and otherwise cooperates in international meetings, conferences, or other activities concerned with health services research or health care technology.

Office of the Director (HAR1). Provides leadership for and directs the activities of the National Center for Health Services Research. Specifically: (1) Oversees and directs the formulation of program objectives and policies for the Center consistent with the law and with departmental and PHS policy; (2) plans, directs, coordinates, and evaluates the research, demonstration, and evaluation activities undertaken and supported by the Center; (3) oversees, coordinates, and evaluates national efforts to improve and expand the field of health services and health care technology research; (4) oversees and directs the response to inquiries received by the Center and clearance of documents dealing with matters of internal policy; (5) directs and coordinates Center activities in support of Equal Employment Opportunity programs; and (6) serves as scientific and technical advisor to the Office of the assistant Secretary for Health, and the Office of the Secretary on matters related to health services and health care technology research.

Office of Program development (HAR12). Oversees and coordinates the development of a research plan for the Center and provides analyses to assist in the formulation of health policy. Specifically: (1) Directs and coordinates the process of formulating a plan for health services and health care technology research, evaluations, and demonstrations; (2) participates in the Forward Planning process of PHS and the Department; (3) advises the Center Director on the types of projects which should be undertaken by the staff of the Center, and the mechanism to be used for research, demonstrations, and evaluation activities to be conducted outside the Center; (4) monitors the research programs and prepares periodic and special reports that describe, integrate, and assess the results of research, evaluations, and demonstrations undertaken and supported by the Center; (5) maintains liaison with other Federal agencies, with State and local government organizations, and with the research community, and organizes conferences to review and recommend modification in the research plan of the Center; (6) assists the Office of the Director in coordinating the research program of the Center with other research efforts within PHS and the Department; (7) plans and directs studies to evaluate the various programs and activities of the Center; and (8) provides analyses of research findings that have implications for health policies and health legislative initiatives.

Office of Program Support (HAR13). Within guidance and policies provided by the Office of Management, directs and conducts administrative management activities to provide services in the areas of organization and management analysis, manpower utilization, ADP management, telecommunications management, information systems, delegations of authority, paperwork management, grants and contracts processes, and other logistical operations to support the Center. Specifically, within the framework of PHS management policy: (1) Monitors, reviews and comments on legislative and policy proposals which impact on Center authorities and operations; (2) develops and oversees the implementation of methods and procedures for controlling operations of the Center; (3) develops budget proposals, and provides financial accounting services for the Center; (4) develops annual ADP plans, and assures the timely issuance of reports; (5)

conducts continuing appraisal of Center processes, organizational and functional structures, and manpower requirements and allocations to assure optimum utilization of the Center's resources; (6) implements award processes of grants and contracts proposals; and (7) maintains liaison with the OASH Office of Management on policy and operational issues and matters affecting the Center.

Office of Health Technology Assessment (HAR14). The Office: (1) Provides national leadership, coordination and administration of a comprehensive program for health care technology assessment and transfer to improve the quality and reduce the cost of medical care; (2) establishes criteria for public and private organizations and individuals both within and outside the Office to identify the critical technologies to be assessed; (3) administers a program of assessments of health care technology which take into account their safety, efficacy, cost effectiveness, and social, ethical and economic impacts; (4) makes recommendations respecting health care technology issues in the administration of the laws under ther the Assistant Secretary for Health's jurisdiction, including preparation of the Public Health Service position regarding appropriateness of Medicare coverage of health care technology; (5) publishes and disseminates the information obtained as a result of activites supported by the Office and undertakes programs to develop new and improved methods for making such information available; (6) provides technical assistance and consultation to organizations and individuals within and outside the Department engaged in or concerned with the results of health care technology assessments, research, evaluations, and demonstrations; and (7) coordinates PHS research, evaluations and demonstrations respecting the assessment of health care technology undertaken and supported by DHHS components.

Division of Academic and External Liaison (HAR2). Provides leadership and direction for the general academic programs of the Center, oversees the activities designed to disseminate the results of research supported by the Center, and supervises the general effort to coordinate the research program of the Center with the research programs and concerns of other governmental nonprofit private organizations and academic institutions. Specifically: (1) Assists in planning and directly oversees the health services research training programs of the Center; (2) directs and monitors the research centers program of the Center; (3) administers and sets policies for the program to publish and disseminate research reports prepared by or with the support of the Center; (4) participates with the Offices of Program Develpment and Health Terchnology Assessment in coordinating the research programs of the Center with the research programs being conducted in other parts of PHS and the Department; (5) serves as the principal liaison with academic institutions, private foundations, and other organizations conducting or supporting health services research programs; (6) advises the Center Director on the non-Federal membership of various review and advisory groups set up to assist the Center; (7) informs the Center Director of general administrative policy and program concerns which exist in the research institutions, private foundations, the Department, and other Government agencies; and (8) assists in developing policies for and oversees activities of the Center pertaining to the Regional Offices; and (9) is responsible for the grants review activities.

Division of Extramural Research (HAR3). Provides the professional expertise required by the Center to manage health services and health care technology research, demonstration, and evaluation activities supported by means of grants and contracts. Specifically: (1) Determines the structure and content of research studies supported by contract which address the critical issues and research questions identified in the research plan of the Center; (2) develops and administers a program to monitor research studies supported by grant or contract; (3) provides general guidance and assistance to groups and individuals seeking support for research, demonstration, or evaluation projects; (4) provides technical support for advisory bodies responsible for reviewing grant and contract proposals for scientific merit; (5) particpates in the preparation of periodic reports which describe, analyze, and integrate the results of various research, demonstration, and evaluation projects supported by the Center; (6) provides a summary of current extramural studies and informs the Offices of Program Development and Health Technology Assessment of results that might have an impact on health policy and legislation; and (7) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health services and health care technology research, demonstration, and evaluation activities.

Division of Intramural Research (HAR5). Provides professional expertise required by the Center to undertake directly health services and health care technology research, demonstration, and evaluation activities. Specifically: (1) Designs and carries out research, demonstration, and evaluation projects which address the critical issues and research questions identified in the research plan of the Center; (2) provides information, analyses, and technical support to the Division of Extramural Research with regard to the structure and content of contracts awarded by the Center and the monitoring of grants; (3) provides consulation and technical assistance to the Office of the Assistant Secretary for Health and the Department with regard to the development, experimental design, management, and interpretation of research projects; (4) prepares and participates in the dissemination of reports which describe and analyze the findings of research, demonstration, and evaluation projects undertaken by the Center; (5) analyzes program operations to ensure responsible administration of resources allocated for intramural research; (6) provides a summary of findings of current intramural research projects and informs the Offices of Program Development and Health Technology Assessment of results that might have an impact on health policy and legislation; and (7) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health services and health care technology research activities.

National Center for Health Statistics (HAS). (1) Provides national leadership in health statistics and epidemiology; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system; health costs and expenditures, changes in the health status of people, and environmental, social and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of PHS and provides technical assistance

in the planning, management and evaluation of statistical programs of PHS; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the Center; and (10) in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget, provides the Assistant Secretary for Health with consulation and advice on statistical matters.

Office of the Director (HAS1). (1) Plans, directs, administers, coordinates and evaluates the total vital, health, and health-related statistics programs of the Center; (2) stimulates basic and applied research and developmental activities; (3) provides national and international leadership in vital and health statistics and epidemiology; (4) conducts a variety of professional activities to provide assistance to government agencies, to foster international relationships and to improve the broad fields of vital and health statistics and epidemology; (5) coordinates the Center's activities with public and private health statistical agencies; (6) provides advice and guidance on disease classification problems in the Center; coordinates activities within the Center on classification of diseases and procedures; and has responsibility for development of revision proposals and U.S. position on decennial revisions of the International Classification of Diseases; (7) directs the Center's environmental and epidemiological statistics programs; (8) directs the Cooperative Health Statistics Systems; (9) provides management and administrative support for the Center; (10) provides program planning and development for the Center; (11) develops and coordinates legislative activities; and (12) directs and coordinates Center activities in support of the Department's Equal Employment Opportunity program.

Office of International Statistics (HAS12). (1) Plans and conducts the National Center for Health Statistics (NCHS) foreign research, consultation, and training programs; (2) coordinates or represents the Center's interests in international statistical activities in vital and health statistics, epidemology and financing of health care; (3) stimulates NCHS staff to develop research programs in foreign countries; (4) develops and conducts academic and applied courses for foreign statisticians; (5) assembles data and prepares reports on comparative international health statistics; and (6) develops and conducts analytical studies in international vital and health statistics.

Office of Management (HAS13). (1) Participates in the development of policly, long-range plans, and programs of the National Center for Health Statistics; (2) plans, coordinates, directs and conducts the management operations of the National Center for Health Statistics; (3) reviews the effectiveness and efficiency of the operation and administration of all programs of the Center; (4) conducts organizational and procedural studies; (5) monitors the performance appraisal system; (6) develops and directs systems for financial, personnel, procurement, paperwork management, staff resources utilization and management by objectives; (7) plans, develops and conducts a Centerwide management information system; (8) develops administrative policies and procedures; (9) manages the Reimbursable Work Program for the Center; and (10) provides services in the areas of delegations of authority, grants and contracts management, reports and records management, and organization and management analysis.

Office of Research and Methodologly (HAS14). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, coordinates and stimulates the Center's applied and basic research program which includes the fields of mathematical statistics, survey design and methodololgy; (3) formulates statistical standards regarding the survey design, data collection, coding, data analysis, data presentation and statistical computing for all NCHS data systems and coordinates activities directed at the implementation and maintenance of these standards; (4) actively supports all of the Center's basic and applied research activities by serving as the Center's consultants in the fields of mathematical statistics, survey design and methodology, and statistical methodology; (5) consults and collaborates on statisticals research projects with PHS agencies and other Federal organizations, State and local governments, universities, private research organizations and international health agencies; and (6) reviews for statistical merit all research contracts and intramural projects and all research projects undertaken through contracts, interagency agreements, or intramural activities.

Office of Program Planning, Evaluation, and Coordination (HAS15). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) develops proposed policies for the coordination of NCHS programs with external agencies, both public and private; (3) serves as the focal point for coordination of health statistical activities within NCHS and for developing and coordinating the collaborative statistical activities of NCHS with other organizations and agencies; (4) provides a focus within NCHS for statistical program planning, evaluation, and coordination and for legislative affairs; (5) evaluates or arranges for the evaluation of the adequacy, completeness and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; (6) directs the definition, development, and coordination of the cooperative program in health statistics, working with the Regional Offices, local governments, and other organizations in the development and strengthening of sub-national statistical systems; (7) provides program leadership and coordination for the NCHS Reimbursable Work Program; (8) provides guidance and staff support for majorl Center conferences and committee organizations in the conduct of statistical training activities; (10) participates with appropriate agencies and organizations to improve the quality, comparability, and timeliness of standard health data sets and to promote and disseminate their use; maintains current information concerning Federal and non-Federal health statistics systems; and (11) coordinates required clearances of NCHS projects.

Office of Vital and Health Care Statistics Program (HASB). (1) Participates in the development of policy, long-range plans and programs of the Center; (2) directs, plans, and coordinates the Vital and Health Care Statistics Program of the Center; (3) provides policy guidance, technical liaison, leadership, and evaluation of Federal-State conjoint Vital and Health Care Statistics Program; (4) provides leadership for the monitoring and statistical evaluation of national vital and health care statistics; (5) provides operating liaison with other programs of the center on vital and health care statistics and other public and private agencies; (6) determines the need for new data systems or capabilities in present systems to provide needed

health statistics; (7) provides statistical consultation and technical assistance to other producers and users of health statistics; and (8) conducts developmental and evaluation research to assess the quality and cost-effectiveness of the vital and health care statistics program.

Division of Vital Statistics HASB2). (1) Plans and administers statistical programs based on the nationwide collection of data from vital records, vital records followback surveys, and demographic surveys of women in the childbearing ages; (2) produces statistical data in tabular and machine-readable form; (3) analyzes data and prepares reports for publication; (4) provides data to users through publications, computer tapes, special tabulations and unpublished data; (5) plans and administers the Division of Vital Statistics programs related to the Cooperative Health Statistics System; (6) develops standards for data collection, data reduction, and tabulation; (7) conducts or participates in research on data collection methodology and data quality and reliability in the vital statistics area; (8) participates in the development of quality control specifications; (9) conducts methodological research in presentation, evaluation and utilization of vital statistics data; (10) monitors, evaluates, and provides technical assistance for State and local registration areas on matters of legal and statistical concern; (11) prepares life tables and analyses of life table data; and (12) plans and administers a National Death Index.

Division of Health Care Statistics (HASB3). (1) Plans and administers statistical programs based on nationwide collection of data on the characteristics and use of health resources; (2) produces statistical data in tabular and machine-readable form; (3) analyzes data and prepares statistical reports for publication; (4) provides health care data to the using public through publications, computer tapes, special tabulations, and unpublished data; (5) plans and administers its programs which are related to the Cooperative Health Statistics System (CHSS); (6) develops standards for data collection, data reduction, and tabulation; (7) conducts or participates in a research program on survey methodology and data quality and reliability in the field of health care statistics; (8) participates in the development of quality control specifications; (9) conducts methodological research on presentation, evaluation, and utilization of data in the field of health resources and utilization statistics; (10) plans, supports and conducts special projects on health care; (11) provides specialized responses to requests from data users; and (12) provides technical assistance to other producers and users of health care statistics.

Office of Interview and Examination Statistics Program (HASC). (1) Participates in the development of policy, long-range plans and programs of the Center; (2) directs, plans, and coordinates the Interview and Examination Statistics Program of the Center; (3) provides operating liaison with other statistical programs of the center on interview and examination statistics and other public and private health agencies; (4) determines the need for new data systems or capabilities in present systems to provide needed health statistics; (5) provides statistical consultation and technical assistance to other producers and users of health statistics; (6) conducts developmental and evaluation research to assess the quality and cost-effectiveness of the interview and examination statistics program.

Division of Health Interview Statistics (HASC2). (1) Plans, develops, and administers statistical programs based on systematic nationwide household interview surveys; (2) produces statistical data in tabular and machine-readable form, analyzes data and prepares statistical reports for publication on the prevalence and incidence of disease and associated disabilities and on the utilization of medical care resources, medical care expenditures and other health-related topics; (3) develops and monitors quality control programs for ongoing data collection and processing activities; (4) conducts a research program on survey methodology, data quality, and reliability as related to household interview statistics; (5) provides technical assistance in health interview survey design and methodology; and (6) provides specialized responses to requests from data users.

Division of Health Examination Statistics (HASC3). (1) Plans, develops, and administers statistical programs based on systematic nationwide and special health and nutrition examination surveys; (2) procures statistical data in tabular and machine-readable form, analyzes data and prepares statistical reports for publication on the prevalence of disease or health-related characteristics, including data on dental, psychological, mental health and health behavior areas, on needs for care, on descriptive or normative data, and on the interrelationship of these variables as observed in the general population; (3) develops and monitors quality control programs for ongoing data collection activities; (4) conducts a research program on survey methodology, data quality, and reliability as related to health examination statistics; (5) plans, supports and conducts special projects on health examination of individuals; (6) provides technical assistance in health examination survey design and methodology; and (7) provides specialized responses to requests from data users.

Office of Data Processing and Services Program (HASD). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the Data Services and Data Processing program of the Center; (3) provides policy guidance and direction regarding the intramural data collection, data processing services, publication services, and scientific and technical information dissemination services of the Center; and (4) provides operating liaison with other programs of the Center and other public and private health agencies on data processing and services activities; and (5) directs the computer users service staff which carries out research and developmental activities, such as use and modification of special software packages, statistical computing, consultation and review, computer assisted graphics and provides Centerwide training in the use of systems hardware and software packages and systems.

Division of Data Processing (HASD2). (1) Plans, directs, coordinates, and evaluates data processing, i.e., computer operations for the Center; (2) conducts data reduction and data preparation services in support of NCHS data collection and analysis programs; (3) provides systems programming services to all Center operations; (4) conducts research programs to improve data processing technology and methodology; and (5) implements the NCHS Automated Data Processing (ADP) security program and procedures.

Division of Data Services (HASD3). (1) Plans, directs, coordinates, and evaluates data dissemination, publications, and intramural data collection services for the Center; (2) provides technical information services to all NCHS data users; (3) provides publication services and data collection services for NCHS programs; (4) coordinates data services with other NCHS divisions and programs to effectively meet Center goals; (5)

promotes and conducts research to improve methods and operations of intramural data collection, data dissemination and publication services; and (8) provides specialized data services to the Center.

Office of Analysis and Epidemiology Program (HASE). (1) Participates in the development of policy, long-range plans and programs of the Center; (2) directs, plans, and coordinates the Analysis and Epidemiology Program of the Center; (3) develops policy for the Analysis and Epidemiological Health Statistics Program of the Center; (4) provides operating liaison with other programs of the Center and other public and private health agencies on analytic and epidemiologic activities; (5) provides consultation and technical assistance to other Federal agencies, States, and other public and private sector institutions in the areas of environmental epidemiology and in the analysis and interpretation of national health statistics; and (6) conducts developmental and evaluation research in the field of environmental epidemiology and analysis of national health statistics.

Divison of Epidemiology and Health Promotion (HASE2). (1) Plans, directs, and manages the Center's epidemiologic research program on the effects of social, behavioral and environmental factors on health; (2) conducts epidemiologic research and research on the epidemiologic uses of alternative concepts of levels of health status; (3) conducts research, demonstrations, and evaluations of the utility of environmental health statistics and health status measurements in health program planning, policy analysis and program direction; (4) provides operational liaison with health statistical programs of other public and private agencies concerned with environmental and health status measurement; (5) recommends the need for new health data systems or improvements in capabilities of present systems to meet the needs of the Center's overall epidemiologic and health status research programs; (6) provides technical assistance to other producers and users of health status and environmental data; (7) collects and disseminates sources of current information on the conceptualization and measurement of health status, including the maintenance of a Clearinghouse on Health Indices; and (8) coordinates the health promotion and disease prevention related data collection activities of the Center and serves as a liaison with the Department's health promotion and disease prevention initiative.

Division of Analysis (HASE3). (1) Plans, directs, and conducts a program of in-depth analysis of health and demographic data; (2) stimulates the development of concepts and statistical data programs throughout the Center; (3) conducts economic analyses of health, including health status resources and utilization, cost and financing of services; (4) conducts research related to the use and analysis of health data in planning and evaluating health programs and policy; (5) augments the policy analysis activities of HRSA; (6) proposes a general schedule of data to be collected by the Center; (7) prepares an overall plan for the analysis and presentation of data on Center programs; and (8) conducts a research program on etiologic inference from observation studies.

Under the heading entitled *Office of Planning and Evaluation (HA9)* delete the title and statement in their entirety and substitute the following:

Office of Planning and Evaluation (HA9). The Deputy Assistant Secretary for Health Planning and Evaluation: (1) Serves as the principal advisor to ASH concering the development of national health policy, planning, legislation and regulations and the conduct of evaluations; (2) represents PHS in the above areas within the Department and recommends new approaches and initiatives as required; (3) requests, directs or conducts PHS health policy analysis and evaluation, including selected research projects; (4) directs PHS participation in the Department's planning efforts and serves as liaison with all components of PHS and other related organizations on these matters; (5) analyzes developments outside PHS which may influence health policies; (6) directs and coordinates the efforts of PHS components in legislative development, planning, evaluation, and policy analysis, providing analytical assistance relative to these efforts; (7) directs the PHS review of plans and strategies for resources development; (8) cooperates and coordinates with the health-related activities of the Assistant Secretary for Planning and Evaluation, OS, and the Health Care Financing Administration (HCFA); (9) directs the Federal regulations process for PHS; and (10) provides leadership and technical direction on all matters related to statistical policy for PHS.

Division of Planning and Evaluation, Legislation and Regulation (HA9-3). The Division: (1) Coordinates the review of planning issues analyses and the preparation of planning and recommendations to ASH; (2) works closely with the Office of Management concerning PHS activities, including submission of the PHS annual budget; (3) identifies policy research questions and with other Office of Planning and Evaluation (OPE) divisions, OASH staff offices and the PHS agencies, sets priorities for such research and assures that such policy research is undertaken, either by the PHS agencies or this division; (4) manages evaluation activities withip PHS and arranges for consultation to the PHS agencies on evaluation methodology and design; (5) contracts for policy research as needed; (6) in cooperation with other OPE divisions, PHS staff offices, PHS agencies, and the Office of the Assistant Secretary for Planning and Evaluation, OS, sets priorities for evaluation of programs; (7) coordinates the review and approval of evaluation plans; (8) conducts or contracts for program evaluation and monitors evaluation programs and assesses the results; (9) coordinates the office of DASH/PE responses to GAO reports and serves as liaison for GAO studies of general concern to PHS for the office of DASH/PE; (10) coordinates development of legislative planning for PHS; (11) directs the Federal regulations process for PHS, including the coordination, review, and technical assistance leading toward the approval of new and revised regulations; (12) distributes and insures review of notices of proposed rulemaking and final regulations, and policy-impacting general notices; (13) provides technical assistance in the development and implementation of new and revised regulations; (14) provides advice and guidance on the development of **Federal Register** notices and (15) coordinates the drafting and clearance of **Federal Register** notices.

Division of Policy Analysis (HA9-6). The Division serving as the policy staff for the Assistant Secretary for Health: (1) Initiates and conducts policy analyses in relevant issue areas including biomedical research, environmental factors in health, disease prevention, technology assessment and transfer, the development of health resources and the planning, delivery and financing of health care services; (2) represents PHS and ASH on health policy analyses and development activities within the Department; (3) analyzes the relevancy of current policies on health programs and recommends new approaches and analzses developments outside PHS which may influence health policies and programs; (4) reviews proposed regulations and guidelines for

consistency with ASH policy; (5) provides analytical assistance in legislative and budget analyses, planning, evaluation, and policy research; (6) develops planning issues for analysis by OPE and other PHS components; (7) reviews legislation for consistency with PHS policy; (8) serves as policy liaison with all components of PHS and other health-related organizations; and (9) coordinates interagency efforts affecting the Division's areas of program responsibility.

Division of Data Policy (HA9–7). The Division: (1) Serves as the PHS focal point for policy analysis, development and coordination of all health data and statistical policy; (2) coordinates all matters regarding PHS health data policy standardization, collaborating with other Federal agencies, as appropriate; (3) serves as statistical policy liaison with all components of PHS and other health-related organizations; (4) provides leadership and staff support to the DHHS Health Information Policy Council and the PHS Health Statistics Cooordinating Committee on the identification of intermediate and long-range health data needs and in the development and modification of data gathering plans; (6) provides centralized policy and technical oversight to PHS for clearance and inventorying of public use reporting and recordkeeping requirements; (7) directs preparation and execution of the annual PHS Information Collection Budget; and (8) serves as focal point for coordinating PHS efforts in implementation of the Paperwork Reduction Act of 1980.

Under the *Office of Management (HAU)* make the following changes:

Under the heading entitled *Office of Organization and Management Systems (HAU2)* delete the titles and statements in its entirety and substitute the following:

Office of Organization and Management Systems (HAU2). The Director of the Office of Organization and Management Systems (OOMS) serves as the principal advisor on all PHS organization and management activities, nationwide. (1) Develops and disseminates PHS policies for organization, ADP, telecommunications and management systems; (2) evaluates or directs the review of PHS-wide and agency management systems, procedures, and activities; (3) serves as a focal point for coordinating agency management activities, including emergency preparedness, with the Office of the Secretary and other Federal agencies and offices; (4) provides leadership and direction for the development and implementation of: (a) agency cross-servicing arrangements; (b) compatible organization, ADP systems, and management systems, and procedures designed to improve efficiency and economy of operations in PHS; (5) fosters the efficient management of PHS manpower through a manpower utilization program; and (6) serves as the Chairman and provides the Executive Secretariat for the Board for Corrections of PHS Commissioned Corps Personnel Records.

Division of ADP and Telecommunications Management (HAU22). (1) Provides guidance and leadership to PHS in areas affecting the development and use of ADP and Telecommunications (TC) resources; (2) serves as the principal office for developing and implementing ADP and TC policies and plans; (3) develops, plans and supports management information systems and ADP systems security on a PHS-wide basis; (4) reviews and assesses systems activities, plans, proposals and budgets; (5) coordinates the integration of program and management data to support PHS-wide information management goals and objectives; (6) conducts technical studies and surveys as appropriate; (7) maintains liaison with the Office of the Secretary and other Federal agencies in areas affecting ADP and Telecommunications management; and (8) represents the Department on Interdepartmental Radio Advisory Committee; manages radio frequency assignments for the Department.

Division of Directives and Authorities Management (HAU25). (1) Develops, coordinates, implements, and interprets PHS policies, standards, and procedures in the management of PHS systems for: (a) Delegations of authority; (b) interagency agreements; (c) forms management; (d) directives management; (e) employee suggestions; (f) records management; (g) mail management; (h) reports management; (i) Privacy Act of 1974; (j) committee management; and (k) legislative implementation planning; (2) conducts studies and implements approved recommendations in the above administrative areas for the purpose of applying new technology, opportunities for cost containment and improved productivity; (3) establishes PHS cost/performance standards for the management of forms, records, reports, and mail; (4) develops periodic profiles of performance and evaluates overall effectiveness of management systems under the Division's purview; (5) maintains controls and serves as a clearance point to assure appropriate development and timely disposition of: (a) PHS forms; (b) record control schedules; (c) congressional reports; (d) issuances in PHS staff manuals; (e) delegations of authority; (f) certain interagency agreements; (g) employee suggestions; (h) establishment and continuance of health committees; (i) systems of records subject to the Privacy Act; (j) legislative implementation plans; and (k) the U.S.P.S. Official Reimbursement Program; (6) assures reviews, clearances and control of internal and intergovernmental reports; (7) provides consultation and assistance to PHS officials in the development of authorities, directives and agreements in relation to enacted legislation, regulations, and policies; (8) develops and publishes the PHS Manual of Laws and Regulations; and (9) Provides technical assistance and training to staff specialists at various levels supporting management systems, procedures, and activities.

Division of Management Planning and Analysis (HAU26). (1) Develops, coordinates, and implements PHS policies, standards, and procedures governing the establishment and maintenance of effective organization structures and functional alignments within PHS and the administration of the Standard Administration Code system; (2) initiates, reviews and/or conducts studies of proposals for establishing or modifying PHS organizations and functions, negotiating solutions to problems both within PHS and with the Department; (3) provides management consultant assistance to PHS elements, conducts management studies and special management problem analyses, and directs or provides support to task forces and study groups addressing organization and management problems and issues; (4) provides advice and assistance to PHS managers in the design and installation of management planning and control systems; (5) develops standards and policy for the development of quantitative staffing systems; (6) administers the system for justifying staffing authorizations by PHS agencies, and periodically evaluates those systems for conformance to PHS policies; (7) as an intergral part of the PHS budget review process, participates in the review of all requests for personnel resources and prepares recommendations on appropriate position levels to be supported by ASH's request to the Department; (8) participates in the development of systems and procedures used to formulate the annual PHS budget

request; (9) conducts staffing assessment studies utilizing quantitative analysis and/or work measurement techniques; (10) assures the efficient and effective use of information systems in PHS by: (a) planning and executing information system reviews; (b) providing technical assistance in the application of information technology; and (c) serving as a focal point for the evaluation of information resource management; and (11) coordinates PHS cost savings initiatives internal to the Office of Management.

Division of Emergency Coordination (HAU27). The Division of Emergency Coordination: (1) Is the PHS focal point for emergency management planning, preparedness, and operations activities; (2) provides staff suport to assist ASH in the accomplishment of emergency preparedness responsibilities assigned by Presidential Executive Order 11490 as amended, the Disaster Relief Act of 1974, and other pertinent statues, directives, and delegations of authority; (3) provides central emergency prepardeness policy guidance, coordination, and assistance to heads of PHS agencies and to Regional Health Administrators and monitors their performance and emergency readiness status; (4) works closely with the Federal Emergency Management Agency and other Federal departments and agencies to develop plans and maintain operational readiness required for timely and effective PHS response to Federal, State and local government requests for assistance following major disasters; (5) develops PHS policies and programs and coordinates PHS planning and response activities related to other types of emergencies, including resource shortages, civil disturbances, mass immigration emergencies and other actual or imminent crises; (6) maintains PHS liaison and working relationships with the Federal Emergency Management Agency and with other Federal departments and agencies; and (7) maintains PHS central files of classified emergency plans and other mobilization documents.

Under the heading entitled *Office of Personnel Management (HAU3),* delete the title and statement for the *Division of Human Resources Planning and Development (HAU36)* and substitute the following:

Division of Human Resources Planning and Development (HAU36). (1) Develops policies and programs in the areas of training, career planning, human resources development, social actions and special concerns, staffing and recruitment; (2) conducts and/or coordinates studies and programs to forecast future staffing requirements; (3) plans and develops policies and guidelines to provide for effective programs that recognize future personnel needs and maximum utilization of PHS human resources; (4) plans, develops and/or coordinates policies and programs for training, development and career planning for persons occupying positions common to all PHS agenices and OASH, with particular emphasis on health professions, minorities and women, lower graded employees, and managerial and executive manpower; (5) provides leadership, advice and assistance to PHS officials on recruitment, placement, retention, performance appraisal, reduction in force, career development and training programs; and (6) provides and encourages participation in common needs training for all PHS employees in the Parklawn Complex.

Section HB. Delegations of Authority. All delegations made to the Deputy Assistant Secretary for Health Research, Statistics, and Technology/OASH are hereby revoked. All delegations and redelegations made to officials of the National Center for Health Services Research, the National Center for Health Statistics and the National Center for Health Care Technology which were in effect immediately prior to the effective date of this reorganization shall continue in effect in them or their successors pending further redelegation. All delegations and redelegations made to other officials within the Office of the Assistant Secretary for Health, which were in effect immediately prior to this reorganization, shall continue in effect in them or their successors pending further redelegation.

Dated: January 13, 1983.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-1496 Filed 1-18-83; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Nez Perce Tribe; Use and Distribution of the Nez Perce Tribe of Idaho Judgment Funds in Dockets 179-A, 523-71 and 524-71 Before the United States Court of Claims

January 7, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 8, and October 16, 1981, in satisfaction of the awards granted to the Nez Perce Tribe of Idaho in United States Court of Claims Dockets 179-A, 523-71 and 524-71. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated July 9, 1982, and was received (as recorded in the Congressional Record) by the House of Representatives on July 12, 1982, and by the Senate on July 22, 1982. The plan became effective on December 5, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on October 8 and October 16, 1981, in satisfaction of awards granted by the United States Court of Claims in Dockets 179-A, 523-71 and 524-71 to the Nez Perce Tribe of Idaho, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. *Per Capita Distribution.* The Nez Perce Tribe of Idaho's latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this Plan.

Subsequent to the preparation and approval by the Secretary of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each enrollee. Any amount remaining after the per capita payment to the enrollees shall be utilized pursuant to the provisions of Part B of this Plan. Payment of the per capita is subject to the following conditions.

Those living enrollees who have delinquent tribal debts shall have their per capita shares placed in Individual Indian Money (IIM) accounts. Subject to the provisions of 25 CFR 115.9, the Agency Superintendent shall cause all or part of the delinquent tribal indebtedness of an enrollee to be paid to the tribe and any remainder of the per capita share in the IIM account shall be available to the enrollee subject to the provisions of 25 CFR, Part 115 governing IIM accounts (25 CFR Part 104 redesignated to 25 CFR Part 115, as published in **Federal Register** of March 30, 1982, page 13327). Living competent adult enrollees who have no delinquent tribal debts shall have their per capita shares paid directly to them. The ownership of the per capita shares of deceased individual enrollees shall be determined and the shares, subject to tribal claims, distributed in accordance

with 43 CFR, Part 4, Subpart D. The per capita shares of legal incompetents who do not have delinquent tribal debts shall be handled pursuant to 25 CFR 115.5. The per capita shares of minors shall be handled pursuant to 25 CFR 87.10(a) and (b)(1) and 115.4.

B. *Programing Aspect.* The remaining twenty (20) percent of these funds shall be utilized by the Nez Perce Tribal Executive Committee, subject to the approval of the Secretary, for social and economic programing purposes on an annual budgetary basis.

None of the funds distributed per capita or held in trust under the provisions of this Plan shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

Dated: January 7, 1983.

John W. Fritz,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 83-1410 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[W-83950]

Wyoming; Invitation for Coal Exploration License Ark Land Company

January 10, 1983.

Ark Land Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following described land in Carbon County, Wyoming:

Lands in Application:

Sixth Principal Meridian

T. 23 N., R. 83 W.,
Sec. 30, lots 1, 2, E½NW¼ (NW¼).
T. 24 N., R. 83 W.,
Sec. 28, W½NE¼, S½;
Sec. 29, N½NE¼, NE¼NW¼, NE¼SE¼.
T. 23 N., R. 84 W.,
Sec. 1, lot 2, SW¼NE¼, SW¼NW¼, SW¼;
Sec. 2, SE¼SE¼;
Sec. 11, NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 13, SW¼SW¼;
Sec. 14, E½, N½NW¼, SE¼N½;
Sec. 24, W½NE¼NE¼, NW¼NE¼, E½NE¼, E½W½, SE¼;
Sec. 25, E½NE¼, N½NW¼;
Sec. 26, E½, E½SW¼;
Sec. 35, E½NW¼.
T. 24 N., R. 84 W.,
Sec. 36, E½SW¼, W½SE¼.

Containing 2973.86 acres.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under Serial Number W-83950): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, 1300 Third Street, Rawlins, Wyoming 82301.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of January 17, 1983, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company, Western Exploration Division no later than thirty days after publication of this invitation in the **Federal Register**. The written notices should be sent to the following addresses: Ark Land Company, Western Exploration Division, Attention: Mr. Jack Cully, Manager, P.O. Box 340, Hanna, Wyoming 82327, and the Bureau of Land Management, Wyoming State Office, Attention: Branch of Energy Minerals, P.O. Box 1828, Cheyenne, Wyoming 82001.

The foregoing notice is published in the **Federal Register** pursuant to Title 43 of the Code of Federal Regulations, § 3410.2-1(d)(1).

Harold G. Stinchcomb.

Chief, Branch of Energy Minerals.

[FR Doc. 83-1400 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Renewal

This notice is published in accordance with the provisions of section 7(a) of the Office of Management and Budget Circular A-63 (Revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary of the Interior has determined that renewal of the Outer Continental Shelf (OCS) Advisory Board is necessary and in the public interest.

The purpose of the OCS Advisory Board is to provide advice to the Secretary and other officers of the Department of the Interior in the performance of discretionary functions of the OCS Lands Act (43 U.S.C. 1331 et. seq.), including all aspects of leasing, exploration, development, and protection of the resources of the OCS.

The General Services Administration concurred in the renewal of this Board on December 2, 1982.

Further information regarding this renewal may be obtained from the Deputy Associate Director for Offshore Leasing, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia 22091, 202/343-3530.

Dated: January 12, 1983.

Harold E. Doley,

Director, Minerals Management Service.

[FR Doc. 83-1479 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Notice of Jurisdiction of the Department of the Interior Relating to Minerals Other Than Oil, Gas, and Sulphur; Clarification

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of jurisdiction; clarification.

SUMMARY: Pending completion of a study of the limits of U.S. Continental Shelf jurisdiction, nothing in the Notice dated December 8, 1982, at page 55313 of the **Federal Register** by the Department of the Interior shall be construed to apply to areas beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of the United States is measured.

Dated: January 12, 1982.

Harold E. Doley, Jr.,

Director.

[FR Doc. 83-1437 Filed 1-14-83; 1:09 pm]

BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of environmental documents prepared for OCS mineral pre-lease and exploration proposals on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR § 1501.4 and § 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EAs) and findings of no significant impact (FONSIs) prepared by the MMS for the following oil and gas pre-lease and exploration activities proposed on the Alaska OCS. This listing includes all proposals for which environmental documents were prepared by the Alaska OCS Region in the 3-month period preceding this notice.

Activity/Operator

Exploration Drilling Program for Shelikof Strait; Chevron USA Inc., as operator for itself.

Location

The proposed wells will be located within the boundaries of OCS Leases Y–0248 and Y–0249, situated about 25 miles west of Black Cape of Afognak Island. After drilling of the first well, the decision to drill subsequent wells will depend upon the results and interpretation of well data obtained in the preceding wells. The location of each well is described as follow:

Lease and well No.	Location	Latitude/ longitude
OCS Y-0248 No. 1	3700' FNLL 7575' FWLL	58°21'54" N. 153°32'05" W.
OCS Y-0248 No. 2	7050' FSLL 2850' FWLL	58°21'05" N. 153°33'34" W.
OCS Y-0248 No. 3	3450' FSLL 6250' FWLL	58°20'29" N. 153°32'31" W.
OCS Y-0249 No. 1	7150' FSLL 1950' FWLL	58°18'26" N. 153°43'36" W.
OCS Y-0249 No. 2	1850' FNLL 5300' NWLL	58°19'34" N. 153°42'36" W.
OCS Y-0249 No. 3	10050' FSLL 3650' FWLL	58°18'56" N. 153°43'06" W.

Environmental Assessment

No. AK–82–3

FONSI Date

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to exploration for oil and gas resources on the Alaska OCS.

The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. EAs are used as a basis for determining whether or not approval of the proposal constitutes major Federal actions that signficantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

The FONSI and associated EA for the activity listed above are available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday (including lunch hour, 11:30 a.m. to 12:30 p.m.) at: Mineral Management Service, Alaska OCS Region, Office of the Regional Supervisor, Offshore Field Operations, 800 A Street, Suite 205, Anchorage, Alaska 99501, Phone: (907) 271–4303.

Persons interested in reviewing specific environmental documents or obtaining information about EAs and FONSIs prepared for activities on the Alaska OCS are encouraged to contact the above listed MMS office.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Irven F. Palmer,

Acting Regional Manager, Alaska OCS Region, Mineral Management Service.

[FR Doc. 83-1351 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Grant Village, Yellowstone National Park; No Significant Impact

AGENCY: National Park Service, Interior.

ACTION: Finding of No Significant Impact for Amendment One to the Development Concept Plan.

SUMMARY: The National Park Service announces the Finding of No Significant Impact, approved November 17, 1982, for Amendment One, to the Grant Village Development Concept Plan, Yellowstone National Park.

The selected plan will relocate the proposed site of the concession store building and accompanying parking area. The proposed building site is centrally located for convenient vehicular and pedestrian access. The site is large enough to accommodate a 12,000 square foot store building with an 8,000 square foot sales area, and a 125-car parking area. The building and parking will be located in a previously disturbed area.

The 1974 park master plan includes expansion of visitor use facilities at Grant Village in order to reduce the environmental impact on primary park resources by removing overnight visitor accommodations at Old Faithful and Fishing Bridge areas.

An Environmental Assessment was prepared for Amendment One to the Grant Village Development Concept Plan. A public review period including the A–95 review process was held from October 1, 1982, to November 1, 1982.

The following are alternatives considered in the environmental assessment number one:

No Action Alternative (Existing conditions alternative)

Develop a 3,000 square foot store at the camper services building. A store of this size is not adequate to accommodate visitor needs at Grant Village and the south end of Yellowstone National Park (438 campsites and 700 rental units). This store site is out of the primary vehicular and pedestrian circulation pattern. The site would not accommodate adequate parking.

Alternative A (The selected alternative)

Develop a 12,000 square foot building with an 8,000 square foot sales area ground level store facility with room for management functions in the basement. The site has been previously disturbed when the trees were removed, utilities placed underground, and area graded for the registration office parking. Both the store and registration office will be located outside of the view corridor and views of the 125 car parking area will be minimized through grading, earth berms, and plant material screening.

Alternative B.

Development would be at the same magnitude as Alternative A but located in a previously undisturbed area of mature Lodgepole Pine forest. The site is limited in size due to existing terrain and is not as convenient to pedestrian circulation as Alternative A.

Other Alternative Considered

Two other sites were considered, but rejected. These sites are located in mature Lodgepole Pine forests and the terrain on one site is too steep to develop a concession store and associated parking without heavy excavation.

All practical means to avoid and/or minimize environmental harm has been considered in the alternative selected.

A copy of alternatives and preferred alternative along with the record of decision and finding of no significant impact is available from the Superintendent, Yellowstone National Park, Wyoming, 82190.

Dated: January 6, 1983.

L. Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 83-1432 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-70-M

Kenilworth Park and Aquatic Gardens; Availability of Record of Decision and Finding of No Significant Impact for the Development Concept Plan

The National Park Service has prepared the Record of Decision and FONSI for the Kenilworth Park and Aquatic Gardens Development Concept Plan. This record documents the selected course of action for the management and use of the Park and Gardens.

Written comments will be accepted for a period of 30-days following the

publication of this notice and should be addressed to the Superintendent, National Capital Parks—East 1900 Anacostia Drive, S.E., Post Office Box 38104, Washington, D.C. 20020.

Copies of the Record of Decision are available from the same address.

Dated: January 12, 1983.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 83-1433 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Wyoming; Receipt of Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Receipt of a Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations and Request for Comments.

SUMMARY: Notice is given that the Office of Surface Mining Reclamation and Enforcement (OSM) received a petition to designate certain Federal lands in the Medicine Bow, Wyoming, area as unsuitable for surface coal mining operations, pursuant to Section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272). Interested persons are requested to submit relevant information and comment on the issues raised in the petition.

DATE: In order to be considered in a timely manner, comments should be received by February 18, 1983.

ADDRESS: Comments should be sent to: Office of Surface Mining, Western Technical Center, Charles Albrecht, Brooks Towers, 2nd floor, 1020 15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht at the address listed above. Telephone: (303) 837-5656 or FTS 327-5656.

SUPPLEMENTARY INFORMATION: Under Section 522 of the Surface Mining Control and Reclamation Act of 1977 (Act) and its implementing regulations, persons with interests which are or may be adversely affected by surface coal mining operations may petition OSM to have an area of Federal land designated as unsuitable for all or certain types of mining. The petition alleges that:

1. Surface mining would destroy sage grouse leks resulting in possible deleterious effects on species reproductive success and on long-term population levels.

2. Black-footed ferrets (Federal endangered species) have been sighted in the area. Mining could eliminate any such petition area populations and could thwart any potential species reintroduction efforts for the area.

3. Pronghorn antelope populations on the area would be severely decimated by coal mining activities.

4. Nesting locations and feeding habitat of ferruginous hawks (high federal interest species) would be destroyed by mining.

5. Nesting locations and feeding habitat of golden eagles (protected by the Bald Eagle Protection Act) would be destroyed by mining.

6. Presistent sepal watercress, *Rorippa calycina*, presently under consideration as a Federal threatened or endangered species and four rare plants species (Ward's goldenweed, *Happlopappus wards;* stemless wildlife buckwheat, *Erlogonurn acaule*; simple leaved milkvetch, *Astragalus simplicifolius*; and Brandeye's hopsage, *Grayia brandegii*) could be located on the area and could be adversely affected by coal mining. Suitable habitats for the species on the area would be destroyed by mining.

7. The 34 known archeological sites, as well as an unknown number of undiscovered sites, are irreplaceable and would be destroyed by mining.

8. Three historic sites listed on the National Register of Historic Places, and an additional 12 sites eligible for listing on the register, are irreplaceable and would be destroyed by mining.

9. The receational and esthetical values of the area would be adversely affected by air, water, and noise pollution and by the intrusion of surface coal mining in the area.

The petition was originally received by the Wyoming Environmental Quality Council on February 5, 1982; OSM received a copy of the petition from the Wyoming Department of Environmental Quality (DEQ) on February 25, 1982. On March 5, 1982, OSM informed the petitioner that the petition for Federal lands would have to be formally submitted to OSM (Casper, Wyoming, office); at the same time, OSM identified, in general, information still needed in the petition. The revised petition, in response to OSM's request for additional information, was received by OSM on November 24, 1982 and was determined to be complete on December 21, 1982. The petition for Federal lands will be processed by OSM in accordance with the procedures as set forth in 30 CFR Part 769. The petition for non-Federal lands will be processed by Wyoming DEQ in accordance with the procedures as set forth in Section 35-11-425 of the Wyoming Environmental Quality Act.

The following describes the petitioners and the land involved:

Petitioner: Cheyenne High Plains Aududon Society
State: Wyoming
Counties: Carbon and Albany

The petition area (92.160 acres) is described as Federal Land contained within:

T. 21 N., R. 77 W.
T. 21 N., R. 78 W.
T. 21 N., R. 79 W.
T. 22 N., R. 79 W.

A review of the Federal land area's suitability for mining will be undertaken by OSM. Factual information such as coal resource data of Federal lands will be supplied by the Bureau of Land Management (formerly the Minerals Management Service). In addition, the Bureau of Land Management, as the surface managing agency, will make recommendations on the petition. A decision on the petition will be made by November 23, 1983.

Copies of the petition may be obtained upon request from OSM at the address listed above. The public record on the petition is available for public review during normal working hours at the OSM office listed above and at the three following locations:

Bureau of Land Management, 1300 North 3rd Street, Rawlins, Wyoming 82301, Telephone: (307) 324-7171

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Street, Rawlins, Wyoming 82301, Telephone: (307) 777-7756

State of Wyoming, Department of Environmental Quality, Equality State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777-7756

After reviewing and analyzing available information, OSM will issue a draft evaluation document which will be available for public review. This will be followed by a public hearing held near the area covered by the petition. The time and place of the hearing will be announced at a later date.

After completion of the analyses and public hearing, the Department of the Interior may designate the area or a portion thereof as unsuitable for all or certain types of surface coal mining operations. The Department may also decline to designate all or part of the area as unsuitable.

Dated: January 14, 1983.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 83-1503 Filed 1-18-83; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-58 (Final)]

Hot-Rolled Carbon Steel Plate From Romania; Suspension of Final Antidumping Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

EFFECTIVE DATE: January 4, 1983.

SUMMARY: On January 4, 1983, the United States Department of Commerce suspended its antidumping investigation involving hop-rolled carbon steel plate from Romania (48 FR 317). The basis for the suspension is an agreement by Metalimportexport, an exporter which accounts for all known U.S. imports of this product from Romania, to revise its prices to eliminate sales of such merchandise to the United States at less than fair value. Accordingly, the United States International Trade Commission hereby gives notice of the suspension of its antidumping investigation involving hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated, from Romania (investigation No. 731-TA-58 (Final)).

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission.

This notice is published pursuant to § 207.40 of the Commission's Rules of Practice and Procedure (19 CFR § 207.40).

By order of the Commission.

Issued: January 11, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-1404 Filed 1-18-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-114]

Certain Miniature Plug-In Blade Fuses; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: On November 22, 1982, the Commission unanimously determined with respect to the above-captioned investigation that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) in the importation of certain miniature plug-in blade fuses into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. The Commission subsequently determined on December 1, 1982, that a general exclusion order pursuant to subsection (d) of section 337 is the most appropriate remedy for the violation found to exist, that the public-interest factors enumerated in subsection (d) do not preclude the issuance of such an order, and that the amount of the bond under subsection (g) of section 337 should be 90 percent of the entered value of the articles concerned. The Commission's Action and Order and the Commission Opinion in support thereof were issued on January 13, 1983.

The notice instituting the investigation and defining its scope was published in the **Federal Register** on January 13, 1982 (47 FR 1448).

The Commission Action and Order, the Commission Opinion, and all other nonconfidential documents on the record of the investigation are available for public inspection Monday through Friday during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

By order of the Commission.

Issued: January 13, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-1403 Filed 1-18-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice 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.

DATE: 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) not 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 [1]	Decided date
619	Burlington Northern Transportation Co., ICC-BN-C-0236, (Grain or grain products) via BN ports in OR or WA	3	1-12-83
623	Soo Line Railroad Co., ICC-SOO-C-0314, Supplement 1, (Chlorine gas, liquefied, sodium, caustic)	3	1-12-83
626	Burlington Northern Railroad Co., ICC-BN-C-0255, (Soybean or vegetable oil)	3	1-12-83

[1] Review Board No. 3, Members Krock, Joyce, and Dowell.

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. 83-1291 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

As indicated by the following below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board 3. Members Krock, Joyce, and Dowell.

James H. Bayne,

Acting Secretary.

Note.—Please direct status inquiries to Team 1, (202) 275-7992.

Vol. No. OPI-FC-17

No. MC-FC-81050. By decision of January 11, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 3 approved the transfer to ROY-L-T TRUCKING, INC., Fontana, CA, of Certificates No. MC-146771 (Sub-Nos. 1 and 2) Issued March 9, 1981 and June 17, 1982, respectively, and Permits No. MC-143058 and (Sub-Nos. 1, 2, 4F, 7F, and 8F) issued February 21, 1979, March 7, 1978, March 13, 1978, August 10, 1979, November 12, 1980, November 6, 1980, respectively, to TRANS WEST CARRIERS, INC., Fontana, CA, authorizing the transportation (A) as a common carrier of (1) *such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses and agricultural feed business houses, soy products, paste flour products and dairy based products, and (2) *materials, equipment, and supplies* used in the manufacture, distribution and sales of the products in (1), between points in the U.S. in and west of Montana, Wyoming, Colorado, Oklahoma and Texas (restricted to traffic moving to or from the facilities of Ralston Purina Company), and (3) *building materials, carpet and carpet padding*, from points in CA to those points in the U.S. in and west of MT, WY, CO, OK and TX (except AK and HI), and (B) as a contract carrier of (1) *plumbing supplies*, (2) *expanded plastic articles*, (3) *paper and paper products*, and (4) *such commodities* as are dealt in by manufacturers of toilet articles and cosmetics, from and to named points and western States under contract with (a) Norris Industries, of City of Industry, CA, (b) Dolco Packaging Corp., of Burbank CA, (c) Concel, Inc., of La Palma, CA, (d) Kimberly-Clark Corporation, of Fullerton, CA, (e) Publishers Paper Co., of Portland, OR, (f) Treasure Chest Advertising Company, Inc., of Glendora, CA, and (g) Avon, of New York, NY. Transferee is a carrier holding authority under No. MC-151418. An application for TA has been filed. Condition: Prior to consummation in this proceeding and prior to a final decision in No. MC-146771 (Sub-No. 3X2), a request for substitution of applicant must be filed by the parties. Representative: Miles L. Kavaller, Suite 315, 315 South Beverly Drive, Beverly Hills, CA 90212.

For status please call Team 2 (202) 275-7030.

Vol. No. OP2-FC-021

No. MC-FC-81026. By decision of January 11, 1983, issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR 1181, Review Board Number 3, approved the transfer to Freightways, Inc., North Sioux City, SD, of Certificate No. MC-155993 (Sub-No. 1), issued July 8, 1982, to Isis Leasing Corporation (John R. Stonitsch, Trustee in Bankruptcy), Kansas City, MO, authorizing the transportation of such commodities, as are dealt in or used by grocery, restaurant and food business houses, and hotels, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, VA, WA, WV, WI, and WY. An application for temporary authority has been filed. Representative: D. Douglas Titus, 340 Insurance Exchange Bldg., Sioux City, IA, 51101, for transferee, and John R. Stonitsch, 5800 Stillwell, Kansas City, MO, 64420, for transferor.

Note.—Coincidental with consummation, the authority in MC-155993 and MC-155993 (Sub-No. 2), will be cancelled.

No. MC-FC-81066. By decision of December 17, 1982, issued under 49 U.S.C. 10926 and the transfer rules of 49 C.F.R. 1181, Review Board Number 3 approved the transfer to CORA C. KOLBERG, DBA AMERICAN EAGLE LINE, INC., Nunica, MI, of Permit No. MC-151982 (Sub-No. 1), issued November 4, 1982, to AMERICAN EAGLE LINE, INC., Grand Rapids, MI, authorizing the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with National Box Corporation, of Grand Rapids, MI. Representative: Lyle V. McCrumb, 530 76th St., SW, Grand Rapids, MI 49509.

No. MC-FC-81077. By decision January 10, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 3, approved the transfer to DENNY & SIMPSON TRUCKING CO., INC., Harrisburg, IL, of Certificate No. MC-142803, issued October 6, 1981, to SIMPSON TRUCKING, INC., Harrisburg, IL, authorizing the transportation of coal and coal products, as a common carrier over irregular routes, between points in IL, IN, KY, MO, and TN. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL., for transferee and transferor.

No. MC-FC-81093. By decision of January 11, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 3 approved the transfer to RTC DISTRIBUTION CO., Inc., Philadelphia, PA, of Certificate No. MC-44373 (Sub-No. 1), issued October 1, 1981, to RAGEN TRANSPORTATION COMPANY, INC., Gloucester City, NJ, authorizing the transportation, over regular routes, of *cork, cork products, rugs, carpets, olives, mushrooms, and poultry*, between Gloucester City, NJ and New York, NY, serving no intermediate points, but serving the off-route points of Clarksboro and Swedesboro, NJ; over irregular routes, transporting *cork, cork products, and olives*, between Gloucester City, NJ and Philadelphia, PA; *textile machinery*, between Beverly, NJ, on the one hand, and, on the other, Norristown, Pottstown, and Spring City, PA; *general commodities* (except those of unusual value, classes A and B explosives, household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Beverly, NJ, and Philadelphia, PA; *general commodities* (except those of unusual value, classes A and B explosives, livestock, used furniture, household goods, commodities in bulk, commodities requiring special

equipment, and those injurious or contaminating to other lading), between points in Monmouth, Burlington and Camden Counties, NJ, on the one hand, and, on the other, Philadelphia and Bristol, PA, New York, Verplanck and Poughkeepsie, NY, and points in Westchester County, NY. An application for temporary authority has been filed. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113.

No. MC-FC-81097. By decision of January 10, 1983 issued under 49 U.S.C. 10926 and the transfer rules of 49 C.F.R. 1181, Review Board Number 3 approved the transfer to transferee H. F. FRIESE, INC., dba H. F. FRIESE AND FRIESE FEED STORE, Friedheim, MO, of Certificates No. MC-59752 and (Sub-No. 1), issued October 11, 1949, and February 8, 1960, respectively, to transferor, H. F. FRIESE, Friedheim, MO, authorizing the transportation of (a) general commodities, with the usual exceptions, over regular routes, (1) between Daisy, MO, and National Stock Yards, IL, and return over the same route, service is authorized to and from the intermediate and off-route points of Biehle, MO, those in MO, within 8 miles of Daisy, MO, and those in St. Clair County, IL, and (2) between Daisy, MO, and Murphysboro, IL, and return over the same routes, service is authorized to and from the intermediate and off-route points of Chester, IL, and those in MO within 8 miles of Daisy, (b) livestock and farm products, from Patton, MO, to National Stock Yards, IL, serving the intermediate points of St. Louis, MO, intermediate and off-route points in Bollinger County, MO, within 15 miles of Patton, MO, and those in St. Clair County, IL, and (c) general commodities with the usual exceptions, from National Stock Yards, IL, to Patton, MO, serving the same intermediate and off-route points as in (b) above. Representative: John P. Lichtenegger, P.O. Box 403, 1210 Greenway Drive, Jackson, MO 63755 for transferee and transferor.

No. MC-FC-81103. By decision of January 11, 1983 issued under 49 U.S.C. 10926 and the transfer rules of 49 C.F.R. 1181, Review Board Number 3 approved the transfer to FRESH EXPRESS, INC., St. Louis, MO, of Permits No. MC-119552 (Sub-Nos. 13, 15X, and 16), issued August 12, 1981, July 22, 1981, and April 6, 1982, respectively, to transferor, J. T. L., INC. (Norman W. Pressman, Trustee in Bankruptcy), St. Louis, MO, authorizing the transportation of (1) general commodities (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Ralston Purina Company, of St. Louis, MO, (b) Fram Corporation and Campbell Filter Company, a subsidiary of Facet Enterprises, Inc., of East Providence, RI, (c) Potlatch Corporation, of Sikeston, MO, (d) Denton Sales Company, of Dallas, TX, (e) Thompson Can Company, of Dallas, TX, and (f) Lever Brothers Company, of Pagedale, MO, (2) pulp paper and related products, between points in the U.S., under continuing contract(s) with Simkins Industries, Inc., of Dallas, TX, and (3) general commodities (except 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 McQuay-Norris, Inc., of St. Louis, MO, and SKF Industries, Inc., of King of Prussia, PA. Representative: Robert L. Cope, 1730 M Street, NW, Ste. 501, Wash, DC 20036 for transferor and transferee. Condition: The permits under No. MC-119552 (Sub-Nos. 5 and 7 through 12), will be canceled as requested by the parties.

[FR Doc. 83-1396 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

In the matter of; 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 40 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.

Vol. No. OP1-15

Decided: January 12, 1983.

By the Commission, Review Board No. 1, Members Chandler, Parker, and Fortier.

MC 2900 (Sub-461), filed January 3, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant), (904) 353-3111. 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 Allied Corporation, or Morristown, NJ, and its subsidiaries.

MC 124170 (Sub-199), filed January 4, 1983. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Dr., Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Rd., Suite 205, Oak Brook, IL 60521, (312) 629-2900. 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 124511 (Sub-77), filed January 3, 1983. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, Suite 1515, 140 South Dearborn St., Chicago, IL 60603, (312) 580-2210. Transporting *such commodities* as are dealt in or used by manufacturers of refractories, between points in the U.S. (except AK and HI).

MC 129090 (Sub-3), filed December 29, 1982. Applicant: REPUBLIC PORTSMOUTH STORAGE CORP., P.O. Box 927, Portsmouth, VA 23704. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036, (202) 785-0024. Transporting *household goods*, as defined by the Commission, between points in AL, AZ, AR, CO, CA, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, WA, WV, WI, WY, and DC.

MC 142840 (Sub-6), filed December 27, 1982. Applicant: P.W.K. TERMINALS, INC., 625 N. 12th Ave., St. Charles, IL 60174. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, (312) 726-6525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143591 (Sub-7), filed December 29, 1982. Applicant: FLOYD WILD, INC., P.O. Box 91, Marshall, MN 56258. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting (1) *furniture and fixtures*, (2) *general commodities* (except classes A and B explosives, household goods and commodities in bulk, (3) *food and related products*, and (4) *building materials*, between points in the U.S. (except AK and HI), under continuing contract(s) in (1) with Office Equipment Warehouse, Inc., of Minneapolis, MN, in (2) with Graybow Daniels, Co., of Plymouth, MN, in (3) with Amalgamated Sugar Co., of Ogden, UT, and in (4) with Mid-American Distributing Co., of Minneapolis, MN.

MC 144381 (Sub-4), filed December 29, 1982. Applicant: RIVER CITY FREIGHT, INC., 2843 Deborah Ann, Arnold, MO 63010. Representative: James S. Goode, 2055 Castle Drive, Edwardsville, IL 62025, (618) 656-1597. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, OH, OK, TN, TX and WI.

MC 145921 (Sub-5), filed January 5, 1983. Applicant: NEXT DAY MOTOR FREIGHT, INC., 9470 Aerospace Drive, St. Louis, MO 63134. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, (901) 526-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, WI, MI, IN, KY, OH, TN, AR, MS, LA, OK, MO, KS, IA and NE.

MC 148300 (Sub-1), filed January 3, 1983. Applicant: ALL STAR VAN & STORAGE, INC., 2309 Mills Street, El Paso, TX 79901. Representative: Albert Christiansen (same address as applicant), (915) 532-1653. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in NM, AZ, and those points in TX on and west of U.S. Hwy 83.

MC 153681 (Sub-1), filed December 14, 1982, and previously noticed in FR issue of December 29, 1982. Applicant: FRAZIER-FARRIS, INC., P.O. Box 178, Gower, MO 64454. Representative: Tom B. Kretsinger, Jr., 20 East Franklin, Liberty, MO 64068, (816) 781-6000. Transporting *commodities in bulk*, between points in MO and KS. NOTE: This republication reflects the territorial description requested.

MC 156361 (Sub-7), filed January 3, 1982. Applicant: BIGBEE TRANSPORTATION COMPANY, P.O. Box 3610, American Lane, Greenwich, CT 06836-3610. Representative: Raymond L. Pucci (same address as applicant), (203)-552-3513. 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 Reed Lignin, Inc., of Greenwich, CT.

MC 156361 (Sub-8), filed January 3, 1983. Applicant: BIGBEE TRANSPORTATION COMPANY, P.O. Box 3610, American Lane, Greenwich, CT 06836-3610. Representative: Raymond L. Pucci (same address as applicant), (203)-552-3513. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Consumer Products Division of Borden Incorporated, of Columbus, OH.

MC 157671 (Sub-1), filed January 4, 1982. Applicant: TROBEC'S BUS SERVICE, INC., Rural Rt. 1, St. Joseph, MN 56374. Representative: Robert P. Sack, P.O. Box 21-307, Eagan, MN 55121, (612)-452-8770. Transporting *passengers*, in charter and special operations, beginning and ending at points in MN, Cass, Richland, Trail and Grand Forks Counties, ND, Roberts, Grant, Deuel, Brookings, Moody, Lincoln, Minnehaha and Union Counties, SD and Pierce, Douglas, Burnett, Polk and St. Croix Counties, WI, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 160650, filed January 3, 1983. Applicant: OSBORNES TRUCKING, INC., 3908 Wilbarger, P.O. Box 2100, Vernon, TX 76384. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255-6279. 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 Osborne Distributing Company, of Vernon, TX.

MC 161571, filed January 4, 1983. Applicant: AMERICAN DELIVERY SERVICE, INC., 8415 Envoy Ave., Philadelphia, PA 19153. Representative: Richard Rueda, 135 North Fourth St., Philadelphia, PA 19106, (215) 627–1923. Transporting *such commodities* as are dealt in or used by retail department stores, between points in NY, NJ, CA, AZ, NM and NY, under continuing contract(s) with H.R.T. Industries, Inc., of Los Angeles, CA. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. § 11343(e) seeking an exemption from the requirements of 49 U.S.C. § 11343, (2) file an application under 49 U.S.C. § 11343(A), or (3) submit an affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 1, 2379.

MC 163931 (Sub-1), filed January 3, 1983. Applicant: ELLIFSON TRUCKING, INC., 641 Jacobus Rd., Edgerton, WI 53534. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608) 238–3119. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in Rock County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164890, filed January 3, 1983. Applicant: CROZIER-DIX, LTD., 1560 Broadway, Room 807, New York, NY 10036. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *oil paintings, drawings, and sculptures,* between New York, NY, on the one hand, and, on the other, Chicago, IL, St. Louis, MO, Minneapolis, MN, Milwaukee, WI, Indianapolis, IN, Pittsburgh, PA, and Boston, MA.

MC 165451, filed January 3, 1983. Applicant: SKYLAND CONTRACT CARRIERS, INC., P.O. Box 781, Skyland, NC 28776. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NY 28204, (704) 372–6730. 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 Clark Equipment Company, of Buchanan, MI.

MC 165461, filed January 29, 1983. Applicant: W. F. MARTIN COMPANY, 3 Toquo Center, 2821 North Central Avenue, Knoxville, TN 37917. Representative: Joseph W. Gibbs, 21st Floor, First American Center, Nashville, TN 37238, (615) 244–2582. Transporting (1) *textile mill products,* and (2) *rubber and plastic products,* between points in the U.S. under continuing contract(s) with Furtex, Inc., of Jacksboro, TN in (1) and (2) above, and Carlisle Tire and Rubber Company, of Carlisle, PA in (2) above.

MC 165470, filed December 30, 1982. Applicant: MACK'S AUTO SALES TRUCKING COMPANY, INC., 4620 Old Jonesboro Rd. Forest Park, GA 30050. Representative: James W. Hightower, Suite 301, Allied Bank-Southwest Bldg., 5801 Martin D. Love Freeway, Dallas, TX 75237–2385, (214) 339–4108. Transporting *automobiles and trucks,* between points in the U.S. (except AK and HI).

MC 165490, filed January 4, 1983. Applicant: ROBERT MOSQUEDA d.b.a. FRESNO CHARTER SERVICE, 724 B St., Fresno, CA 93706. Representative: Robert Mosqueda (same address as applicant), (209)–485–8299. Transporting *passengers,* in charter and special operations, between points in CA, AZ, NV, and UT. NOTE: Applicant seeks to provide privately funded charter and special transportation.

MC 165491, filed January 4, 1983. Applicant: JRJ ENTERPRISES, 6350 Upper Road, Cincinnati, OH 45238. Representative: James R. Jones, (same address as applicant), (513) 941–3155. Transporting *food and related products,* between Cincinnati, OH, on the one hand, and, on the other, points in the U.S. (Except AK and HI).

MC 165521, filed January 4, 1983. Applicant: GODWIN MATERIAL SERVICE, INC., P.O. Box 214, Brantley, AL 36009. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, (205)–262–2756. Transporting (1) *commodities in bulk,* and (2) *bagged fertilizer,* between points in AL, FL, GA, MS, NC, SC, and TN.

MC 165541, filed January 6, 1983. Applicant: J. C. VAUGHAN, 7080 Crown Road, S.W., Roanoke, VA 24018. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. 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 National Pools, of Roanoke, Inc., of Roanoke, VA.

For the following, please direct status calls to Team 4 at (202) 275–7669.

Volume No. OP4–012

Decided: January 12, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF–646, filed December 15, 1982. Applicant: SOUND FORWARDERS, 130 N.W. 54th St., Seattle, WA 98107. Representative: Roy E. Bequette (same address as applicant) (206) 789–0589. As a freight forwarder, in connection with the transportation of *used household goods, unaccompanied baggage, and used automobiles,* between points in the U.S.

MC 59247 (Sub-26), filed December 29, 1982. Applicant: LINDEN MOTOR FREIGHT CO., INC., 1300 Lower Rd., Linden, NJ 07036. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 84687 (Sub-7), filed January 3, 1983. Applicant: VETERANS TRUCK LINE, INC., P.O. Box 218, Bristol, WI 53104. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. Transporting *general commodites* (except classes A and B explosives, household goods and commodities in bulk), between St. Louis, MO and points in IL and WI.

MC 104057 (Sub-9), filed January 4, 1983. Applicant: CRAFT TRANSPORT COMPANY, INC., P.O. Box 367, Gate City, VA 24251. Representative: Gorman Barger (same address as applicant), (703) 386–7112. Transporting (1) *petroleum, natural gas and their products,* between points in TN, KY, WV, NC and VA; and (2) *farm products,* between points in KY and VA.

MC 110197 (Sub-21), filed January 4, 1983. Applicant: DAVID S. DRACUP, d.b.a. DSD TRUCKING, 20 S. Hanford Ave., Jamestown, NY 14701. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *pipe and related products,* between points in Kanawha, Putnam and Upshur Counties, WV; Portage, Trumbull and Washington Counties, OH, and Chautauqua County, NY.

MC 114227 (Sub-14), filed January 4, 1983. Applicant: A & C CARRIERS, INC., 2909 E. Laketon Ave., Muskegon, MI 49442. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *chemicals and related products,* between points in MI, IN, IL and OH.

MC 114757 (Sub-7), filed January 3, 1983. Applicant: EMPIRE BUS LINES, d.b.a. LEPRECHAUN LINES, P.O.Box 2628, Newburgh, NY 12550. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893-3050. Over regular routes, transporting *passengers*, between Fishkill and Arlington, NY: from Fishkill over U.S. Hwy 9 to Poughkeepsie, NY, then over U.S. Hwy 44 to Arlington, serving all intermediate routes, and the off-route points of Downstate Correctional Facility and Beacon Correctional Facilities, near Beacon, NY.

Note— (1) Applicant seeks to provide regular-route service in interstate or foreign commerce.

(2) Applicant states it intends to tack the authority herein with its presently authorized operations.

MC 129057 (Sub-6), filed January 3, 1983. Applicant: ACADEMY MOVERS, INC., 421 W. Sycamore, Junction City, KS 66441. Representative: Alan F. Wohlstetter, 1700 K. St., NW, Washington, DC 20006, (202) 833-8884. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 133296 (Sub-17), filed December 27, 1982. Applicant: YULE TRANSPORT, INC., P. O. Box 56, Medford, MN 55049. Representative: Robert S. Lee, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333-1341. Transporting (1) *such commodities* as are dealt in or used by liquor stores, grocery stores and food business houses, between points in IL, MN, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Des Moines, IA, and points in Montgomery County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation of the Permits in MC-133296 Sub 2, issued October 2, 1069, MC-133296 Sub 4, issued March 1, 1971, MC-133296 Sub 6, issued October 31, 1974, MC-133296 Sub 7, issued July 1, 1977, MC-133296 Sub 8, issued April 9, 1979, MC-133296 Sub 10, issued May 4, 1979, MC-133296 Sub 13, issued March 4, 1981, MC-133296 Sub 15, issued August 12, 1981, and MC-133296 Sub 16, issued May 6, 1982.

MC 134836 (Sub-1), filed December 28, 1982. Applicant: I.C. KING TRUCKING, INC., 7434 West 300 North 27th St., Converse, IN 46919. Representative: Mel P. Booker, Jr., P.O. Box 1281, Old Town Station, Alexandria, VA 22313, (703) 836-6115. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Howard County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140827 (Sub-29), filed January 3, 1983. Applicant: MARKET TRANSPORT, LTD., 110 N. Marine Dr., Portland, OR 97217. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006, (202) 337-6500. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S., under continuing contract(s) with The Clorox Company, of Oakland, CA.

MC 142857 (Sub-11), filed January 3, 1983. Applicant: MCC TRANSPORTATION CO., INC., Route 2, Box 107-B, Hope, AR 71801. Representative: Mark J. Andrews, Suite 1100, 1660 L Street NW., Washington, DC 20036, (202) 452-7438. Transporting *plastic products*, between points in the U.S., under continuing contract(s) with Mobil Chemical Company, of Macedon, NY.

Mc 143427 (Sub-5), filed December 27, 1982. Applicant: WINSTON LIMOUSINE SERVICE, INC., 1650 Sycamore Ave., Bohemia, NY 11716. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022, (212) 759-3700. Over regular routes, transporting *passengers*, between junction U.S. Hwy 1 and CT Hwy 121 at or near Milford, CT, and the Airports of J.F.K. International and LaGuardia, NY: from junction U.S. Hwy 1 and Ct Hwy 121 to junction Interstate Hwy 95, then west over Interstate Hwy 95 to Bridgeport, CT, then west over Railroad Ave. to junction Interstate Hwy 95, then over Interstate Hwy 95 to Stamford, CT, then west over U.S. Hwy 1 to junction Interstate Hwy 95, then west over Interstate Hwy 95 to Bruckner Expressway, then south on Brunckner Expressway to Whitestone Bridge, then over the Whitestone Bridge to the Whitestone Expressway, then south over Whitestone Expressway to (a) Van Wyck Expressway, then south on Van Wyck Expressway to J.F.K. International Airport, and (b) Astoria Blvd., then west on Astoria Blvd., to 94th St., Then north on 94th St. to LaGuardia Airport, serving all intermediate points. Note: Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 144867 (Sub-13), filed December 30, 1982. Applicant: R & J TRANSPORT, INC., 608 N. 41st. St., Manitowoc, WI 54220. Representative: Michael, J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *general commodities* (except commodities in bulk, household goods, and classes A and B explosives), between points in WI on the east of U.S. Hwy 51, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145587 (Sub-2), filed January 4, 1983. Applicant: MD TRUCKING CORPORATION 1221 E. Costilla Ave., Littleton, CO 80122. Representative: Nancy P. Bigbee, 745 E. 18th Ave., #101, Denver, CO 80203, (303) 839-0057. Transporting *petroleum and petroleum products*, between those points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI).

MC 147027 (Sub-5), filed January 3, 1983. Applicant: REEVES' TRUCK LINES, Rt. 2, Honoraville, AL 36042. Representative: J. Douglas Harris, 200 S. Lawrence St., Montgomery, AL 36104, (205) 265-0251. 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 150806 (Sub-11), filed December 28, 1982. Applicant: WECO, INC., 500 Scott St., P.O. Box 5128, Kansas City, KS 66119. Representative: Erle W. Francis, 719 Capitol Federal Bldg., Topeka, KS 66603, (913) 232-0601. 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 Weber Transportation Company, Inc. of Kansas City, KS.

MC 151257 (Sub-3), filed January 3, 1983. Applicant: SHO LEN, INC, d.b.a. PACIFIC TRANSPORTATION, 10869 Drury Lane, Lynwood, CA 90262. Representative: Don R. Shores, Jr. (same address as applicant), (213) 639-9560. Transporting *batteries and battery supplies*, between points in the U.S. (except AK and HI).

MC 158576 (Sub-1), filed January 3, 1983. Applicant: ROSS TRUCK LEASING, INC., d.b.a. ROSS TRUCKING COMPANY, Hwy 129 North, Ocilla, GA 31774. Representative: John W. Greer, III, 925 Healey Building, 57 Forsyth Street NW., Atlanta, GA 30303, (404) 523-1601. Transporting *coal tar and coal tar creosote*, between points in AL, FL, GA, NC, SC, TN, and VA.

MC 159986 (Sub-4), filed December 29, 1982. Applicant: AMAZON INDEPENDENT TRANSPORTATION, INC., 12480 24th Ave., Marne, MI 49435. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459-6121. Transporting *general*

commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in MI and GA, under continuing contract(s) with Bishop Distribution Co., of Grand Rapids, MI, Grand Distributing and Johnson Carpet, Inc., both of Grandville, MI.

MC 160246 (Sub-2), filed January 3, 1983. Applicant: NIMROD CORPORATION, 244 E. Ogden Ave., Suite 114, Hinsdale, IL 60521. Representative: Daonald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298–1094. Transporting (1) *petroleum and coal products*, (2) *chemicals and related products*, (3) *machinery*, and (4) *metal products*, between points in IL, IN, OH, PA, on the one hand, and, on the other, points in AL, CO, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI, and DC.

MC 162247, filed January 3, 1983. Applicant: SABER TRANSPORT, INC., P.O. Box 18, Paulsboro, NJ 08066. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting (1) *cleaning compounds and chemicals*, between points in Burlington County, NJ, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX; (2) *air conditioning* and *home heating products*, between points in Mercer County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI); (3) *lighting fixtures and equipment*, between points in the U.S. (except AK and HI); and (4) *building materials*, between points in PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162817 (Sub-1), filed January 4, 1983. Applicant: NORTHWEST CONTRACT CARRIERS, INC., 2050 Antelope Rd., P.O. Box 2564, White City, OR 97503. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210, (503) 226–3755. 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 163116 (Sub-1), filed December 20, 1982. Applicant: TRAIL CAR, INC., P.O. Box 94982, Schaumburg, IL 60194. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, DC 20036, (202) 296–2900. 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 164977 (Sub-1), filed December 22, 1982. Applicant: BEAM TRANSPORT, INC., 3484 Union St., P.O. Box 557, Mineral Ridge, OH 44440. 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 the U.S. (except AK and HI), under continuing contract(s) with Liberty Steel Products, Inc., of North Jackson, OH, Hynes Industries, Inc., and Industrial Steel Company, Inc., both of Youngstown, OH.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1394 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of: 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 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.

Vol. No. OPI–14

Decided: January 12, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 30521 (Sub-4), filed December 28, 1982. Applicant: H&L BLOOM, INC., 427 Cohannet St., Taunton, MA 02780. Representative: Arthur M. White, 281 Pleasant St., P.O. Box 2547, Framingham, MA 01701, (617) 879-5000. Transporting *passengers*, in charter and special operations, beginning and ending at points in MA, RI, and CT, and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 45721 (Sub-13), filed December 27, 1982. Applicant: WHITE BUS COMPANY, INC., 907 South Orange Ave., East Orange, NJ 07018. Representative: Edward F. Bowes, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. 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 95320 (Sub-3), filed January 5, 1983. Applicant: JACKSON-ROCK SPRINGS STAGES, INC., 2016 Carson St., Rock Springs, WY 82901. Representative: James P. Zanetti (same address as applicant), (307) 362-6161. 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 96021 (Sub-5), filed January 4, 1983. Applicant: SUPER SERVICE BUS CO., Route 35, South Amboy, NJ 08879. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 737-1030. Transporting *passengers*, in charter and special operation, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 144721, filed January 3, 1983. Applicant: ANNAPOLIS BUS CO., INC., P.O. Box 3247, Annapolis, MD 21403. Representative: Paul F. Sullivan, Suite 202, 3408 Wisconsin Ave., N.W., Washington, DC 20016, (202) 363-1848. 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 146450 (Sub-2), filed January 4, 1983. Applicant: UNITED CHARTER SERVICE, INC., 1047 Mississippi St., San Francisco, CA 94107. 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 147781 (Sub-1), filed December 30, 1982. Applicant: DELANEY BUS LINES LIMITED, R.R. 1, Avonmore, Ontario, Canada KOC 1 CO. 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 148870 (Sub-2), filed January 3, 1983. Applicant: GOODHALL'S CHARTER BUS SERVICE, INC., 5010 Market St., San Diego, CA 92102. Representative: William J. Monheim, P.O. Box 1756 Whittier, CA 90609, (213) 945-2745. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant intends to provide privately-funded charter and special transportation.

MC 161011, (Sub-1), filed January 4, 1983. Applicant: TRIUMPH CHARTERS, 18488 Prospect Road, Suite Two, Saratoga, CA 95070. Representative: Mark Yim Sun Leung, (same address as applicant), (408) 996-0254. Transporting *passengers*, in charter and special operations, between points in the U.S. (Except HI).

Note.—Applicant intends to provide privately-funded charter and special transportation.

MC 161250 (Sub-1), filed January 5, 1983. Applicant: C. VERN WEST d.b.a. SIERRA WEST LIMOUSINE, 7525 Vista View, Reno, NV 89506. Representative: C. Vern West (same address as applicant), (702) 329-4310. 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 163231 (Sub-1), filed December 28, 1982. Applicant: THE TROLLEY COMPANY, 1721 Delaware Ave., Wilmington, DE 19806. Representative: Robert R. Harris, 1730 M St., N.W. Suite 501, Washington, DC 20036, (202) 296-2900. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 163980 (Sub-1), filed December 27, 1982. Applicant: CRUSADER TOURS AND COACH, INC., One Oxford Ave., Jersey City, NJ 07304. Representative: LARSH B. MEWHINNEY, 555 Madison Ave., New York, NY 10022, (212) 838-0600. 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 165450, filed January 3, 1983. Applicant: FRANK W. BLAIR, d.b.a. BLAIR FARMS, INC., 9367 Stayton Rd., S.E., Aumsville, OR 97325. Representative: Frank W. Blair (same address as applicant), (503-769-5440). Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165460, filed December 29, 1982. Applicant: NORTHFIELD BUS LINES, INC., P.O. Box 532, Northfield, MN 55057. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting *passengers*, in charter and special operations, beginning and ending at points in MN, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 165471, filed January 3, 1983. Applicant: DOOR THRU DOOR TRANSPORTATION CORP., 114 Railroad Ave., Huntington Station, NY 11746. Representative: Sidney J. Leshin, 3 East 54th St., New York, NY 10022. 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 165481, filed December 28, 1982. Applicant: FUGAZY EXPRESS, INC., 767 3rd Ave., New York, NY 10017. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755-9500. Transporting *passenger*, in charter and special operations, between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343, (2) file an application under U.S.C. 11343(A), or (3) submit an

affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 1, Room 2379.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165501, filed January 5, 1983. Applicant: AMERICAN DISTRIBUTION SERVICES, 12 Deer Run Rd., Marlborough, CT 06447. Representative: Erving T. Arnold III (same address as applicant), (203) 295–4643. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 165520, filed January 4, 1983. Applicant: LORITINE OF CALIFORNIA, INC., 12928 Midway Place, Cerritos, CA 90701. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., 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).

For the following, please direct status calls to Team 4 at 202–275–7669.

Vol. No. OP4–013

Decided: January 12, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 95466 (Sub-8), filed January 4, 1983. Applicant: DATTCO, INC., 583 South St., New Britain, CT 06051. Representative: W. C. Mitchell, 370 Lexington Ave., New York, NY 10017, (212) 532–5100. 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 115306 (Sub-3), filed December 28, 1982. Applicant: HAROLD E. COLEMAN d.b.a. COLEMAN SERVICE, P.O. Box 353, Chester, IL 62233. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in charter and special operations, beginning and ending at points in IL and MO, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 116677 (Sub-5), filed December 28, 1982. Applicant: NIAGARA FALLS SIGHTSEEING BY SHERIDAN, INC., 3466 Niagara Falls Blvd., N. Tonawanda, NY 14120. Representative: William J. Hirsch, 64 Niagara St., Buffalo, NY 14202, (716) 853–0200. Transporting *passengers*, in special and charter operations, beginning and ending at points in NY and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 117486 (Sub-2), filed December 27, 1982. Applicant: HAST, INC. d.b.a. ROYAL MESSENGER SERVICE, 9 Indian Neck Ave., Branford, CT 06405. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728–0700. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 126876 (Sub-5), filed December 29, 1982. Applicant: BUTLER MOTOR TRANSIT, INC., P.O. Box 1902, 210 South Monroe St., Butler, PA 16001. Representative: Samuel P. Delisi, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222, (412) 232–3505. 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 128306 (Sub-5), filed December 30, 1982. Applicant: T.R.Y., INC. d.b.a. YOUNG'S TRANSPORTATION, 943 Riverside Dr., Asheville, NC 28804. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 737–1030. 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 128577 (Sub-8), filed January 3, 1983. Applicant: CLYDE'S CHARTER BUS SERVICE, INC., 301 Furnace Branch Road E., Glen Burnie, MD 21601. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783–3525. 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 136546 (Sub-8), filed January 4, 1983. Applicant: PELTON BROTHERS TRANSPORT LIMITED, R.R. #3, Paris, Ontario, CD POM 2LO. Representative: William J. Hirsch, 64 Niagara St., Buffalo, NY 14202, (716) 853–0200. 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 144407 (Sub-29), filed December 29, 1982. Applicant: DECKER TRANSPORT COMPANY, INCORPORATED, 96 Route 23, Riverside, NJ 07457. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 146467 (Sub-1), filed January 3, 1983. Applicant: TRAID LINES, INC., Routes 8, Box 374, Burlington, NC 27215. Representative: Jeffrey A. Vogelman, 123 S. Royal St., Alexandria, VA 22314, (703) 683–6304. 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 148236 (Sub-1), filed January 3, 1983. Applicant: JOSEPH WARD SHUBAT d.b.a. SHUBAT BUS COMPANY, 117 East Caspian Ave., P.O. Box 275, Caspian, MI 49915. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. 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 157046 (Sub-1), filed January 3, 1983. Applicant: VARIETY TOURS, INC., 3840 Crenshaw Blvd., Suite 205, Los Angeles, CA 90008. Representative: William C. Robinson, 16133 Ventura Blvd., Penthouse Suite B, Encino, CA 91436, (213) 784–9993. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA and AZ, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165336, filed December 21, 1982. Applicant: DAVID & CASSANDRA BONNER, d.b.a BONNER ENTERPRIZE, R.D. 1, Box 237, Guyton, GA 31312. Representative: David J. Bonner (same address as applicant), (912) 728–3715. 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 165446, filed December 27, 1982. Applicant: LEON B. KERR, 4011 14th St., Greeley, CO 80634. Representative: Leon B. Kerr (same address as applicant),

(303) 353–6848. Transporting *food and other edible products and by products 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 165456, filed January 3, 1983. Applicant: JOE HARD, d.b.a HART MOVING & STORAGE, 302 Ave. L, Lubbock, TX 79401. Representative: Joe Hart (same address as applicant), (806) 763–4191. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in Lubbock, Lamb, Hockley, Terry, Lynn, Garza, Crosby, Floyd, Hale, Castro, Swisher, Briscoe, Motley, Cottle, Dickens, King, Kent, Yoakum, Cochran, Andrews, Dawson, Gaines, and Martin Counties, TX.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1395 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP 3-9]

Motor Carrier; Permanent Authority Decisions; Decision-Notice

Decided: January 13, 1983.

90-Day Intrastate Motor Common Carriers of Passengers.

The following applications, filed on or after November 19, 1982, are governed by Part 1168 of the Commission's Rules of Practice. See 49 CFR Part 1168, published in the **Federal Register** on November 24, 1982, at 47 FR 53275. For compliance procedures, see 49 CFR 1168.6 and 49 U.S.C. 10922(c)(2)(E).

Persons wishing to oppose an application must follow the rules under 49 CFR Part 1168. In addition to fitness grounds, applications may be opposed on the grounds that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on all commuter bus service in the area in which the competing service will be performed. 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.

Finding

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 decisions 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 25 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 30 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Carleton, Williams, and Ewing.

James H. Bayne,

Acting Secretary.

Note.—All applications are filed under 49 U.S.C. 10922(c)(2)(A) for authority to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has interstate, regular-route authority on November 19, 1982.

Please direct status inquiries to Team 3, (202) 275–5223.

MC 74 (Sub-15), filed December 30, 1982. Applicant: VALLEY TRANSIT COMPANY, INC., P.O. Box 1870, Harlingen, TX 78551. Representative: Paul D. Angened, P.O. Box 2207, Austin, TX 78768, (512) 476–6391. Applicant seeks authority to transport *passengers* in intrastate commerce at all intermediate points on routes in No. MC 74 (Sub-Nos. 9, 10 and 11) as follows: In each of the above authorities, over all of the routes which traverse TX.

[FR Doc. 83-1401 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 322]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: January 11, 1983.

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, Review Board No. 2, Members Carleton, Williams, and Ewing.

James H. Bayne,

Acting Secretary.

MC 9251 (Sub-5)X, filed December 17, 1982. Applicant: S & M TRUCK LINE, INC., P.O. Box 813, Mt. Angel, OR 97362. Representative: John A. Anderson, Suite 801, The 1515 Bldg., 1515 SW Fifth Ave., Portland, OR 97201. Lead and Sub-4 certificates: (1) broaden to "general commodities (except classes A and B explosives, household goods and commodities in bulk)" from general commodities (with usual exceptions), in lead and Sub-4; (2) authorize service to all intermediate points, in lead; (3) expand off-route points to counties (a) in

lead, Clackamas and Marion Counties, OR (Scott Mills, Marquam, St. Benedict, Monitor, Mt. Angel, OR), and Marion and Polk Counties, OR (points within three miles of OR Hwy. 213 between Silverton and Salem, OR), and (b) in Sub-4, Marion and Linn Counties, OR (Aumsville, Victor Point School, and points within 5 miles of authorized routes between Silverton and Stayton, OR); (4) remove the pickup at and delivery at restriction in lead.

MC 61396 (Sub-409)X, filed December 21, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Sub-No. 367F certificate, broaden (1) commodity description to "clay, concrete, glass or stone products," from cement; (2) facilities and city points to countywide authority: Knox County, TN (Knoxville), and Marion County, TN (facilities near Richard City); and (3) one-way service to "radial" authority.

MC 86782 (Sub-7)X, filed December 27, 1982. Applicant: RICHARD L. EDGAR, d.b.a. SAMSON TRUCK LINE, P.O. Box 456, Mt. Home, ID 83647. Representative: Kenneth G. Bergquist, P.O. Box 1775, Boise, ID 83701. Sub-3, (1) broaden to "general commodities (except classes A and B explosives)," and remove the exceptions: those of unusual value, livestock, and commodities requiring special equipment; (2) authorize service to all intermediate points; and (3) remove: the restriction against serving the Mountain Home Air Force Base near Mountain Home, ID, and the originating at or destined to restriction.

MC 111397 (Sub-140)X, filed December 16, 1982. Applicant: DAVIS TRANSPORT, INC., 1345 South Fourth St., Paducah, KY 42001. Representative: H. S. Melton, Jr., P.O. Box 7406, Paducah, KY 42001. Sub-Nos. 1, 32, 35, 46, 50, 51, 53, 58, 59, 63, 64, 67, 68, 69, 73, 74, 78, 79, 80, 82, 84, 89, 95, 98, 100, 103, 110, 117, 124F, 126F, 129F, 130F, and 134F certificates. (1) Broaden commodity descriptions in (a) Sub 1, to: petroleum or coal products (petroleum and petroleum products, in bulk, in tank vehicles); chemicals or allied products and petroleum or coal products (coal tar and coal tar products, in bulk, in tank vehicles); petroleum or coal products (coke, in hopper trailers); containers (empty containers used in the transportation of coke); chemicals or allied products (compressed gases in shipper-owned cylinders and manifold-tube semitrailers); containers, carriers or devices, shipping, returned empty, and transportation equipment (empty gas containers and shipper-owned semitrailers used in transporting compressed gases); chemicals or allied products (oxygen, hydrogen, and nitrogen, in bulk, in shipper-owned vehicles); transportation equipment (empty shipper-owned vehicles); and, petroleum or coal products (carbon black, in bulk, in hopper-type trailers; (b) Subs 32 and 58, clay, concrete, glass or stone products (fire brick, tile, refractory materials, and accessories used in the building and maintenance of coke ovens); (c) Sub 35, petroleum or coal products (coke, in hopper-type trailers); (d) Subs 46, 50, 51 and 129, clay, concrete, glass or stone products (cement, cement in bulk, and cement and mortar in bulk and bags); (e) Subs 53 and 73, petroleum or coal products (carbon black, in bulk, in hopper or pneumatic-type trailers); (f) Subs 59 and 63, clay, concrete, glass or stone products (limestone, in bulk, and granulated limestone); (g) Sub 64, petroleum or coal products (emulsified asphalt in bulk, in tank vehicles); (h) Sub 67, chemicals or allied products (dry fertilizer, in bulk); (i) Sub 68, lumber or wood products (wood chips); (j) Sub 69, chemicals or allied products (anhydrous ammonia, in bulk, in tank vehicles, and dry urea, in bulk); (k) Subs 74, 78, and 124, clay, concrete, glass or stone products (clay in bulk, absorbent clay in bags, and clay); (l) Sub 79, chemicals or allied products (hydrated alumina and calcined alumina); (m) Sub 80, clay, concrete, glass or stone products (feldspar in bulk, in dump hopper vehicles, and in bags); (n) Sub 82, chemicals or allied products (ferrophosphorous, in bulk, in dump vehicles); (o) Sub 84, chemicals or allied products (ammonium nitrate fertilizer); (p) Subs 89 and 98, chemicals or allied products (liquid synthetic latex, in bulk); (q) Sub 95, chemicals or allied products (dry calcium chloride); (r) Sub 100, clay, concrete, glass or stone products (fly ash in bulk); (s) Sub 103 chemicals or allied products (dry fertilizer, dry fertilizer material, and dry urea, in bulk); (t) Sub 110, coal (ground coal, in bulk); (u)(Subs 117, 126, and 134, clay, concrete, glass or stone products (granulated slag); and, (v) Sub 130, primary metal products, including galvanized (zinc, zinc oxide, zinc dust, zinc dross, metallic cadimum, and lead sheet); (2) broaden plantsites and cities to countywide authority: (a) Sub 1, Gibson County, IN (pipeline terminal near Princeton, Gibson County, IN); Warren County, OH (pipeline terminal near Lebanon, Warren County, OH); and, Marshall County, KY (Calvert City); (b) Sub 32, Marshall County, KY (Calvert City,and that portion of Marshall County, KY located between U.S. Hwy 62 and the Tennessee River); (c) Subs 46 and 95, McCracken County, KY (Paducah); (d) Sub 51, Massac County, IL (plantsite near Joppa); (e) Sub 58, Callaway and Audrain Counties, MO (Fulton and Vandalia); (f) Sub 63, Caldwell County, KY (plantsite near Fredonia); (g) Sub 68, Pulaski County, IL (Karnak), and Marshall County, KY (Calvert City); (h) Sub 69, Orleans Parish, LA (plantsite at Avondale); (i) Sub 74, Graves County, KY (plantsite near Mayfield); (j) Sub 78, Henry County, TN (plantsite at Paris); (k) Sub 79, Lawrence County, OH (plantsite at Ironton); (l) Sub 80, Jasper County, GA (plantsite at Monticello); (m) Sub 82, Maury County, TN (plantsite at Mt. Pleasant); (n) Sub 84, Williamson County, IL (plantsite at Ordill); (o) Sub 89, Graves County, KY (plantsite at Mayfield), and Madison County, TN (plantsite near Jackson); (p) Sub 98, Graves County, KY (plantsite near Mayfield, and Adams County), MS (plantsite near Natchez); (q) Sub 100, Massac County, IL (Metropolis), and Livingston County, KY (project site near Dog Island); (r) Sub 103, Hamilton County, OH (plantsite near Cincinnati); (s) Sub 110, Kanawha County, WV (plantsite near Hansford), Marion County, IN (Indianapolis), Seneca County, OH (Tiffin), and Wayne County, MI (Detroit); (t) Sub 117, Shelby County, TN (Memphis); (u) Sub 126, Shelby County, TN (facilities at Memphis); (v) Sub 129, Cape Girardeau, MO (facilities at Cape Girardeau); (w) Sub 130, Beaver County, PA (facilities at Josephtown), and St. Louis City and St. Louis County, MO (St. Louis); and, (x) Sub 134, Muhlenburg County, KY (facilities near Greenville); (3) broaden one-way service to "radial authority" in all certificates; and (4) remove restrictions in Subs 32, 50, 95, and 100, which restrict (a) against transportation of "commodities which because of size or weight require the use of special equipment," (b) transportation to shipments having a prior rail or barge movement, and, (c) transportation to traffic having an immediately prior movement by rail.

MC 141733 (Sub-5)X, filed December 22, 1982. Applicant: UNION TRANSIT COMPANY, INC., 2406 Boston Road, Wilbraham, MA 01095. Representative: James M. Burns, Suite 403, 1365 Main Street, Springfield, MA 01103. Lead and Subs 2F and 4F: (1) Broaden commodity description from (a) tools, forgings, tool boxes, packing containers, and materials, supplies and equipment used in the manufacture and distribution of such commodities to "tools, metal products, toolboxes, packing containers and materials, equipment and supplies used in the manufacture thereof" in the

lead and Sub 2F; and (b) paper and paper articles, and materials and supplies to "pulp, paper and related products" in Sub 4F; (2) broaden territorial descriptions to between points in the U.S. under continuing contract(s) with Easco Hand Tools, Inc., in the lead and Sub 2F, and American Pad & Paper Company in Sub 4F; and (3) remove the except commodities in bulk restrictions from all permits.

MC 148693 (Sub-2)X, filed December 14, 1982. Applicant: J. D. TRANSPORTS, INC., P.O. Box 179, Memphis, TN 38101. Representative: John Paul Jones, P.O. Box 3140, Front Street Station, 189 Jefferson Ave., Memphis, TN 38103. Sub 1F permit: broaden territorial description to between points in the United States, under continuing contract(s) with John Deere Company of East Moline, IL.

[FR Doc. 83-1303 Filed 1-18-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-231

The following applications were filed in region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 134783 (Sub-5-7TA), filed January 6, 1983. Applicant: DIRECT SERVICE, INC., P.O. Box 2491, Lubbock, TX 79408. Representative: Charles M. Williams, 1600 Sherman St., Suite 665, Denver, CO 80203. *Such commodities as are dealt in or used by manufacturers and distributors of office and school supplies, printing supplies, and paper and paper products,* from St. Louis, MO and points in its commercial zone, and Webster and Morehouse Parishes, LA to points in TX. Supporting shipper: Jim Walter Papers, Inc., Jacksonville, FL.

MC 144609 (Sub-5-4TA), filed January 5, 1983. Applicant: DOMINGUEZ BROS. TRUCKING CO., 1500 South Zarzamora St., San Antonio, TX 78207. Representative: Kenneth R. Hoffman, 1600 W. 38th Street, Suite 410, Austin, TX 78731. *Food and related products* between points in CA, OR and WA. Supporting shipper: Texsun Corp., Weslaco, TX.

MC 149147 (Sub-5-5TA), filed January 6, 1983. Applicant: DECKERT TRANSPORT, INC., 12223 East Fourth Place, Tulsa, OK 74128. Representative: David R. Worthington, 1916 East Valley Road, Sapulpa, OK 74066. *(1) Paper Bags, In Packages (2) Non-Refigerated Single-Strength Juice In Glass Bottles* (1) From Hodge, LA to Tulsa, OK (2) From Bradenton, FL to Tulsa, OK. Shipments destined to Quik-Trip Corp. in Tulsa, OK. Supporting shipper: Quik-Trip Corp., Tulsa, OK.

MC 150440 (Sub-5-8TA), filed January 6, 1983. Applicant: UNIVERSAL EXPRESS, LTD., 3820 University, West Des Moines, IA 50265. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Pneumatic tires,* from Hopkins County, KY, to Des Moines, IA and points in Bartow County, GA; Weakley County, TN; and Washington County, WI. Supporting shipper: Dico Company, Inc., Des Moines, IA.

MC 165560 (Sub-5-1TA), filed January 7, 1983. Applicant: JAMES W. TONEY, R.R. 1, Box 7, Decatur City, IA 50067. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Potash, in bulk,* from Carlsbad, NM to points in IA, KS and MO. Supporting shipper(s): Mid-West Fertilizer, Inc., Paola, KS.

James H. Bayne,
Acting Secretary.

[FR Doc. 83-111301 Filed 1-18-83; 8:45 am]
BILLING CODE 7035-01-M

Agricultural Cooperative; Notice of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: January 14, 1983.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Dairylea Cooperative Inc.
(2) 831 James Street, Syracuse, NY 13203
(3) P.O. Box 395, Tannery Lane, Vernon, NY 13476
(4) Frank Reile, P.O. Box 395, Tannery Lan, Vernon, NY 13476

(1) Indiana Farm Bureau Cooperative Association, Inc.
(2) 120 East Market St., Indianapolis, IN 46204
(3) 120 East Market St., Indianapolis, IN 46204
(4) Charles Shaw, 120 East Market St., Indianapolis, IN 46204

(1) Knouse Foods Cooperative, Inc.
(2) Peach Glen, PA 17306
(3) Peach Glen, PA 17306
(4) William H. Horner, Peach Glen, PA 17306

(1) Southern States Cooperative, Inc.
(2) 6606 West Broad St., P.O. Box 26234, Richmond, VA 23260

(3) 6606 W. Broad St., P.O. Box 26234, Richmond, VA 23260
(4) Garry L. Horn, P.O. Box 26234, Richmond, VA 23260

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-1392 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carriers; Decision

Decided: January 5, 1983.

Kingsway Transports Limited (No. MC-122908) an Kingsway Dalewood Limited (No. MC-133690), commonly controlled, petition for waiver of Subpart B, §§ 1057.11 (except paragraph (b)) and 1057.12 of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057) with respect to equipment augmented between them, provided they agree in writing that the lesee will control and be responsible for the equipment during the lease period, that a copy of the agreement be carried on the vehicle while in lessee's possession, and that a receipt as required by paragraph (b) of § 1057.11 be furnished only to the lessor.

We find:

1. Petitioners are commonly controlled and jointly administer a common safety program, and they have acceptable fitness records.

2. Greater economy and efficiency would result if the requirements of Subpart B were waived in part.

3. Petitioners have presented no evidence warranting waiver of the requirements of paragraph (b) of § 1057.11 that the receipt required by paragraph (b) of § 1057.11 be turned over to the lessee at the time equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

It is ordered:

The petition of Kingsway Transport Limited and Kingsway Dalewood Limited, for waiver of Subpart B, of the leasing regulations is granted with respect to equipment leased between them, provided petitioners or their authorized representatives agree in writing that control and responsibility for operating the equipment shall be that of the lessee from the time possession is taken by lessee, and the receipt required by paragraph (b) of § 1057.11 is furnished to the lessor until possession is returned to lessor or the equipment is interchanged with another authorized carrier, and that a copy of the agreement is carried on the vehicle while in the lessee's possession, and, further provided that petitioners remain under common control.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1398 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30072]

Amherst Industries, Inc.; Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Amherst Industries, Inc. from 49 U.S.C. Subtitle IV in connection with its current rail operations.

DATES: This exemption is effective on February 18, 1983. Petitions to stay the effectiveness of this decision must be filed by January 31, 1983, and petitions for reconsideration must be filed by February 8, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423
(2) Petitioner's Representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1240, Arlington, VA 22210.

Pleadings should refer to Finance Docket No. 30072.

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 Avenue, NW., Washington, D.C. 20423, (202) 289-4357—DC metropolitan area (800) 424-5403—Toll free for outside the DC area.

Decided: January 11, 1983.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1400 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15063]

Gary McLean, Terry McLean, Doug McLean, and Rod McLean—Continuance in Control Exemption—Northwest Contract Carriers, Inc., Interstate Distributor Co., and Interstate Draying Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte no. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property under 49 U.S.C. 11343,* 47 Fed. Reg. 53303 (November 24, 1982), Gary McLean, Terry McLean, Doug McLean, and Rod McLean, who jointly control Interstate Distributor Co. (No. MC-117201) and Interstate Draying Co. (No. MC-151925) seek an exemption from the requirements of prior regulatory approval under 49 U.S.C. 11343 for their continuance in control of Northwest Contract Carrier, Inc. (No. MC-162817).

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Team 1, Room 2379, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative, Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210.

Comments should refer to No. MC-F-15063.

FOR FURTHER INFORMATION CONTACT: Joyce Lannon, (202) 275-7992.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: January 13, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1389 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30088]

Southern Pacific Transportation Co.; Abandonment Exemption—In Fresno County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 et seq. the abandonment by the Southern Pacific Transportation Company of 2.55 miles of its Coalinga Branch between milepost 296.387 at Coalinga and milepost 293.837 near Ora in Fresno County, CA, subject to conditions for protection of employees.

DATES: This exemption will be effective on February 18, 1983. Petitions to stay the effective date must be filed by January 31, 1983, and petitions for reconsideration must be filed by February 8, 1983.

ADDRESSES: Send pleadings to: (1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, D.C. 10423.

Petitioner's Representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

Pleadings should refer to Finance Docket No. 30088.

FOR FURTHER INFORMATION CONTACT: Louise 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 Avenue NW., Washington, DC 20423, (202) 289–4357—DC metropolitan area (800) 424–5403—Toll free for outside the DC area.

Decided: January 11, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Gilliam, Andre, Simmons, and Gradison. Commissioner Gilliam did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1399 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. MC-F-15072]

Philip E. Lattavo—Continuance in Control Exemption—Action Transit Company, Inc., Lattavo Brothers, Inc., and Peoples Cartage, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e) and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1) *Procedures for Handling Exemptions Filed by Motor Carriers of Property under 49 U.S.C. 11343*, 47 *FR.* 53303 (November 24, 1982), Philip E. Lattavo seeks an exemption from requirements under section 11343 of prior regulatory approval for his continuance in control of Action Transit Company, Inc. (No. MC–149604), Lattavo Brothers, Inc. (No. MC–45149), and Peoples Cartage, Inc. (No. MC–123685).

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESS: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative, M. Diane Neal, Esq., 2230 Shepler Church Avenue, SW. P.O. Box 6270, Canton, OH 44706

Comments should refer to No. MC–F–15072

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: January 13, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-1390 Filed 1-18-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Judgment on Consent In Action To Remedy Violations of the Clean Air Act and for Civil Penalties

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 15, 1982, a proposed Judgment on Consent in *United States* v. *Gulf Oil Corporation* was lodged with the United States District Court for the Eastern District of New York. The proposed judgment would require Gulf to make corrections to the vapor recovery systems at its Oceanside terminal and to pay a penalty of $25,000.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this Notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States of America* v. *Gulf Oil Corporation*, D.J. No. 90–5–2–1–539.

The proposed Judgment on Consent may be examined at the Office of the United States Attorney, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y. 11201, at the Region II Office of the Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York, 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1515), Ninth and Pennsylvania Avenue, Washington, D.C. 20530. A copy of the proposed Judgment on Consent can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-1411 Filed 1-18-83; 8:45 am]

BILLING CODE 4410-01-M

Buffelen Woodworking Co., Inc.; Proposed Consent Decree in Action To Enforce the Clean Air Act

In accordance with the Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 29, 1982, a consent decree in *United States* v. *Buffelen Woodworking Company, Inc.*, Civil No. C82–86IT, was submitted to the United States District Court for the Western District of Washington. The decree provides for settlement of a suit under the Clean Air Act concerning the defendant's facility in Tacoma, Washington. The decree requires that the defendant comply with the particulate and visible emission standards promulgated pursuant to the Clean Air Act, pay a penalty for past violations of the visible emission standard and pay stipulated penalties in the event of a breach of the terms of the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Buffelen Woodworking Company, Inc.*, D.J. Ref. No. 90–5–2–1–569.

A copy of the consent decree may be examined at the office of the United

States Attorney, Western District of Washington, 3600 Sea-First Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; at the Region 10 Office of the United States Environmental Protection Agency, Office of Regional Counsel, 1200 6th Avenue, Seattle, Washington 98101; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting the consent decree, please send a check or money order in the amount of $1.00 (10 cents per page reproduction charge) made payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-1402 Filed 1-18-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 82-30]

Drug Fair of Bayonne; Bayonne, New Jersey; Hearing

Notice is hereby given that on October 29, 1982, the Drug Enforcement Administration, Department of Justice, issued to Drug Fair of Bayonne an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AD1548152.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, January 25, 1983 in Courtroom No. 2-A, Room 305, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: January 12, 1983.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 83-1439 Filed 1-18-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Committee Management, Ad Hoc Advisory Group on Crustal Studies; Notice of Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Ad Hoc Advisory Group on Crustal Studies is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

NAME OF COMMITTEE: Ad Hoc Advisory Group on Crustal Studies.

PURPOSE: To provide advice, recommendations, and counsel on major goals and priorities pertaining to NSF activities and programs relating to crustal studies, including drilling programs.

EFFECTIVE DATE OF ESTABLISHMENT AND DURATION: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of congress having legislative jurisdiction of the Foundation. The Group will operate on an ad hoc basis for three months.

GSA has waived the requirement that the Notice of Establishment appear in the **Federal Register** 15 days prior to the filing of the charter because this Group needs to meet before the first congressional hearings on the budget which are scheduled to begin on February 15, 1983.

MEMBERSHIP: The membership of this Group shall be fairly balanced in terms of the points of view represented and expertise in the appropriate scientific desciplines. Members will be individuals eminent in the related scientific fields. Due consideration will be given to achieving membership that reasonably represents the academic research community; not-for-profit and for-profit research organizations; and other balance, including geographic regions of the country.

OPERATION: The Group will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Foundation policy and procedures, OMB Circular A-63, Revised, and other directives and instructions issued in implementation of the Act.

Edward A. Knapp,

Director.

January 17, 1983.

[FR Doc. 83-1585 Filed 1-18-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence; Radiological Contamination From Well Logging Operations

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria notes that moderate release of radioactive material licensed by or otherwise regulated by the Commission can be considered an abnormal occurrence. While no individual internal or external exposure limits were exceeded, the importance of the event was enhanced by the widespread nature of the radiological contamination (including unrestricted areas) and the significant clean up efforts and costs required. The following description of the incident also contains information on the remedial actions planned and taken.

Date and Place—On September 1, 1982, the NRC Region I office was notified by Consolidation Coal Company, Library, Pennsylvania, that one, and possibly two americium-241 sealed sources had been ruptured during well logging operations at a field site near Jollytown, Pennsylvania.

Nature and Probable Cause—The licensee's well logging device, used in coal exploration, included two sealed sources each containing 250 millicuries of americium-241 (a radioisotope with a 432 year half-life) as powdered oxide, compacted into a double-walled capsule. The sources are attached to a suspension cable which is lowered into a drill hole.

The licensee's procedure is to lower the device (and sources) to the bottom of the drill hole, and then to withdraw the device at a controlled rate to log (profile) the hole. If the well logging device becomes wedged in the hole, the cable is designed to release, at the point

of attachment to the device, when extreme tension is exerted on the cable. Recovery operations for the device can include the use of drilling to enlarge the diameter of the drill hole. The licensee had successfully retrieved wedged devices on nine previous occasions using such a procedure.

During well logging operations at a field site near Jollytown, Pennsylvania on August 19, 1982, the device became wedged at the 420 foot level in a drill hole of 950 feet total depth. While exerting considerable tension on the cable, the cable broke off about 80 feet above the device, rather than releasing at the device as designed.

During recovery operations on August 27, 1982, while drilling at a level which the licensee thought was well above the expected level of the stuck device, one (or both) of the americium-241 sealed sources was apparently ruptured by the drill bit. Apparently, the drill bit cutting through the 80-foot cable caused the device to move from the original wedged level to the drill bit. Americium-241 contamination mixed with drilling mud used to cool and lubricate the bit. This mud was discharged to a nearby retention basin for recycling. The americium-241 contamination was not detected during licensee surveys because the survey instrument was not sufficiently sensitive for the procedures being used. Licensee representatives, believing the americium-241 sources still intact, replaced the first drilling rig with one more suited for planned recovery operations. The first drilling rig was sent to a second site nearby. On September 1, 1982, licensee representatives identified americium-241 contamination in the retention basin and immediately notified the NRC.

The immediate concerns were to determine the extent of the contamination and its concentration. The principal radioactive decay scheme of the americium series is predominately a series of alpha particle emitters. For example, both americium-241 and its daughter neptunium-237 are alpha emitters; the latter also generates low energy X-rays. The radioactive material could be hazardous, particularly if inhaled or ingested.

Radiological surveys and contamination evaluations, both on and offsite, were performed by the NRC, the Commonwealth of Pennsylvania, and the licensee. On September 1, 1982, a Pennsylvania state inspector found contamination onsite as high as 10 millirem per hour in a small area of drilling mud. On September 2, 1982, an NRC Region I inspector found spots of contamination near the drilling rig as high as 6 millirem per hour at contact; most spots were less than 1 millirem per hour. The onsite surveys identified contamination at both drilling rigs, five vehicles and various drilling pipes, casings and hand tools. Contamination levels ranged from 100 to greater than 1,000,000 disintegrations per minute per 100 square centimeters. The latter value is equivalent to about 0.5 microcuries per 100 square centimeters. Offsite surveys were performed at 20 private residences, a motel, and the licensee's corporate offices. These surveys identified contaminated shoes, clothing, and/or equipment at the motel, the corporate office, and nine private residences ranging from 20 to 600,000 disintegrations per minute per 100 square centimeters. Seven of the homes where contaminated articles were found belonged to work crew members, and two homes belonged to local residents who had walked onto the drilling sites prior to the identification of the contamination incident. All contaminated articles were bagged and returned to the original site for storage. No skin contamination was identified on any person. The licensee is presently decontaminating equipment and the sites. The NRC guidelines for release of facilities and equipment for unrestricted use are 20 and 100 disintegrations per minute per 100 square centimeters for removable and non-removable contamination, respectively, for the radioactive material involved.

Film badges worn by licensee personnel on the sites indicated minimal exposures. Ten individuals who had the most intimate contact with the americium-241 contamination were given whole body counts and urine bioassays. No internal contamination was identified.

The consequences of this incident were that, while no individual external or internal exposure limits were exceeded, there were 11 locations where loose radioactive material was found in unrestricted areas frequented by members of the general public. The financial impact on the licensee will be substantial; clean up costs are estimated by the licensee to be as much as $1,000,000.

Cause or Causes—The direct cause of this contamination incident is the rupture of at least one of the americium-241 sources by the drill bit. The most likely cause was the presence of 80 feet of cable, still attached to the source, a recovery problem which had not been previously encountered. The drill bit cutting through the 80 foot cable apparently moved the device (from the expected, original wedged location) closer to the drill bit until the drill bit ruptured one of both sources.

A contributing cause was the inadequate use of survey instrumentation which failed to identify the americium-241 contamination even though the licensee was making periodic radiological surveys.

Actions Taken to Prevent Recurrence

Licensee—The licensee, in addition to the State of Pennsylvania and NRC inspectors, performed radiological surveys to determine the extent of the contamination, both on and offsite. Contaminated articles found were returned to the original site for storage. Equipment and any contaminated areas are being decontaminated. All sealed sources containing powdered americium-241 oxide used in well logging devices will be replaced with americium-241 sealed sources composed of ceramic microspheres. In addition, instrumentation will be purchased which is sensitive to low levels of radioactive contamination. Recovery procedures have been changed to eliminate drilling operations during recovery attempts.

NRC—The investigation into this incident is continuing. In addition, the NRC will review the incident to determine whether more specific information on recovery techniques will be necessary during license reviews of well logging operations.

An Inspection and Enforcement Information Notice is being considered to send to licensees to inform them of this event.

Dated at Washington, D.C. this 13th day of January 1983.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-1489 Filed 1-18-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 91 to Facility Operating License No. DPR-31 and Amendment No. 85 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications to correctly identify horizontal tendon 64H50, which

was incorrectly identified as 64H51, as one of the tendons surveyed during the first, third, fifth and tenth year surveillance.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 5, 1982, (2) Amendment Nos. 91 and 85 to License Nos. DPR-31 and DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of January, 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-1490 Filed 1-18-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-546 and STN-547]

Public Service Company of Indiana and Wabash Valley Power Association, Inc., Marble Hill Nuclear Generating Station, Units 1 and 2; Order Extending Construction Completion Dates

Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc., are the holders of Construction Permit Nos. CPPR-170 and CPPR-171 issued on April 4, 1978 by the U.S. Nuclear Regulatory Commission for construction of the Marble Hill Nuclear Generating Stations, Units 1 and 2 to be located in Saluda Township, Jefferson County, Indiana.

By letter, dated November 24, 1982, Public Service Company of Indiana, acting for itself and the Wabash Valley Power Association, Inc., filed a request for extension of the earliest and latest construction completion dates for the Marble Hill Nuclear Generating Stations, Units 1 and 2 Construction Permits. It was requested that Construction Permit No. CPPR-170 for Unit 1 be extended from January 1, 1982 and January 1, 1984, earliest and latest dates, respectively, to March 1, 1986 and March 1, 1988, respectively, and for Construction Permit CPPR-171, Unit 2 to be extended from January 1, 1984 and January 1, 1986, earliest and latest dates, respectively to September 1, 1987 and September 1, 1989, respectively. The reasons given for the requested extension in time were:

1. Voluntary suspension of safety-related work stoppage in August 1979 due to growing concerns about the adequacy and effectiveness of the quality assurance program, followed by a confirmatory order ceasing safety-related work issued by the Commission's Director of Inspection and Enforcement in August 1979. This rescission order remained in effect until February 12, 1982.

2. Subsequent design revisions, added work complexities, additional scope, increased regulatory requirements and the applicants' expanded commitment to quality assurance for the remaining construction activities further expanded the schedule for a projected four years.

The NRC staff has determined that no extension of the earliest completion dates are needed and have not acted on the applicant's request on that matter.

This action involves no significant hazards consideration, good cause has been shown for the delays, and the requested extension of the latest completion date is for a resonable period, the bases for which are set forth in the staff's safety evaluation for this extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

The applicant's letter, dated November 24, 1982, and the NRC staff's safety evaluation supporting the Order are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana 47250.

It is hereby ordered that the latest construction completion date for CPPR-170, Unit 1 be extended from January 1, 1984, to March 1, 1988, and that the latest construction completion date for CPPR-171, Unit 2 be extended from January 1, 1986 to September 1, 1989.

Date of Issuance: January 13, 1983.

For the Nuclear Regulatory Commission.

Rober A. Purple,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-1491 Filed 1-18-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

Virgil C. Summer Nuclear Station, Unit No. 1; Issuance of Amendment to Facility Operating License No. NPF-12

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees) for the Virgil C. Summer Nuclear Station, Unit No. 1 (the facility) located in Fairfield County, South Carolina. The amendment was authorized by telephone on December 28, 1982, and was confirmed by letter on December 29, 1982. The amendment authorizes, through July 1, 1983, operation of the facility with certain containment isolation valves inoperable. The amendment was issued on an expedited basis so the facility could change power modes. The amendment was effective December 28, 1982.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) South Carolina Electric & Gas Company letter, dated December 28, 1982, (2) Amendment No. 8 to Facility Operating License No. NPF–12 with Appendix A Technical Specifications page changes, and (3) the Commission's related safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. A copy of Amendment No. 8 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of January 1983.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-1492 Filed 1-18-83; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. MC83–2; Order No. 476]

Mail Classification Schedule, 1983 ZIP+4 First-Class Subclasses; Order Granting Petitions for Intervention and Allowing Participation and Establishing Tentative Procedural Schedule

Issued: January 5, 1983.

On December 10, 1982, this Commission issued a Notice [1] stating that the United States Postal Service had filed a Request for a Recommended Decision on establishing two new subclasses of first class, ZIP+4 letters and ZIP+4 cards. The Notice directed those desiring to participate in the proceeding to file, on or before December 30, 1982, petitions for leave to intervene (39 CFR 3001.20) or requests to be heard as a limited participant (39 CFR 3001.19a). In addition, persons wishing to express their views informally, but not desiring to become a party or limited participant, were permitted to file comments (39 CFR 3001.19b).

In response to the Notice, this Commission has received 10 petitions to intervene. These parties are listed in Attachment A. In addition, 9 requests to be heard as limited participators were received. These parties are listed in Attachment B.

Any answers to such petitions are to be filed by January 10, 1983. In order to advise those filing petitions of their status at the earliest possible date, and to establish an initial service list for this proceeding, we have decided to rule on the petitions at this time, subject to reconsideration on the basis of any answers which may yet be filed.

The petitioners listed in Attachments A and B are either users of the mail or have otherwise demonstrated an interest in this proceeding. Accordingly, their requests for participation will be granted.

Concurrent with the issuance of this Order, the Secretary is transmitting a service list to be employed by all parties, whether full or limited participants, in making filings in the proceeding. The Postal Service, pursuant to section 65 of our rules of practice (39 CFR 3001.65) will be required to serve copies of its Request and its prepared direct evidence upon the parties identified in Attachments A and B, and upon the Officer of the Commission. Where service upon more than one representative has been requested in the petition to intervene or leave to be heard as a limited participator, service will be required only on the first two named representatives in the petition.[2]

Procedural Schedule. We have established a tentative schedule, which balances the goal of expedition and the time necessary for adequate consideration of a proposal of such significance. The schedule is attached to this order as Attachment C. Anyone who wishes to comment on the tentative schedule and/or the special rules of practice described in the following paragraph may either file written comments by January 19, 1983, or address the subject at the prehearing conference, which will be held January 20, 1983, at 10:00 a.m. in the Commission's hearing room at 2000 L Street, NW., Suite 500, Washington, D.C. All other hearings in this case will begin at 9:30 a.m. in the Commission's hearing room.

Special Rules. We are attaching to this Order a copy of the special rules of practice we propose to use in this case. We believe using these rules may assist in streamlining our procedures in this case. We have included in our special rules a new procedure which should assist parties in introducing interrogatories and answers into the record. We have decided in this case to have the Secretary of the Commission compile the interrogtories which the parties designate for inclusion in the record. We hope thereby to streamline the procedure.[3]

The Commission orders:

(1) Each of the petitioners identified in Attachment A to this Order is hereby permitted to intervene in this proceeding, subject to the provisions of paragraph (3), below.

(2) Each of the petitioners identified in Attachment B to this Order is hereby permitted to become a limited participator in this proceeding, subject to the provisions of paragraph (C), below.

(3) The participation of the intervenors and limited participators permitted by paragraphs (A) and (B), above, is subject to the rules and regulations of the Commission: *Provided, however,* That their participation shall be limited to matters affecting rights and interests specifically set forth in their respective petitions to intervene and requests to become limited participators, and *Provided, further,* That the admission of such intervenors and limited participators shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(4) The Postal Service shall serve copies of its request and its prepared direct evidence upon representatives of petitioners permitted to intervene and the representatives of the limited participators. For purposes of such service, where service upon more than one representative has been requested in the petition to intervene or in a request for leave to be heard as a limited participator, including those petitions and requests filed jointly and severally by two or more persons, only the first two named representatives in the petition need be served.

(5) The procedural schedule, Attachment C, is tentatively established.

By the Commission.

David F. Harris,

Secretary.

Attachment A—Intervenors

Alliance of Third-Class Nonprofit Mailers
American Bankers Association (ABA)
Council of Public Utility Mailers (CPUM)
Council to Save the Post Card (CSPC)
Direct Marketing Association, Inc. (DMA)
J. C. Penney Company, Inc. (Penney)
Newsweek, Inc.

[1] Published in the **Federal Register** on December 15, 1982 (47 FR 56221–22).

[2] *See* sections 12 (c) and (d) of the rules of practice [39 CFR 3001.12(c) and 3001.12(d)].

[3] This idea was first offered by counsel for OMA and modified as suggested by the Postal Service. We are trying the innovation with the Postal Service's modification.

Mail Order Association of America (MOAA)
Reader's Digest Association, Inc.
Time Incorporated (Time Inc.)

Attachment B—Limited Participators

American Newspaper Publishers Association (ANPA)
American Retail Federation (ARF)
Classroom Publishers Association (CPA)
E-Systems, Inc. (ESY)
Envelope Manufacturers Association (EMA)
Meredith Corporation
National Association of Greeting Card Publishers (NAGCP)
Third Class Mail Association (TCMA)
United Parcel Service (UPS)

Attachment C—Tentative Hearing Schedule for Proceedings—ZIP+4 Subclasses Docket No. MC83-2

January 20, 1983—Prehearing Conference (10:00 a.m. in the Commission hearing room).
February 14, 1983—Completion of all discovery directed to the Postal Service.
March 17, 1983—Beginning of hearings, *i.e.*, cross examination of the Postal Service's case-in-chief.
April 4, 1983—Filing of the case-in-chief of each participant (including that of OOC).
April 25, 1983—Completion of all discovery directed to the intervenors.
May 23, 1983—Beginning of evidentiary hearings as to the case-in-chief of other participants.
June 13, 1983—Rebuttal evidence of the Postal Service and each participant. (No discovery to be permitted on this rebuttal evidence; only oral cross-examination.)
June 27, 1983—Beginning of evidentary hearings on rebuttal evidence.
July 18, 1983—Initial briefs filed.
August 1, 1983—Reply briefs filed.
August 8, 1983—Oral argument (if scheduled).

Attachment D—Proposed Special Rules of Practice

1. Discovery

A. *General.* The discovery procedures set forth herein are not exclusive. The parties are encouraged to engage in informal discovery wherever possible to clarify exhibits and testimony. The results of such efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

B. *Objections to Discovery.* In the interest of expedition, the bases for objecting to (1) interrogatories, (2) requests for production of documents or things for the purposes of discovery, and (3) requests for admissions for purposes of discovery shall be clearly and fully stated. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatories or requests, providing estimates of costs and workhours required to the extent possible. The party objecting to interrogatories or requests for production of documents or things shall within 10 days serve its objections on the party who served the interrogatories or requested production of documents or things. Copies of objections to interrogatories and/or requests shall be filed with the Secretary and as provided in special rule 1.F., below.

C. *Compelled Answers or Production of Documents or Things.* Parties who have objected to interrogatories or requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer such a motion. Answers will be considered supplements to the arguments presented in the initial objection.

Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel production of documents or things, or compel an answer to an interrogatory or request for admissions if the objection is found not to be valid.

Compelled answers, documents or things shall be made available to the party making the motion within 10 days of the grant of a motion to compel or such other period designated by the presiding officer or Commission. Copies of the answers or documents or things ordered to be produced shall also be made available to the Secretary pursuant to § 3001.9 and to the other participants who request them.

D. *Supplemental Answers to Interrogatories.* Participants are expected to serve supplemental answers whenever appropriate. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current, or whether it is intended as a complete replacement for the answer previously given.

E. *Follow-up Interrogatories.* Follow-up interrogatories shall be served within five days of receipt of the answer to the prior interrogatory unless extraordinary circumstances are shown.

F. *Service.* Interrogatories, objections, and answers thereto should be served in conformance with § 3001.12 on the Commission, the Officer of the Commission (three copies), on the complimentary party, and on any other participant so requesting. Participants will be deemed to have requested service for purposes of these special rules unless they file a document to the contrary with the Commission.

2. Case-in-Chief

The case-in-chief of all participants shall be in writing and shall include the participant's direct case and its rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by legal memoranda, where appropriate.

3. Exhibits

Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains and may also contain a statement of the purpose for which the exhibit is offered; however, such a statement will not be considered part of the evidentiary record. Where one part of the multi-page exhibit is based on another part, as on another exhibit, appropriate cross references should be made. Relevant exposition should be included in the exhibits or given in the accompanying testimony.

4. Motions to Strike

Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at an early date, and at least 10 days before the scheduled appearance of the witness. Responses to such motions shall be made five days after the filing of the motion.

5. Official Notice

Parties requesting official notice should refer to the page and paragraph of such material and should furnish copies of the referenced item for the record and for other parties.

6. Cross-examination

A. *Written cross-examination.* Written cross-examination will be

utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. The scope of oral cross-examination is set forth in special rule 6.B., below.

Designations or written cross-examination should be served three working days before the announced appearance of a witness on the Commission, on the Officer of the Commission (three copies), on the witness' counsel, and on any participant so requesting. Designations shall identify every item to be offered as evidence, listing the participant which initially posed the request, the witness or party to whom the question was addressed (if different from the witness answering) and, if more than one answer was provided, the dates of all answers to be included in the record.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination, alphabetically, by participant which initially posed the question. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials found objectionable will be stricken from the record.

B. *Oral cross-examination.* Oral cross-examination will be permitted for testing assumptions, conclusions, or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three days before the announced appearance of a witness accompanied by (1) specific references to the subject matter to be examined, and (2) page references to the relevant direct testimony.

7. General

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony which is adverse to the participant wishing to cross-examine.

Legal memoranda, where appropriate, will be welcome at any stage of the proceeding.

[FR Doc. 83-1544 Filed 1-18-83; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12954; (812-5307)]

American Investors Money Fund, Inc.; Filing of an Application

January 11, 1983.

In the matter of American Investors Money Fund, Inc., 88 Field Point Road, Box 2500, Greenwich, Connecticut 06836.

Notice is hereby given that American Investors Money Fund, Inc. ("Applicant"), which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on September 7, 1982 and amendment thereto on December 29, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to calculate its net asset value per share in accordance with the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of those provisions thereof for which an exemption is being sought.

Applicant states that it intends to operate as a "money market" fund designed as an investment vehicle for savings and reserve funds of investors. Applicant's investment objective is to provide stability of principal and as high a rate of current income as is consistent with preservation of capital and liquidity. In order to achieve this objective, Applicant states that its assets will be invested in high quality money market instruments having maturities of one year or less, consisting of: (a) obligations issued by or guaranteed as to principal and interest by the U.S. Government or its agencies or instrumentalities; (b) obligations (including certificates of deposit, letters of credit and bankers' acceptances) of banks or other financial institutions organized under the laws of the United States, or any state or territory thereof, that are members of the Federal Reserve System, the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC") if either (i) the principal amount of the obligation is insured in full by the FDIC or the FSLIC or (ii) the issuer of the obligation has total assets of $1 billion; (c) commercial paper issued by corporations which at the time of the purchase (i) are rated "A-1" by Standard & Poor's Corporation or "Prime-1" by Moody's Investors Service, Inc. or (ii) if not rated, are issued by a corporation, which at the date of purchase, has an outstanding debt issue rated at least "AA" by Standard & Poor's or Moody's and as to which the Applicant's investment adviser, American Investors Corporation ("Manager-Adviser"), under direction of Applicant's board of directors, has made an independent determination that the instrument presents minimal credit risks and is of "high quality"; (d) corporate bonds and debentures which at the time of purchase have a rating of at least "AA" by Standard & Poor's or "Aa" by Moody's and which mature in one year or less at the time of purchase; and (e) certain repurchase agreements with respect to obligations which, without regard to maturities, Applicant is authorized to invest.

Applicant states that its board of directors has concluded that potential stockholders desire to invest their cash balances in a vehicle which offers stability of principal and a steady flow of investment income commensurate with prevailing money market yields. Applicant also states that its board of directors has determined that the only practicable method of fulfilling this investor desire is to determine its net asset value per share on the amortized cost basis.

Applicant states that prior to the filing of this application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires portfolio instruments of "money market" funds to be valued with reference to market factors and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the exent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it believes that use of the amortized cost method of valuation for its portfolio assets will

enable its stockholders to have the convenience of determining the value of their holdings by maintaining a constant net asset value per share (preferably at $1.00 per share) and by paying dividends which do not fluctuate due to daily changes in the value of portfolio securities. Applicant states that in light of the perceived desires of potential stockholders and in light of competitive conditions in the marketplace, the valuation of investment securities on the amortized cost basis will benefit its stockholders by enabling it to more effectively maintain its net asset value per share at $1.00, while providing stockholders with the opportunity to receive a flow of investment income less subject to fluctuation than would be the case under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities. Applicant also states that its board of directors has determined that the amortized cost method of calculating net asset value per share under such circumstances is appropriate and in the best interests of its stockholders. Moreover, Applicant contends that granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that in any order of the Commission granting the exemptive relief requested, it agrees that the following conditions may be imposed:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of Applicant shall be the following:

(a) Review by the Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 0.50 of 1 percent, a requirement that the Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where the Applicant's board of directors believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above, was taken during the preceding calendar quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 4, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1424 Filed 1-18-83; 8:45 am]

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[1] To fulfill this condition, Applicant intends to use actual quotations chosen by its board of directors (or estimates of market value reflecting current market conditions chosen by its Manager-Adviser, under direction of its board of directors) in the exercise of its discretion to be appropriate indicators of value, which may include, inter alia, (i) quotations or estimates of market value for individual portfolio instruments or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12965; (812-5372)]

CG Fund, Inc., et al; Filing of Application

January 12, 1983.

In the mater of CG Fund, Inc., CG Income Fund, Inc., CG Municipal Bond Fund, Inc., CG Money Market Fund, Inc., CIGNA Cash Fund, Inc., CIGNA Tax-Exempt Cash Fund, Inc., Companion Fund, Inc., Companion Income Fund, Inc., Hartford CT 06152.

Notice is hereby given that CG fund, Inc. ("CG Fund"), CG Income Fund, Inc.

("CG Income"), CG Municipal Bond Fund, Inc. ("CG Municipal"), CG Money Market Fund, Inc. ("CG Money Market"), CIGNA Cash Fund, Inc. ("CIGNA Cash"), CIGNA Tax-Exempt Cash Fund, Inc. ("CIGNA Tax-Exempt"), Companion Fund, Inc. ("Companion") and Companion Income Fund, Inc. ("Companion Income") (collectively, the "Applicants"), open-end, diversified, management investment companies registered under the Investment Company Act of 1940 (the "Act"), filed an application on November 8, 1982, requesting an order of the Commission, pursuant to Sections 6(c) and 17(d) of the Act and Rule 17d–1 thereunder, exempting Applicants from the provisions of, and rules under, Sections 13(a)(2), 17(d), 18(f)(1) and 22 (f) and (g) of the Act, in connection with a proposed Standard Deferred Fee Agreement to be entered into by each Applicant except CIGNA Cash and a proposed CIGNA Cash Deferred Fee agreement to be entered into by CIGNA Cash (collectively, the "Agreements") and transactions to be effected by the Funds and certain of their directors pursuant to the Agreements. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, CG Fund and Companion have as their investment objectives long-term growth of capital, principally through the purchase of common stocks; CG Income seeks current income with reasonable concern for safety of principal through investments primarily in fixed and convertible corporate debt, dividend-paying common stock, preferred stocks and government obligations; CG Municipal seeks as high a level of current interest income exempt from Federal taxation as is consistent with preservation of capital by investing in municipal bonds; Companion Income has as its investment objective providing as high a level of income as is consistent with preservation of principal through investment in marketable debt securities; CG Money Market, CIGNA Cash and CIGNA Tax-exempt are all money market funds; CG Money Market, and CIGNA Cash invest in money market instruments; CIGNA Tax-Exempt invests in municipal money market instruments the interest on which is exempt from Federal taxation. CG Fund, CG Income, CG Municipal and CG Money Market are sold to the public by representatives of CIGNA Securities, Inc. (formerly CG Equity Sales Company) and by other authorized brokerdealers. CIGNA Securities is an affiliate of Connecticut General Corporation ("CGC"), which is wholly-owned by CIGNA Corporation ("CIGNA"). Companion and Companion Income are sold without a sales load as underlying investment vehicles to CG Variable Annuity Account I and CG Variable Annuity Account II, both unit investment trusts registered under the Act, which are separate accounts issued by Connecticut General Life Insurance Company ("CG Life"), also an affiliate of CGC and CIGNA. CIGNA Cash and CIGNA Tax-Exempt Cash are sole to the public without a sales load. All the Applicants are advised and managed by CIGNA Investment Management Company ("CIGNA Investment Management"), a subsidiary of CGC and CIGNA.

The Applicants state that each Applicant's board of directors consists of twelve persons, a majority of whom are not "interested persons" of each Applicant within the meaning of Section 2(a)(19) of the Act. Each director who is not an interested person of CIGNA, CGC, CC Life or CIGNA Investment Management receives a retainer of $7,800 for serving as a director of all the Applicants plus a meeting fee of $525 for each board or committee meeting attended. All the Applicants currently have audit, nominating and contracts committees. Directors acting as chairmen of committees receive an additional retainer of $1,500 per year. With two exceptions, no director of who is an interested person of CIGNA, CGC, CG Life or CIGNA Investment Management receives any remuneration from the Applicants. Those exceptions are Mr. James H. Torrey, a Director of CIGNA, who receives a retainer of $26,000 per year for acting as Chairman of the Board of each Applicant in lieu of all other fees, and Mr. Harold H. Bigler, a former officer of CG Life and currently president and majority shareholder of Bigler Investment Management Company, Inc., who receives the standard amount of director's fees.

According to the application, the total remuneration payable to the directors is allocated among all the Applicants based on their relative net assets. Applicants pay no other remuneration to their directors. The amounts paid to the directors are, and are expected to continue to be, insignificant in comparison to the total net assets of each Applicant.

Applicants state that the requested order would cover two forms of proposed deferred director's fee agreements: an agreement to be available for the deferral of fees payable by all Applicants except CIGNA Cash (hereinafter referred to as the "Standard Deferred Fee Agreement") and a deferred fee agreement for fees payable by CIGNA Cash (the "CIGNA Cash Deferred Fee Agreement") (collectively, the "Agreements"). Each Agreement will allow each individual director to elect to defer receipt of all director's fees which otherwise would become payable to him for sevices performed after the date of the Agreement. According to the application, the purpose of the Agreements is to permit a director of each of the Applicants to elect to defer receipt of his director's fees, in order to avoid diminution or loss of social security benefits to which the director may otherwise be entitled, to enable the directors to defer payment of income taxes on such fees, or for other reasons.

Under both forms of Agreement, the deferred director's fees will be credited to a book reserve account (the "Deferred Fee Account") as of the date such fees would have been paid. Director's fees that become payable for attending board meetings or meetings of committees of the board will be credited to the Deferred Fee Account on the following business day. The principal difference between the two forms of Agreement relates to the manner in which the deferred fees accrue interest. Under the Standard Deferred Fee Agreement, deferred fees will accrue interest on a daily basis from and after the date of credit to the Deferred Fee Account in an amount equal to the amount that would have been earned had an amount equal to such deferred fees (plus all interest earned thereon on a daily basis) been invested in CIGNA Cash. Under the CIGNA Cash Deferred Fee Agreement, deferred fees will accrue interest on a daily basis from and after the date of credit to the Deferred Fee Account in an amount equal to the amount that would have been earned had an amount equal to such deferred fees (plus all interest earned thereon on a daily basis) been invested in Aetna Money Trust, a no-load money market fund, that is not affiliated with CIGNA, CGC, CG Life, CIGNA Investment Management or any of the Funds.

Both forms of Agreement provide that each Applicant's obligation to make payments of deferred fees and interest accrued thereon will be a general obligation of that Applicant, and payments made pursuant to the Agreements will be made from the Applicant's general assets and property. The relationship of the director to the Applicant will be only that of a general unsecured creditor. Both forms of Agreement also provide that the

Applicant will be under no obligation to purchase, hold or dispose of any investments under the Agreement, but, if the Applicant chooses to purchase investments to cover its obligations under such Agreement, then any and all such investments will continue to be a part of the general assests and property of the Applicant.

According to the application, the deferred director's fees and any interest thereon will become payable in cash upon termination of the director's services in a lunp sum or in such number of annual installments as shall be determined by each Applicant in its sole discretion. In the event of the director's death, amounts payable to him under the Agreements will thereafter be payable to his designated beneficiary; in all other events, the director's right to receive payments will be nontransferable.

Applicants state that deferral of director's fees in accordance with the Agreement will have a negligible effect on the assets, liabilities, net assets and net income per share of each Applicant. Further, Applicants state that the Agreement will not obligate an Applicant to pay any (or any particular level of) director's fees to any director. Applicants represent that participation in the deferred fee arrangement will be available to all directors who currently receive director's fees from each Applicant, *i.e.*, those directors who are not "interested persons" of the Applicants within the meaning of Section 2(a)(19) of the Act and Messrs. Torrey and Bigler.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Rule 17d–1 under the Act provides that Commission may, by order upon application, grant exemptions from the prohibitions of Section 17(d) and Rule 17d–1 regarding certain joint enterprises or arrangements and profit-sharing plans involving a registered investment company. Rule 17d–1(b) further provides that in passing upon such an application the Commission will consider whether the participation of the registered investment company in such enterprise, arangement, or plan is consistent with the policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants submit that the agreements are in the best interests of Applicants and their shareholders and consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, Applicants submit that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors.

With respect to the requested exemptions from Sections 18(f) (1) and 13(a) (2), Applicants contend that the Agreements possess none of the characteristics of senior securities which led Congress to enact the restrictions on the issuance of such securities set forth in Section 18 and 13(a)(2) of the Act. Applicants submit that they would not be "borrowing" from their directors in the sense which concerned Congress and that all liabilities created by credits to the Deferred Fee Accounts under the Agreements would be offset by essentially equal assets of the Applicants which would not otherwise exist if the directors' fees were paid on a current basis. Applicants further argue that the Agreements would not induce speculative investments by Applicants or provide opportunity for manipulative allocations of Applicants' expenses and profits; that control of the Applicants would not be affected; and, given the common existence of deferred compensation agreements today, the Agreements would not confuse investors, make it difficult for them to value the Applicants' share or convey a false impression of safety.

With respect to the requested exemption from Section 22(f) of the Act, Applicants argue that this section was designed to bar only those restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulation, neither of which circumstances would apply here. Applicants point out that the restriction on transferability of a director's benefits would be clearly set forth in the Agreements, would be included primarily to benefit the director and would not adversely affect the interests of the director or of any shareholder of Applicants.

Applicants contend that the legislative history of the Act indicates that in Section 22(g) of the Act Congress was primarily concerned with the dilutive effect on the equity and voting power of the common stock of or units of beneficial interest in, and open-end company if securities were issued for consideration not readily valued. Applicants submit that the Agreements would not have this effect, particularly in view of current disclosure requirements applicable to director compensation. Applicants also contend that their obligation to make payments under the Agreements need not be viewed as being "issued" for services or for property other than cash or securities, because, while any director's fees which might become payable to a director would clearly be for services, any such fees would become payable independent of the Agreements. Thus, according to the Applicants, the Agreements would merely provide for deferral of payment of such fees and thus may be viewed as being "issued" not in return for services but in return for the Applicants' not being required to pay such fees on a current basis. For these reasons, Applicants submit that the requested exemption of the Agreements and future transactions effected pursuant to them from Section 22 (f) and (g) of the Act also would be consistent with the protection of investors and the purposes of the Act.

Applicants assert that neither form of Deferred Fee Agreement is a joint transaction between an Applicant and its directors within the meaning of Section 17(d) and Rule 17d–1 thereunder, as the interest to be accrued on the deferred amounts under the Standard Deferred Fee Agreement is to be based on the yield of CIGNA Cash, not that of the Applicant entering into the Agreement, while the interest to be accrued under the CIGNA Cash Agreement is based on the yield of Aetna Money Trust, an unaffiliated money market fund, so that neither agreement possesses the profit-sharing characteristics of a joint transaction. If the Agreements are considered to be joint transactions, the Applicants state in support of their requested exemption that the use of CIGNA Cash's or Aetna Money Trust's yield to determine interest on deferred amounts does not inherently differ from (but might be fairer than) the use of the prime rate or another assumed rate of interest.

Applicants argue that the effect of both Agreements would merely be to defer the payment of fees that the Applicants would otherwise be obligated to pay on a current basis as services are performed by the director. Applicants contend that deferral of a director's fees in accordance with the Agreements would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. On a

comparative basis, deferral would have a negligible effect on each Applicant's assets, liabilities, net assets and net income per share.

In addition, Applicants assert that the total fees paid to the Applicants' directors which would be eligible for deferral will be *de minimis* as compared to the Applicants' total assets. Applicants emphasize their view that their ability to recruit and retain highly qualified directors would be enhanced if they were able to offer their directors the option of deferred payment of their directors' fees. Applicants submit that this benefit to the Applicants and their shareholders outweighs any tax, social security or other benefit that may be realized by an individual director under the proposed Agreements.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 4, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1429 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12960; (812-5197)]

Guaranty U.S. Government Securities Trust; Filing of Application

January 11, 1983.

In the matter of Guaranty U.S. Government Securities Trust, 2100 66th Street North, St. Petersburg, Florida 33710.

Notice is hereby given that Guaranty U.S. Government Security Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 22, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a money market fund, states that it is organized as a Massachusetts business trust and that it has filed a registration statement under the Act and under the Securities Act of 1933. It is also stated that Guaranty Securities, Inc. is the proposed investment adviser of Applicant. Applicant represents that its investment objective is to seek as high a level of current income as possible, while maintaining liquidity and safety of capital. Applicant further states that it pursues this objective by investing only in a portfolio that consists of short-term debt securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, including those securities subject to repurchase agreements.

Applicant requests exemptions from Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit its portfolio investments to be valued according to the amortized cost valuation method. Under the amortized cost valuation method, portfolio instruments are valued at their cost as of the date of acquisition and thereafter assuming a constant rate of amortization of maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of such instruments. Applicant states that, prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant states that it believes that, to meet the needs and expectations of present and potential investors and to offer them relative stability of principal and steady flow of predictable income at currently competitive rates, it wishes to price its portfolio at amortized cost. In addition, Applicant represents that as a condition to the granting of the exemptions requested, Applicant's Board of Trustees shall have determined, in good faith based on a full consideration of all material factors, that, absent unusual circumstances, the valuation method hereby applied for will fairly reflect the value of each shareholder's interest in Applicant and that Applicant will continue to use such method only so long as the Board of Trustees believes that it fairly reflects the value of each shareholder's interest. In addition, Applicant has agreed, to adhere to the following express conditions to the granting of the exemptive relief it seeks.

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within its overall duty of care owed to shareholders of Applicant to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize its net asset value per share, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included among the procedures to be adopted by the Board of Trustees of Applicant shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's amortized cost price per share, and maintenance of records of such review.[1]

[1] To fulfill this condition, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Trustees in the exercise of its discretion to be appropriate indicators of value, which may include, among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes or money market instruments published by reputable sources.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes that the extent of any deviation from Applicant's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity [2] appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[3]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 2 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the meeting of the Board of Trustees. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which its Board of Trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service, or in the case of any instrument that is not rated, is of comparible quality as determined by the Board of Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 3(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Notice if further given that any interested person wishing to request a hearing on the application may, not later than February 7, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1435 Filed 1-18-83; 8:45 am]
BILLING CODE 8010-01-M

[2] In determining dollar-weighted average portfolio maturity or the maturity of any instrument, Applicant will use the definition of "maturity of an instrument" contained in proposed Rule 2a–7 as set forth in Release No. IC–12206 (January 29, 1982), or, on the effectiveness of a final rule, the definition contained in such final rule (whether or not such proposed rule is withdrawn). Applicant will also treat instruments called for redemption in one year or less as maturing within one year.

[3] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12951; (812–4983)]

Investors Syndicate of America, Inc., et al.; Application

January 11, 1983

In the matter of Investors Syndicate of America, Inc., Investors Diversified Services, Inc., and IDS Life Insurance Co., IDS Tower, Minneapolis, Minnesota 55402.

Notice is hereby given that Investors Syndicate of America, Inc. ("ISA"), registered under the Investment Company Act of 1940 ("Act") as a face-amount certificate company, Investors Diversified Services, Inc. ("IDS"), the sole shareholder of and distributor and manager for ISA, and IDS Life Insurance Company ("IDS Life"), an insurance company subsidiary of IDS organized under Minnesota law (hereinafter referred to collectively as "Applicants"), filed an amendment to a previously granted application on October 27, 1982, and a further amendment on January 7, 1983, requesting that the Commission, pursuant to Sections 6(c) and 17(b) of the Act, amend its prior order (Investment Company Act Release No. 12060, November 27, 1981) ("Prior Order") exemption certain transactions from the provisions of Sections 12(d)(3) and 17(a) of the Act and permitting the transactions pursuant to Section 17(d) and Rule 17d–1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below. Such persons are also referred to the act and the rules thereunder for the complete text of those provisions thereof from which exemption is being sought.

The Prior Order permitted ISA to sell certain marketable securities to IDS and, as part of the purchase transaction, the issuance by IDS of a note to ISA representing the difference between the fair market value of the securities purchased, which was to be paid by IDS in cash, and their book value on the date of purchase. The application states that the representations made in the original application are still applicable.

Applicants state that, pursuant to the Prior Order, IDS purchased certain securities from ISA at a price equal to the greater of ISA's book value of fair market value on the date of actual transfer of the securities. Applicants assert that ISA benefitted from the transaction in that it improved its portfolio liquidity, reinvested the proceeds of the sales higher yielding securities and converted the unrealized book depreciation of the securities into a subordinated 15% earning asset. Applicants further assert that IDS benefitted from the transaction because, as explained in the original application, it realized a taxable loss from the transaction which offset capital gains it had incurred. Applicants state that it was the desire of ISA that the securities sold would have unrealized depreciation, and the taxable loss for IDS would be approximately $100 million at the dates of sale. Applicants state that market conditions changed after the Prior Order was granted and the value of the securities increased. Applicants state that, as a result, the unrealized depreciation or capital loss amounted to approximately $85 million, rather than $100 million. Applicants state that it is the desire of the parties to

amend the original application to permit ISA to sell to IDS additional securities with additional unrealized depreciation of approximately $15 million no later than December 31, 1983. Applicants represent that IDS will receive similar benefits as stated in the original application and IDS will realize additional tax losses of approximately $15 million. Applicants state that it is the opinion of ISA and IDS that this amendment is consistent with the original intent of the parties.

Applicants state that under the original application, ISA was obligated to sell the securities to IDS, which sold the securities it purchased in the marketplace to realize capital losses for federal income tax purposes. The securities ISA desires to sell as this time, however, are securities which it purchased directly from the issuer in a private placement transaction or in the secondary market from those who held such privately placed securities. Applicants state that such securities do not have a quoted market price but are valued at the price which represents fair value in the opinion of ISA's Board of Directors. Applicants state that estimated fair values are determined by the Board of Directors after review of values provided by ISA personnel arrived at using an established procedure involving, among other things, review of market indices, price levels of current offerings and comparable issues, price estimates and market data from independent brokers, and financial files. Applicants state that the independent brokers, which were selected at the time the securities were purchased, have experience and expertise in the particular industry of the issuer. Applicants state that the independent pricing broker reviews the issues and assigns a price and a yield to each issue, which Applicants believe is comparable to current market value. Applicants state that, although the securities are privately placed securities, they believe there is an institutional market available and such securities have not been treated as restricted securities by ISA.

Applicants state that, under the current proposal, ISA is not required to sell the securities to IDS. Applicants state that IDS would agree to pay ISA a price equal to the greater of ISA's book value or the fair value for such securities on the date of sale to IDS. Applicants state that at the time of the sale, IDS will pay ISA an amount in cash equal to the fair value of the securities at the date of sale. Applicants state that the excess, if any, of the book value over the amount to be paid in cash by IDS will be paid by adding that amount to the principal of the note issued by IDS to ISA for that purpose. Applicants state that the note, described in the original application, provides that IDS pay to ISA interest quarterly on the unpaid balance at the rate of 15% per annum. Applicants represent that IDS has made all payments in accordance with the terms of the original note. Applicants further represent that the financial position of IDS is substantially the same as it was when the Prior Order was granted on November 27, 1981. Applicants represent that ISA is of the opinion that the note it received from IDS is a marketable note, and that the terms will be the same as contained in the original note.

Applicants state that under the current proposal IDS desires to sell the securities to IDS Life, a subsidiary of IDS, and therefore an affiliate of ISA, at the fair value as determined above. Applicants represent that IDS Life is subject to regulations by the Minnesota insurance department. Applicants further represent that such rules and regulations are designed to protect against overreaching on the part of its parent, IDS, or any subsidiary of IDS (namely, ISA). Applicants state that the securities ISA intends to sell are of the kind and quality which IDS Life is permitted to, and does in the ordinary course of business, invest in under state insurance laws. Applicants represent that IDS Life has determined that the price it will pay for the securities is a fair price.

Applicants represent that they believe the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any persons concerned. The conditions for granting an amendment to the Prior Order are claimed to be present. Applicants further assert that ISA believes the proposed transaction is consistent with its own policies as recited in its registration statements and reports. Applicants state that while ISA normally purchases fixed income securities with a view to holding such securities until their maturity, the current transaction offers ISA an additional opportunity to improve its portfolio liquidity on very favorable terms at a time when ISA believes it is desirable to do so. Applicants state that ISA is specifically aware that IDS intends to achieve tax payment savings for itself by this transaction by selling the securities to its subsidiary, IDS Life, which will benefit through elimination of any brokerage costs. Applicants submit that ISA does not believe that IDS' or IDS Life's advantage detracts from the advantages which ISA receives. Finally, Applicants submit that they believe and represent that the transaction taken as a whole, including every relevant part thereof taken in the context of the transaction, is protective of the certificate holders of ISA and in all respects is consistent with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 4, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1423 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12957; (812-5391)]

The New Hampshire Intra-State "MICRO" Money Market Fund, Inc.; Application

January 11, 1983.

In the matter of the New Hampshire Intra-State "MICRO" Money Market Fund, Inc., 132 North Main Street, Concord, New Hampshire 03301.

Notice is hereby given that The New Hampshire Intra-State "MICRO" Money Market Fund, Inc., ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on December 9, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit applicant to value its assets through use of the

amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund organized under the laws of the State of New Hampshire, and that its shares of beneficial interest are available only to residents of that state. It is further stated that Applicant's investment objective is to seek to provide the maximum level of current income available from short-term securities, to the extent consistent with stability of principal and maintenance of liquidity, by investing in domestic and foreign certificates of deposits, repurchase agreements and bankers' acceptances, issued by banks or savings and loan associations the principal place of business of which is located in New Hampshire, and by investing in United States Treasury bills. It is further stated that to be fully invested each day, Applicant will place excess funds in overnight or weekend instruments, such as one-day repurchase agreements. Applicant states that Arthur N. Economou & Co., Inc., will serve as Applicant's investment adviser.

Applicant represents that its board of directors intends to establish procedures designed to stabilize, to the extent reasonably possible, the net asset value of its shares, computed for the purposes of distribution, redemption and repurchase, at $1.00. It is further stated that experience indicates that a money market fund must be able to provide (1) stability of principal, and (2) a steady flow of predictable and competitive investment income. Applicant asserts that it can offer these features to investors by maintaining a portfolio of high quality securities valued on the basis of the amortized cost method of valuation. Applicant states that in accordance with the amortized cost method of valuation, a portfolio security is valued at its historic cost (purchase price), and the interest to be earned on the security (plus any discount received, or minus any premium paid upon purchase) is accrued ratably over the remaining maturity of the security. It is stated that by declaring these accruals to shareholders as a daily dividend, the value per share will generally remain constant.

In relevant part, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). Therefore, Applicant requests that the Commission issue an order pursuant to Section 6(c) of the Act permitting it to use the amortized cost method of valuation in pricing its shares for sale, redemption and repurchase.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that its board of directors has determined in good faith that, in light of Applicant's characteristics, the amortized cost method of valuation of portfolio securities is, absent unusual or extraordinary circumstances, preferable to the use of a market valuation method. Applicant states that, given the nature of its policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Therefore, it is asserted that Applicant's use of the amortized cost valuation method would not be inconsistent with the policy of the Act as implemented by Rule 2a-4, not would it detract from the protection of investors afforded by the Rule. Applicant's board of directors has determined, Applicant also states, to monitor continuously values indicated by valuation methods other than the amortized cost valuation method in order to assure that the method of valuation which Applicant is utilizing approximately represents fair value in view of all pertinent factors.

Applicant has agreed, in addition, that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving management of Applicant's portfolio to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

[1] To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classed of money market instruments published by reputable sources.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes that the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; selling portfolio instruments prior to maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, the Applicant will not (a) purchase any security with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as through such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase and reverse repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 7, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–1421 Filed 1–18–83; 8:45 am]

BILLING CODE 8010–01–M

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12961; (812–5377)]

Rockwell International Overseas Capital Corp.; Application

January 12, 1983.

In the matter of Rockwell International Overseas Capital Corp., 600 Grant Street, Pittsburgh, PA 15219.

Notice is hereby given that Rockwell International Overseas Capital Corporation ("Applicant") filed an application on November 16, 1982, and an amendment thereto on December 13, 1982, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a corporation incorporated under the laws of the State of Delaware in 1982. According to the application, Applicant's outstanding securities consist entirely of capital stock held by Rockwell International Finance Corporation ("Finance"), a wholly-owned, subsidiary of Rockwell International Corporation ("Rockwell"), a publicly-held Delaware corporation subject to the periodic reporting requirements of the Securities Exchange Act of 1934.

Applicant proposes to raise funds in the foreign Eurodollar market by issuing its unsecured notes (the "Notes"), through underwriters or otherwise, in one or more transactions structured to prevent distribution of the Notes to nationals and residents of the United States, its territories and possessions and otherwise designed to cause the Notes to be exempt from registration under the Securities Act of 1933. According to the application, payment of the principal of and premium, if any, and interest on the Notes will be fully guaranteed by Rockwell. Applicant represents that the Rockwell guarantees will provide that in the event of a default by Applicant with respect to the Notes, legal proceedings may be instituted by holders of the Notes directly against Rockwell to enforce the Rockwell guarantees without their first proceeeding against Applicant.

Applicant further states that the Notes will rank *pari passu* with other unsecured debt, if any, of Applicant, and the Rockwell guarantees will rank *pari passu* with other unsecured debt of Rockwell. Applicant represents that, although the fiscal agency agreement and the other agreements relating to the issuance of the Notes will not place limitations on the issuance of additional debt by Applicant, no such issuance of additional debt is currently contemplated.

Applicant states that substantially all of the proceeds from the sale of the Notes will be loaned by Applicant to Finance or Rockwell and will be used in financing Rockwell's requirements, including the requirements of Finance, for capital expenditures and working capital and for direct and indirect investments. It is intended that the sole business of Applicant will be the provision of funds to Rockwell or subsidiaries of Rockwell, and, accordingly, a substantial portion of Applicant's assets will consist of amounts receivable from Rockwell or such subsidiaries.

Applicant states that it might be deemed an investment company under Section 3(a)(3) of the Act on the ground that it proposed loans to Rockwell or Finance might be deemed "investment

securities" which would constitute over 40 percent of Applicant's assets. In order to eliminate any doubt that it would be entitled, without registration under the Act, to issue and sell the Notes, Applicant requests an exemption from all provisions of the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts, in the support of the requested exemption, that the return to investors who purchase the Notes will not turn upon Applicant's management of a portfolio of securities of unaffiliated issuers, but rather upon the solvency of Rockwell and its operating subsidiaries. Applicant further asserts that, if Rockwell itself issued the Notes to be issued by Applicant, neither Rockwell nor any of its subsidiaries would be subject to the Act; that Rockwell has chosen to use Applicant as a conduit for this borrowing for reasons unrelated to any policy or provision of the Act, principally savings in interest; that Applicant will not be engaged in the kind of business the Act was intended to regulate; and that the proposed use of Applicant gives investors the same protection they would have if Rockwell itself issued the Notes.

Applicant further represents as follows:

(a) Applicant will not issue any equity securities to any person other than Rockwell and its wholly-owned subsidiaries.

(b) Applicant will not hold equity securities of any issuer and will not hold notes or other evidences of indebtedness issued by any person other than Rockwell and its wholly-owned subsidiaries, except for temporary investments in short-term, high quality debt instruments of the kind in which Rockwell and Finance customarily invest.

(c) Applicant will not make any material change in its business as described in the application without giving prior notice of such change to the Commission and undertakes if necessary either to file a request for amendment or modification of the exemption or a request that the exemption be continued in effect or to notify the Commission that it will no longer rely on the exemption.

On the basis of the foregoing, Applicant submits that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 4, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1428 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19422; File No. SR-OCC-82-8]

Options Clearing Corp. ("OCC"); Order Approving Proposed Rule Change

January 12, 1983.

On April 27, 1982, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that would add Interpretations and Policies to OCC Rule 604 (i) formalizing certain of OCC's criteria for approving domestic banks as issuers of letters of credit for margin purposes; and (ii) allowing OCC to accept, for the first time, letters of credit issued by foreign banks.[1] Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of Securities Exchange Act Release No. 18721 (May 10, 1982), 47 FR 21170 (May 17, 1982). No letters of comment were received.

I. Description of the Proposed Rule Change

The proposal would permit OCC to approve as an issuer of letters of credit for margin purposes and non-United States-based financial institution ("foreign bank"), provided that the bank (i) is organized under the laws of a country other than the United States and has a Federal or state branch or agency, as defined in the International Banking Act of 1978,[2] located in New York, New York or Chicago, Illinois; (ii) has, at the time of approval, and continuously thereafter, shareholders' equity in excess of U.S. $200,000,000; (iii) has its principal executive office located in a country that (a) is rated "AAA" by Moody's Investor Service ("Moody's") and/or Standard & Poor's Corporation ("Standard & Poor's") or (b) has been approved by OCC's margin committee as a "AAA"-equivalent country, based on the committee's consultations with at least two entities which, in the margin committee's opinion, are experienced in international banking and finance; and (iv) issues commercial paper and other short-term obligations rated "P-1" by Moody's or "A-1" by Standard & Poor's.[3]

The proposal would further restrict OCC's acceptance of foreign bank letters of credit in the following ways: (i) no more than 50% of a participant's margin obligation to OCC could be

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[1] OCC's margin requirements should be distinguished from customer margin requirements in Regulation T (12 CFR 220.1 *et seq.*). Regulation T governs, among other things, the amount of money that a broker-dealer's customer can borrow to purchase securities and the amount and type of collateral that those customers must deposit to secure their obligations. In contrast, OCC's daily margin requirements are imposed on OCC's clearing members with respect to the positions that they maintain at OCC and help insure that those members meet their daily obligations to OCC.

Currently, OCC holds approximately $3 billion worth of letters of credit as margin, representing about 90% of all margin held by OCC. In addition to letters of credit, OCC participants may deposit margin in the form of cash, certified checks, government securities, or common stocks underlying outstanding classes of options. OCC Rule 604.

[2] Pub. L. No. 95-309, 92 Stat. 607 (the "IBA"). Sections 1(b)(1), (3), (5), (6), (11) and (12) of the IBA respectively define the terms "agency," "branch," "Federal agency," "Federal branch," "state agency," and "state branch."

[3] Moody's commercial paper ratings represent Moody's "opinions of the ability of issuers to repay punctually" their short-term debt obligations. The ratings include, in order of preference, Prime 1, Prime 2, Prime 3, and Not Prime. Prime 1 issuers have a "superior capacity for repayment of short-term promissory obligations." Moody's Bond Rec., Dec. 1982, at 80. Similarly, Standard & Poor's commercial paper ratings indicate the likelihood of timely repayment of the instrument. Commercial paper is rated A, B, C, or D, with A being the highest rating and D being the lowest. These ratings are further divided into categories 1, 2, and 3, with 1 being the highest subclassification. Accordingly, an A-1 rating is Standard & Poor's highest rating for commercial paper and "indicates that the degree of safety regarding timely payment is very strong." Standard & Poor's Corp., Standard & Poor's ratings Guide 331 (1979).

secured by such letters of credit; (ii) no greater than 20% of a participant's OCC margin obligation could be secured by letters of credit from any one foreign bank; and (iii) the total amount of letters of credit that one foreign bank may issue for any one participant may not exceed 10% of the foreign bank's worldwide shareholders' equity.[4] In addition, a letter of credit issued by a foreign bank on behalf of a participant would have to be issued and payable at a Federal or state branch or agency of that bank.[5]

In addition, the proposal would formalize OCC's policy of approving a domestic financial institution ("domestic bank") as an issuer of letters of credit, provided that the bank (i) is organized under the laws of the United States or a state thereof; (ii) is regulated and examined by Federal or state authorities having regulatory authority over banks or trust companies; and (iii) has, at the time of approval by OCC and continuously thereafter, shareholders' equity of at least $100,000,000.

Finally, the proposal would establish several requirements that apply to both foreign and domestic banks. First, each bank applying to OCC for approval as an issuer of letters of credit would have to provide OCC with a copy of its most recent annual financial report.[6] Second, a bank approved by OCC would have to provide OCC with copies of its annual reports and quarterly financial statements at the time of their issuance. Third, each bank would have to provide, in written form satisfactory to OCC, the names of individuals authorized to sign letters of credit on behalf of the bank and a statement of the bank's legal authority to issue letters of credit. Fourth, the proposal would provide that OCC would reserve the right, in its sole discretion, to refuse to approve, or to revoke the approval of, any bank as an issuer of letters of credit at any time.[7]

[4] OCC's proposed ten percent requirement is stricter than the comparable current Federal lending limitation of 15% of shareholders' equity. *See* Pub. L. No. 97-320, 96 Stat. 1510.

[5] Letter Amendment to the staff dated December 1, 1982, from Marc L. Berman, Executive Vice President and General Counsel of OCC.

[6] If the applicant bank's annual financial report was issued more than 90 days prior to the date of its application to OCC, the bank also would have to provide OCC with its most recent published quarterly financial statements.

[7] OCC has informed the Commission staff that, if OCC revoked the approval of any issuing bank, affected participants would be required to supply substitute margin in accordance with OCC's rules. Because OCC monitors continuously its approved banks to detect banks experiencing difficulties, OCC ordinarily could advise affected participants at an early stage and thereby facilitate orderly margin substitution.

II. OCC's Rationale For the Proposed Rule Change

In its filing, OCC stated that because of recent developments affecting the availability of unsecured letters of credit,[8] OCC wants to expand the forms of margin available to OCC participants to include letters of credit from foreign banks. OCC represented that domestic banks, for a short time, reduced their issuance of, and increased their fees for, margin-related letters of credit. Also, such banks increasingly have been requiring letters of credit to be partially or fully collateralized by the bank's customers. In reponse to these developments, OCC now desires to include foreign banks in the universe of banks eligible as issuers of letters of credit, which should increase the supply of letters of credit available to OCC's participants and should reduce OCC's dependence on letters of credit issued by domestic banks.

Despite that desire, OCC believes that it should not accept letters of credit issued by foreign banks for margin purposes unless OCC has adopted strict criteria, which those foreign banks must meet, to compensate for differences in bank regulation between the United States and other countries and to insure that OCC approves only foreign banks it reasonably believes to be financially responsible. For example, OCC's proposal makes eligible only those foreign banks that have an office in New York City or Chicago to enable OCC to litigate disputes in American courts and to insure that foreign banks doing business in the United States will be subject to domestic banking regulations, with which OCC is familiar. Also, because OCC states that it is not familiar with foreign regulations respecting foreign bank parent organizations, the proposal will allow OCC, in part, to rely on ratings assigned to foreign countries by nationally-known independent rating services in determining whether to approve a foreign bank. Furthermore OCC's proposal includes important concentration and aggregate lending limitations that are designed to preclude dependence by OCC and its participants on any one foreign bank. OCC's proposal will formalize various criteria for approval of banks as issuers of letters of credit.

[8] For example, Chase Manhattan Bank, N.A. stopped issuing unsecured letters of credit to broker-dealers after incurring losses during the insolvencies of Drysdale Government Securities, Inc. and Lombard-Wall, Inc., two government-securities firms. *See* Wall St. J., September 1, 1982 at 4.

III. Discussion

Although OCC has allowed its participants to satisfy their margin obligations to OCC with letters of credit since OCC's inception in 1973, the Commission has not had the opportunity to review OCC's letter of credit program prior to the filing of this proposed rule change.[9] Accordingly, in reviewing OCC's filing pursuant to Section 19(b) of the Act, the Commission believes it appropriate to assess the proposal in light of OCC's entire program of financial safeguards to assure the proposal's consistency with the requirements of the Securities Acts Amendments of 1975, and in particular, with Section 17A of the Act.

A. The Commission's General Policy Concerns Regarding the Use of Letters of Credit by Clearing Agencies

The Commission has approved the controlled use of letters of credit by clearing agency participants in a related context. In August 1981, the Commission approved a proposal submitted by National Securities Clearing Corporation ("NSCC") that enabled NSCC's participants to secure their clearing fund obligations with letters of credit issued by banks approved by NSCC.[10] In reviewing NSCC's proposal, the Commission noted several factors relevant to its determination that a clearing agency's letter of credit program could promote the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. *See* Section 17A(b)(3)(F) of the Act. A number of the most relevant factors are discussed below.

First, the Commission believes that a clearing agency should take measures to ensure that it accepts letters of credit only from banks that are likely to be financially responsible. Accordingly, a clearing agency should adopt reasonable criteria to determine whether a bank is financially responsible ("bank standards"), including, for example, those that (i) would prevent a bank from issuing amounts of letters of credit

[9] Before Congress's enactment in 1975 of Section 17A of the Act, clearing agencies were not subject to pervasive direct regulation by the Commission. With the adoption of Section 17A, however, clearing agencies must apply for registration with the Commission, and the Commission must review those applications for compliance with the Act. The Commission currently is reviewing OCC's application. Absent the filing of the proposed rule change, the Commission's analysis of OCC's letter of credit program would be limited to review in the context of that application.

[10] Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341 (August 27, 1981).

disproportionate to the bank's size [11] and (ii) would allow the clearing agency to accept letters of credit from issuer banks with high ratings by a recognized financial rating service.[12] Second, the Commission further believes that a clearing agency should have sufficient liquidity in its systems for safeguarding funds and securities to protect itself and its participants if payment of a letter of credit is delayed or refused. If a participant becomes insolvent and cannot meet its settlement obligations, and if payment on the participant's letters of credit is delayed by the issuing bank,[13] the clearing agency must have access to other liquid assets that could be used to satisfy the defaulting participant's settlement obligations. Accordingly, the Commission believes it important that clearing agencies adopt measures insuring liquidity in their back-up systems in the event a letter of credit is not paid promptly or is dishonored by an issuing bank ("liquidity requirements").[14] Third, the Commission believes that a clearing agency should not become excessively dependent upon any one bank as an issuer and, for that reason, believes that a clearing agency should adopt measures insuring the diversification of each participant's letters of credit and the clearing agency's letters of credit among a number of banks ("concentration requirements").[15]

The Commission does not believe, however, that all clearing agencies that wish to establish letters of credit programs must have uniform bank standards, liquidity requirements, and concentration requirements. Indeed, because the Act recognizes that legitimate variations may exist among different clearing agencies, the Commission believes it appropriate to examine all of the facts and circumstances surrounding a clearing agency's proposal for the use of letters of credit to determine whether the proposed program, in the context of that clearing agency's other systems for safeguarding funds and securities, are consistent with the requirements of the Act.

B. Determination of Whether OCC's Proposal Is Consistent with the Requirements of the Act

The Commission believes that OCC's proposed rule change includes concentration requirements and eligibility criteria that should enable OCC to control safely and effectively the use of letters of credit issued by foreign banks. As noted, the proposal includes eligibility standards for foreign banks that should reduce significantly the likelihood that a foreign bank issuer will be unwilling or unable to pay a letter of credit. Moreover, the proposal includes effective concentration prevent OCC or any of its participants from becoming unduly dependent on foreign banks generally or one foreign bank in particular. As noted above, OCC can approve, as foreign bank issuers, sizable, highly-rated institutions having domestic branches in OCC's principal locations. In addition, OCC's proposal would limit in important respects the percentage of participants' margin obligations that can be secured by the use of bank letters of credit.[16] Finally, by accepting letters of credit from foreign banks, OCC will expand the universe of banks approved as issuers of letters of credit, which should reduce OCC's dependence on domestic issuers.[17]

The Commission further believes that OCC's proposal includes various additional safeguards, applicable to both foreign and domestic banks, that should further reduce the risks associated with the use of letters of credit. For example, as part of its continuous monitoring program, OCC periodically will receive financial reports from approved banks. Moreover, OCC maintains a substantial clearing fund consisting only of liquid assets. In the event of participant solvency, OCC clearing fund rules enable it to pledge clearing fund assets in exchange for cash that OCC can apply to participant defaults.[18]

III. Conclusion

Because the proposal provides significant benefits to OCC and its participants and furthers the purposes and requirements of the Act, including in particular, Section 17A of the Act, the Commission believes that the proposal should be approved.

Accordingly, it is therefore ordered, pursuant to Section 19(b) of the Act, that the proposed rule change (SR–OCC–82–8) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1431 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[11] The Commission anticipates that, as a general matter, a clearing agency may safely accept larger amounts of letters of credit from larger banks because the value of those letters of credit would constitute a smaller percentage of the larger bank's total liabilities and total assets.

[12] *See, e.g.*, File No. SR–NSCC–80–15. For example, NSCC generally will not approve a domestic or a foreign bank as an issuer of letters of credit unless its commercial paper is highly rated by a national rating service and/or the bank has a specified amount of assets.

[13] The essential characteristic of an irrevocable letter of credit is that the obligation of the issuer to pay the beneficiary is independent of any contract between the beneficiary and the bank's customer. *See, e.g.*, N.Y.U.C.C. § 5–114(1) (McKinney). In general, the only defenses that an issuing bank has against paying a letter of credit are fraud, forgery, or prior payment to a holder in due course. *Szteja v. J. Henry Schroder Banking Corp.*, 177 Misc. 719, 31 N.Y.S. 2d 631 (Sup. Ct. 1941). *See also KMW Int'l v. Chase Mathattan Bank, N.A.*, 602 F.2d 10 (2d Cir. 1979). Thus, unless a clearing agency were a party to a fraud or forgery, a clearing agency would routinely be entitled to draw down on a letter of credit without delay. That entitlement exists even when the participant is bankrupt. *Westinghouse Credit Corp. v. Pope (In re Pope)*, 18 B.R. 713 (D.D.C. 1982). *But see Twist Cap, Inc. v. Southeast Bank of Tampa (In re Twist Cap, Inc.)*, 18 B.R. 284 (D. Fla. 1979).

[14] For example, NSCC (i) requires a participant using letters of credit to increase the minimum cash contribution to the clearing fund and (ii) has authority to pledge a solvent participant's letters of credit to obtain a loan to NSCC in the event payment on a letter of credit is delayed. In addition, NSCC has other significant systems for safeguarding securities and funds, such as the authority (i) to reverse certain securities deliveries; (ii) to mark-to-the-market failed trades; and (iii) to require participants to provide further assurances of operational and financial stability.

[15] For example, NSCC's rules limit the aggregate value of letters of credit that any bank may issue in favor of NSCC. NSCC's rules also require that no one bank issue more than a maximum stated percentage of the clearing fund, absent NSCC's board of director's express approval.

[16] In particular, under the proposed rule change, OCC will not accept with respect to any OCC participant letters of credit from any one foreign issuer to secure more than twenty percent of that participant's margin obligation. Therefore, as a practical matter, OCC will always have letters of credit from a variety of foreign banks for each participant that makes full use of foreign bank letters of credit. While that arrangement does not directly increase the liquidity of OCC's margin collateral, it does reduce the risk associated with a particular issuing bank's insolvency.

[17] Recently, the Commission approved a rule change filed by OCC that enables participants to meet their OCC margin obligations by pledging common stocks underlying outstanding option classes. Securities Exchange Act Release No. 18994 (August 20, 1982), 47 FR 37731 (August 26, 1982). OCC anticipates that this rule change will reduce significantly its dependence on letters of credit.

Although the proposal contains concentration requirements for foreign banks, OCC's existing rules do not preclude OCC from becoming unduly dependent upon any one domestic issuer. By letter dated January 3, 1983, from Marc L. Berman of OCC to the staff, OCC agreed to study its letter of credit program to determine whether any additional regulatory limitations are necessary to insure the safeguarding of funds and securities at OCC. The Commission welcomes this commitment by OCC and urges it to complete its study promptly.

[18] Under OCC's rules, letters of credit cannot be used for clearing fund purposes.

[Release No. 19421; File No. SR-PCC-82-5]

The Pacific Clearing Corp. ("PCC"); Order Approving Proposed Rule Change

January 12, 1983.

On July 19, 1982, PCC submitted a proposed rule change (SR-PCC-82-5) under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") that would amend Article XI of PCC's By-Laws, with respect to the indemnification of PCC's directors, officers, employees and agents, to conform with recent amendments to the California Corporation Code. On December 9, 1982, PCC filed with the Commission a letter amendment which clarified and substantively altered the provisions of the proposed rule change.[1] The Commission published notice of the proposal in the **Federal Register** on December 10, 1982, and invited interested persons to comment.[2] No comments were received by the Commission.

Description of the Proposed Rule Change

In its filing, PCC represents that its current By-Law provisions with respect to the indemnification of officers, directors and employees are consistent with pre-1977 California indemnification law. Under those By-Laws, PCC must seek to indemnify any person who is or was a director, officer or employee of PCC against any action arising out of that person's misfeasance or nonfeasance in the performance of their duties or out of any alleged wrongful act. The By-Law provides that such a person shall be indemnified for all reasonable expenses, including attorney's fees, if (1) the person sued is successful[3] or the suit is settled with court approval, and (2) the court finds that indemnity is warranted in light of the person's conduct and the amount of indemnification is reasonable.

The current By-Law also allows PCC's board of directors to indemnify any present or former director, officer or employee for satisfying a judgment or fine imposed on such director, officer or employee for an action allegedly committed by such person while (1) the person acted in good faith, and (2) the person reasonably believed the action to be within the scope of employment and for a purpose to be in the best interests of PCC.[4] Indemnification under this provision is permissive.

PCC states in its filing that the proposed rule change would conform Article XI of PCC's By-Laws to the 1977 amendments to the California Corporation Code.[5] Under the proposed rule change, which would delete the current provision in its entirety and substitute for it the new provision, PCC could indemnify its "agents" to the maximum extent permitted by the California Corporation Code against all expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with any proceeding arising from that person's agency relationship with PCC. An "agent," as defined by the proposal, would include

> any person who is or was a director, officer, employee or other agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

Discussion

As noted above, the proposed rule change would integrate into PCC's By-Laws the indemnification provisions of the California Corporation Code by expanding the class of eligible persons to be indemnified to include all agents rather than merely directors, officers and employees, as provided in the current By-Law. The Commission believes that this limited expansion is appropriate because PCC, like any business, must be able to provide valuable financial support to persons that are carrying out its business activities. The Commission further believes that PCC's financial exposure will not increase significantly under the proposal because the class of persons that qualify for indemnification is not enlarged materially, and, in any event, PCC has comprehensive liability insurance to guard against potential financial exposure that could arise out of the operation of its indemnification provisions.

Accordingly, the Commission believes that the proposed rule change is appropriate because it does not significantly differ from PCC's current indemnification provisions, and because PCC maintains substantial financial safeguards against the potential financial exposure inherent in any indemnification scheme. In addition, as PCC's filing indicates, the proposal would enhance PCC's ability to attract top quality directors, officers and employees. The Commission believes that the proposed rule change is consistent with the Act, and in particular with Section 17(b)(3)(F).

Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1427 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[1] PCC's outside counsel, Munger, Tolles and Rickershauser, indicated in a November 9, 1982 letter to the Commission that PCC's original filing inadvertently omitted a necessary sentence from PCC's proposed rule change. The December 10, 1982 letter amendment corrected the omission and thereby fully conformed the filing to the California statute regarding indemnification.

[2] Securities Exchange Act Release No. 19321 (December 10, 1982), 47 FR 56761 (December 20, 1982).

[3] The By-Law states that one need be successful "in whole or in part."

[4] This provision is not applicable to derivative actions.

[5] *See* California Corporation Code (Sections 317 and 2306).

[Release No. 19420; File No. SR-PSDTC-82-2]

Pacific Securities Depository Trust Co. ("PSDTC"); Order Approving Proposed Rule Change

January 12, 1983.

On July 19, 1982, PSDTC submitted a proposed rule change (SR-PSDTC-82-2) under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") that would amend Article XIII of PSDTC's By-Laws, with respect to the indemnification of PSDTC's directors, officers, employees and agents, to conform with recent amendments to the California Corporation Code. On December 9, 1982, PSDTC filed with the Commission a letter amendment which clarified and substantively altered the provisions of the proposed rule change.[1] The Commission published notice of the proposal in the **Federal Register** on December 10, 1982, and invited

[1] PSDTC's outside counsel, Munger, Tolles and Rickershauser, indicated in a November 9, 1982 letter to the Commission that PSDTC's original filing inadvertently omitted a necessary sentence from PSDTC's proposed rule change. The December 10, 1982 letter amendment corrected the omission and thereby fully conformed the filing to the California statute regarding indemnification.

interested persons to comment.[2] No comments were received by the Commission.

Description of the Proposed Rule Change

In its filing, PSDTC represents that its current By-Law provisions with respect to the indemnification of officers, directors and employees are consistent with pre-1977 California indemnification law. Under those By-Laws, PSDTC must seek to indemnify any person who is or was a director, officer or employee of PSDTC against any action arising out of that person's misfeasance or nonfeasance in the performance of their duties or out of any alleged wrongful act. The By-Law provides that such a person shall be indemnified for all reasonable expenses, including attorney's fees, if (1) the person sued is successful[3] or the suit is settled with court approval, and (2) the court finds that indemnity is warranted in light of the person's conduct and the amount of indemnification is reasonable.

The current By-Law also allows PSDTC's board of directors to indemnify any present or former director, officer or employee for satisfying a judgment or fine imposed on such director, officer or employee for an action allegedly committed by such person while (1) the person acted in good faith, and (2) the person reasonably believed the action to be within the scope of employment and for a purpose to be in the best interests of PSDTC.[4] Indemnification under this provision is permissive.

PSDTC states in its filing that the proposed rule change would conform Article XIII of PSDTC's By-Laws to the 1977 amendments to the California Corporation Code.[5] Under the proposed rule change, which would delete the current provision in its entirety and substitute for it the new provision, PSDTC could indemnify its "agents" to the maximum extent permitted by the California Corporation Code against all expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with any proceeding arising from that person's agency relationship with PSDTC. An "agent," as defined by the proposal, would include any person who is or was a director, officer, employee or other agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

Discussion

As noted above, the proposed rule change would integrate into PSDTC's By-Laws the indemnification provisions of the California Corporation Code by expanding the class of eligible persons to be indemnified to include all agents rather than merely directors, officers and employees, as provided in the current By-Law. The Commission believes that this limited expansion is appropriate because PSDTC, like any business, must be able to provide valuable financial support to persons that are carrying out its business activities. The Commission further believes that PSDTC's financial exposure will not increase significantly under the proposal because the class of persons that qualify for indemnification is not enlarged materially, and, in any event, PSDTC has comprehensive liability insurance to guard against potential financial exposure that could arise out of the operation of its indemnification provisions.

Accordingly, the Commission believes that the proposed rule change is appropriate because it does not significantly differ from PSDTC's current indemnification provisions, and because PSDTC maintains substantial financial safeguards against the potential financial exposure inherent in any indemnification scheme. In addition, as PSDTC's filing indicates, the proposal would enhance PSDTC's ability to attract top quality directors, officers and employees. The Commission believes that the proposed rule change is consistent with the Act, and in particular with Section 17(b)(3)(F).

Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and is hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1426 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19423; File No. SR-SCCP-81-5]

Stock Clearing Corporation of Philadelphia ("SCCP"); Order Withdrawing Prosposed Rule Change

January 12, 1983.

On July 21, 1981, SCCP filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 87s(b)(1), (the "Act") and Rule 19b–4 thereunder, a proposed rule change that would authorize SCCP participants to satisfy the non-cash portion of their clearing fund . contribution by pledging letters of credit issued by banks approved by SCCP.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of Securities Exchange Act Release No. 18381 (December 31, 1981), (47 FR 3249, January 22, 1982). No letters of comment were received by the Commission.

By letter dated December 30, 1982, SCCP has requested that the proposal be withdrawn. SCCP believes that letters of credit have become increasingly difficult and expensive for participants to obtain and, therefore, no longer offer meaningful cost savings to participants. In response to this request, the Commission grants the withdrawal of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, withdrawn.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1430 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19418; Files No. SR-AMEX-82-25]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.

Pursuant to Section 19 (b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b) (1), notice is hereby given that on January 3, 1983, the American Stock Exchange, Inc. filed with the

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[2] Securities Exchange Act Release No. 19321 (December 10, 1982), 47 FR 56761 (December 20, 1982).

[3] The By-Law states that one need be successful "in whole or in part."

[4] This provision is not applicable to derivative actions.

[5] *See* California Corporations Code (Sections 317 and 2306).

Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "the Exchange") proposes to amend Rules 904 and 905, regarding position and exercise limits, as set forth below. Italics indicate material proposed to be added. Brackets [] indicate material proposed to be deleted.

Rule 904. Position Limits

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, an opening transaction (whether on the Exchange or on another Participating Exchange) in an option contract of any class of options dealt in on the Exchange if the member or member organization has reason to believe that as a result of such transaction the member or member organization or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in option contracts (whether long or short) of the put class and the call class on the same side of the market covering any underlying security in excess of:

(i) [2,000] *3,000* contracts covering an underlying stock; or

(ii) through (v)–no change.

Rule 905. Exercise Limits

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member organization has an interest or for the account of any partner, officer, director, or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in excess of:

(i) [2,000] *3,000* contracts in a class of options for which the underlying security is a stock; or

(ii) through (v)–no change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to increase position and exercise limits for stock options, from 2,000 contracts to 3,000 contracts.

Position and exercise limit rules were originally adopted by option exchanges in order to minimize the manipulative potential which could result from the accumulation of large options positions. In 1978, the Special Study of the Options Market ("Study") recognized a number of significant problems which resulted from the position limit rule restrictions, including the inability of large portfolio managers to utilize options as a vehicle to properly balance a portfolio's risk and potential reward. The Study recommended that existing Exchange rules, which limited the size of options positions held by market participants, be reviewed and that their relaxation or elimination be considered. As a result of re-examination of position limits, as suggested in that Study, the Exchange proposed rule changes which were adopted in October 1980 to raise position and exercise limits from 1,000 to 2,000 contracts. In view of the increased use of the options markets and the experience gained during the two years since the position limits were increased in 1980, the Exchange believes that it is appropriate at this time to again increase position and exercise limits from 2,000 to 3,000 contracts.

In its 1980 release approving position and exercise limit increases, the Commission made the following statements (Release, No. 34–17237) that the Exchange believes also apply to the current proposal to increase limits to 3,000 contracts:

> * * * There is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications * * *

A major concern in any raising of position and exercise limits is the greater potential for "short squeezes" that could result. A "short squeeze" can conceivably occur when there is an accumulation of large option positions, which are exercised day after day, so that, for example, uncovered call option writers who are assigned to deliver stock on the exercises must buy that stock at increasingly higher prices because fewer shares are available. While the theoretical peril of a short squeeze is created by the size of the uncovered short interest in any option class, it should be noted that each options exchange has the ability to impose limitations on uncovered writing as well as the uncovering of existing short positions. (See Exchange Rule 908—Limit on Uncovered Short Positions.) In addition, the Exchange has the power to restrict the exercise of option contracts as it deems advisable in the interests of maintaining a fair and orderly market in the options or the underlying securities (see Exchange Rule 909—Other Restrictions on Exchange Transactions and Exercises) and the Options Clearing Corporation, under appropriate circumstances, has the authority to require cash settlement of exercises. In sum, "short squeezes" can be handled directly, rather than indirectly by means of position limits.

Further, position limits cannot be justified as a protection against financial exposure. While unhedged larger positions do entail financial risks, position limits are cumbersome and inefective mechanisms for limiting those risks. Rather, those rules which have been designed specifically to limit risk exposure should be used for this purpose, namely, suitability, margin and net capital rules.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder

applicable to the Exchange in that the expansion of position limits will provide increased market depth and liquidity, while maintaining adequate surveillance and protection of the investing public from manipulative activities.

Therefore the proposed rule changes are consistent with Section 6 (b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the Board of Governors comprised of Exchange members and representatives of member firms, endorsed the proposed rule change.

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 11, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-1422 Filed 1-18-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Delegation of Authority No. 151]

Director General of the Foreign Service; Delegation of Authority

By virtue of the Authority vested in me as Acting Secretary of Stateincluding tha authority of Section 4 of the Act of May 26, 1949 [22 U.S.C. 2658], and Executive Order 12391 of November 4, 1982 [47 FR 50457, November 8, 1982], the authority to Act in a consultative role to the Secretary of Defense pursuant to Section 2 of Executive Order 12391, is hereby delegated to the Director General of the Foreign Service. The Director General will confer with the Special Assistant to the Secretary and Coordinator for International Labor Affairs and other appropriate officers of the Department of State in the carrying out of this delegation of authority.

Dated: December 23, 1982.

Kenneth W. Dam,

Acting Secretary.

[FR Doc. 83-1404 Filed 1-18-83; 8:45 am]

BILLING CODE 4710-37-M

[Public Notice 843]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: The Bureau of Oceans and International Environmental and Scientific Affairs of the Department of State has requested the Nuclear Regulatory Commission to conform United States reporting to the new International Atomic Energy Agency format. The Nuclear Regulatory Commission requires its licensees to provide certain information regarding exports and imports in order for the U.S. to fulfill certain undertakings to the International Atomic Energy Agency made in connection with implementation of the Treaty on the Non-Proliferation of Nuclear Weapons.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—Revision of instructions.

(2) Number of forms submitted—Two.

(3) Form numbers—DOE/NRC Forms 740M & 741.

(4) Title of information collection—Nuclear Material Transaction Report Instructions.

(5) Estimated number of responses—2500.

(6) Estimated total number of hours needed to fill out form—725.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed format and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: December 30, 1982.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 83-1406 Filed 1-18-83; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 842]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: The proposed information collection is to determine the representativeness of the candidates selected for the Foreign Service and to determine the focus of the recruitment effort.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—extension.

(2) Number of forms submitted—one.
(3) Form number—DSP-24.
(4) Title of information collection—Registration/Application Record Form—Foreign Service Examination.
(5) Frequency—Annual.
(6) Respondents—Individuals seeking employment in the Foreign Service.
(7) Estimated number of responses—28,000.
(8) Estimated total number of hours needed to fill out form—7,000. Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed format and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: December 30, 1982.

Thomas M. Tracy,
Assistant Secretary for Administration.

[FR Doc. 83-1407 Filed 1-18-83; 8:45 am]
BILLING CODE 4710-22-M

[Public Notice 841]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted proposed collections of information to the Office of Management and Budget for review.

PURPOSE: The proposed information collections are for use by the Bureau of Consular Affairs of the Department of State in connection with the issuance of passports and visas.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—DSP-19.
(4) Title of information collection—Application for Amendment of Passport.
(5) Frequency—On occasion.
(6) Respondents—Passports applicants.
(7) Estimated number of responses—52,000.
(8) Estimated total number of hours needed to fill out form—4,333.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—DSP-82.
(4) Title of information collection—Application for Passport by Mail.
(5) Frequency—On occasion.
(6) Respondents—Passport applicants.
(7) Estimated number of responses—1,000,000.
(8) Estimated total number of hours needed to fill out form—83,333.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—DSP-11.
(4) Title of information collection—Passport Application.
(5) Frequency—On occasion.
(6) Respondents—Applicants seeking passports.
(7) Estimated number of responses—3,500,000.
(8) Estimated total number of hours needed to fill out form—291,000.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—OF-178.
(4) Title of information collection—Application for Passport or Registration.
(5) Frequency—On occasion.
(6) Respondents—Passport applicants.
(7) Estimated number of responses—250,000.
(8) Estimated total number of hours needed to fill out form—33,300.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—OF-195.
(4) Title of information collection—Application for Renewal, Amendment, Extension of Passport.
(5) Frequency—On occasion.
(6) Respondents—Passport applicants residing abroad.
(7) Estimated number of responses—65,000.
(8) Estimated total number of hours needed to fill out form—8,600.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—FS-240.
(4) Title of information collection—Report of Birth (U.S. Citizens Born Abroad).
(5) Frequency—On occasion.
(6) Respondents—Parents of U.S. citizen children born abroad.
(7) Estimated number of responses—40,000.
(8) Estimated total number of hours needed to fill out form—13,333.

The following summarizes the information collection proposal submitted to OMB:
(1) Type of request—extension.
(2) Number of forms submitted—one.
(3) Form number—OF-230.
(4) Title of information collection—Application for Immigrant Visa and Alien Registration.
(5) Frequency—On occasion.
(6) Respondents—Foreign nationals seeking to immigrate to the U.S.
(7) Estimated total number of responses—350,000.
(8) Estimated total number of hours needed to fill out form—116,666.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed format and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: December 30, 1982.

Thomas M. Tracy,
Assistant Secretary for Administration.

[FR Doc. 83-1408 Filed 1-18-83; 8:45 am]
BILLING CODE 4710-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 83-30]

Commerce and Treasury Departments Agreement—Entry of Steel Products

AGENCY: Customs Service, Treasury.

ACTION: General Notice.

SUMMARY: This document advises the public of an agreement between the U.S. Department of Commerce and the U.S. Department of the Treasury concerning the release into the commerce of the United States of steel products subject to arrangements between the European Communities and the United States.

EFFECTIVE DATE: January 19, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Spetrini, Acting Director, Agreements Compliance Division, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3793) or Frank Brennan, Director, Duty Assessment Division, U.S. Customs Service, Washington, D.C. 20229 (202-566-8121).

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1982, the United States Government concluded two

Arrangements with the European Communities (EC) restricting exports of certain steel products and steel pipes and tubes to the United States. These Arrangements, which will be in effect from November 1, 1982 through December 31, 1985, were published as an appendix to a notice published by the International Trade Administration, U.S. Department of Commerce, in the Federal Register on October 29, 1982 (47 FR 49058), relating to the termination of countervailing duty and antidumping investigations of steel imports from the EC. One of the Arrangements involves the immediate restraint by the EC of exports of certain steel products to the United States through a system of export licenses. The United States Government has agreed to require presentation to the U.S. Customs Service of a properly executed EC export certificate, issued by EC member state customs officials against an export license, as an absolute condition for making entry of steel products covered by the Arrangement. Under this Arrangement and a separate Arrangement on EC exports of steel pipes and tubes, requirements by the U.S. Customs Service of presentation of a valid export certificate or other documents issued by the EC or their member states for additional steel mill products may become necessary as a condition of entry.

The procedure set forth in the Agreement was formulated to ensure that the Arrangement were effectively administered while at the same time not unnecessarily delaying imports of steel from the EC.

The text of the Agreement is set forth below.

Dated: January 14, 1983.

John P. Simpson,

Director, Office of Regulations and Rulings.

Memorandum of Agreement Between the U.S. Department of Commerce and the U.S. Department of the Treasury Concerning the Release Into the Commerce of the United States of Steel Subject to Arrangements Between the European Communities and the United States of America

On October 21, 1982, the United States Government concluded two Arrangements with the European Communities (EC) restricting exports of certain steel products and steel pipes and tubes to the United States. These Arrangements will be in effect from November 1, 1982 through December 31, 1985. One of the Arrangements involves the immediate restraint by the EC of exports of certain steel products to the United States through a system of export licenses. The United States Government has agreed to require presentation to the U.S. Customs Service of a properly executed EC export certificate, issued by EC member state customs officials against an export license, as an absolute condition for making entry of steel products covered by the Arrangement. Under this Arrangement and a separate Arrangement on EC exports of steel pipes and tubes, requirement by the U.S. Customs Service of presentation of a valid export certificate or other documents issued by the EC or their members states for additional steel mill products may become necessary as a condition of entry.

The authority for this condition for entry into the United States is provided by section 626 of Title IV of the Tariff Act of 1930, as amended by section 153 of Pub. L. 97-276. President Reagan and the Head of the Delegation of the Commission of the European Communities to the United States, Sir Roy Denman, have requested in writing that Secretary of the Treasury Regan utilize his authority under section 626 to enforce the export measure taken by the EC under these Arrangements.

On November 5, 1982, U.S. Customs Headquarters issued a press release announcing that: "These shipments will be released from Customs custody only after formal acceptance of entry summary documents." This method of enforcement is referred to as "live entry." Since the time of that announcement, U.S. Customs Headquarters and Department of Commerce, Import Administration personnel have closely consulted to develop an effective alternative to the so-called live entry method that would preserve the required certainty in Arrangement enforcement but prove less burdensome on the importing community. During the course of these discussions, Customs and DOC personnel developed alternative measures which will meet these goals within the framework of existing Customs regulations. Accordingly, in order to carry out the purposes of the Arrangements and to ensure compliance with the terms thereof, the U.S. Department of Commerce and the U.S. Department of the Treasury have agreed to the following:

1. As an alternative to the live entry method, the U.S. Customs Service will allow entry release of steel products from the EC subject to the following conditions:

a. With respect to steel products that are currently subject to the export licensing provisions of the Arrangements or which become subject to licensing in the future, proper documentation sufficient to ensure the security and integrity of the Arrangements must be provided to and reviewed by the appropriate Customs officer prior to entry release. Such documentation shall include: (i) a Customs Form 3461; (ii) a Special Steel Summary Invoice; (iii) a rated invoice; and (iv) an essentially correct export certificate.

b. With respect to EC steel products covered by the Arrangements but not currently subject to export licensing, the documentation listed in subparagraph a., above, with the exception of the export certificate, must be provided to and reviewed by the appropriate Customs officer prior to entry release.

2. Should entry release occur without the submission of the documentation listed in paragraph 1, or should review of the complete entry documentation reveal that release was improper, the appropriate District Director of Customs will promptly demand immediate redelivery of the entire shipment. The failure to redeliver in accordance with the demand of the District Director will result in the immediate revocation of entry release privileges (entry release privileges—sometimes referred to as immediate delivery—being described in 19 CFR 142.1 through 142.8 *et seq.*) for the importer concerned. In addition, the failure to redeliver the entire shipment will cause the U.S. Customs Service to assess liquidated damages in accordance with Customs Regulations. The authority to mitigate liquidated damages will be exercised by the Deputy Assistant Secretary of the Treasury for Operations or such Department of the Treasury or U.S. Customs Service Headquarters official as he may designate. The Deputy Assistant Secretary for Operations, or his delegate, will also consult with the Deputy Assistant Secretary of Commerce for Import Administration, or his delegate, regarding the assessment of liquidated damages. The Deputy Assistant Secretary for Operations, or his delegate, also will seek and follow the recommendation of the Deputy Assistant Secretary for Import Administration, or his delegate, regarding the degree of mitigation, if any, of liquidated damages. In the event that the Deputy Assistant Secretary of the Treasury for Operations or such Department of the Treasury for U.S. Customs Service Headquarters official as he may designate does not follow the recommendation of the Department of Commerce, the Deputy Assistant Secretary for Operations will in writing provide the reason to the Deputy Assistant Secretary for Import Administration.

3. The U.S. Customs Service will use its best efforts to ascertain whether a violation of section 592 of the Tariff Act of 1930, as amended, has occurred in connection with any improper release of steel products into the commerce of the United States, and will vigorously pursue any investigations of such occurrences. The Department of Commerce will provide any relevant information which it develops concerning such violations to the Deputy Assistant Secretary of the Treasury for Operations, or his delegate, and such information will be carefully considered during the course of the investigative process.

4. The Deputy Assistant Secretary of the Treasury for Operations, or his delegate, and the Deputy Assistant Secretary for Import Administration, or his delegate, will consult on other matters arising out of the administration of the U.S.-EC Arrangements on steel, as necessary.

Dated: January 8, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce.

January 4, 1983.

David Q. Bates,

Deputy Assistant Secretary for Operations, U.S. Department of the Treasury.

[FR Doc. 83-1486 Filed 1-18-83; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 83-5]

General Counsel and Congressional Liaison; Delegation of Authority

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, and by Executive Order 12048 of March 27, 1978, there is hereby delegated to the General Counsel and Congressional Liaison, the following described authority:

1. The authority to designate Exchange Visitor Programs under the sponsorship of a reputable U.S. or international agency or organization and designed to promote the interchange of persons, knowledge and skills, and the interchange of developments in the field of education, the arts and sciences, and concerned with one or more foreign national participants, in order to promote mutual understanding between the people of the United States and the people of other countries.

2. The authority to designate a Responsible Officer and alternates among the officials of a sponsoring organization.

3. The authority to grant or deny applications for favorable recommendations of the waiver of the foreign residency requirement imposed on persons admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, to issue authoritative opinions concerning the applicability or interpretation thereof, and to authorize extensions of duration of stay.

4. To approve and promulgate regulations concerning any aspect of this authority.

5. To exercise in full any authority vested in the Director by law relating to Exchange Visitor Program designations, visa waiver review, and to authorized periods of duration of stay.

6. The authority to redelegate any authority granted herein together with the power of further redelegation.

7. Notwithstanding any other provision of this Order, the Director may at any time exercise any function or authority delegated herein.

This Order shall take effect on January 16, 1983.

Dated: January 13, 1983.

Charles Z. Wick,

Director.

[FR Doc. 83-1412 Filed 1-18-83; 8:45 am]

BILLING CODE 8230-01-M

[Delegation Order No. 83-4]

Associate Director for Broadcasting; Delegation of Authority

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, and by Executive Order 12048 of March 27, 1978, there is hereby delegated to the Associate Director for Broadcasting, the following described authority.

1. The authority to acquire or to produce program-relevant audio-visual materials. The authority to acquire these materials from sources outside the United States Information Agency shall be exercised by means of requisitions issued in accordance with paragraph 9 of Delegation Order No 83-2.

2. The authority to redelegate any authority granted herein together with the power of further redelegation.

3. Notwithstanding any other provision of this Order, the Director may at any time exercise any authority delegated herein.

Dated: January 13, 1983.

Charles Z. Wick,

Director.

[FR Doc. 83-1413 Filed 1-18-83; 8:45 am]

BILLING CODE 8230-01-M

[Delegation Order No. 83-3]

Associate Director for Educational and Cultural Affairs; Delegation of Authority

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, and by Executive Order 12048 of March 27, 1978, there is hereby delegated to the Associate Director for Educational and Cultural Affairs, the following described authority:

1. The authority to direct academic programs including academic relations, academic exchange programs, student and academic support services and American studies.

2. The authority to direct institutional relations, including cultural presentations, international visitor and private sector programs; and to develop and to coordinate official international educational and cultural exchanges policy.

3. The authority to conduct and to administer functions relating to the Board of Foreign Scholarships.

4. The authority to conduct and to administer programs with respect to studies abroad of the United States, including the authority to provide logistical support and to develop operating policies for libraries, Bi-National Centers and other centers; and to conduct book and English teaching programs.

5. The authority to conduct and to administer relations with respect to the East-West Center and the East-West Center Corporation, including the authority to request the initiation or continuation of grant-in-aid agreements with the East-West Center Corporation, to coordinate with representatives of the East-West Center Corporation annual budget presentations and other relations with Congress, and to be Governor of the Corporation.

6. The authority to be an alternate member of the U.S. panel of the U.S.-Japan Friendship Commission and of the U.S.-Japan Conference on Cultural and Educational Exchange.

7. The authority to conduct and to administer relations with respect to international agreements involving programs in the field of educational and cultural affairs.

8. The authority to exercise the functions of section 102(a)(2)(iv) of the Mutual Educational and Cultural Exchange Act of 1961, as amended, for purposes of determining that the participation therein specified is in the national interest.

9. The authority to prepare for and to participate in conferences or negotiations with foreign governments or international organizations with respect to the functions delegated hereunder, in association with other elements of the Agency as may be appropriate. The assistance and participation of the Office of the General Counsel shall be considered necessary in all negotiations of consequence.

10. The authority to exercise any authority or to discharge any responsibility arising out of any existing interagency agreement between the United States Information Agency or the International Communication Agency, and the Department of State, or between either of the foregoing and any other agency or department, or component thereof, which agreement was concluded under functions transferred or delegated to the Director or to the Agency and is related to the authorities granted herein.

11. The authority to enter into interagency agreements to further the

discharge of responsibilities set forth herein.

12. The authority to issue requisitions for personal property, services (including construction) and real property to be acquired by the Agency's Office of Contracts; to identify potential recipients of grants and grants-in-aid; to initiate requisitions for the issuance of grants and grants-in-aid; to review grants and grants-in-aid and Bi-National Center loan proposals and to make recommendations thereon. This order does not include the authority to make contracts, grants or grants-in-aid.

13. The authority to assign or authorize the assignment for service to or in cooperation with a foreign government of any person in the employ or service of the United States having special scientific or other technical or professional qualifications (in other than the field of radio broadcasting) with the approval of the Government agency in which such person is employed or serving. No such person shall be assigned for such services unless (1) The Associate Director finds that such assignment is necessary in the national interest of the United States, or (2) the foreign government agrees to reimburse the United States in an amount equal to the compensation, travel expenses and allowances payable to such person during the assignment in accordance with the provisions of section 302 of the United States Information and Educational Exchange Act of 1948, as amended, or (3) the foreign government shall have made an advance of funds, property or services as provided in section 902 of the Act. This delegated authority does not extend to the assignment of such personnel for service relating to the organization, training, development or combat equipment of the armed forces of a foreign government.

14. The authority to redelegate any authority granted herein together with the power of further redelegation.

15. Except as otherwise expressly provided, all delegations of authority in force on May 14, 1982 and related to the exercise of functions and responsibilities herein granted to the Associate Director for Educational and Cultural Affairs shall remain in force.

16. Notwithstanding any other provision of this Order, the Director may at any time exercise any function or authority delegated herein.

17. All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or suspended.

18. This Order supersedes Delegation Order No. 78–3 of April 3, 1978.

Dated: January 12, 1983.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 83–1414 Filed 1–18–83; 8:45 am]

BILLING CODE 8230–01–M

[Delegation Order No. 83–2]

Associate Director for Broadcasting; Delegation of Authority

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977, and by Executive Order 12048 of March 27, 1978, there is hereby delegated to the Associate Director for Broadcasting the following described authority:

1. The authority to direct radio broadcasting conducted by the Voice of America, including its broadcasting studios, and radio transmitting and radio relay stations within the United States or in foreign countries.

2. The authority to make arrangements domestically and in foreign countries for the collection of news and information on current affairs; to analyze and to make preparation for the broadcasting thereof.

3. The authority for technical aspects of the planning, design, preparation of specifications, and construction of radio transmitting and radio relay stations within the United States and in foreign countries.

4. The authority to implement any international radio regulations, executive agreements or treaties reached with foreign countries or international organizations to the extent involving the exercise of authorities granted under other paragraphs of this Order or to the extent specifically authorized by the Director.

5. The authority to prepare for and to participate in conferences or negotiations with foreign governments or international organizations on radio broadcasting, in association with other elements of the Agency as may be appropriate. The assistance and participation of the Office of the General Counsel shall be considered necessary in all negotiations of consequence.

6. The authority to negotiate and to sign implementing or cooperative arrangements within the scope of existing executive agreements for radio stations in foreign countries, subject in each case to the prior clearance of the General Counsel on the legality and form of the proposed arrangements.

7. The authority to exercise any authority or to discharge any responsibility arising out of any existing interagency agreement between the United States Information Agency or the International Communication Agency and the Department of State, or between either Agency and any other agency or department, or component thereof, which agreement was concluded under functions delegated or transferred to the Director or to the Agency and is related to authorities granted herein.

8. The authority to enter into interagency agreements to further the discharge of the responsibilities set forth herein.

9. The authority to issue requisitions for personal property, services (including construction) and real property to be acquired by the Agency's Office of Contracts. This Order does not include the authority to make contracts or grants.

10. The authority to assign or authorize the assignment for service to or in cooperation with a foreign government of any person in the employ or service of the United States having special scientific or other technical or professional qualifications in the field of radio broadcasting with the approval of the Government agency in which such person is employed or serving. No such person shall be assigned for such services unless (1) The Associate Director finds that such assignment is necessary in the national interest of the United States, or (2) the foreign government agrees to reimburse the United States in an amount equal to the compensation, travel expenses and allowances payable to such person during the assignment in accordance with the provisions of section 302 of the United States Information and Educational Exchange Act of 1948, as amended, or (3) the foreign government shall have made an advance of funds, property or services as provided in section 902 of the Act. This delegated authority does not extend to the assignment of such personnel for service relating to the organization, training, development or combat equipment of the armed forces of a foreign government.

11. Notwithstanding any other delegation at any time made by the Director, the authority independently to provide personnel services throughout the world for the Associate Directorate for Broadcasting (including by appointment in the civil service or in the foreign service of overseas specialists, and by employment of foreign nationals both domestically and in foreign countries); to establish training and

development programs with respect to any category of personnel; to conduct employe-management relations; and to administer systems for the resolution of employee grievances. The civil service personnel system may be administered on a separate competitive basis if legally proper and deemed desirable in the discretion of the Associate Director for Broadcasting. The Associate Director for Broadcasting and the Associate Director for Management shall coordinate their activities to ensure operational efficiency and harmony of Agency-wide personnel policies and procedures to the extent practicable.

12. Except as otherwise limited by law, the authority to exercise any authority delegated directly by the Director or the Agency Procurement Executive to any subordinate officer or employee of the Associate Director for Broadcasting.

13. Except as provided in paragraph 12, the authority to redelegate any authority granted herein together with the power of further redelegation. The power of redelegation shall not diminish or limit the right of the Associate Director for Broadcasting to exercise any redelegated authority.

14. Notwithstanding any other provision of this Order, the Director may at any time exercise any function or authority delegated herein.

15. All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or suspended.

16. This Order supersedes Delegation Order No. 81–1 of October 9, 1981.

Dated: January 12, 1983.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 83–1415 Filed 1–18–83; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 13
Wednesday, January 19, 1983

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).

CONTENTS

1

CIVIL AERONAUTICS BOARD

[M-371, Amdt 2; Jan. 12, 1983]

Deletion From and Addition To the January 12, 1983 Meeting and Change of Status of Item 18 From Open to Closed

TIME AND DATE: 10 a.m., January 12, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

18. Dockets 40623, 40680, Capitol Air, Inc., and United Air Lines, Inc., for issuance or amendment of certificate of public convenience and necessity pursuant to section 401 of the Federal Aviation Act of 1958, as amended, to add authority to serve various Caribbean and Latin American points. (Memo 1642, BIA, OGC, BALJ)

21. Docket 40887, *U.S.-People's Republic of China Service Proceeding. (Phase II).* Request for instructions. (OGC)

21a. Discussion of Negotiations with Ireland. (BIA).

STATUS: 18, 21a closed, 21 open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-69-83 Filed 1-17-83; 4:03 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

[M-371 Amdt 1; Jan. 10, 1983]

Addition to the January 12, 1983 meeting

TIME AND DATE: 10 a.m., January 12, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

25. Position Concerning Negotiations with Thailand. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-70-83 Filed 1-17-83; 4:03 pm]

BILLING CODE 6320-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 24, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389-4425.

Dated: January 17, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-72-83 Filed 1-17-83; 4:04 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 24, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of the minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,564-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Case No. 45,573 (Amended)—Establishment of the Division of Liquidation Midwest, Area Office, Chicago, Illinois

Memorandum and Resolution re: Mt. Pleasant Bank & Trust Company, Mount Pleasant, Iowa

Memorandum and Resolution re: Elm Creek State Bank, Elm Creek, Nebraska

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, California.
Sidley & Austin, Chicago, Illinois, in connection with the receivership of The Des Plaines Bank, Des Plaines, Illinois.

Memorandum and Resolution re: Final amendment to Part 348 of the Corporation's rules and regulations, entitled "Management Official Interlocks," which will (1) permit a management official of a depository organization who terminated a grandfathered interlock because of a change in circumstances to resume the interlock for the duration of the grandfather period under the Depository Institution Management Interlocks Act, and (2) permit management officials currently serving in grandfathered interlocks to continue such service until November 10, 1988, despite the occurrence of a change in circumstances.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 17, 1983.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-73-83 Filed 1-17-83; 4:04 pm]
BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 3:45 p.m., January 14, 1983.

PLACE: Room 12313, 1100 L Street, NW., Washington, D.C. 20573

STATUS: Closed.

MATTER TO BE CONSIDERED: Docket No. 82-58: Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-71-83 Filed 1-17-83; 4:03 pm]
BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, January 24, 1983.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20651.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 14, 1983.
James McAfee,
Asociate Secretary of the Board
[S-67-83 Filed 1-14-83; 5:10 pm]
BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM

(Board of Governors)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR. 1262, Tuesday, January 11, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, January 17, 1983.

CHANGES IN THE MEETING: Addition of the following closed items(s) to the meeting:

Proposed acquisition of check sorters within the Federal Reserve System. (This item was previously announced for a meeting on January 19, 1983.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 14, 1983.

James McAfee,
Associate Secretary of the Board.

[S-68-83 Filed 1-14-83; 5:10 pm]
BILLING CODE 6210-01-M

federal register

Wednesday
January 19, 1983

Part II

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment, and Instruction of Inmates; Rule and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is amending its final rule on Transfer of Offenders to or from Foreign Countries. The amendment identifies limitations on the transfer of offenders to foreign countries. One revision states that an inmate with a civil contempt commitment may not be returned to the inmate's country of citizenship for service of the sentence or commitment imposed in a United States court. The inmate may be considered for transfer once the contempt commitment is purged, served, or otherwise terminated by judicial authority. A second revision states that an inmate with a committed fine may not be returned to the inmate's country of citizenship for service of a sentence imposed in a United States court without the concurrence of the court imposing the fine. These amendments are intended to clearly identify limitations on the transfer of offenders who have been convicted and sentenced in federal courts to foreign countries.

EFFECTIVE DATE: February 20, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is amending its final rule on Transfer of Offenders to or from Foreign Countries. A final rule on this subject was published in the **Federal Register**, December 4, 1981 (at 46 FR 59506 et seq.). The present amendment was published in the **Federal Register** as a proposed rule October 22, 1982 (at 47 FR 47170). The amendment adds § 527.46, "Limitations on transfer of offenders to foreign countries", to the final rule. This new section concerns limitations on the return of an inmate to the inmate's country of citizenship for service of a sentence or commitment imposed in a United States court. Specifically, the changes concern an inmate who has a civil contempt commitment (may not be transferred) and an inmate whose detention is the result of a committed fine (may be considered for transfer only with the concurrence of the federal court imposing the fine).

No public comments were received on the proposed rule. Members of the public may submit comments on the final rule by writing the previously cited address. These comments will be considered but will receive no formal response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by adding § 527.46 to Part 527, Subpart E.

Dated: January 13, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

In Subchapter B, Part 527 is amended as follows:

PART 527—TRANSFERS

1. The authority citation for Part 527, Subpart E reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 4001, 4042, 4081, 4082, 4100–4115, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart E—Transfer of Offenders to or From Foreign Countries

3. In Part 527, amend Subpart E by adding a new § 527.46 to read as follows:

§ 527.46 Limitations on transfer of offenders to foreign countries.

(a) An inmate while in custody for civil contempt may not be considered for return to the inmate's country of citizenship for service of the sentence or commitment imposed in a United States court.

(b) An inmate with a committed fine may not be considered for return to the inmate's country of citizenship for service of a sentence imposed in a United States court without the permission of the court imposing the fine. When considered appropriate, the Warden may contact the sentencing court to request the court's permission to process the inmate's application for return to the inmate's country of citizenship.

[FR Doc. 83–1383 Filed 1–18–83; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500 and 571

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau of Prisons is publishing its proposed rule on Fines and Costs. The rule provides that when a federal court orders an inmate confined until a fine and/or costs are paid, the Bureau of Prisons will so confine that inmate, unless the inmate qualifies for release as an indigent under 18 U.S.C. 3569. The rule is intended to discuss Bureau of Prisons procedures with respect to the inmate who is ordered committed until a fine and/or costs are paid, and who requests a discharge from imprisonment because of indigency. This subject was previously published in the **Federal Register** as a proposed rule January 12, 1979. That proposed rule is now withdrawn.

This document also contains proposed amendments to two definitions used by the Bureau of Prisons. These amendments are intended to clarify what is meant by the terms "inmate" and "contraband".

DATE: Comments must be received on or before March 14, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** its proposed rule on Fines and Costs. A proposed rule on this subject was previously published in the **Federal Register** January 12, 1979 (at 44 FR 2991 et seq.). That rule is now withdrawn. The new proposed rule describes Bureau of Prisons procedures with respect to the inmate who is committed by the court for non-payment of a fine and/or costs and who subsequently requests discharge from imprisonment on the basis of indigency (see 18 U.S.C. 3569).

This document also proposes to amend Bureau of Prisons definitions for "inmate" and "contraband". The present definitions were published in the **Federal Register** June 29, 1979 (at 44 FR 38244). The intent of the revisions is to clarify the scope of these terms. It has suggested that the Bureau's present definition of "inmate" does not clearly recognize the intent to include all persons (e.g., sentenced, pre-trial, detained aliens) committed to the custody of the U.S. Attorney General. The definition of "contraband" is changed from "anything that an inmate is not authorized to possess in an institution" to material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution. As revised, the language is consistent with the Department of Justice Federal Standards for Prisons and Jails.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. With respect to the proposed amendments to the two Bureau of Prisons definitions, the Bureau has determined that EO 12291 does not apply since these definitions involve agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, DC. 20534. Comments received on or before March 14, 1983 will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 500 and 571

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapters A and D of 28 CFR, Chapter V as follows:

1. In Subchapter A, Part 500, revise § 500.1(c) and (h); and

2. In Subchapter D, Part 571, add a new Subpart F.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

1. The authority citation for Part 500 reads as follows:

Authority: 5 U.S.C. 301, 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. By revising § 500.1(c) and (h) to read as follows:

§ 500.1 Definitions.

* * * * *

(c) "Inmate" means any person who is committed to, or in the custody of, the U.S. Attoney General and who is placed in, or designated to be placed in, a Bureau of Prisons institution. "Inmate" also includes any person who is committed for civil contempt to an institution of the Bureau of Prisons.

* * * * *

(h) "Contraband" is material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution.

3. In Subchapter D, Part 571 is amended by adding a new Subpart F to read as follows:

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

Subpart F—Fines and Costs

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568, 3569, 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart F—Fines and Costs

§ 571.50 Purpose and scope.

When the court orders a prisoner's confinement until a fine and/or costs are paid, the Bureau of Prisons shall confine that inmate until the fine and/or costs are paid, unless the inmate qualifies for release under 18 U.S.C. 3569.

(a) An inmate who is unable to pay such fine and/or costs and whose non-exempt property does not exceed $20 may request discharge from imprisonment on the basis of indigency (see 18 U.S.C. 3569).

(b) 18 U.S.C. 3569 states that the determination of indigency may be made by the Warden of the federal institution where the inmate is confined or by the U.S. Migistrate. Where the Warden and/or U.S. Magistrate make a finding of non-indigency based on the inmate's application for a determination of his ability to pay the committed fine and/or costs, the appropriate Regional Director shall review the application for

the purpose of making a final decision on the inmate's discharge under 18 U.S.C. 3569. It is to be noted that 18 U.S.C. 3569 provides for confining an indigent inmate for thirty days for nonpayment of a committed fine. By court decision, such an indigent inmate may not be held for any time past his regularly established release date for nonpayment of a fine.

§ 571.51 Definitions.

(a) Fine—a monetary penalty associated with an offense imposed as part of a judgment and commitment. There are two types of fines.

(1) Committed fine—a monetary penalty imposed with a condition of imprisonment until the fine is paid.

(2) Non-committed Fine—monetary penalty which has no condition of confinement imposed.

(b) Costs of the prosecution—monetary costs of the legal proceeding which the court may levy.

Imposition of costs is similar in legal effect to imposition of a fine. The court may also impose costs with a condition of imprisonment.

§ 571.52 Procedures—committed fines.

(a) Staff shall inform the inmate that there is a committed fine on file against the inmate, as part of the sentence. Staff shall then impound the inmate's trust fund account until the fine is paid except—

(1) The inmate may spend money from his trust fund account for the purchase of commissary items not exceeding the maximum monthly allowance authoried for such purchases.

(2) Staff may authorize the inmate to make withdrawals from his trust fund account for emergency family or emergency personal needs or for furlough purposes.

This rule on impounding an inmate's trust fund account applies when the inmate is confined in a federal institution. It does not apply to a federal inmate confined in a state institution or in a contract community-based facility.

(b) If the inmate pays the committed fine, or if staff verifies payment prior to confinement, staff shall document payment in the appropriate file and release the inmate's trust fund account from impoundment.

(c) Inmates with committed fines may be transferred or committed directly to contract community-based facilities or to state institutions as boarders.

(d) Inmates with committed fines may be transferred or designated to state institutions for service of federal sentences concurrently with state sentences.

(e) Staff shall interview an inmate with an unpaid committed fine at least 60 days prior to the inmate's pending release date. Staff shall explain to the inmate that to secure release without paying the committed fine in full, the inmate must make an application, on the appropriate form, to either the Warden or the U.S. Magistrate for a determination on whether the inmate is considered indigent under 18 U.S.C. 3569.

§ 571.53 Determination of indigency by Warden.

An inmate in a federal institution who has a committed fine may apply to the Warden of that institution for a determination on the inmate's ability to pay the committed fine. If application is made to the Warden and the Warden determines that the inmate is not indigent under 18 U.S.C. 3569, the inmate may elect to apply to the U.S. Magistrate for a determination on the inmate's ability to pay the committed fine.

(a) The Warden's decision as to the inmate's indigency must be made on the basis of the inmate's property and the determination as to whether such property exceeds "* * * $20.00 in value, except such as is by law exempt from being taken on execution for debt * * *" (18 U.S.C. 3569).

(b) If the Warden finds that the inmate is indigent, the Warden shall notify the inmate that the inmate may take the "Pauper's Oath" (see 18 U.S.C. 3569) on the inmate's regularly established date of release providing the inmate's indigency status does not change.

(c) If the Warden finds that the inmate is not indigent under 18 U.S.C. 3569, the Warden shall refuse to administer the oath and notify the inmate in writing as to the reasons for this refusal. The Warden shall advise the inmate that, if the inmate disagrees with the Warden's non-indigency finding, an application, if not previously made, may be submitted to the nearest U.S. Magistrate for a determination as to the inmate's indigency under 18 U.S.C. 3569. The Warden shall also advise the inmate that in the event a finding of non-indigency is made by the Warden and, if submitted, a similar finding is made by the U.S. Magistrate, the inmate's application for a determination of indigency under 18 U.S.C. 3569 shall be forwarded by staff to the Regional Director for final disposition.

§571.54 Determination of indigency by U.S. Magistrate.

(a) An inmate with a committed fine who is imprisoned in a federal institution may make application directly to the U.S. Magistrate for a determination of the inmate's indigency under 18 U.S.C. 3569.

(b) An inmate with a committed fine who is imprisoned in a contract community-based facility or state institution and who desires to file for release on the basis of indigency under 18 U.S.C 3569 must make application directly to the U.S. Magistrate.

(c) An inmate who elects to apply to the U.S. Magistrate after a finding of non-indigency by the Warden must complete a new application. Staff shall offer to forward the completed forms and any other applicable information the inmate chooses to the U.S. Magistrate.

(d) If the U.S. Magistrate finds that the inmate is indigent, the U.S. Magistrate will administer the oath to the inmate. The inmate shall be released no earlier than the inmate's regularly established release date.

(e) If the U.S. Magistrate finds that the inmate is not indigent, Bureau staff shall forward a referral package to the Regional Director for a final determination as to the inmate's ability to pay the committed fine.

§ 571.55 Review by Regional Director.

(a) When a finding of non-indigency is made by the Warden and/or U.S. Magistrate, staff shall forward material to the Regional Director who will make a final determination as to the inmate's ability to pay the committed fine. This authority may not be delegated below the level of acting Regional Director.

(b) If the Regional Director determines that the "* * * retention by such convict of all of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for the nonpayment of such fine, and costs; or if he finds that the retention by such convict of any part of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine or fine and costs upon payment on account of his fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family." (18 U.S.C 3569)

(c) After making a determination as to the property that the inmate possesses in excess of what is exempt by law, and what property the inmate may need in the community, the Regional Director may take one of the following three actions: (1) Release the inmate without any payment toward the fine: (2) require partial payment of the fine prior to the

inmate's release; or (3) require payment of the fine in full prior to the inmate's release. Regardless of the action taken, the Regional Director shall furnish the inmate with a written statement stating the action taken and the reasons for that action.

Dated: January 13, 1983.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 83-1384 Filed 1-18-83; 8:45 am]

BILLING CODE 4410-05-M

federal register

Wednesday
January 19, 1983

Part III

Environmental Protection Agency

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Hazardous Waste Permit Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 260, 264, and 265

[SW-FRL 2038-3]

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating in final form the interim final rule promulgated November 19, 1980, which addressed responsibilities of persons who undertake hazardous waste treatment and storage activities in immediate response to a spill of a hazardous waste, or of a material which, when spilled, becomes a hazardous waste. In the interim final rule EPA made clear that the Resource Conservation and Recovery Act (RCRA) regulations governing treatment and storage of hazardous waste are not applicable to actions taken to immediately contain and treat spills of hazardous waste and materials which, when spilled, become hazardous waste. Thus, persons who treat or store hazardous waste in immediate response to a spill need not obtain a RCRA permit for those activities. Today's action finalizes the interim final rule with two changes. First, the term "spill" has been replaced with the term "discharge". Second, the applicability of the exemption has been extended to include immediate responses to imminent and substantial threats of discharges of hazardous waste.

EPA anticipates that protection of human health and the environment will be improved by this action. This action will encourage prevention and timely control of discharges of hazardous waste by relieving persons who respond to such emergencies of having to first obtain permits for their activities. However, this action does not reduce the regulatory requirements that pertain to persons who treat or store hazardous waste after immediate response is over; neither does it reduce the substantial penalties which exist for improper disposal of hazardous waste.

EPA estimates that this action will result in a savings to the regulated community of approximately $200,000 per year.

EFFECTIVE DATE: These amendments become effective on January 19, 1983.

ADDRESSES: The public docket for this regulation is located in Room S-269C, U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact Amy Mills, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. (202) 382-4755. For information on implementation, contact your EPA Regional Office.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 19, 1980, EPA published an interim final rule in the Federal Register (45 FR 76630) concerning the application of the hazardous waste management regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), to the immediate response to spills of hazardous waste and materials which, when spilled, become hazardous waste. The action was taken in response to concerns voiced by members of the regulated community as to whether certain activities taken in immediate response to such spills constitute treatment (e.g., neutralizing the hazardous waste) or storage (e.g., containing the waste in order to prevent its spread). Treatment and storage of hazardous wastes, under normal circumstances, must be carried out in facilities that have interim status under Section 3005(e) of RCRA or that have a treatment or storage permit from either EPA or a State authorized to implement the RCRA hazardous waste program.

Spills are often sudden events which require immediate response actions. In many cases, immediate response in the form of treatment or storage of hazardous waste will not be covered by a RCRA permit or interim status. This is particularly true for generators who do not treat, store or dispose of hazardous waste and transporters who would have neither a permit nor interim status. It also may be true for owners and operators of treatment, storage or disposal facilities where their permit or interim status may not cover the types of treatment or storage performed in responding to a particular spill. Persons responding to spills would be placed in the uncomfortable position of taking actions necessary to protect human health and the environment while being in violation of RCRA.

To correct this situation, EPA promulgated an interim final rule (45 FR 76630), November 19, 1980) amending 40 CFR Parts 264 and 265 to exempt immediate spill treatment and containment activities from the regulations governing treatment and storage of hazardous waste. Part 122 was amended to indicate that persons who perform such response activities do not have to have a RCRA permit or interim status. The rulemaking action did not however, exempt owners and operators of hazardous waste management facilities regulated under 40 CFR Parts 264 and 265 from the requirements listed in Subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures) of those parts.

The November 19, 1980, action also added a definition of "spill" in §§ 260.10 and 122.3. The term "spill" was defined essentially as an accidental discharge incident. EPA sought initially to limit the exemption to persons who respond to unintentional discharges, believing that if the exemption applied to intentional discharges as well, persons who intentionally discharge hazardous waste in an unlawful manner would be granted relief from RCRA permit regulations. The Agency sought to avoid that result, and therefore limited the exemption to persons responding to accidental discharges, i.e., spills.

Since promulgation of the interim final rule, EPA has determined that this distinction between intentional and accidental discharges is unnecessary and in some cases may actually delay prompt cleanup action. Emergency response personnel such as Federal On-Scene-Coordinators and state and local response teams should have the latitude to implement this exemption whether or not the discharges they respond to are of an intentional or unintentional nature. If immediate treatment and storage were restricted to only unintentional discharges (i.e., spills), discharge response personnel would be in an untenable position in two respects. First, they would have to make the difficult determination of whether or not the discharge was caused accidentally. Second, if the discharge was not accidental, they would be required to obtain a RCRA permit before commencing any treatment or storage activities. Timely, effective response would be inhibited by such requirements. Unnecessary delays in cleanup actions would be detrimental to human health and the environment.

Further, EPA has determined that expanding the scope of the exemption to include persons who respond to

intentional discharges would not, in fact, relieve persons who deliberately discharge hazardous waste in an unlawful manner of their obligations under RCRA. The exemption concerns only treatment and storage activities; it does not relieve anyone of complying with any requirements for the disposal of hazardous waste. In addition, the exemption applies only during immediate response; all hazardous waste management activities thereafter are fully subject to the RCRA regulations. Moreover, anyone who violates any provision of RCRA or regulations thereunder by unlawfully discharging hazardous waste remains fully liable for civil or criminal penalties. EPA therefore has concluded that the interim final rule should be amended so that the exemption applies to treatment and storage activities in response to both accidental and intentional discharges of hazardous waste.

In order to accomplish this change, and equalize the application of the RCRA regulations to all immediate response situations, EPA has replaced the term "spill" with the term "discharge" which, as defined in § 260.10 includes both accidental and intentional spills. Unlike the definition of "spill", the definition of "discharge" does not include materials which, when spilled, become hazardous wastes. However the regulatory language in §§ 264.1(g)(8) and 265.1(c)(11) indicates that the exemption applies to activities taken in response to discharged materials which become hazardous wastes.

Today's rule also broadens the response exemption to include persons undertaking activities to immediately respond to an imminent and substantial threat of a discharge of hazardous waste, as well as the discharge itself. This addition to the interim final rule is being taken in recognition of the fact that the same time constraints which render compliance with the facility standards and permitting requirements impractical during immediate response to an actual discharge also render compliance impractical during immediate response to an imminent and substantial threat of a discharge.

Imminent and substantial threats of discharges can include a variety of situations where persons handling hazardous waste determine that a discharge is about to occur. One example would be a bulging or smoking drum containing a reactive hazardous waste. A second example would be a highway collision of tank trucks carrying ignitable hazardous wastes. In such cases, immediate treatment or storage may be necessary to prevent or to mitigate a serious discharge. The Agency believes that in order to encourage rapid response, persons performing hazardous waste treatment or containment actions in immediate response to such impending discharges should be relieved of the facility standards and permitting requirements as are persons responding to actual discharges.

The final rule promulgated today therefore includes a regulatory exemption for persons responding to imminent and substantial threats of discharges. The intended effect of this final action is to augment hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threats of discharges from time-consuming requirements. Persons who treat or store hazardous waste past the immediate response phase are subject to all applicable requirements of Parts 264, 265, and 122.

The Agency has also clarified the language used in the amendments to Parts 264, 265, and 122. The only substantive changes have been a replacement of the term "spill" with the term "discharge" (thus, the definition of "spill" has been deleted from Parts 260 and 122), and the addition of a provision for immediate response to imminent and substantial threats of discharges of hazardous waste. The "comment" that appeared at the end of §§ 264.1(g)(8), 265.1(c)(11), and 122.21(d)(3) of the interim final rule has been deleted. The substance of the comment has been integrated into the regulatory language of those sections.

II. Response to Comments

1. Most of the comments received on the interim final rule promulgated November 19, 1980, supported EPA's decision to waive the RCRA requirements for treatment and storage activities undertaken to immediately respond to spills. Most commenters agreed that compliance with the treatment and storage regulations during immediate spill response would be burdensome and in some cases counter-productive to pollution abatement efforts. The general support received on the spill response exemption has been based on the belief that immediate response to spills can be more timely and therefore more effective if procedural delays inherent in regulatory compliance can be kept to a minimum.

2. Comments were received suggesting that the exemption be extended to include responses to non-accidental spills. For reasons cited in this preamble, the Agency agrees, and has broadened the exemption to include responses to both accidental and non-accidental discharges.

3. Two commenters objected to the exclusion of spills which occur during routine maintenance of machinery from the exemption provision. EPA stated in the preamble to the interim final rule (45 FR 76628) that the exemption did not apply to such situations. The rationale was that discharges during routine maintenance could be expected and controlled, and therefore do not qualify as spills. However, because EPA now finds the distinction between intentional and unintentional discharges to be unnecessary and unworkable in the context of this rule, the Agency is extending the exemption to cover immediate responses to all discharges, including those which occur during maintenance of machinery.

4. Some concern was expressed over the restriction of the exemption to immediate response only. The point was made that response cannot always be immediate, due to a variety of reasons, and that the exemption should be extended to cover treatment and storage activities in "direct response" to a spill. EPA promulgated the spill response exemption in recognition of the fact that in emergency situations, where immediate response in the form of treatment or storage is necessary to protect human health and the environment, there may be no time available to comply with the regulatory standards or to obtain an emergency permit from EPA, pursuant to 40 CFR 122.27. When the response is not of an immediate nature, the Agency believes that sufficient time would be available to contact EPA to obtain an emergency permit for treatment or storage activities. (Emergency permits can be granted orally and can be valid for up to 90 days.) In addition, persons who generate hazardous waste as a result of a discharge may temporarily store those wastes without a permit if they comply with the requirements for 90-day accumulation described in 40 CFR 262.34. Thus, the Agency does not believe that an extension of the exemption beyond the immediate response phase is necessary.

5. Several persons commented that the term "immediate response" is vague, and needs to be defined. EPA has not explicitly defined this term because we believe that individual incidents will dictate what "immediate response" will entail on a case-by-case basis. A rigid definition would most likely restrict the application of this exemption to a time-frame or set of activities which would be reasonable in some instances but

unreasonable in others. The Agency wishes to encourage rapid response to discharge and discharge threat situations by relieving persons engaged in response actions from restrictive regulations. The extent of immediate response therefore must be judged by persons responding to discharges on an individual basis. Problems with persons who abuse the intent of this provision can be better controlled through the enforcement provisions of RCRA than through more restrictive definitions.

6. Several commenters requested a clarification of the requirements for persons who discharge a material listed in 40 CFR 261.33 (commercial chemical products, off-specification species, containers, and spill residues thereof) but use, reuse, recycle, or reclaim the material after the discharge. Materials listed in § 261.33 become hazardous wastes when discarded or intended to be discarded.[1] EPA explained in the preamble to the final rule promulgating § 261.33 (45 FR 78532, 78540, November 25, 1980) that a material listed in that Section which spills but is subsequently used, reused, recycled or reclaimed has not been discarded, and therefore is not a hazardous waste. Thus, the RCRA Subtitle C regulations do not apply in those instances when all of a discharged material is reused; however, any quantity of such discharged material which is not reused is a hazardous waste.

In the preamble to the interim final rule on spills (November 19, 1980), EPA stated that spilling a material listed in § 261.33 is tantamount to discarding it, and therefore all such materials which spill automatically become hazardous wastes. That statement was made in error. The act of discharging a material listed in § 261.33 constitutes discarding only as provided in § 261.2 of the regulations.

7. Several persons have asked how to determine whether a discharged material is a hazardous waste. If no manifest or other hazardous waste documentation is available, a person wishing to characterize a discharged material should consult 40 CFR Parts 260 and 261. Part 260 defines hazardous waste as a subset of solid waste. In Part 261, §§ 261.31 and 261.32 list hazardous waste from non-specific and specific sources. Knowledge of the origin of the discharged material can thus be helpful to the person in determining whether the material is the product of a hazardous waste stream. § 261.33 lists materials which become hazardous wastes when discharged if they are subsequently discarded. These materials are also listed on the Department of Transportation hazardous materials table (49 CFR Part 171). If a hazardous materials shipping paper accompanies the material, the name of the material should be compared to the § 261.33 list. If it cannot be determined whether a discharged material is a listed hazardous waste, §§ 261.20 through 261.24 describe criteria for determining whether a solid waste exhibits the hazardous waste characteristics of ignitability, corrosivity, reactivity, or toxicity.

8. There have been some questions regarding the applicability of 40 CFR 261.5, the small quantity generator exemption, to discharges of materials listed in Section 261.33. A person who discharges a § 261.33 material and discards any or all of that material becomes a generator of hazardous waste. (This is also true of persons who discharge any other kind of material which, as a result of discharging, becomes a hazardous waste.) If the quantity of hazardous waste produced by that generator in that calendar month at that site totals less than the amount specified in § 261.5 (May 19, 1980, with amendments November 19, 1980) the generator is subject to reduced regulatory requirements for small quantity generators under § 261.5 for the handling of that waste.

The small quantity generator exemption does not apply to discharged hazardous wastes which were subject to 40 CFR Parts 262–265 of the regulations prior to the discharge.

9. Several commenters noted that persons who discharge and subsequently discard a material listed in § 261.33 may become hazardous waste generators or transporters as a result of their actions. The RCRA regulations require generators and transporters to possess EPA identification numbers. Commenters expressed the opinion that the procedure for acquiring an EPA identification number is too time consuming in the emergency situations discharges often produce.

In response to these concerns EPA published a notice in the Federal Register of December 24, 1980 (45 FR 85022) advising persons of the availability of provisional EPA identification numbers for generators and transporters of hazardous waste during spills and other unanticipated events. This provision applies to generators and transporters who did not obtain an EPA identification number through the standard procedures under Section 3010 of RCRA or §§ 262.12 and 263.11 of the regulations but who, due to unforeseen circumstances, need one in order to transport hazardous waste to a designated facility.

According to § 263.30(b), a Federal, State, or local official acting within the scope of his official responsibilities may temporarily waive the EPA identification number requirement for persons engaged in immediate hazardous waste removal following a discharge incident during transportation. In cases where a waiver is not authorized, or even if a waiver is authorized but the generator or transporter still identifies a practical need to obtain a number before transporting the waste, a provisional number may be requested from EPA.

In the preamble to the interim final spill response exemption (45 FR 78629) EPA stated that "* * * persons who anticipate that they generate hazardous waste in the future may obtain an EPD ID number in advance." The procedure for issuing provisional identification numbers established since that statement was made obviates the need for persons who think they may become generators or transporters of hazardous waste as the result of a discharge incident to obtain numbers in advance.

10. One commenter claimed that since some hazardous waste dischargers may be subject to liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund") for discharge cleanup, regulation under RCRA is redundant and unfair, particularly in the sense that a discharger could incur penalties under both Acts for the same incident.

EPA believes that the discharge response exemption, promulgated in final form today, reduces this area of duplication considerably. Treatment and storage activities undertaken in immediate response to discharges of hazardous waste, or materials which become hazardous wastes as a result of a discharge are exempt from most RCRA regulations. However, ultimate disposal of any hazardous waste residue resulting from cleanup operations is fully subject to the regulations, and must be accomplished at a facility with a RCRA permit or interim status.

If a person improperly disposes of the hazardous waste residue, he can be held liable under both Superfund and RCRA. Nothing precludes EPA or the courts from assessing penalties under both laws for the same incident. EPA will

[1] It should be noted that on Nov. 19, 1981, EPA published an interim final amendment to § 261.3(a)(2) [46 FR 56588] which, among other things, exempts from Subtitle C regulation certain *de minimis* losses of § 261.33 materials from manufacturing operations where the losses are mixed with wastewater and discharged in conformance with regulations under Sec. 402 or 307(b) of the Clean Water Act.

exercise enforcement discretion on a case-by-case basis in situations of duplicate statutory or regulatory coverage. The Agency must carry out the mandates of both Acts, but does not wish to place an undue burden on the regulated community.

Persons affected by today's rulemaking should note that these amendments do not affect requirements regarding notification of releases of hazardous substances under § 103 of Superfund.

III. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. In addition, Section 553 of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation. The purpose of these requirements is to allow persons affected by the rulemaking sufficient lead time to prepare to comply with major new regulatory requirements. For the amendments proposed today however, the Agency believes that delaying the effective date for any period of time would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. These amendments were promulgated as interim final rules on November 19, 1980 in substantially the same form, and have been in effect since that date. In addition, the interim final amendments and today's final amendments grant an exemption from numerous EPA requirements. Persons affected by these amendments will not need lead time to prepare to comply with new regulatory requirements. For these reasons, EPA believes that good cause exists for making these amendments effective immediately. Accordingly, EPA is making this final rule effective upon promulgation.

IV. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not a major rule because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

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

V. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information collection request contained in a proposed or final rule. This final rule will not impose any new information requirements on the regulated community. In fact, this rule would reduce the information collection requirements contained in the cleared OMB request #2000–0380.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: January 12, 1983.

Anne M. Gorsuch,

Administrator.

PARTS 122, 260, 264, AND 265 [AMENDED]

Title 40 of the Code of Federal Regulations Parts 260, 264, 265, and 122 are amended as follows:

1. The authority citation for Parts 260, 264, 265, and 122 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974.

§ 260.10 [Amended]

2. Remove the definition of "spill" from § 260.10.

3. Add the following paragraph (g)(8) to §264.1:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(8)(i) Except as provided in paragraph (g)(8)(ii) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part and Parts 122–124 of this chapter for those activities.

* * * * *

4. Add the following paragraph (c)(11) to § 265.1:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(11)(i) Except as provided in paragraph (c)(11)(ii) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part and Parts 122–124 of this chapter for those activities.

* * * * *

§ 122.3 [Amended]

5. Remove the definition of "spill" from § 122.3.

6. Add the following paragraph (d)(3) to § 122.21:

§ 122.21 Purpose and scope of Subpart B.

* * * * *

(d) * * *

(3)(i) *Further exclusions.* A person is not required to obtain a RCRA permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part for those activities.

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Part IV

Environmental Protection Agency

Harzardous Waste Management System; Standards for Owners and Operators of Hazardous Waste, Treatment, Storage and Disposal Facilities

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH—FRL 2170-2]

Hazardous Waste Management System; Interim Status Standards for Owners and Operators of Hazardous Waste, Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment to rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act to clarify the scope and applicability of the interim status standards to hazardous waste management facilities. It is proposing to amend the provision that explains who is subject to the interim status regulations to clarify that these regulatiohns apply to all hazardous waste management facilities in existence on November 19, 1980, including those facilities which have failed to qualify fully for interim status. This amendment would make more explicit an EPA policy that has been in effect since November 19, 1980.

DATE: The Agency will accept comments on this amendment until February 18, 1983.

ADDRESS: Comments should be addressed to Docket Clerk, Office of Solid Waste (WH-562), Docket 3004, Scope of Interim Status Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346, or in Washington D.C., 382-3000; or Deborah Wolpe, Office of Solid Waste, U.S. Environmetal Protection Agency, Washington. D.C. 20460, (202) 382-4754.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 26, 1980, and May 19, 1980, EPA promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, establishing a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 122-124, 45 FR 33066-33580). The regulations, among other things, require facilities which treat, store, or dispose of hazardous waste to obtain a permit from EPA or an authorized state [1] and require that hazardous wastes be designated for, delivered to, and treated, stored, or disposed of only in these permitted facilities.

Recognizing that EPA would not be able to issue permits to all hazardous waste management (HWM) facilities before the Subtitle C program became effective, Section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit until final administrative action is taken on its permit application. This satutory authorization to operate a HWM facility between the effective date of the Subtitle C program (November 19, 1980) and the issuance or denial of a final permit is known as "interim status." Facilities operating under interim status are subject only to the operating standards in 40 CFR Part 265, which are known as the "interim status standards." These standards do not contain the full set of technical design and operating standards contained in 40 CFR Part 264, the Standards to be used when issuing permits to such facilities.

Interim status is conferred directly by Section 3005(e) upon a person who:

(1) Owns or operates a facility which is required to have a permit under Section 3005 and is in existence on November 19, 1980;

(2) Has complied with the requirements of Section 3010(a) of RCRA, regarding notification of hazardous waste activity; and,

(3) Has complied with the requirements of 40 CFR 122.22 (a) and (c), governing submission of Part A applications.

Interim Status cannot be granted or conferred by EPA. Therefore if an owner or operator of a facility failed to meet one or more of the statutory requirements for interim status, EPA cannot, under a literal construction of Section 3005(e) consider the facility as having achieved interim status. Moreover, any person treating, storing or disposing of hazardous waste without a permit or without having achieved interim status may be ordered by the Agency to cease that operation (Section 3008(a)), may be subject to civil penalties (Section 3008(c, g)), and may be subject to fine and imprisonment (Section 3008(d)).

As EPA indicated in its **Federal Register** notice of November 19, 1980 (45 FR 76630), the Agency recognizes that such a literal construction of Section 3005(e) may have the effect of preventing owners or operators of certain well-managed facilities from qualifying for interim status and require that they cease operations until such time as they receive a RCRA permit. Accordingly, the Agency has adopted a policy that allows certain facilities in existence on November 19, 1980, that have failed to achieve interim status to continue operations pursuant to the exercise of enforcement discretion, if continued operation is in the public interest, and the facility owner or operator complies with the appropriate RCRA performance standards. See 45 FR 76630-36, November 19, 1980. Under this policy, EPA may, by compliance order issued under Section 3008 of RCRA, extend the date by which the owner or operator of an existing facility may submit Part A of its permit application, thereby allowing the facility to obtain interim status, if that is the only requirement for interim status that the facility fails to meet. (40 CFR 122.22(a)(3)). An existing facility which has failed to notify as required by Section 3010(a) of RCRA, however, can never achieve interim status but may be allowed to continue operation through the issuance of either a compliance order under Section 3008 (or an Interim Status Compliance Letter (ISCL), which was available to facilities which notified no later than one year after the required date or after September 18, 1981, whichever date was later). See 45 FR 76630-36, November 19, 1980. As a part of this enforcement policy EPA will require facilities operating under compliance orders or ISCL's to comply with appropriate management practices as a condition of continued operation. Therefore, EPA must consider whether existing facilities operating without interim status or a permit should comply with the Part 264 general permitting standards or with the Party 265 interim status standards.

II. Amendment to and Clarification of Application of Interim Status Regulations

Section 3004 of RCRA requires EPA to promulgate performance standards which apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes. These Section 3004 standards are independently enforceable national standards which are separable from the Section 3005 permitting requirements. See 45 FR 33158, May 19, 1980.

EPA promulgated both the Part 264 general permitting standards and the

[1] Section 3006 of RCRA provides that the Administrator of EPA shall authorize state hazardous waste management programs which meet minimum EPA guidelines to operate in their states in lieu of the Federal program. See 40 CFR Part 123, Subparts A, B, and F.

Part 265 interim status standards under the authority of Section 3004. EPA has, by regulation, limited the requirements for facilities with interim status to those found in 40 CFR Part 265. See 40 CFR 122.23(d). The language of 40 CFR 265.1(b), which defines the general application of the interim status standards provides that "[t]he standards in this Part apply to owners and operators of facilities which treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status * * *" This regulatory language has created some uncertainty as to whether the Part 265 standards apply to existing facilities which have failed to qualify for interim status. EPA believes that this language does not preclude application of the interim status standards to non-interim status facilities given that Part 265.1(b) does not expressly limit the application of the Part 265 standards to only interim status facilities. Therefore, EPA believes that it has both the statutory and regulatory authority to apply either the Part 264 general permitting standards or the Part 265 interim status standards to existing facilities which have failed to qualify for interim status.

On November 19, 1980 (45 FR 76630), EPA announced its intent to excercise prosecutorial discretion where appropriate to allow continued operation of existing facilities that did not have interim status if such facilities complied with applicable EPA Part 265 regulations. For the reasons discussed below, EPA still believes it is sound enforcement policy to require facilities in existence on November 19, 1980 that have failed to achieve interim status to comply with the Part 265 interim status standards until such time as final administrative disposition of the permit application is made.

This proposed amendment would clarify in the regulations that such facilities are required to meet the Part 265 regulatory requirements. EPA promulgated the interim status standards (40 CFR Part 265) to ensure that existing facilities meet those threshold requirements for hazardous waste management under Section 3004 during the interim status period which apply generally to all facilities and which will definitely be included in all permits. Section 3008(e)(1)(B)(ii) of RCRA recognizes explicitly the interim status regulations and provides for enforcement action for knowing non-compliance with those regulations.

The interim status regulations, for the most part, consist of general administrative and non-technical operating standards. These standards were designed to be self-implementing, without need for substantial interpretation by, or negotiation with, EPA. These same considerations suggest that the Part 265 regulations are the most appropriate standards to apply to all existing unpermitted facilities, including those facilities which have failed to qualify for interim status. EPA also believes that, in order to ensure consistent application of the RCRA regulations, the Agency should apply the same set of RCRA performance standards to all existing unpermitted facilities.

As stated above, EPA believes that it has clear authority to apply the Part 265 standards to these facilities that have not fully qualified for interim status. However, to avoid any possible confusion on this point, and to clarify in the regulatory language the intent explained in this preamble, EPA is today proposing an amendment to 40 CFR 265.1(b) in order to provide clear notice to owners or operators of existing facilities without interim status or a permit that they must comply with the Part 265 regulations until such time as final administrative disposition of their permit application is made.

III. Request for Comments

The Agency invites comments on all aspects of this proposed regulation, including all issues raised in the preamble.

IV. Regulatory Impacts

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA). A major rule is one which results in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to industry, consumers, Federal, State or local government agencies or geographic region; (3) or cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Agency does not anticipate that today's amendment will have any of the effects which characterize a rule as "major" under the Executive Order. It merely clarifies how the existing regulations apply to existing facilities which have failed to achieve interim status.

This amendment was submitted to the Office of Management and Budget as required by Executive Order 12291. Any comments from OMB and any EPA response to those comments are available at the Office of Solid Waste Docket, Room 2636, U.S. EPA, Washington, D.C. 20460.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must estimate the paperwork burden created by any information collection requests in a proposed or final rule. Because there would be no information collection activities created by this proposed amendment, the requirements of the Paper Reduction Act do not apply.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish general notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the proposed rule on small entities (i.e., small businesses, small organizations, and small governmental entities). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities.

This amendment will generally have no economic impact on small entities. It merely clarifies already existing responsibilities.

Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: January 7, 1983.

John W. Hernandez, Jr.,

Acting Administrator.

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

1. Authority: This amendment is issued under the authority of Sections 2002(a), 3004, and 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a), 6924, and 6925.

2. Section 265.1(b) is revised to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(b) The standards in this Part apply to owners and operators of facilities which

treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA and § 122.22 of this Chapter, *and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA, and/or failed to file Part A of the Permit Application as required by 40 CFR 122.22 (a) and (c),* until final administrative disposition of their permit application is made. These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Part or Part 261 of this Chapter.

Comment: As stated in Section 3005(a) of RCRA, after the effective date of regulations under that Section, i.e., Parts 122 and 124 of this Chapter, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's and operator's permit application is made.

* * * * *

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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.

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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
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List of Public Laws

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R 5470 / Pub. L. 97–473 To amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, and for other purposes. (Jan. 14, 1983; 96 Stat. 2605) Price: $2.25.