

4-6-83
Vol. 48 No. 67
Pages 14853-15116

Federal Register

OK
Wednesday
April 6, 1983

G.S.A.
4/11-589
12-VOL

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Environmental Protection Agency

Civil Rights

Small Business Administration

Commodity Exchanges

Commodity Futures Trading Commission

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Federal Reserve System

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Nuclear Power Plants and Reactors

Nuclear Regulatory Commission

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Federal Trade Commission

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Presidential Documents

Title 3—

Proclamation 5038 of April 4, 1983

The President

Swedish-American Friendship Day, 1983

By the President of the United States of America

A Proclamation

On April 3, 1783, Ambassador Extraordinary Gustav Philip Creutz, representing the King of Sweden, and Benjamin Franklin, Minister Plenipotentiary of the United States of America, signed a Treaty of Amity and Commerce in Paris, France. In the Treaty, they pledged, "firm, inviolable and universal peace and a true and sincere friendship between the King, his heirs and successors, and the United States of America."

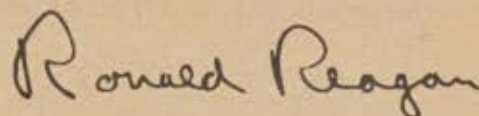
They could not then know how dramatically that friendship would flourish, and how closely mingled the fates and fortunes of the two lands would become. During the nineteenth century, thousands of Swedes joined the great current of Scandinavian migration to the United States. Once there, they helped push the frontier westward, achieving great successes in agriculture and industry. Their achievements constitute proud monuments to the Swedish-American heritage and to the development of our country.

Democratic ideals, a belief in ingenuity and hard work, concern for the individual, and free trade are among the many values and principles both countries share. Because of the extensive commerce and interchange of persons and ideas between Sweden and the United States, we have long enjoyed a deep understanding of each other.

For these reasons, the Congress, by Senate Joint Resolution 64, has authorized and requested the President to proclaim April 4, 1983, as Swedish-American Friendship Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate April 4, 1983, as Swedish-American Friendship Day. I invite the people of the United States to honor the Bicentennial of the Treaty of Amity and Commerce that day by holding appropriate ceremonies and activities in suitable places throughout the land.

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



Presidential Documents

Proclamation 5039 of April 4, 1983

National Child Abuse Prevention Month, 1983

By the President of the United States of America

A Proclamation

Child abuse and child neglect continue to threaten the lives and health of over a million of our Nation's children. Their physical suffering and emotional anguish challenge us, as parents, neighbors, and citizens, to increase our attention to their protection and intensify our efforts to prevent their maltreatment.

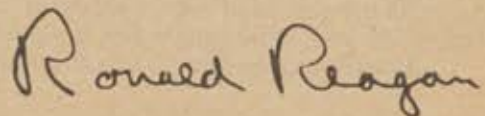
Children may be endangered by physical battering, denial of the basic necessities for life and health, sexual abuse and exploitation, or emotional cruelty. Public concern can help prevent maltreatment and help protect children. Action taken after cruelty has occurred is often too late. Prevention of abuse requires that neighborhoods and communities be attentive to the problems of families in their midst and be willing to help when help is needed. It requires the active concern of educational, medical, mental health, law enforcement, and social service professionals, and the efforts of volunteers and private citizens.

The health and well-being of our children underlie the future of our Nation. The Congress, by Senate Joint Resolution 21, has recognized the need for public attention to prevention of child abuse and has requested me to proclaim April 1983 as National Child Abuse Prevention Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1983 as "National Child Abuse Prevention Month." I urge all citizens to renew our Nation's commitment to meet the serious challenge that child abuse and child neglect pose to the welfare of our children and families.

I invite the Governors of the States; the Commonwealth of Puerto Rico and the Territories; the Mayor of the District of Columbia; the heads of voluntary and private groups; and the offices of local, State and Federal government to join in this observance. I also urge them to encourage activities whose purpose is to prevent and treat child abuse and child neglect.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.



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Presidential Documents

Proclamation 5040 of April 4, 1983

Pan American Day and Pan American Week, 1983

By the President of the United States of America

A Proclamation

For the last fifty-two years, the proclamation of an annual Pan American Day has brought to the attention of the world the unique harmony of ideals inspiring the nations of the western hemisphere. These common goals of peace, prosperity, and freedom serve as the foundation for the Organization of American States, which is charged with upholding and defending these principles.

The OAS has succeeded admirably in maintaining and strengthening the traditional bonds of friendship among the peoples of the Americas. At the same time, the peacekeeping mechanisms forged by the OAS member nations have proved effective in preventing the level of conflict that has afflicted other areas of the globe.

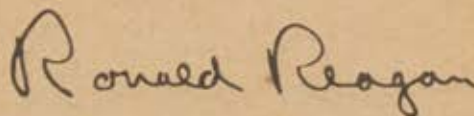
The commitment of the Pan American nations to work together to solve their problems has prompted the creation of several specialized inter-American agencies. These agencies, along with the major councils of the OAS, have been instrumental in promoting the economic, social, scientific, educational, and cultural development of the Pan American nations. The Inter-American Human Rights Commission also has made a significant contribution to strengthening respect for basic liberties throughout the hemisphere.

Cooperation among Pan American nations is predicated on mutual respect for the individual character and culture of each people. Pan American Day commemorates this high mutual regard and salutes the great progress that has been made within the OAS framework.

On this Pan American Day of 1983, the people of the United States extend warm greetings to their neighbors in the Americas, and reaffirm their commitment to the spirit of solidarity, the ideals and purposes of the inter-American system, and their active support of the Organization of American States.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Thursday, April 14, 1983, as Pan American Day, and the week beginning April 10, 1983, as Pan American Week; and I urge the Governors of the fifty States, and the Governor of the Commonwealth of Puerto Rico, and the officials of the other areas under the flag of the United States of America, to honor these observances with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.



Presidential Documents

Proclamation 5041 of April 4, 1983

Prayer for Peace, Memorial Day, 1983

By the President of the United States of America

A Proclamation

Each year, for more than 100 years, we have gathered on Memorial Day to pay tribute to those men and women who have fallen in battle, sacrificing their lives to preserve our freedom and world peace. In doing this, we are reminded that neither peace nor liberty is guaranteed, and that our national ideals remain threatened by global conflict, economic crises, violence, and aggression.

Throughout our history, America has been a symbol of hope for all people. We must always accept the many responsibilities that this requires. Thus, we are prepared to assist other nations in their struggle for economic progress; to help those in other lands who suffer from political repression and injustice; to deter aggression by strengthening democracy around the globe; and to work tirelessly toward a world without war.

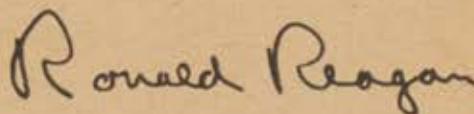
Those who have sacrificed their lives for our country serve as a reminder that our work is unfinished. With vision and purpose and a prayer in our hearts, let us dedicate ourselves to their memory.

In recognition of those Americans to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, Monday, May 30, 1983, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico and the appropriate officials of all local units of government to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.



REPORT ON THE PROGRESS OF THE AMERICAN MEDICAL ASSOCIATION

Presented at the Annual Meeting of the American Medical Association, Chicago, Ill., May 1, 1914

Report by the President, Dr. J. C. Brainerd

For the President of the American Medical Association

A. J. Brainerd

The American Medical Association has been very fortunate in having as its President for the past year a man who has been able to bring to the attention of the public the many important questions which are now before the medical profession. It is a pleasure to me to be able to report to you the progress of the Association during the past year.

The first of the important questions which have been brought to the attention of the public is the question of the regulation of the medical profession. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

The second of the important questions which have been brought to the attention of the public is the question of the medical education of the physician. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

The third of the important questions which have been brought to the attention of the public is the question of the medical research of the physician. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

The fourth of the important questions which have been brought to the attention of the public is the question of the medical practice of the physician. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

The fifth of the important questions which have been brought to the attention of the public is the question of the medical ethics of the physician. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

The sixth of the important questions which have been brought to the attention of the public is the question of the medical law of the physician. It is a question which has been discussed for many years, and it is one which is now being discussed in a more serious manner than ever before.

James C. Brainerd

Presidential Documents

Executive Order 12414 of April 4, 1983

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain Labor Organizations

A dispute exists between The Long Island Rail Road and certain labor organizations, designated on the list attached hereto and made a part hereof, representing employees of The Long Island Rail Road.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

The New York Metropolitan Transportation Authority, the parent body of The Long Island Rail Road, has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(e) of the Act provides that the President, upon request of a party, shall appoint an emergency board to investigate and report on the dispute.

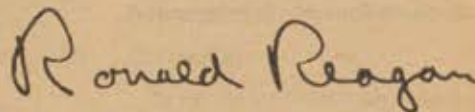
NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. § 159a), it is hereby ordered as follows:

Section 1. Establishment of Board. There is established, effective immediately, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

Sec. 2. Report. Within 30 days after creation of the board the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after the submission of final offers the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. Maintaining Conditions. As provided by Section 9A(h) of the Act, as amended, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. Expiration. The Emergency Board shall terminate upon submission of the report provided for in Sec. 2 of this Order.



THE WHITE HOUSE,
April 4, 1983.

LABOR ORGANIZATIONS

ARASA Division, Brotherhood of Railway and Airline Clerks
Brotherhood of Locomotive Engineers
Brotherhood of Railway Carmen of the United States and Canada
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
Police Benevolent Association
Railroad Yardmasters of America
Sheet Metal Workers International Association
United Transportation Union

Editorial Note: The President's announcement of Apr. 4, 1983, on the creation of the board is printed in the *Weekly Compilation of Presidential Documents* (vol. 19, no. 14).

[FR Doc. 83-9164

Filed 4-5-83; 10:52 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 48, No. 67

Wednesday, April 6, 1983

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 83-042]

Exotic Newcastle Disease; Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document quarantines a portion of Queens County, New York, because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in this portion of Queens County, New York, on March 29, 1983. Therefore, in order to prevent the dissemination of exotic Newcastle disease, it is necessary to take this action.

EFFECTIVE DATE: March 31, 1983.

FOR FURTHER INFORMATION CONTACT: W. W. Buisch, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 748, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION:

Exotic Newcastle disease is a communicable viral disease affecting all species of poultry and birds. This disease was diagnosed on a premises in Queens County, New York, on March 29, 1983.

This document on an emergency basis amends 9 CFR Part 82 by quarantining that portion of Queens County, New York, where the disease was diagnosed. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles,

from the area quarantined, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Executive Order 12291 and Emergency Action

This final action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will have an annual effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Dr. E. C. Sharman, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, has determined that the emergency nature of this interim rule warrants publication without opportunity for public comment. This amendment is necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry and birds, and must be made effective immediately to accomplish its purpose in the public interest.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Certification Under the Regulatory Flexibility Act

James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the quarantine imposed due to the existence of exotic Newcastle disease affects only one premises.

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Transportation, Exotic Newcastle disease.

PART 82—[AMENDED]

Accordingly, 9 CFR Part 82 is amended as follows:

In § 82.3, new paragraphs (c)(1) is added to read:

§ 82.3 Imposition and removal of quarantine.

(c) * * *

(1) *New York.* (i) The premises of Richard King, 256-08 Craft Avenue, Rosedale, Queens County.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, D.C., this 31st day of March, 1983.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-8949 Filed 4-5-83; 9:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

Consumer Products Containing Small Quantities of Radioactive Material; Modified Reporting and Recordkeeping Requirements

Correction

In FR Doc. 83-7695 beginning on page 12331 in the issue of Thursday, March 24, 1983, make the following corrections.

1. On page 12333, first column, first line of the second paragraph of the "Authority," "sec. 23" should have read "sec. 223".

2. On the same page, second column, second line of § 32.12 (c)(2), the reference to "§ 30.27" should have read "§ 30.37".

BILLING CODE 1505-01-M

10 CFR Part 50

Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations**AGENCY:** Nuclear Regulatory Commission.**ACTION:** Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: May 6, 1983. The Commission specifically requests comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the documents discussed in this notice and of the comments received on the proposed rule and interim final rules may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:**Introduction**

Pursuant to Public Law 97-415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether

amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no significant hazards considerations (item (a) above) were published for comment in the *Federal Register* by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not to apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideration (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the *Federal Register*.

These regulations are issued as final, though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the *Federal Register*. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

Background**A. Affected Legislation, Regulations and Procedures**

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. Public Law 85-256 (71 Stat. 576) amending § 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. *See, e.g.,* Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6. Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (*see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process",* March 1961, at 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. H. Rep. No. 1966, 87th Cong., 2d. Sess., at 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a

construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the *Federal Register*, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and *Federal Register* publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition, § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

The Commission will hold a hearing after at least 30 days notice and publication once in the *Federal Register* on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the *Federal Register* or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the *Federal Register* of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such

notice and publication and may issue the amendment.

Thus, it is very important to note that a determination that a proposed license amendment does or does not present a "significant hazards consideration" has involved the hearing and attendant notice requirements. Consequently, under its present rules the Commission has generally coupled its determination about whether it should provide a hearing before issuing an amendment with its determination about whether it should issue a prior notice, and the central factor in both determinations has been the determination about "no significant hazards consideration." It has been charged that in practice this has meant that the staff has sometimes coupled the decision about the merits of an amendment to the decision about when it should notice the amendment, i.e., whether it should give prior notice or post notice. Additionally, there has been some concern that the Act and the regulations have not defined the term "significant hazards consideration" and that they have not established criteria for determining when a proposed amendment involves a "significant hazards consideration." Section 50.59 does set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question," but it is clear that not every such question involves a "significant hazards consideration." In any event, the Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the *Federal Register* a notice of issuance. See § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, have occurred after the amendment was issued.

It is very important to bear in mind that there is not intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). Also, whether or not an

amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazard consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standards has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public and reasonable opportunity for a hearing.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in *Sholly v. NRC*, 651 F.2d 780 (1980), rehearing denied, 792 F.2d 792 (1980), cert granted 101 S. Ct. 3004 (1981) (*Sholly*). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a of the Act, NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the *Federal Register*. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a of the Act. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider its decision in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest so requires. See, Administrative Procedure Act, Section 9(b), 5, U.S.C. § 558(c), section 161 of the Atomic Energy Act, and 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to

enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a.—that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, *BPI v. Atomic Energy Commission*, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for this request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in *Sholly* because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. The commission believes that, since most requested license amendments involving no significant hazard consideration are routine in nature, prior hearing on such amendments could result in unwarranted disruption or delay in the operations of nuclear plants and could impose regulatory burdens upon it and the nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R. 2330 and S. 1207, they agreed on a unified version (See Conf. Rep. No. 97-884, 97th Cong. 2d. Sess. (1982)) and passed Public Law 97-415. Specifically section 12(a) of that law amends section 189a of the Act by adding the following with respect to license amendments involving no significant hazard consideration:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The amendment shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

Section 12(b) of that law specifies that:

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. The Conference Report states:

The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. *Id.*, at 37.

In this regard, the Senate stressed:

Its strong desire to preserve for the public a meaningful right to participate in decisions

regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. S. Rep. No. 97-113, 97th Cong., 1st Sess. at 14 (1981).

It should be also noted, in light of the previous discussion about the coupling of the decision on the merits of an amendment with the decision about when to notice the amendment, that Section 12 of Public Law 97-415, by providing for prior public notice and comment, in effect uncouples the determination about prior versus post notice from the determination about whether to issue an amendment.

In sum, the Commission is promulgating as an interim final rule the proposed standards in § 50.92 for determining whether an amendment to an operating license involves no significant hazards consideration, and it is publishing separately an interim final rule to establish (a) procedures for noticing operating license amendment requests for an opportunity for a hearing, (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any proposed determination on no significant hazards consideration, and (c) procedures for consulting with the requisite State on any such determination.

Interim Final Rule on Standards for Determining Whether an Amendment to an Operating License Involves No Significant Hazards Considerations and Examples of Amendments That Are Considered Likely or Not Likely To Involve Significant Hazards Considerations

A. Petition and Proposed Rule

The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration completes its actions on the notice of proposed rulemaking (discussed above), which was issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, Mr. Robert Lowenstein. For the reasons discussed below, the petition is denied. However, the Commission is promulgating standards, as intended by the petitioner, though not the standards petitioned for. (PRM-50-17 was published for comment in the Federal Register on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY-79-660 (December 13, 1979). The notice of proposed rulemaking was published in the Federal Register on

March 28, 1980 (45 FR 20491). The staff's recommendations on the interim final rule are in SECY-81-366, 81-366A, 83-16, 83-16A and 83-16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.)

The petitioner requested that 10 CFR Part 50 of the Commission's regulations be amended with respect to the procedures for issuance of amendments to operating licenses for production and utilization facilities. The petitioner's proposed amendments to the regulations would have required that the staff take into consideration (in determining whether a proposed amendment to an operating license involves no significant hazards consideration) whether operation of the plant under the proposed license amendment would (1) substantially increase the consequences of a major credible reactor accident or (2) decrease the margins of safety substantially below those previously evaluated for the plant and below those approved for existing licenses. Further, the petitioner proposed that, if the staff reaches a negative conclusion about both of these standards, the proposed amendment must be considered not to involve a significant hazards consideration.

In issuing the proposed rule, the Commission sought to improve the licensing process by specifying in the regulations standards on the meaning of no significant hazards consideration. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permits, to whatever extent considered appropriate. As mentioned before, the Commission now believes that these standards should not be applied to amendments to construction permits, not only because construction permits do not normally involve a significant hazards consideration but also because such amendments are very rare; the proposed rule has been modified accordingly. Additionally, the Commission is reviewing the extent to which and the way standards should be applied to research reactors. The Commission will handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations.

In the statement of considerations which accompanied the proposed rule, the Commission explained that it did not agree with the petitioner's proposed standards because of the limitation to "major credible reactor accidents" and

the failure to include accidents of a type different from those previously evaluated.

During the past several years the Commission's staff has been guided, in reaching its determinations with respect to no significant hazards consideration, by standards very similar to those now described in this interim final rule as well as by examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These have proven useful to the staff, and the Commission employed them in developing the proposed rule. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into Part 50, and the statement of considerations contained examples of amendments to an operating license that are considered likely and not likely to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, they had to be used together with standards in determining whether or not a proposed amendment involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether the license amendment would: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

Before responding to the specific comments on the proposed rule, it should be noted again that it was structured so that the three standards would have been used to decide not only whether the Commission would publish prior notice of an amendment request (as opposed to notice after the amendment was issued) but also to decide whether to grant an opportunity for hearing before issuance of the amendment (as opposed to granting the opportunity after issuance). As explained before, the standards were not meant to be used to make the ultimate decision about whether to issue an amendment—that final decision is a public health and safety judgment on the merits, not to be confused with the decisions on notice and reasonable opportunity for a hearing.

As a result of the legislation, under the final rule the three standards would

no longer be used to make a determination about whether or not to issue prior notice of an amendment request. As fully described in the separate *Federal Register* notice mentioned before, the Commission has formulated separate notice and State consultation procedures that will provide in all (except emergency and some exigent) situations prior notice of amendment requests. The standards and the examples will usually be limited to a proposed determination and, when a hearing request is received, to a final determination about whether or not significant hazards considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued. The decision about whether or not to issue an amendment is meant to remain one that, as a separate matter, is based on public health and safety.

B. Comments on the Proposed Rule

1. *General.* Nine persons submitted comments on the petition for rulemaking and nine persons submitted comments on the proposed amendments. The comments on the petition are in SECY-79-660. The comments on the proposed rule are in SECY file PR-2, 50 (45 FR 20491). A summary of the comments and initially-proposed responses to the comments are in SECY-81-366, available for examination at the Commission's Public Document Room. In light of the legislation, the Commission has decided to make its approach more precise (as described below) and has, therefore, revised its response to the comments. The new response is found in SECY-83-16A and 83-16B.

One of the commenters stated that all three standards are unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs. It is the Commission's considered judgment that the standards have been and will continue to be useful in making the necessary reviews. Moreover, the Commission believes that the standards when used together with the examples will enable it to make the requisite decisions. In this regard, it should be noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation. For example, Senate Report No. 97-113, cited above, stated:

... The Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves

no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. *Id.* at 15.

Similarly, the House noted:

The committee amendment provides the Commission with the authority to issue and make immediate effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. *Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.* * * * H. Rep. No. 97-22 (Part 2), 97th Cong., 1st Sess., at 26 (1981) (Emphasis added).

A number of commenters recommended, in regard to the second criterion in the proposed rule, that a threshold level for accident consequences (for example, the limits in 10 CFR Part 100) be established to eliminate insignificant types of accidents from being given prior notice. This comment was not accepted. Setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated.

It is possible, for example, that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involve a significant hazards consideration because they result in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). Such amendments typically are also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license—and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the license was issued. In this instance, the presence of the new safety

issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue would ultimately be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added to the list of examples considered likely to involve a significant hazards consideration a new example (vii).

When the legislation described before was being considered, the Senate Committee on Environment and Public Works commented upon the Commission's proposed rule before it reported S. 1207. It stated:

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. *Id.*, at 15.

The Commission agrees with the committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it has tried "to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." The Commission believes that the standards coupled with the examples help draw as clear a distinction as practicable. It has decided not to include the examples in the text of the rule in addition to the original standards, but, rather, to keep them as guidelines under the standards for the use of the Office of Nuclear Reactor Regulation.

The Commission wishes licensees to note that when they consider license amendments outside the examples, the Commission may need additional time for its determination on no significant hazards considerations; thus, they should factor this information into their schedules for developing and implementing such changes to facility design and operation.

The interim final rule thus goes a long way toward meeting the intent of the legislation. In this regard, the Conference Report stated:

The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental consideration. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982).

It should be noted that the Commission has attempted to draft standards that are as useful and as clear as possible, and it has tried to formulate examples that will help in the application of the standards. These final standards are the product of a long deliberative process. As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration. The standards and examples are as clear and certain as the Commission can make them—and, to repeat the Conference Report, "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." The Commission welcomes suggestions from the public to make them clearer and more precise, recognizing, in the Senate Committee's words, "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration."

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," as will be recalled, it has been the Commission's general practice to couple the determination about prior versus post notice with the determination about provision of a prior hearing versus a hearing after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. Consequently one commenter suggested that application of the criteria with respect to prior notice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of

the license amendment. The implication of the comment was that the Commission at the prior notice stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards, was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits.

In any event, the legislation has made these comments moot by requiring separation of the criteria used for providing or dispensing with public notice and comment on no significant hazards consideration determinations from the standards used to make a determination about no significant hazards consideration. Under the legislation, the Commission's criteria for public notice and comment would not be the same as its standards on the determination about no significant hazards consideration. In fact, the Commission will normally provide prior notice (for public comment and for an opportunity for a hearing) for each operating license amendment request. (The Commission's criteria on public notice and comment are discussed in the separate *Federal Register* notice noted before.) Additionally, the Commission believes that use of these standards and examples will help it reach sound decisions about the issues of significant versus no significant hazard considerations and that their use would not prejudice the merits of a decision.

It holds this belief because the standards and the examples are merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and cannot be said to prejudice the Commission's final decision to issue or deny the amendment request. As explained above, that decision is a separate one, based on separate public health and safety findings.

2. Reracking of Spent Fuel Pools. The Commission has been providing prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. The Commission is not prepared to say that a reracking of a spent fuel storage pool will necessarily involve a significant hazards consideration. Nevertheless, as shown by the legislative history of Public Law 97-415, section 12(a), the Congress was aware of the Commission's practice and statements were made by members of both Houses, before passage of that law, that these members thought the practice would be continued. The report on the Senate side

has been quoted above; the discussion in the House is found at 127 *Cong. Record* at H 8156, Nov. 5, 1981.

The Commission is not including reracking in the list of examples that will be considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission feels that the matter deserves further study. Accordingly, the staff has been directed to prepare by August 1, 1983, a report (1) which reviews NRC experience to date with respect to spent fuel pool expansion reviews, and (2) which provides a technical judgment on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. Upon receipt and review of this report the Commission will revisit this part of the rule.

During the interim, the Commission will make a finding on the question of no significant hazards consideration for each reracking application, on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. It is not the intent of the Commission to make a no significant hazards consideration finding for reracking based on unproven technology. However, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. If the Commission determines that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate *Federal Register* notice.

Additionally, it should be noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. The Commission will publish in the near future a *Federal Register* notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel.

3. Amendments Involving Irreversible Consequences

The Conference Report stated:

The conferees intend that in determining whether a proposed license amendment

involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) *Id.*, at 37-38.

This statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

Mr. Domenici. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC "should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?

Mr. Simpson. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.

Mr. Domenici. I thank the Senator for the clarification. That is consistent with my readings of the language . . . 134 *Cong. Rec.* (Part II) at S. 13056 (daily ed. Oct. 1, 1982).

The statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

Mr. Mitchell. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commission "should be especially sensitive . . . to license amendments that have irreversible

consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?

Mr. Hart. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in *Sholly* against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor—an irreversible action.

As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing. *Id.* (Part III), at S. 13292.

In light of the Conference Report and colloquies quoted above, the Commission wishes to note that it will make sure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing." It will do this by providing in § 50.92 of the rule that it will review proposed amendments with a view as to whether they involve irreversible consequences. In this regard, example (iii) makes clear that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards consideration in that it is likely to meet the criteria in § 50.92 of the rule.

Finally, it is once again important to note that the examples do not cover all possible examples and may not be representative of all possible concerns. As new information is developed, the Commission will refine these examples and add new examples, in keeping with the standards in § 50.92 of the interim final rule—and, if necessary, it will tighten the standards themselves.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rule are substantially identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 has been revised to make the determination easier to use and understand. To supplement the standards that are being incorporated into the Commission's regulations, the guidance embodied in the examples will be referenced in the

procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations Are Listed Below

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

- (i) A significant relaxation of the criteria used to establish safety limits.
- (ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.
- (iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).
- (iv) Renewal of an operating license.
- (v) For a nuclear power plant, an increase in authorized maximum core power level.
- (vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.
- (vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued.

Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations Are Listed Below

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

(v) Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license.

Paperwork Reduction Act Statement

This final rule contains no new or amended requirements for record keeping, reporting, plans or procedures, applications or any other type of information collection.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a regulatory analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, 10 CFR Part 50, are published as a document subject to codification.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073, (42 U.S.C. 2239). Section 50.78 also issued under sec.

122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.58, paragraph (b) is revised to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

(b) The Commission will hold a hearing after at least 30-days' notice and publication once in the *Federal Register* on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 of this part, or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30-days' notice and publication once in the *Federal Register*, or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30-days' notice and publication in the *Federal Register* of its intent to do so. If the Commission finds, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and comment may issue the amendment. If the Commission finds that exigent circumstances exist, as described in § 50.91, it may reduce the period provided for public notice and comment. Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards considerations are involved. The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the

type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

3. Section 50.91 is redesignated as § 50.92 and revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that, for example, permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards considerations, if operation of the facility in accordance with the proposed amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

The views of Chairman Palladino and Commissioners Ahearne, Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary for the Commission.

Chairman Palladino's Additional Views

In my opinion the Commission's decision on rerecking represents its best technical judgment at this time on the generic no-significant-hazards question. That is, the Commission cannot say that rerecking, as a general matter, would or would not involve a significant hazards consideration. The technical considerations of rerecking proposals can vary significantly from one to another.

It was this latter fact, as well as the statements made in the Congress on rerecking, that caused me to vote for the staff to study the technical basis for judgments about the hazards considerations presented by particular rerecking applications.

I also believe that we may have cleared up one of the Congressional concerns about rerecking by stating that it is not our intent to make a no-significant-hazards-consideration finding for rerecking based on unproven technology.

Additional Comments of Commissioner Ahearne

There have been several complaints that the criteria for determining when an amendment involves significant hazards considerations are unclear or difficult to apply. For example, in the current notice the Commission notes that a commenter on the proposed rule stated the standards are "unclear and useless in that they imply a level of detailed review of amendment applications far beyond what the staff normally performs."¹ However, these criticisms must be considered in context.

In May 1976 a petition for rulemaking was filed which requested that criteria be specified for determining when an amendment involved no significant hazards considerations.² The petition was published for comment in 1976.³ The Commission received few comments, primarily supporting or opposing criteria which had been proposed in the petition. The discussion focused on underlying philosophical/legal issues rather than specific alternative criteria.

The rulemaking then lay dormant for several years. In late 1979 the Commission addressed the matter and agreed to issue a proposed rule for public comment. The proposed rule was published March 1980.⁴ As the Commission explained in that notice:

During the past several years, the Staff has been guided in reaching its findings with respect to "no significant hazards consideration" by staff criteria and examples of amendments likely to involve, and not likely to involve, significant hazards considerations. These criteria and examples have been promulgated within the Staff and have proven useful to the Staff. The Commission believes it would be useful to consider incorporating these criteria into the Commission's regulations for use in determining whether a proposed amendment to an operating license or to a construction permit of any production or utilization facility involves no significant hazards consideration.⁵

With respect to the criticism that the criteria are unclear, we have not received much assistance in developing clearer criteria despite having obtained two rounds of comment over the last seven years. For example, in the comments on the proposed rule mentioned above, NRDC and UCS simply argued: "The NRC should promulgate a rule holding that prior notice and opportunity for hearing should be provided for construction permit and operating licenses amendments in all cases except those involving no significant previously-unreviewed safety issue."⁶ In addition, the debate has often become confused by differing assumptions and philosophies that are not usually clearly identified. For example, the NRDC/UCS implication of a detailed level of review arises largely because of an implicit assumption that the criteria are intended to require a merits type review. In fact, what the staff has always done, and what I believe we had in mind, was to make a preliminary judgment.

Basically, we have done the best we can. I would be willing to address any specific alternatives. However, after dealing with this for a number of years, I believe we must move ahead with what we have.

Commissioner Gilinsky's Separate Views on the Interim Final Rule Regarding Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations (Amendments to 10 CFR Part 50)

April 4, 1983.

Standing by themselves, the standards which are set forth in the rule are so general that they offer no real guidance to the NRC staff. In a prior version of the rule, the Commission included, in the rule itself, some very useful examples of which amendments

do and do not involve a significant hazards consideration. In the final version, these examples have been downgraded to the preamble of the rule where they will be of little or no legal consequence and where, as a practical matter, they will be inaccessible to anyone but the NRC historian. This diminishes the value of the rule so much that I can no longer approve it.

The earlier version of the rule placed amendments authorizing substantial spent fuel pool expansions in the significant hazards consideration category. The Commission should have retained this categorization which is consistent with the terms of the rule. Moreover, the Commission should not have ignored the strong public and Congressional views which have been expressed on this point, most recently by Senators Simpson, Hart, and Mitchell. I am in agreement with Commissioner Assestine's analysis of the legislative record underlying this provision.

Additional Views of Commissioner Assestine

I strongly disagree with the Commission majority's decision to permit the use of the "Sholly amendment" authority contained in section 12 of Public Law 97-415, the NRC Authorization Act for fiscal years 1982 and 1983, for license amendments for the rerecking of a spent fuel pool.

The Commission majority's interim final rule would change the Commission's longstanding and consistent policy of requiring that any requested hearing on a license amendment for the rerecking of a spent fuel pool be completed prior to granting the license amendment. Although the Commission has considered and approved a large number of spent fuel pool rerecking amendments in the past, it has never used the no significant hazards consideration provisions in section 189 a. of the Atomic Energy Act of 1954 as a basis for approving the amendment before the completion of a requested hearing.

It is clear to me from the legislative history of section 12 of Public Law 97-415 that the Congress did not intend that the authority granted by section 12 should be used to approve rerecking amendments prior to the completion of any requested hearing. The Sholly amendment was first included in the NRC authorization bill for fiscal years 1982 and 1983 by the Senate Committee on Environment and Public Works. The report of that Committee on the bill (Senate Report 97-113) makes it abundantly clear that the Committee did not intend the Sholly amendment to be used by the Commission to approve rerecking amendments in advance of the completion of a requested hearing. Although the report of the Conference Committee on the bill did not repeat this admonition, there is no evidence to indicate a contrary view by the House-Senate conferees on the bill or by the two House Committees that considered the legislation.

Moreover, I believe that the use of the Sholly amendment authority to approve rerecking amendments before the completion of any required hearing goes far beyond the justification offered by the Commission when it requested the Sholly amendment. In

¹ This refers to: "Comments by the Natural Resources Defense Council and the Union of Concerned Scientists on Proposed amendments to 10 CFR Parts 2 and 50: No Significant Hazards Consideration" at 8 (May 23, 1980) (comment 3, PR-2,50 (45 FR 20491)).

² The petition was filed May 7, 1976 by Mr. Robert Lowenstein on behalf of Boston Edison Company, Florida Power and Light Company, and Iowa Power Company.

³ 41 FR 24006 (June 14, 1976).

⁴ 45 FR 20491 (March 28, 1980).

⁵ *Id.* at 20492.

⁶ *Id.* At 11. 10 CFR 50.59 deems actions to be an "unreviewed safety question":

"(i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced."

NRDC/UCS did not propose an alternate definition to be used with their proposal. It is interesting to note the substantial similarity to the significant hazards consideration test.

requesting the enactment of the Sholly amendment, the Commission described in some detail the situations in which it foresaw the need for this authority. The Commission emphasized the need for a large number of unforeseen and unanticipated changes to the detailed technical specifications in the operating licenses for nuclear powerplants that arise each year through such activities as refueling of the plant. The Commission argued that the need to hold a hearing on each of these changes, if one is requested, would be burdensome to the Commission and could disrupt the operation of a number of plants. In order to avoid this problem, the Commission asked the Congress to reinstate the authority that the Commission had exercised in similar situations since 1962. A reracking amendment is substantially different from the situations described by the Commission in requesting the Sholly amendment, because the need for reracking can be anticipated, because reracking involves a substantial physical modification to the plant and because of the significance attached to reracking by State and local officials and by the public.

Finally, I believe that there are strong public policy reasons for continuing the Commission's past practice of completing hearings on reracking amendment proposals before approving the amendment. These public policy reasons include the strong interest and concern on the part of State and local governments and the public regarding reracking proposals and the extent to which proceeding with reracking in advance of the hearing may prejudice the later consideration of other alternatives to the proposed reracking plan.

For these reasons, as a matter of policy, I would not permit the use of the Sholly amendment authority to approve reracking amendments prior to the completion of any requested hearing. I would therefore have added a provision to the Commission's interim final rule that would have required, as a policy matter, the completion of any requested hearing on a spent fuel pool reracking amendment before Commission approval of the amendment.

(FR Doc. 83-0052 Filed 4-5-83; 8:45 am)

BILLING CODE 7550-01-M

10 CFR Parts 2 and 50

Notice and State Consultation

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations (1) to provide procedures under which normally it would give prior notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities (research reactors are not covered) and prior notice and reasonable opportunity for public comment on proposed determinations about whether these

amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment in emergency situations, and (3) to furnish procedures for consultation on any such determinations with the State in which the facility involved is located. These procedures will normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

DATE: Effective date: May 6, 1983. The Commission invites comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis proposed in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

Public Law 97-415, signed on January 4, 1983, among other things, directs NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing or, in emergency situations, dispensing with prior notice and public comment on any such determination, and (c) procedures for consulting on such a determination with the State in which the facility involved is located. See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorizes NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing. This rulemaking and request for comments responds to the statutory directive that NRC

expeditiously promulgate regulations on items (b) and (c) above. NRC is also publishing separately in the Federal Register interim final regulations on item (a) above.

These regulations are issued, as final though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the Federal Register. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. Public Law 85-256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. See, e.g., Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d Sess. (April 17, 1962), at 6.) Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing,

issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulations 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, now provides that, upon thirty-days' notice published in the Federal Register, the Commission may issue an operating license, or an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act, or for a testing facility licensed under section 104c., without a public hearing if no hearing is requested by any interested person. Section 189a. also permits the Commission to dispense with such thirty-days' notice and Federal Register publication with respect to the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. These provisions have been incorporated into §§ 2.105, 2.106, 50.58(a) and (b) and 50.91 of the Commission's regulations.

The regulations provide for prior notice of a "proposed action" on an application for an amendment when a determination is made that there is a significant hazards consideration and provide an opportunity for interested members of the public to request a hearing. See §§ 2.105(a)(3) and 50.91. Hence, if a requested license amendment is found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing is completed or after expiration of the notice period. In addition § 50.58(b) further explains the Commission's hearing and notice procedures, as follows:

The Commission will hold a hearing after at least 30 days notice and publication once in the Federal Register on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following

the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the Federal Register or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the Federal Register of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the Federal Register a "notice of issuance." See § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

It is important to bear in mind that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Whether or not an action requires prior notice, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). Also, whether or not an amendment entails prior notice, no amendment to any license may be issued unless it conforms to all applicable Commission safety standards. Thus, the "no significant hazards consideration" standard has been a procedural standard only, governing whether public notice of a proposed action must be provided, before the action is taken by the Commission. In short, the "no significant hazards consideration" standard has been a notice standard and has had no substantive safety significance, other than that attributable to the process of prior notice to the public to the public and reasonable opportunity for a hearing.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in *Sholly v. NRC*, 651 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1980), cert. granted 101 S.Ct. 3004 (1981) (*Sholly*). In that case the U.S. Court of

Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a prior hearing before an amendment to an operating license for a nuclear power plant can become effective, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the Federal Register. At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. The Supreme Court has remanded the case to the Court of Appeals with instructions to vacate it if it is moot and, if it is not, to reconsider it in light of the new legislation.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments, without prior notice or hearing, when the public health, safety, or interest so requires. See, Administrative Procedure Act, section 9(b), 5 U.S.C. 558(c), section 161 of the Atomic Energy Act, and 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a.—that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, *BPI v. Atomic Energy Commission*, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

However, the Commission believed that legislation was needed to change the result reached by the Court in *Sholly* because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. The Commission believes that, since most requested license amendments involving no significant hazards consideration are routine in nature, hearings on such amendments could result in disruption or delay in the operations of nuclear powerplants and could impose regulatory burdens upon it and the

nuclear industry that are not related to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) that would expressly authorize it to issue a license amendment before holding a hearing requested by an interested person, when it has made a determination that no significant hazards consideration is involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R. 2330 and S. 1207, they agreed on a unified version (see Conf. Rep. No. 97-884, 97th Cong. 2d. Sess. (1982)) and passed Pub. L. 97-414. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the

amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards consideration, even though NRC has before it a request for a hearing from an interested person. At the same time, however, the legislative history makes it clear that Congress expects NRC to exercise its authority only in the case of amendments not involving significant safety questions. The Conference Report states:

The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. *Id.*, at 37.

In this regard, the Senate stressed:

Its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. *See* S. Rep. No. 97-113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and

public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Notice for Public Comment and for Opportunity for a Hearing.

The Commission has decided to adopt the notice procedures and criteria contemplated by the legislation with respect to determinations about no significant hazards consideration. In addition it has decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing, thereby, normally providing both prior notice of opportunity for a hearing and prior notice for public comment of requests it receives to amend operating licenses of facilities described in § 50.21(b) or § 50.22 or of testing facilities.

With respect to opportunity for a hearing, the Commission would amend § 2.105 to specify that it could normally issue in the *Federal Register* at least monthly a list of "notice of proposed actions" on requests for amendments to operating licenses. These monthly notices would provide an opportunity to request a hearing within thirty days. The Commission would also retain the option of issuing individual notices, as it sees fit. If the Commission does not receive any request for a hearing on an amendment within the notice period, it would take the proposed action when it has completed its review and made the necessary findings. If it receives such a request, it would act under a new § 50.91, which describes the procedures and criteria the Commission would use to act on applications for amendments to operating licenses involving no significant hazards considerations. (The interim final rule on "Standards for

Determining Whether License Amendments Involve No Significant Hazards Considerations," published separately in the *Federal Register*, redesignated the present § 50.91 as § 50.92.)

To implement the main theme of the legislation, under new § 50.91 the Commission would combine a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. Additionally, new § 50.91 would permit the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing where it has determined that no significant hazards consideration is involved. Thus, § 50.91 would build upon amended § 2.105, providing details for the system of *Federal Register* notices. For instance, exceptions would be made for emergency situations, where no prior notices (for opportunity for a hearing and for public comment) might be issued, assuming no significant hazards considerations are involved. In sum, this system would add a "notice for public comment" under § 50.91 to the present system of "notice of proposed action" under § 2.105 and "notice of issuance" under § 2.106. Under this new system, the Commission would require an applicant requesting an amendment to its operating license (1) to provide its appraisal on the issue of significant hazards, using the standards in § 50.92 and the examples discussed in the separate *Federal Register* notice, and (2), if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points will be discussed later.)

When the Commission receives the amendment request, as described below, it would first decide whether there is an emergency or an exigency. If there is no emergency, it would then make a preliminary decision, called a "proposed determination," about whether the amendment involves no significant hazards consideration—normally, this would be done before completion of the safety analysis (also called safety evaluation). In this determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion.

At this stage, if the Commission decides that no significant hazards consideration is involved, it could issue an individual *Federal Register* notice or list this amendment in its monthly publication in the *Federal Register*. This monthly publication would not only list

amendment requests received for which the Commission is publishing notice under § 2.105, it would also provide a reasonable opportunity for public comment by listing this and all amendment requests received since the last such monthly notice, and, like an individual notice, (a) providing a brief description of the amendment and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determination, and (d) providing for a 30-day comment period.

While it is awaiting public comment, the Commission would proceed with the safety analysis. In this context, the Commission wishes to note that, though the substance of the public comments could be litigated in a hearing, when one is held, neither it nor its Boards will entertain hearing requests on its actions with respect to these comments. It believes that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment.

After the public comment period, the Commission would review the comments, consider the safety analysis, and reach its final decision on the amendment request. If it decides that no significant hazards consideration is involved, it would publish an individual "notice of issuance" under § 2.106 or publish the notice of issuance in its system of monthly *Federal Register* notices, and thus close the public record. Note that the Commission would not make and publish a final determination on no significant hazards consideration because such a determination is needed only if a hearing request is received and the Commission decides to make the amendment immediately effective and to provide a hearing after issuance rather than before.

If it receives a hearing request during the comment period and the Commission has decided that no significant hazards consideration is involved, it would prepare a "final determination" on that issue, make the requisite safety and public health findings, and proceed to issue the amendment. The hearing request would be treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained before, the legislation permits the Commission to make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person (even one that meets the provisions for intervention in § 2.714), in advance of the holding and completion of any required hearing,

where it has determined that no significant hazards consideration is involved. The Commission wishes to state in this regard that any question about its staff's determinations on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment will not stay the effective date of the amendment.

The Commission believes that the procedure just described would be its usual way of handling license amendments, because most of these do not involve emergency or exigent situations and do not entail a determination that significant hazards consideration is involved. These three situations and other unusual ones could arise though.

Returning to the initial receipt of an application, if the Commission receives an amendment request and then determines that a significant hazards consideration is involved, it would handle this request in the same way it does now, by issuing an individual notice of proposed action and providing an opportunity for a hearing under § 2.105. The only change in its present procedure would be that it could notify the public of the final disposition of the amendment by noting its issuance or denial in the monthly *Federal Register* notice instead of in an individual notice.

Another possibility might be that the Commission receives an amendment request and finds an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed later in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the Commission might not necessarily be able to provide for prior notice for opportunity for a hearing or for prior notice for public comment and might therefore use its present procedure, publishing an individual notice of issuance under § 2.106 (which provides an opportunity for a hearing after the amendment is issued.) Additionally, the Commission's monthly *Federal Register* notice system would note the Commission's action on the amendment request and, thereby, provide an opportunity for public comment. In connection with emergency requests, the Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the no significant hazards consideration determination, if it

determines that the applicant has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, the Commission expects the applicant to explain to it why this emergency situation has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

Still another possibility might be that the Commission receives an amendment request and finds an exigency, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

The Commission believes that extraordinary situations may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a Federal Register notice soliciting public comment or to provide 30 days ordinarily allowed for public comment. For instance, such a circumstance may arise where a licensee, while shutdown for a short time, wishes to add some component clearly more reliable than one presently installed or wishes to use a different method of testing some system and that method is clearly better than one provided for in its Technical Specifications. In either case, the licensee may have to request an amendment, and, if the Commission determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee starts the plant up and the opportunity to improve the plant is lost.

In circumstances such as the two just described, the Commission may use media other than the Federal Register, for example, a local newspaper published near the licensee's facility, widely read by the residents in the area surrounding the facility, to inform the

public of the licensee's amendment request. In these instances, the Commission will provide the public a reasonable opportunity to comment on the proposed no significant hazards determination. To ensure that the comments are received on time, the Commission may also set up in such a situation a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request. It should be noted that this method of prior notice for public comment will be in addition to the routine notice of the amendment in the monthly Federal Register compilation or to any individual notice of hearing that may be published; it will not affect the time available to exercise one's opportunity to request a hearing, though it may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission will use these procedures sparingly and wants to make sure that its licensees will not take advantage of these procedures. Therefore, it will use criteria, somewhat similar to the ones it will use with respect to emergency situations, to decide whether it will shorten the comment period and change the type of notice normally provided. Consequently, in connection with requests indicating an exigency, the Commission expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of the emergency provision. Whenever a licensee wants to use this provision, it will have to explain to the Commission the reason for the exigency and why the licensee cannot avoid it; the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

Another different circumstance may also present itself to the Commission. For instance, it could receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure and notify the public about the final disposition of the amendment in a notice of issuance or denial in its monthly Federal Register notice, instead of in an individual notice.

It should also be noted that these procedures only apply to license applications. The Commission may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order an amendment without prior notice for public comment or opportunity for a hearing. In this case, the Commission would follow its present procedure and publish an individual notice of issuance in the Federal Register and provide for an opportunity for a hearing on the order.

This new system would change only the Commission's noticing practices; it would not alter the Commission's hearing practices. The Commission has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, they are quite burdensome and involve significant resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees would be able to reduce these delays, under the proposed procedures, by providing to the Commission their appraisals on the issue of significant hazards. There might also be other ways to make the noticing procedures simpler and to assure that the opportunity for public comment is not curtailed. The Commission is therefore particularly interested in comments addressing the workability of its proposed noticing procedures.

Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments requested on which the Commission has not acted before the effective date of the interim final rule.

D. State Consultation

As noted above, Public Law 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribe procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report, cited earlier, stated that the conferees expect that the procedures for State consultation would include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;

(3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;

(4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and

(5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

(1) Give the State a right to veto the proposed NRC determination;

(2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;

(3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or

(4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. *Id.*, at 39.

The Commission believes that the law and its legislative history are quite specific. Accordingly, it proposes to adopt the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. Normally, the State consultation procedures would work as follows. To make the State consultation process simpler and speedier, the Commission would require an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The NRC is compiling a list of State officials who have been designated to consult with it on amendment requests involving no significant hazards considerations; it intends to make this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The Commission would send its Federal Register notice, or other notice in case of exigent circumstances, containing its proposed determination to

the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination—in this regard, the Commission intends to make available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials—but, nevertheless, before it issues the amendment, it will telephone the appropriate State official for the purpose of consultation.

In an emergency situation, the Commission would do its best to consult with the State, before it makes a final determination about no significant hazards consideration, by simply telephoning the appropriate State official before it issues an amendment.

Finally, the Commission wishes to note two points in connection with the legislative history. First, though the Commission intends to give careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the question. Second, State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Paperwork Reduction Act Statement

This rule contains a new reporting requirement which the Office of Management and Budget approved under OMB No. 3150-0011 for the Commission's use through April 30, 1985.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

General notice of proposed rulemaking is not required for this interim final rule because the amendments by their nature concern rules of agency procedure and practice. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 CFR Parts 2 and 50 are published as a document subject to codification.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants, and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 78 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

(Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 68 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5848). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5

U.S.C. 557. Sections 2.790 also issued under sec. 103, 66 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended. (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(9), a new paragraph (a)(4) is added, and redesignated paragraph (a)(6) is revised, as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under § 50.58 and § 50.91 that an emergency or exigent situation exists and that the amendment involves no significant hazards considerations, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

(6) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, when such amendment would authorize actions which may significantly affect the health and safety of the public; or

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

(Sec. 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-

50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236).)

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.60(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. A new § 50.91 is added to Part 50 to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) *Notice for public comment.*—(1) At the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2) The Commission may publish in the *Federal Register* under § 2.105 either an individual notice of proposed action as to which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, a monthly notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such monthly notice. For each amendment proposed to be issued, either notice will (i) contain the staff's proposed determination, under the standards in § 50.92, (ii) provide a brief description of the amendment and of the facility involved, (iii) solicit public comments on the proposed determination, and (iv) provide for a 30-day comment period. Normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request where it has made a proposed determination on no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 or by publishing such a notice in its monthly system of *Federal Register* notices. In either event, it will not make and publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon

issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a circumstance, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration, if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision. Whenever a threatened closure or derating is involved, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failure to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a *Federal Register* notice allowing 30 days for prior public comment, it will:

(i) Use local media to inform the public in the area surrounding a licensee's facility of the licensee's amendment request and of its proposed determination as described in paragraph (a)(2) of this section;

(ii) Provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly;

(iii) Publish a notice of issuance under § 2.106, providing an opportunity for a hearing and for public comment after issuance, if it determines that the

amendment involves no significant hazards consideration.

(iv) Require an explanation from the licensee about the reason for the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

(b) *State consultation.*—(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing to that State a copy of its application and its analysis about no significant hazards consideration and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the Federal Register notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, before it issues the amendment it will telephone that official for the purpose of consultation.

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary to avoid a shutdown or derating.

(5) After the Commission issues the requested amendment, it will send a copy of its final determination to the State.

(c) *Caveats about State consultation.* The State consultation procedures in paragraph (b) of this section do not give the State a right:

(1) To veto the Commission's proposed determination;

(2) To a hearing on the determination before the amendment becomes effective; or

(3) To insist upon a postponement of the determination or upon issuance of the amendment;

(4) Nor do these procedures alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Dated at Washington, D.C., this 4th day of April, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary for the Commission.

[PR Doc. 83-4061 Filed 4-5-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Doc. R-0449]

Electronic Fund Transfers; Technical Amendments and Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and official staff interpretation.

SUMMARY: The Board is adopting technical amendments to Regulation E (Electronic Fund Transfers) to conform certain provisions that refer to Regulation Z (Truth in Lending). These changes reflect redesignated sections in revised Regulation Z. This notice also contains changes to the official staff commentary, which applies and interprets the requirements of Regulation E.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Jesse B. Filkins, Senior Attorneys, or Gerald P. Hurst, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3867.

SUPPLEMENTARY INFORMATION:

1. *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). The Board's staff has also issued an official commentary that interprets the regulation (EFT-2).

2. Explanation of revisions.

Regulation. Regulation E contains certain provisions that describe the relationship between the rules governing electronic fund transfers and Regulation Z (Truth in Lending). These provisions cover issuance of access devices, § 205.5(c)(1)(ii) and 205.5(c)(2)(i); liability for unauthorized transfers, § 205.6(d)(1)(i); documentation of transfers, § 205.9(b)(3); and procedures for resolving errors, § 205.11(i). The changes set forth below relate to the updating of Regulation Z sectional references. These changes are needed because Regulation Z sections were redesignated when the Board revised Regulation Z, pursuant to the Truth in Lending Simplification and Reform Act of 1980.

Commentary. This is the first periodic update to the Official Staff Commentary on Regulation E, which was published in September 1981 (46 FR 46876). These changes were proposed for comment on February 2, 1983 (48 FR 4667). Some of the revisions to the commentary relate to amendments to the regulation published on October 12, 1982 (47 FR 44708). Other changes respond to various questions that have arisen concerning Regulation E since the commentary was originally published. Questions that are being added between existing questions are designated ".5"—for example, question 2-5.5 belongs after question 2-5.

It is contemplated that future updates to the commentary will be published annually, unless circumstances dictate more frequent revision. The staff expects to publish the next proposal in November 1983 for a 60-day comment period, and to issue a final version in the first quarter of 1984.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System.

3. *Text of regulatory revisions.* Pursuant to the authority granted in Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), the Board amends Regulation E, 12 CFR Part 205, by revising §§ 205.5(c)(1)(ii), 205.5(c)(2)(i), 205.6(d)(1)(i), 205.9(b)(3), and 205.11(i) to refer to the revised sections of Regulation Z, to read as follows:

§ 205.5 Issuance of access devices.

(c) *Relation to Truth in Lending* (1)

(ii) Addition to an accepted credit card, as defined in 12 CFR 228.12(a)(2), footnote 21 (Regulation Z), of the

capability to initiate electronic fund transfers; and

(2) * * *

(i) Issuance of credit cards as defined in 12 CFR 226.2(a)(15);

§ 205.6 Liability of consumer for unauthorized transfers.

(d) *Relation to Truth in Lending.* (1)

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

§ 205.9 Documentation of transfers.

(b) *Periodic statements.* * * *

(3) The total amount of any fees or charges, other than a finance charge under 12 CFR 226.7(f), assessed against the account during the statement period for electronic fund transfers or the right to make such transfers, or for account maintenance.

§ 205.11 Procedures for resolving errors.

(i) *Relation to Truth in Lending.*

Where an electronic fund transfer also involves an extension of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the financial institution shall comply with the requirements of this section rather than those of 12 CFR 226.13 (a), (b), (c), (e), (f), and (h).

4. *Text of commentary revisions.* The revisions to the Official Staff Commentary to Regulation E (EFT-2, 12 CFR Part 205) read as follows:

Supplement II—Official Staff Commentary—EFT-2

§ 205.2 Definitions and rules of construction.

Q 2-5.5: *Retail repurchase agreements.* A retail repurchase agreement (repo) is essentially a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities. Is a repo an account for purposes of Regulation E?

A: While repos may not be deposits for purposes of some other banking

regulations, repos are accounts as defined in Regulation E. (§ 205.2(b))

Q 2-12.5: *Fund transfer—withholding of income tax on interest.* A financial institution electronically debits a portion of the interest on a consumer account for transmittal to the Internal Revenue Service, to comply with withholding requirements. Is the debit subject to the regulation?

A: No. (§ 205.2(g))

Q 2-25.5: *Card-activated telephones.* Does the regulation cover transfers to pay for calls made from a telephone that is activated when the consumer inserts a card into a magnetic strip or card reader, and does the terminal receipt requirement apply?

A: The regulation applies to transfers initiated electronically. As a result the electronic transfers from a consumer's account to pay for telephone calls are covered by the regulation as electronic fund transfers. A receipt is not required provided the only transfer of funds occurring as a result of the use of the card at the combination telephone/reader is to pay for the charges incurred by use of the telephone. (§ 205.2(h))

Q 2-27: *Unauthorized transfers—access device obtained from the consumer.* A consumer is robbed or induced by fraud to furnish another person with an access device. Are transfers initiated at an ATM by the person who obtained the access device from the consumer "unauthorized electronic fund transfers"?

A: The transfers are unauthorized for purposes of Regulation E. Although the definition of "unauthorized electronic fund transfer" excludes any transfer initiated by a person "who was furnished with the access device to the consumer's account by the consumer," it assumes that the consumer has authorized the person to make transfers with the access device. This exclusion does not apply when the access device is "furnished" as the result of a robbery, or as the result of a fraud on the consumer in which the consumer does not authorize the use of the access device to make transfers. But if the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the financial institution has been notified that transfers by that person are no longer authorized. (§ 205.2(i))

§ 205.3 Exemptions.

Q 3-19.5: *Telephone transfers—money market deposit accounts, retail repurchase agreements.* Are telephone transfers between a money market deposit account (or a retail repo account) and another account within the institution subject to the regulation?

A: The answer depends on whether the transfers are made pursuant to a written plan or agreement in which periodic or recurring transfers are contemplated. An agreement that merely permits the consumer to telephone institutions for the rollover of all or a portion of the funds at maturity does not meet this test. (§ 205.3(e))

Q 3-22: *Small institution exemption—grace period.* If the assets of a previously exempt financial institution exceed \$25 million on December 31, when must the institution begin complying with the regulation?

A: Such an institution would have a one-year grace period. For example, if the assets exceed \$25 million on December 31, 1983, compliance is not required until January 1, 1985. On the other hand, a previously covered institution whose assets fall below \$25 million on December 31, 1983, may take advantage of the exemption beginning on January 1, 1984. (§ 205.3(g))

§ 205.7 Initial disclosure of terms and conditions.

Q 7-18.5: *Error-resolution disclosure—foreign-initiated transfers.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which transfers may be initiated outside the United States?

A: The financial institution may but need not refer to the longer time periods in the error-resolution disclosure. (§§ 205.7(a)(10), 205.8(b), and 205.11(c)(4))

§ 205.9 Documentation of transfers.

Q 9-9: *Receipts—type of account.* A footnote states that the type of account need not be identified if the access device used to initiate the transfer can access only one account at a given terminal. When does this exception apply?

A: The exception applies to point-of-sale terminals, ATMs, and any other electronic terminals. It is available even if the access device can access more than one account when used at another terminal. For example, it is available when, in a shared ATM system, an access device can access only one account at a terminal operated by an institution other than the account-holding institution, even though the access device can access more than one account at terminals operated by the account-holding institution. Moreover, account refers only to asset accounts. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, for example, the exception is still available. (§ 205.9(a)(3), footnote 3)

Q 9-10.5: *Receipts—type of account, interchange system.* What about an interchange system in which consumers can access multiple accounts of the same type at their account holding institution's terminals, but only a primary account of each type of other terminals in the system—may the receipt at such other terminals describe the account in terms of "checking" or "savings," without unique identification? A: Yes. (§ 205.9(a)(3), footnote 3)

Q 9-16: *Periodic statements—frequency.* How often must periodic statements be sent for accounts that are subject to the regulation?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically (by use of an access device, telephone bill-payment service, or preauthorized transfers from the consumer's account, for example) or if the account can be credited electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are certain exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update).

Also, to eliminate duplicative statements, the regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. This exception

does not alter the statement provisions, however, with respect to accounts that receive preauthorized credits; such accounts continue to acquire quarterly statements or passbook updates. (§ 205.9(b), (c), (d), and (h))

Q 9-22 (Reserved.)

Q 9-26: *Periodic statements—terminal location omitted.* When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) trigger the error resolution procedures under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error resolution section. However, in responding the institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error resolution procedures do not apply. (§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7))

Q 9-50: *Periodic statements—transfers between accounts.* The regulation provides that an account is excepted from the periodic statement requirements for transfers to or from another account of the consumer within the institution, if these transfers are described on a complying statement for the other account. What effect does this have on the periodic statement requirements for accounts that also are accessed by other electronic transfer activity?

A: The exception applies only to the transfers between accounts. The financial institution must comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a quarterly Regulation E statement must be sent for an account that also receives payroll deposits electronically; and a Regulation E statement must be sent for any month in which an account is also accessed by a withdrawal at an ATM. However, a financial institution need not comply with the Regulation E requirements on such statements for transfers that are otherwise exempt, such as the transfers between accounts discussed above. (§§ 205.9(c), (d), and (h))

Q 9-51: *Periodic statements—foreign-initiated transfers.* Failure to provide

terminal receipts and periodic statements for transfers initiated outside the United States is deemed not to be a failure to comply with the regulation if an inquiry or request for documentation is treated as a notice of an error. What does this mean?

A: The relaxation in documentation requirements takes account of the fact that some foreign-based terminals do not capture all of the information required by the regulation. However, it is expected that the institution would make a good faith attempt to provide on the periodic statements the information required by the regulation to identify the transfer. For example, even though the institution may not be able to provide the location of the specific terminal, it should, if possible, identify the country and city in which the transfer was initiated. (§ 205.9(i))

By order of the Board of Governors of the Federal Reserve System, March 31, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-0875 filed 4-1-83; 2:13 pm]

BILLING CODE 6210-01-M

12 CFR Part 226

[Reg. Z; Doc. No. R-0450]

Truth in Lending; Definition of Arranger of Credit; Exemption of Certain Student Loans; Treatment of Certain Disclosure Errors; and Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and final official staff interpretation.

SUMMARY: The Board is publishing final amendments to revised Regulation Z to implement Truth in Lending amendments made in the Garn-St Germain Depository Institutions Act of 1982. The amendments to 12 CFR part 226 delete from coverage arrangers of credit and exempt certain student loans. For purposes of administrative enforcement, two footnotes relating to disclosure errors caused by the use of faulty calculation tools are also amended. This notice also contains changes to the official staff commentary, which applies and interprets the requirements of the revised Regulation Z as a substitute for individual staff interpretations of the regulation. Some of the changes reflect the statutory amendments while others update the current commentary.

EFFECTIVE DATES:

Regulatory amendments—October 1, 1982.

Commentary changes—April 1, 1983, but reliance optional until October 1, 1983.

FOR FURTHER INFORMATION CONTACT:

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Regulatory amendments—Claudia Yarus
Commentary:

Subpart A—Gerald Hurst

Subpart B—Ruth Amberg, Jesse Filkins, Richard Garabedian, Lynn Goldfaden, Gerald Hurst, John Wood

Subpart C and Appendices—Clarence Cain, Lucy Griffin, Rugenia Silver, Susan Werthan, Claudia Yarus, Steven Zeisel

Subpart D—Rugenia Silver.

SUPPLEMENTARY INFORMATION:

1. *Introduction.* This notice contains three types of changes to the Board's Regulation Z, and changes to the accompanying official staff commentary. These changes were proposed for comment on February 2, 1983 (48 FR 4669). The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, October 15, 1982 as amended by Pub. L. 97-457, Jan. 13, 1983) (DIA) made two amendments to the Truth in Lending Simplification and Reform Act of 1980. Section 103(f) of the Truth in Lending Act was amended by deleting "arrangers of credit" from the definition of "creditor," effective October 1, 1982. Section 104 was amended by exempting from coverage (both prospectively and retroactively) loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.). To implement these statutory amendments, the Board is amending § 226.2 of Regulation Z by removing the definition of "arranger of credit" and removing "arrangers of credit" from the "creditor" definition, and amending § 226.3 by adding a new paragraph that exempts loan programs under Title IV of the Higher Education Act of 1965. These amendments are retroactively effective October 1, 1982.

The vast majority of those who commented on the deletion from coverage of arrangers of credit supported the change. A few preferred that the exemption be narrowed to exclude only real estate brokers, but the majority agreed that the regulatory change properly reflected the statutory action.

Only a small number of commenters addressed the exemption for certain student loans. Almost all of the commenters supported the exemption, although a couple of commenters asked that the exemption be broadened to include all student loans.

Amendments to footnote 31a (§ 226.14(a)) and footnote 45a (§ 226.22(a)) are also being made, effective October 1, 1982. These footnotes protect creditors from liability for use of faulty calculation tools. The footnotes provide that an error in the disclosure of the annual percentage rate or finance charge is not considered a violation if: (1) The error results from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor discontinues use of the tool and notifies the Board in writing of the error in the calculation tool. Thus, errors that meet these criteria are not violations and creditors found to have such errors are protected from both civil and administrative actions, particularly restitution.

The Board had eliminated the protection provided by the footnotes as of October 1, 1982, the effective date of the amended act, in the belief that the act's expansion of the bona fide error defense to civil liability made the footnotes unnecessary.

Upon further review, however, the Board believes that the elimination of the protection provided by the footnotes had the effect, without the intent, of exposing creditors to restitution. The amended act protects creditors from civil liability for violations resulting from bona fide errors, even in the absence of the footnotes. However, without the protection of the footnotes creditors could be subject to administrative enforcement, including restitution, for the same errors. The Board therefore proposed to reinstate the protection of the footnotes.

Over 90% of the commenters that addressed the proposal to amend the footnotes supported its adoption without any changes. Very few commenters opposed the amendment.

The creditor's reliance on the tool must be in good faith in order to take advantage of the protection offered by the footnotes. In the Board's view, this imposes on the creditor a reasonable degree of responsibility for assuring that the tool in question provides the degree of accuracy required by the regulation. For example, the creditor might verify the results obtained by use of the tool by comparing those results to the figures obtained by use of another calculation tool. The creditor might also reasonably rely on the expertise of the enforcement

agency in making such a determination prior to use of the tool.

Finally, changes to the Regulation Z official staff commentary (Supplement I to Part 226) are being made. Some of the changes correspond to the regulatory amendments implementing the DIA and serve to conform the regulation and commentary. Other commentary changes update the document. This is a periodic update to the commentary, as amended effective September 17, 1982 (47 FR 41388, September 20, 1982) and responds to significant questions that have arisen since the last update. The types of changes being made generally give creditors more flexibility in making disclosures, while preserving basic consumer protections.

For purposes of continuing the commentary as the sole interpretive vehicle of Regulation Z, the staff plans to update the commentary annually. There may, of course, be occasions when updates occur more frequently. It is expected that revisions will be proposed in November for at least a 60-day comment period. Final changes will then be issued after the first of the year, with optional compliance until the uniform effective date of October 1 for mandatory compliance.

2. *Regulatory revisions.* Following is a brief description of the regulatory revisions:

Subpart A—General*Section 226.2 Definitions and rules of construction.**(a)(3) "Arranger of credit"*

This definition and footnote 2 are removed to implement the Truth in Lending Act amendment to the definition of "creditor" made in the DIA. The paragraph and footnote numbers are reserved for future use in order to avoid the need for renumbering all subsequent definitions and footnotes.

(a)(17) "Creditor"

This definition is amended by removing paragraph (a)(17)(ii). The amendment conforms the regulatory definition to the statutory definition as amended by the DIA. Paragraphs (a)(17)(iii), (iv), and (v) of the current definition are redesignated as paragraphs (a)(17)(ii), (iii), and (iv), respectively.

Section 226.3 Exempt transactions.

Paragraph (f) is added to exempt loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965. The DIA Truth in Lending

amendments expressly exempt these loans from coverage.

Sections 226.14 and 226.22

Determination of annual percentage rate.

The last sentence of both footnote 31a and footnote 45a is removed. This amendment reinstates the protections provided by the two footnotes.

3. *Commentary revisions.* Following is a brief description of the revisions to the commentary:

Subpart A—General

Section 226.2 Definitions and rules of construction.

2(a)(3) "Arranger of Credit"

Comments 2(a)(3)-1 through 6 are removed to correspond to the regulatory amendments that remove "arrangers of credit" from the "creditor" definition.

2(a)(4) "Billing Cycle" or "Cycle"

Comment 2(a)(4)-1 is revised to eliminate possible confusion over whether the periodic statement must in fact be sent within the 4-day interval.

2(a)(17) "Creditor"

The word "five" in the first sentence of comment of 2(a)(17)-1 is changed to the word "four".

Comment 2(a)(17)(ii)-1 is removed to conform the commentary to the regulatory amendments that implement the DIA Truth in Lending amendments.

The comment designations—Paragraph 2(a)(17)(iv) and Paragraph 2(a)(17)(v)—are redesignated Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv), respectively.

2(a)(18) "Downpayment"

Comment 2(a)(18)-1 is revised to include a cross-reference to the commentary to § 226.2(a)(23). Material added to the commentary to § 226.2(a)(23) discusses the allocation of lump-sum payments between the downpayment and the prepaid finance charge.

2(a)(23) "Prepaid Finance Charge"

A new comment 2(a)(23)-4 is added to clarify the treatment to be given discounts and other items that are finance charges under § 226.4 in credit sale transactions involving lump-sum payments by a consumer. This comment discusses the allocation of a lump-sum payment between the downpayment and the prepaid finance charge.

2(a)(24) "Residential Mortgage Transaction"

A new comment 2(a)(24)-5 is added to clarify whether certain transactions are

"to finance the acquisition" of the consumer's principal dwelling and are therefore residential mortgage transactions. The comment also discusses some of the effects this determination has on whether disclosures are required and which ones must be given.

References

A sentence is added to the paragraph under 1981 *Changes* discussing "arranger of credit" indicating that the definition has been removed from the statute. This reflects the DIA Truth in Lending amendment.

Section 226.3 Exempt transactions.

3(f) Student Loan Programs

Comment 3(f)-1 is added to clarify which loan programs are administered under Title IV of the Higher Education Act of 1965. This comment corresponds to the regulatory amendment implementing the DIA Truth in Lending amendments that exempt these loan programs from the regulation.

Section 226.4 Finance charge.

4(d) Insurance

Comment 4(d)-10 is revised to provide an exception to the requirement that creditors allocate a portion of the premium for coverages that are not VSI or other property insurance when the total amount of the premium in fact attributable to all of the non-VSI coverages included in the VSI policy is \$1.00 or less (or in the case of multi-year policies, \$5.00 or less).

Subpart B—Open-End Credit

Section 226.5 General disclosure requirements.

5(a) Form of Disclosures

Comment 5(a)(2)-3 is added to clarify that the terms "finance charge" and "annual percentage rate" need not be more conspicuous than numerical amounts or percentages. The material has been revised from the proposal, but is unchanged in substance.

5(b) Time of Disclosures

Comment 5(b)(1)-3 is expanded to clarify that no new initial disclosures need be given when the consumer's account is closed simply to provide the consumer with a new account number, such as when a credit card is reported lost or stolen and a new account number is assigned for security reasons.

Section 226.8 Identification of transactions.

Comment 8-7 is added to give the creditor the option of two means of

identifying credit insurance premiums on the periodic statement when the insurance is offered through the creditor but actually provided by another company. In such a case, the creditor could identify the premium using either the rule in § 226.8(a)(2) for "related" sellers and creditors, or the rule in § 226.8(a)(3) for "non-related" sellers and creditors.

Section 226.9 Subsequent disclosure requirements.

9(c) Change in Terms

The first sentence of comment 9(c)(1)-3 is revised to clarify when the change-in-terms notice must be provided to the consumer in those cases in which the 15-day advance-notice requirement is inapplicable.

Comment 9(c)(1)-3 is revised to clarify the scope of the exception to the 15-day change-in-terms requirement. The revision includes an example of an occurrence that would not be considered an "agreement" for purposes of relieving the creditor of its responsibility to provide an advance change-in-terms notice. If the change is the type that has been unilaterally made by the creditor and is of general applicability, advance notice must be given. Thus, the "agreed to" rule would not apply in the following example: A creditor has decided to change a term in its open-end plan. Instead of providing change-in-terms notices to its customers 15 days in advance of the term change, the creditor decides to wait until each consumer comes to the creditor's office to request a cash advance. At that time, the consumer is given a change-in-terms notice, and, if the consumer agrees to the term change, the advance is made.

The first sentence of comment 9(c)(2)-2 is revised to add the words "or payments," which is merely an editorial change.

Comment 9(c)(2)-2 is revised to give additional guidance on how the change-in-terms requirement may be satisfied when skip features are involved.

Section 226.15 Right of rescission.

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-4 is revised to clarify that the sale of the consumer's interest in the property terminates the right to rescind, even though the consumer is financing the transaction. The comment has been expanded from the proposal for illustrative purposes.

Subpart C—Closed-End Credit**Section 226.17 General disclosure requirements.****17(a) Form of Disclosures**

Comment 17(a)(1)-5 is expanded to add one example of "directly related" information. This example, relating to § 226.18(q), responds to inquiries about an appropriate assumption policy disclosure when a transaction involves a due-on-sale clause. The example makes clear that the creditor may refer to the due-on-sale clause in making the disclosure under § 226.18(q).

Comment 17(a)(2)-1 is expanded to clarify that the terms "finance charge" and "annual percentage rate" need not be more conspicuous than numerical amounts or percentages. The material has been renumbered and revised from proposed comment 17(a)(2)-3, but is unchanged in substance from the proposal.

17(i) Interim Student Credit Extensions

Comment 17(i)-1 is revised to remove references to the Guaranteed Student Loan Program and the PLUS program. These loan programs are administered under Title IV of the Higher Education Act of 1965 and are thus no longer subject to Regulation Z, pursuant to the statutory amendments exempting these loan programs. A cross-reference to § 226.3(f), which reflects that exemption, has been added to comment 17(i)-1.

Comment 17(i)-4 is deleted. This comment addressed loan programs that are now exempt under the DIA Truth in Lending amendments. Comment 17(i)-5 is redesignated comment 17(i)-4.

Section 226.18 Content of disclosures.**18(f) Variable Rate**

Comment 18(f)-1 is revised to make clear that the variable-rate disclosure applies not only to an increase in the interest component of the annual percentage rate but also to increases in other elements that affect the rate, such as the rate of required credit life insurance. The comment has been expanded from the proposal for greater clarity.

Comment 18(f)-5 is revised to explain the circumstances under which footnote 43 is available to creditors authorized by recent federal legislation to make alternative mortgage loans. Footnote 43 permits creditors to omit the § 226.18(f) disclosures if variable-rate disclosures are made in accordance with certain variable-rate regulations of other federal agencies. Title VIII of the DIA allows non-federally-chartered housing creditors to offer creative financing in accordance with certain federal

regulations, even where applicable state law prohibits such financing by state creditors. The revision to the comment permits those creditors to take advantage of footnote 43, whether or not they are subject to examination by the agencies issuing the regulations. A sentence has been added to the proposal to make clear that creditors using the footnote should look to the other federal regulations rather than to Regulation Z for the timing of the variable-rate disclosures.

Comment 18(f)-5 and the references to other regulations are also revised to reflect the citation to the Federal Home Loan Bank Board's amended adjustable mortgage loan regulation. A reference to the DIA has been added to the statutory references.

18(q) Assumption Policy

Comment 18(q)-1 is revised to include a cross-reference to comment 17(a)(1)-5, which permits creditors to state in the Truth in Lending disclosures that a due-on-sale clause is contained in the loan document.

Section 226.19 Certain residential mortgage transactions.**19(a) Time of Disclosure**

Comment 19(a)-3 is revised to clarify when a creditor receives an application that is transmitted by an agent or broker. No change is intended to the general rule that "written application" is defined by the Real Estate Settlement Procedures Act and Regulation X.

Section 226.20 Subsequent disclosure requirements.**20(b) Assumptions**

Comment 20(b)-1 is revised to make clear that assumptions other than those defined in § 226.20(b) do not require disclosures. The language has been modified from the proposal for greater clarity.

Comment 20(b)-7 is added to explain the relationship between the abbreviated disclosures of § 226.20(b)(1) through (5) and the general disclosure requirements of §§ 226.17 and 226.18.

The proposal would have added a comment discussing the timing of assumption disclosures. That comment has not been adopted because the issue is adequately addressed by the definition of consummation in § 226.2(a)(13).

Section 226.22 Determination of annual percentage rate.**References**

The last sentence under 1981 Changes, reflecting the elimination of footnote

45a, is deleted in light of the reinstatement of that footnote.

Section 226.23 Right of rescission.**23(a) Consumer's Right to Rescind**

Comment 23(a)(3)-3 is revised to clarify that the sale of the consumer's interest in the property terminates the right to rescind, even though the consumer is financing the transaction. The comment has been expanded from the proposal for illustrative purposes.

Subpart D—Miscellaneous**Section 226.28 Effect on State laws.****28(a) Inconsistent Disclosure Requirements**

The commentary to § 226.28 is expanded by the addition of new comments 28(a)-8 through 28(a)-10, reflecting recent Board determinations on the effect of the Truth in Lending Act on certain consumer credit laws in Arizona, Florida and Missouri.

Section 226.29 State exemptions.**29(a) General Rule**

Comment 29(a)-4 is revised to reflect three additional state exemptions from the Truth in Lending Act granted by the Board since publication of the previous commentary update. The reference to the Oklahoma exemption has been expanded from the proposal to provide more detail on the scope of that exemption.

Appendix D—Multiple-Advance Construction Loans

The commentary and references to Appendix D are revised to reflect the fact that creditors in certain multiple-advance transactions other than construction loans may also use the appendix.

Appendix H—Closed-End Model Forms and Clauses

Current comments H-17 through 20 as they reflect the approval under section 113 of the act of student loan disclosure forms issued by the Department of Education are removed. The loan programs to which the forms apply are exempt from the regulation under the recent DIA amendments to the Truth in Lending Act. New comments H-17 through 20 are added to reflect the approval under section 113 of the act of four student loan disclosure forms issued by the Department of Health and Human Services in conjunction with the Health Education Assistance Loan (HEAL) program. That loan program remains subject to the requirements of the regulation.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking.
Consumer protection, Credit, Federal Reserve System, Finance, Truth in lending, Penalties.

PART 226—[AMENDED]**§§ 226.2, 226.14, 226.22 [Amended]**

4. *Text of Regulatory Revisions.* Pursuant to the authority granted in § 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z, 12 CFR Part 226, by removing and reserving paragraph (a)(3), and reserving footnote 2 to paragraph (a)(3) of § 226.2; removing paragraph (a)(17)(ii) of § 226.2 and redesignating paragraphs (a)(17) (iii), (iv), and (v) as paragraphs (a)(17) (ii), (iii), and (iv), respectively; adding a new paragraph (f) to § 226.3; and removing the last sentence of both footnote 31a to § 226.14 and footnote 45a to § 226.22, to read as follows:

§ 226.3 Exempt transactions.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

5. *Text of Commentary Revisions.* The revisions to the commentary (Supplement I to Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL-1**Subpart A—General****§ 226.2 Definitions and rules of construction.****2(a) Definitions****2(a)(3) "Arranger of Credit"**

The comment designation 2(a)(3) "Arranger of Credit" and comments 2(a)(3)-1 through 6 are deleted in their entirety.

2(a)(4) "Billing Cycle" or "Cycle"

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2(a)(17) "Creditor"

The word "five" in the first sentence of comment 2(a)(17)-1 is changed to the word "four". Comment 2(a)(17)(ii)-1 is deleted. Comment designations Paragraph (a)(17)(iv) and Paragraph 2(a)(17)(v) are redesignated Paragraph 2(a)(17)(iii) and Paragraph 2(a)(17)(iv). The reference to "section 226.2(a)(17)(iv)" in new comment 2(a)(17)(iii)-1 is changed to "section 226.2(a)(17)(v)" in new comment 2(a)(17)(iv)-1 is changed to "section 226.2(a)(17)(iv)".

2(a)(18) "Downpayment"

1. *Allocation.* * * * (See the commentary to section 226.2(a)(23).)

2(a)(23) "Prepaid Finance Charge"

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under section 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for \$10,000, requires the consumer to pay \$3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is \$9,000. The seller is the creditor in the transaction and therefore the \$1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to sections 226.4(b)(9) and 226.4(c)(5).) If the creditor applies the entire \$3,000 to the cash price and adds the \$1,000 finance charge to the interest on the \$6,000 to arrive at the total finance charge, all of the \$3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies \$2,000 of the lump-sum payment to the cash price, then \$2,000 of the \$3,000 is a downpayment and the \$1,000 discount is a prepaid finance charge.

2(a)(24) "Residential Mortgage Transaction"

5. *Acquisition.* A transaction is not "to finance the acquisition" of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchased the dwelling and acquired some title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types

of transactions are not residential mortgage transactions:

- The financing of a balloon payment due under a land sale contract.
- An extension of credit made to a joint owner of property to buy out the other joint owner's interest.

As a result, in giving the disclosures for these transactions several provisions of the regulation are not applicable, for example, the exceptions to the right of rescission (sections 226.23(f)(1) and 226.15(f)(1)), the early disclosure requirement (section 226.19(a)), and the disclosure concerning assumability (section 226.18(q)). In the following situation, by contrast, since the transaction is not a residential mortgage transaction, no disclosures are required by section 226.20(b) and therefore the right of rescission does not apply:

- A written agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assume the mortgage, where the buyer previously purchased the property and agreed with the seller to make the mortgage payments.

References**1981 changes:**

"Arranger of Credit" * * * This definition was deleted effective October 1, 1982.

§ 226.3 Exempt transactions.**3(f) Student Loan Programs**

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the federal government, state, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

§ 226.4 Finance charge.**4(d) Insurance**

10. *Single-interest insurance defined.* The term "single-interest insurance" as used in the regulation refers only to the types of coverage traditionally included in the term "vendor's single-interest insurance" (or "VSI"), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement,

and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under section 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is \$1.00 or less (or \$5.00 or less in the case of a multi-year policy).

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

5(a) Form of Disclosures

Paragraph 5(a)(2)

3. *Disclosure of figures—exception to "more conspicuous" rule.* The terms "annual percentage rate" and "finance charge" need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

5(b) Time of Disclosures

5(b)(1) Initial disclosures

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

§ 226.8 Identification of transactions.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor, but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the rule in section 226.8(a)(2) for "related" sellers

and creditors, or the rule in section 226.8(a)(3) for "non-related" sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under section 226.8(a)(2), a brief identification of the services provided (for example, "credit life insurance"), or by disclosing, under section 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.

§ 226.9 Subsequent disclosure requirements.

9(c) Change in Terms

9(c)(1) Written Notice Required

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

- If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default
- If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of section 226.9(c)(1): the consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

9(c)(2) Notice Not Required

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change

in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

§ 226.15 Right of rescission.

Paragraph 15(a)(3)

4. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after the occurrence giving rise to the right of rescission
- Transfer of all the consumer's interest in the property
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of § 226.15. A partial transfer of the consumer's interest, such as a

transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

17(a) Form of Disclosures

Paragraph 17(a)(1)

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

- A statement that a due-on-sale clause is contained in the loan document. For example, the disclosure given under section 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms "annual percentage rate" and "finance charge" be shown more conspicuously:

- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See section 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under section 226.18.

Comment 17(i)-4 is removed.
Comment 17(i)-5 is redesignated comment 17(i)-4.

§ 226.18 Content of disclosures.

18(f) Variable Rate

1. *Coverage.* The requirements of section 226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.

5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of section 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.6-2(a)) and the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR 29). The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by Title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

18(q) Assumption Policy

1. *Policy statement.* Because a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or "under certain circumstances" in complying with section 226.18(q). The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria or conditions

for assumability. However, the creditor may state that a due-on-sale clause is contained in the loan document. (See comment 17(a)(1)-5 regarding directly related information.)

References

Statute: Section 128, the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

Other regulations: 12 CFR 545.6-2(a) and 12 CFR Part 29.

§ 226.19 Certain residential mortgage transactions.

19(a) Time of Disclosure

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X requires disclosures "to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan" (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

§ 226.20 Subsequent disclosure requirements.

20(b) Assumptions

1. *General definition.* An assumption as defined in section 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who

assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. (See comment 2(a)(24)-5 for a discussion of assumptions that are not considered residential mortgage transactions.)

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms "annual percentage rate" and "total of payments," when disclosed according to section 226.20(b) (4) and (5), are not subject to the description requirements of section 226.18 (e) and (h). The term "annual percentage rate" disclosed under section 226.20(b)(4) need not be more conspicuous than other disclosures.

§ 226.22 Determination of the annual percentage rate.

References

1981 changes: The section now provides a larger tolerance ($\frac{1}{4}$ of 1 percentage point) for irregular transactions.

§ 226.23 Right of rescission.

23(a) Consumer's Right to Rescind

Paragraph 23(a)(3)

3. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after consummation of the transaction.
- Transfer of all the consumer's interest in the property.
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title

through a device such as an installment sale contract.

Transfer of all the consumers' interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

Subpart D—Miscellaneous

§ 226.28 Effect on state laws.

28(a) Inconsistent Disclosure Requirements

8. *Preemption determination—Arizona.* Effective October 1, 1983, the Board has determined that the following provisions in the state law of Arizona are preempted by the Federal law:

- Section 44-287 B.5—Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

- Section 44-287 B.6—Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the Federal finance charge, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.

- Section 44-287 B.7—Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

9. *Preemption determination—Florida.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Florida are preempted by the Federal law:

- Sections 520.07(2)(f) and 520.34(2)(f)—Disclosure of amount financed. This disclosure is preempted in those transactions in which the

amount is different from the Federal amount financed, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.

- Sections 520.07(2)(g), 520.34(2)(g), and 520.35(2)(d)—Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the Federal amount, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.

- Sections 520.07(2)(h) and 520.34(2)(h)—Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the Federal total of payments, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount than the Federal law.

- Sections 520.07(2)(i) and 520.34(2)(i)—Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount as the Federal law.

10. *Preemption determination—Missouri.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Missouri are preempted by the Federal law:

- Sections 365.070-6(9) and 408.260-5(6)—Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

- Sections 365.070-6(10) and 408.260-5(7)—Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the Federal finance charge, since in such transactions the State law requires the use of a term different from the Federal law to represent the same amount.

- Sections 365.070-2 and 408.260-2—Use of the terms "time price differential" and "time charge" in certain notices to

the buyer. In those transactions in which the State disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.

- Sections 365.070-6(11) and 408.260-5(8)—Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount.

- Sections 365.070-6(12) and 408.260-5(9)—Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term from the Federal law to represent the same amount.

§ 226.29 State exemptions.

29(a) General Rule

4. *Exemptions granted.* Effective October 1, 1982, the Board has granted the following exemptions from portions of the revised Truth in Lending Act:

- Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor or lessor.)

- Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

- Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

- Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal act. (The exemption does not apply to §§ 132 through 135 of the Federal act, nor does it apply to transactions in which a federally chartered institution is a creditor or lessor.)

- Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal act. (The exemption does

not apply to transactions in which a federally chartered institution is a creditor.)

Appendix D—Multiple-Advance Construction Loans

1. *General rule.* Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. This appendix reflects the approach taken in section 226.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; i.e., the construction phase and the permanent phase may be treated as one transaction or more than one transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

2. *Variable-rate multiple-advance loans.* The hypothetical disclosure required in most variable-rate transactions by § 226.18(f)(4) is not required for multiple-advance loans disclosed pursuant to Appendix D, Part I.

References

1981 Changes: The use of Appendix D is limited to multiple-advance loans for construction purposes or analogous types of transactions.

Appendix H—Closed-End Model Forms and Clauses

17. *HRSA-500-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

18. *HRSA-500-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

19. *HRSA-502-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

20. *HRSA-502-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

By order of the Board of Governors of the Federal Reserve System, March 31, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-8074 Filed 4-1-83; 2:13 pm]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

[Rev. 1, Amdt. 3]

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Policies of Federal Government and SBA

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of 28 CFR 42.403(d) and in effectuation of Federal government and Small Business Administration policies against discrimination, the Small Business Administration is revising Appendix A of Part 113 by updating its listing of programs that receive Federal financial assistance and by including all nonfinancial programs. In addition, we are amending our definition of "Federal financial assistance" to coincide with the definition which appears at 28 CFR 42.102(c).

DATE: Effective April 6, 1983.

FOR FURTHER INFORMATION CONTACT: Adelino Sanchez, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street, NW, Room 501, Washington, D.C. 20416, (202) 653-6054.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of 28 CFR 42.403(d), published December 1,

1976, there was published in the Federal Register (47 FR 49851-49852) a notice that the Small Business Administration proposed the amendment of its Appendix A to include an updated listing of all financial assistance programs, and by adding a listing of nonfinancial assistance programs which are subject to the nondiscrimination provisions of this part. The definition of "financial assistance" was also amended to coincide with the definition of "Federal financial assistance" as it appears at § 42.102(c) of Title 28 of the Code of Federal Regulations.

Interested parties were given until December 3, 1982, to submit comments, suggestions or objections concerning this proposed amendment. No comments were received.

SBA hereby certifies that this rule, will not constitute a major rule for the purposes of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. The rule constitutes a nonsubstantive procedural change, and by its terms will not significantly affect the administration of any of SBA's financial assistance programs.

List of Subjects in 13 CFR Part 113

Aged, Civil rights, handicapped, Loan programs—business, Marital status discrimination, Religious discrimination, Sex discrimination, Small businesses.

PART 113—[AMENDED]

Accordingly, pursuant to the authority contained in 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 113, Chapter I, Title 13 of the Code of Federal Regulations, is amended as follows:

1. Section 113.2(a) is revised to read as follows:

§ 113.2 Definitions.

(a) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other

contract which has as one of its purposes the provision of assistance.

2. Appendix A of Part 113 of Title 13 of the Code of Federal Regulations is revised to read as follows:

APPENDIX A

Name of program	Authority
Business Loans.....	Small Business Act, Section 7(a)
Debtor State Development companies (501) and their small business concerns.	Small Business Investment Act, Title V
Debtor State Development companies (502) and their small business concerns.	Small Business Investment Act, Title V
Debtor certified development companies (503) and their small business concerns.	Small Business Investment Act, Title V
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III
Pollution Control.....	Small Business Investment Act, Title IV, Part B
Surety Bond Guarantees.....	Small Business Investment Act, Title IV, Part B
Disaster Loans:	
Physical, including riot.....	Small Business Act, Section 7(b)(1)
Economic Injury (EIDL).....	Small Business Act, Section 7(b)(2)
Federal Action Loan Program.	Small Business Act, Section 7(b)(3) (No funds have been authorized for this program for FY 1982 through FY 1984)
Women's Business Enterprise.	Executive Order 12138
Procurement Automated source System.	Small Business Act, Section 8
Business Development Program.	Small Business Act, Section 8(a)
Subcontracting Program.....	Small Business Act, Section 8(d)
Small Business Institute.....	Small Business Act, Section 8(b)(1)
Certificate of Competency.....	Small Business Act, Section 8(b)(7)
Technology Assistance Program.	Small Business Act, Section 9
Small Business Development Centers.	Small Business Act, Section 21
International Trade Program.	Small Business Act, Section 22
Technical and Management Assistance.	Small Business Act, Section 7(j)
Service Corps of Retired Executives and Active Corps of Executive.	Small Business Act, Section 6(b)(1)

(Catalog of Federal Domestic Assistance Programs No. 59.001 through 59.031.)

Dated: March 25, 1983.

James C. Sanders,
Administrator.

[FR Doc. 83-6861 Filed 4-5-83; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8899]

Sterling Drug, Inc., et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on Oct. 1, 1974 (40 FR 3979). The modified order permits respondents to make claims that environmental surfaces play a significant role in the transmission of viruses and bacteria associated with colds and that household disinfectants can reduce the incidence or prevent the spread of colds, if supported by competent and reliable scientific evidence.

DATES: Final Order issued Oct. 1, 1974. Modifying Order issued March 11, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/PC, Connie Vecellio, Washington, D.C. 20580. (202) 376-3465.

SUPPLEMENTARY INFORMATION: In the Matter of Sterling Drug, Inc., et al. Codification appearing at 40 FR 3979 remains unchanged.

List of Subjects in 16 CFR Part 13

Household disinfectants.

(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 Order Reopening the Proceeding and Modifying Cease and Desist Order is as follows:

[Docket No. D. 8899]

Sterling Drug, Inc. et al.; Order Reopening the Proceeding and Modifying Cease and Desist Order

On September 20, 1982, Sterling Drug, Inc. and SSC&B, Inc., respondents in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the consent order entered therein. By letter dated January 17, 1983, respondents agreed to modify their original proposal.

The consent order, which has issued in 1974, applies to Lysol or any other household disinfectant products. Sterling Drug manufactures and markets Lysol Brand Disinfectants. SSC&B prepared and distributed the advertising for Lysol Brand Disinfectants which was challenged in the complaint. The advertising represented that Lysol Brand Disinfectants could be used to kill influenza viruses and other germs and viruses on environmental surfaces and in the air, and that such use would be of significant medical benefit in reducing the incidence or preventing the spread of colds, influenza, and other upper respiratory diseases within the home. However, the prevailing view among scientists at the time the advertising was disseminated was that airborne germs and viruses were the known

cause of most colds, influenza, and other upper respiratory diseases, that germs and viruses on environmental surfaces did not play a significant role in the transmission of colds, influenza, and other upper respiratory diseases, and that Lysol Brand Disinfectants would not be of medical benefit in reducing the incidence or preventing the spread of these diseases. Consequently, paragraph I.A. and I.B. the consent order prohibited the following claims:

A. environmental surfaces play a significant role in the transmission of viruses or bacteria associated with influenza, colds, or streptococcal throat infection;

B. use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of influenza, colds, or streptococcal throat infection.¹

In their petition, respondents allege that there has been a dramatic change in scientific opinion since the order was issued in 1974 with respect to the manner in which colds are transmitted. Consequently, they request a change in those provisions of paragraphs I.A. and I.B. of the order which relate to colds.² The request, as set forth in the letter of January 17, 1983, is that those paragraphs be changed to prohibit the following claims:

A. 1. Environmental surfaces play a significant role in the transmission of viruses or bacteria associated with influenza or streptococcal throat infection;

2. environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds unless respondent(s) making such representation has (have) and relies (rely) on competent and reliable scientific evidence that environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds;

3. it has been established that environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds, unless such representation is true.

B. 1. Use of any household disinfectant product will be of medical benefit in reducing the incidence or

preventing the spread of influenza or streptococcal throat infection;

2. use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of colds, unless respondent(s) making such representation has (have) and relies (rely) on competent and reliable scientific evidence that such use will be of medical benefit in reducing the incidence or preventing the spread of colds;

3. it has been established that use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of colds, unless such representation is true.

Respondents presented impressive evidence indicating that most scientists no longer believe that "airborne germs and viruses are the known cause of most colds," as paragraph 9 of the complaint filed in this matter indicates they did in 1974.³ Rather, there is mounting scientific evidence that, at least for rhinoviruses (which are the major cause of colds in adults), hand contamination with virus and subsequent self-inoculation with the virus may be a more important route of infection than the airborne route.⁴ Similar findings have been made for respiratory syncytial virus, the major cause of colds in children.

The evidence indicates that hands can become contaminated with virus in two ways—through contact with viruses on the skin of another person or through contact with viruses which have survived on environmental surfaces. Evidence has been presented which indicates that rhinoviruses can survive for as long as three or four days on environmental surfaces, and respiratory syncytial viruses for as long as six hours. The evidence indicates that most scientists are no longer certain that "germs and viruses on environmental surfaces do not play a significant role in the transmission of colds," although paragraph 9 of the complaint indicates they did believe this proposition in 1974.⁵ Furthermore, while there is certainly controversy on the subject, some eminent scientists have taken the affirmative position that environmental surfaces probably do play some role in the transmission of colds.⁶ Finally, while

some scientists still support the statement set forth in paragraph 9 of the complaint that disinfectants "will not be of significant medical benefit in reducing the incidence or preventing the spread of colds," some eminent scientists have said that the use of disinfectants may be of benefit.⁷

Thus, we are presented with a change in scientific opinion with respect to issues on which the complaint and order in this matter were based. Most of these issues are now controversial, and there are reputable scientists on both sides of the controversy. We believe that an absolute ban on claims for which there may be reputable scientific support is inappropriate. On the other hand, we believe that such claims must not be made in such a way that they assert or imply that the propositions in question have been established to the satisfaction of the scientific community, unless such is the case.⁸ Consequently, we have modified the order to allow claims that environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds to be made if they are supported by competent and reliable scientific evidence. Similarly, we have modified the order to allow claims that the use of a household disinfectant will be of medical benefit in reducing the incidence or preventing the spread of colds to be made if they are supported by competent and reliable scientific evidence. However, claims that either of these propositions have been established can only be made if it is true that the propositions have been established.

In addition, in the letter of January 17, 1983, respondents have requested that we modify section I.D. of the order "for uniformity of language" with sections I.A. and I.B., as modified. Paragraph D, as presently written, prohibits any representation that

D. use of any household disinfectant product kills germs associated with disease[s], unless such representation expressly mentions the name[s] of the disease[s]; the representation is true;

Couch, M.D., Professor of Microbiology and Immunology and Medicine, Baylor College of Medicine. It should be noted that Doctors Douglas and Couch were both designated by complaint counsel as witnesses in the trial scheduled in 1973 for this matter. (Neither testified since the matter was settled before trial.) Both have obviously changed their opinions on the relevant issues since that time.

¹ *Id.*

² See, e.g., *American Home Products Corporation*, D. 8918 (Sept. 9, 1981), modified, No. 81-2920 (3rd Cir. Dec. 3, 1982); *National Commission on Egg Nutrition*, 88 FTC 69 (1976), modified, 570 F.2d 157 (7th Cir. 1977), cert. denied, 430 U.S. 821 (1978).

¹ The order also contains certain other provisions discussed below.

² In their petition, respondents also requested a change in order provisions relating to influenza and streptococcal throat infection. However, by letter dated January 17, 1983, they modified their request. As modified, the request does not seek a change in the existing prohibitions on claims relating to the role of environmental surfaces in the transmission of these diseases or the use of household disinfectants in reducing the incidence or preventing the spread of these diseases.

³ See, *Sterling Drug, Inc.*, 84 FTC 547, 551 (1974).

⁴ Indeed, the evidence indicates that experimenters have been unable to demonstrate that it is possible to transmit a rhinovirus cold via the airborne route.

⁵ 84 FTC at 551.

⁶ See, e.g., letter of December 2, 1982 to Ernst Zander, M.D. from R. Gordon Douglas, Jr., M.D., Professor and Chairman, Department of Medicine, New York Hospital-Cornell Medical Center; letter of Jan. 7, 1983 to Ernst Zander, M.D., from Robert B.

and respondent[s] making such representation has [have] competent and reliable scientific evidence that such use reduces the incidence or prevents the spread of the named disease[s].

The change requires that a respondent can only make the claims listed in paragraph I.D. if it has and *relies on* competent and reliable scientific evidence for the claims. We believe this is a desirable change which will clarify the meaning of paragraph I.D. of the order.

Finally, respondents requested in their petition that paragraph I.E. of the order be modified to eliminate the requirement that any representation that "use of any household disinfectant kills viruses associated with influenza, colds, streptococcal infection, staphylococcal infection, or other respiratory diseases" must be accompanied by a statement that "there is no evidence that the product portrayed will protect the family against flu or strep throat." (This request is unchanged by the letter of January 17, 1983). Respondents point out that paragraph I.D. of the order guarantees that no representation that a product kills cold viruses will be made unless there is scientific evidence that the product is of benefit in preventing the spread or reducing the incidence of colds. Respondents contend that "[s]uch a well-founded and substantiated statement about colds would be confused, not clarified, by a disclaimer directed to other more serious diseases," and that the existing I.E. "would impose an unwarranted and confusing burden upon valid and useful statements reflecting the new scientific knowledge and opinion on colds." Petition, p. 20. We agree that the disclosure required by I.E. is not necessary in advertisements relating only to colds. Consequently, we have modified I.E. so as to delete this requirement.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued October 1, 1974 in Docket No. D. 8899 is hereby modified to read as follows:

Order

I

It is ordered, That respondents Sterling Drug Inc., a corporation, and SSC&B, Inc., a corporation, their successors and assigns and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of Lysol Brand Products or any household disinfectant product,

shall forthwith cease and desist from representing, directly or by implication, that:

A. 1. Environmental surfaces play a significant role in the transmission of viruses or bacteria associated with influenza or streptococcal throat infection;

2. environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds unless respondent[s] making such representation has [have] and relies [rely] on competent and reliable scientific evidence that environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds;

3. it has been established that environmental surfaces play a significant role in the transmission of viruses or bacteria associated with colds, unless such representation is true.

B. 1. Use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of influenza or streptococcal throat infection;

2. use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of colds, unless respondent[s] making such representation has [have] and relies [rely] on competent and reliable scientific evidence that such use will be of medical benefit in reducing the incidence or preventing the spread of colds.

3. it has been established that use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of colds, unless such representation is true.

C. use of any household disinfectant product kills airborne viruses or bacteria associated with influenza, colds, streptococcal throat infection, or other upper respiratory disease, *Provided* That nothing in this subparagraph shall be construed to otherwise restrain demonstrations of aerosol products as room deodorizers or air fresheners;

D. use of any household disinfectant product kills germs associated with disease[s], unless such representation expressly mentions the name[s] of the disease[s]; the representation is true; and respondent[s] making such representation has [have] and relies [rely] on competent and reliable scientific evidence that such use reduces the incidence or prevents the spread of the named disease[s];

E. use of any household disinfectant product kills viruses or bacteria associated with influenza, streptococcal infection, staphylococcal infection, or other upper respiratory diseases other

than colds, unless the advertisement in which such representation appears clearly and conspicuously discloses that there is no evidence that the product portrayed will protect the family against flu or strep throat, *Provided*, That nothing in this subparagraph shall be construed to apply to a representation that Lysol Brand Disinfectants kill bacteria which cause streptococcal or staphylococcal skin infections.

II

It is further ordered, That nothing herein contained shall be construed to require any alteration of, or deletion from the labeling of any of Sterling's household disinfectant products of legends, claims or information heretofore specifically accepted by the Environmental Protection Agency or its predecessor agency pursuant to the Federal Insecticide, Fungicide and Rodenticide Acts, as amended 7 U.S.C. Sec. 135, *et seq.*

III

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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.

It is further ordered, That respondents forthwith distribute a copy of this order to each of its operating divisions or subsidiaries involved in the advertising, promotion, distribution or sale of Lysol Brand Disinfectants.

It is further ordered, That the foregoing modification shall become effective upon service of this order.

By direction of the Commission.

Issued: March 11, 1983.

Benjamin I. Berman,
Acting Secretary.

Separate Statement of Commissioner Michael Pertschuk on Modification of Order in Sterling, Inc.

March 11, 1983.

Sterling wants out of a 1974 consent order which prohibits it from claiming that spray Lysol can prevent colds. It says that it now has proof that, contrary to prior scientific understanding, cold viruses can be picked up from environmental surfaces and that Lysol can help prevent colds by killing surface viruses. It now seeks to modify the order to permit it to claim that Lysol can help prevent colds.

I have reluctantly voted in favor of the order modification, simply because the only alternative under consideration by a majority

of the Commission would have eroded the advertising substantiation doctrine even further. At the very least, Sterling is cautioned by the Commission letter accompanying the modified order that the modification in no way indicates that Sterling in fact presently has a "reasonable basis" for any claim, express or implied, that Lysol actually prevents colds.

The Commission's concern (however mildly expressed in the letter) is well-founded. The primary piece of evidence which Sterling cites is a study, partly funded by Sterling, conducted by two eminent scientists at the University of Virginia. They directed volunteers with colds to blow their noses on their hands and wipe them on some plastic tiles. Ten minutes later, some tiles were given a three second shot of Lysol; others were not. After fifteen minutes, healthy volunteers were directed to rub their fingers on the tiles, and then pick their noses and rub their eyes. Lo and behold, about half of the healthy volunteers touching the untreated tiles got colds; fewer got colds from touching the tiles that had been sprayed with Lysol, although the results were not statistically significant.

Largely on the basis of this laboratory evidence, demonstrating simply that Lysol killed cold viruses on surfaces that otherwise might be transmitted to people, at least some scientists are now of the opinion that Lysol "may" be of value in reducing colds in the home environment, on the logical assumption that a reduction in the number of viruses will lead to a reduction in colds. Most scientists, however, remain skeptical. They note that, while Lysol might work in *theory*, there's just no *proof* that in fact it does—and reason to think it doesn't. Laboratory results might well be meaningless in the home environment, which is, of course, the only environment consumers care about. (After all, any family that duplicates the bizarre laboratory procedure described above in its own home needs more than a shot of Lysol to solve its problems.) Practical constraints that exist in home environments limit the applicability of the findings. For example, household surfaces are continually being re-infected. Many surfaces which harbor viruses—like skin and clothing—can't be safely sprayed. And perhaps more fundamentally, scientists just don't know the *significance* of the role of surface contamination. Assigning a family member the chore of spraying doorknobs and telephones every ten minutes just isn't likely to be of much help when other sources of cold viruses—such as direct contact with people with colds—may be even more likely to cause colds.

The modified order would require Sterling to prove that an unqualified medical efficacy claim, such as "Lysol reduces the incidence of colds," is in fact recognized by the scientific community to be an established fact. The effect of this standard is properly to prohibit such claims, since it is evident that there is simply no proof that Lysol works to reduce colds. All that Sterling has is an unproved theory.

Nevertheless, apparently motivated by the belief that *all* information has inherent value, the Commission has modified the Order to permit Lysol to make certain "qualified"

claims, as long as those claims are supported by "competent and reliable scientific evidence"—in other words, a reasonable basis. In my opinion, the only claim for which Sterling has a reasonable basis goes something like this: "While many scientists disagree, some scientists are of the opinion that in certain circumstances, Lysol may, with an unknown probability, reduce the incidence of colds to an unknown extent in a home environment."

The mischief with this elegant formulation is that the only claims which Sterling is actually likely to make in a typical 30-second television ad will fall far short of giving consumers the complete context they need to properly interpret the claim. After all, Sterling isn't interested in making these claims to educate the public to the possible health hazards of cold viruses harboring on doorknobs and countertops. It wants to make them to sell more Lysol.

Simply put, any "qualified" claim Sterling is likely to make by permission of the revised order must invariably make an implied claim that Lysol reduces colds—precisely the claim for which Sterling lacks proof. As a result, such "qualified" claims have a capacity to mislead which far outweighs their capacity to inform. For that reason, I would have preferred to retain the existing prohibitions on making even qualified claims. As an alternative, I would have been willing to support these modifications with a letter that plainly stated that Sterling presently does not have a reasonable basis for any claim, express or implied, that Lysol reduces colds.

I would note, however, that even under the modified order, the burden will be on Sterling to make sure that their "qualified" claims do not make an implied claim that Lysol reduces the incidence of colds. To that end, Sterling would be well-advised, to the extent that it wishes to avoid making any implied efficacy claims when it makes the qualified claims permitted by the order modification, to disclose that Lysol has not been proven to reduce colds in actual home settings.

[FR Doc. 83-9016 Filed 4-5-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3108]

MIB, 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 Westwood, Mass. non-profit medical reporting agency, among other things, to cease reporting that a code in a consumer's file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the code's existence. The order prohibits the firm from conditioning the release of

information to a consumer on his/her execution of a waiver of claims against the firm and from representing to consumers that their statements concerning disputed items be limited to 100 words or less, unless at the same time, the firm offers to assist the consumer in preparing the statement. Additionally, the firm is required to timely reinvestigate disputed information; contact, where possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly.

DATE: Complaint and Order issued March 21, 1983.¹

FOR FURTHER INFORMATION CONTACT: William P. McDonough, Federal Trade Commission, Boston Regional Office, 150 Causeway St., Room 1301, Boston, MA 02114. (617) 223-6621.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 19, 1982, there was published in the *Federal Register*, 47 FR 52192, a proposed consent agreement with analysis in the Matter of MIB, Inc., d/b/a/ Medical Information Bureau, 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.

A comment was filed and considered by the Commission. 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—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-1 Confidentiality, accuracy, relevancy and proper utilization; 13.382-1(a) Fair Credit Reporting Act; 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-37 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Consumer reports.

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

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681i)

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 83-9017 Filed 4-5-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-1768]

Success Motivation Institute, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission, having received no objections to a show cause order, has reopened this proceeding and modified its order issued on July 14, 1970 (35 FR 14207), so as to provide prospective franchisees and distributors with more information on sales data, as well as success and failure rates, so that they may better evaluate their chances for success.

DATES: Consent Order issued July 14, 1970. Modifying Order issued March 22, 1983.

FOR FURTHER INFORMATION CONTACT: Gary D. Kennedy, Acting Director, 5R, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Dr., Dallas, TX 75247. (214) 767-7050.

SUPPLEMENTARY INFORMATION: In the Matter of Success Motivation Institute, Inc., a corporation, and Paul J. Meyer, individually and as an officer of said corporation. Codification appearing at 35 FR 14207 remains unchanged.

List of Subjects in 16 CFR Part 13

Franchises.

(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 Order Reopening the Proceeding and Modifying the Decision and Order is as follows:

[Docket No. C-1768]

Success Motivation Institute, Inc., a corporation, and Paul J. Meyer, individually and as an officer of said corporation; Order Reopening the Proceeding and Modifying the Decision and Order

On July 14, 1970, in this matter the Commission issued against respondents Success Motivation Institute, Inc. and Paul J. Meyer, in connection with the sale of franchises or distributorships, in commerce (as "commerce" is defined in

the Federal Trade Commission Act), a Decision and Order to Cease and Desist.

On December 8, 1982, the Commission issued an order for respondents to show cause why the proceeding should not be reopened and the Decision and Order to Cease and Desist issued on July 14, 1970, should not be modified in a certain respect.

Respondents Success Motivation Institute, Inc. and Paul J. Meyer raised no objection to the proposed modification.

Therefore, the Commission being of the opinion that the proposed modification will increase the ability of prospective purchasers to evaluate their chances for success as distributors or franchisees of respondents and, therefore, that the public interest will be served by modifying the Decision and Order in this matter as requested.

It is ordered that the proceeding be, and hereby is, reopened.

It is further Ordered that the Decision and Order issued on July 14, 1970, be, and hereby is, modified by deleting paragraph (3) of the order and by substituting for paragraph (4) of the order the following (with paragraphs to be renumbered appropriately):

(4) Failing to furnish to prospective franchisees or distributors a written tabulation or statistical summary showing, on an accumulative and comparative basis, for each fiscal year, for each of the corporate respondent's operating divisions the following information as it pertains to the division of which the prospective franchisee or distributor is considering acquisition of a franchise or distributorship:

(a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the fiscal year.

(b) The number of franchisees or distributors at the beginning of the fiscal year, the number appointed during the year, the number terminated during the year, the number retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.

(c) The foregoing information shall be tabulated as a running 4-year analysis so that prospective franchisees or distributors will be furnished such information for the 4 fiscal years immediately preceding the year in which the information is to be furnished, provided that, the information for the fiscal year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of the fiscal year.

(d) The tabulation will include all franchisees or distributors, whether full or part time, whether or not purchases were made during the fiscal year(s) on which the tabulation is based.

(e) The information required to be furnished under this paragraph will be given to prospective franchisees or distributors at the first face-to-face meeting or 10 days before the execution of any franchise or distributor agreement, whichever comes first, on a separate document which the prospective franchisee or distributor may keep.

By direction of the Commission.

Issued March 22, 1983.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 83-9018 Filed 4-5-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-2370]

Illinois Central Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has reopened this matter and declared that Paragraph VI of the order issued on March 28, 1973 (38 FR 10707) shall be of no further force and effect. Paragraph VI barred Midas-International Corp., an IC subsidiary, from purchasing any product containing automotive brake friction material manufactured by Abex Corp., another IC subsidiary.

DATES: Consent Order issued March 26, 1973. Modifying Order issued March 16, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Elliot Feinberg, Washington, D.C. 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of Illinois Central Industries, Inc., a corporation, and Midas-International Corporation, a corporation. Codification appearing at 38 FR 10707 remains unchanged.

List of Subjects in 16 CFR Part 13

Automotive parts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

The Order Modifying Decision and Order is as follows:

[Docket No. C-2370]

Illinois Central Industries, Inc., a corporation; and Midas-International Corp., a corporation Order Modifying Decision and Order

On November 16, 1982, respondent IC Industries, Inc. (formerly Illinois Central Industries, Inc.) ("IC") filed its "Petition Pursuant To Rule 2.51 To Reopen And Modify Consent Order" ("Petition"). The Petition asked that the Commission reopen the consent order that issued on March 26, 1973 in this matter ("the order") and set aside Paragraph VI thereof. Paragraph VI of the order perpetually bans IC's subsidiary, Midas-International Corporation ("Midas") from purchasing, directly or indirectly, any products containing automotive brake friction materials manufactured by Abex Corporation ("Abex"), another subsidiary of IC. It also bans Midas from selling or distributing such products. Paragraph VI likewise perpetually bars Midas from purchasing automotive flashers from IC or from selling or distributing such flashers manufactured by IC. IC's Petition was on the public record for thirty days and no comments were received.

Based on respondent's Petition and on other information available to it, the Commission has determined that IC has made a satisfactory showing that the public interest warrants reopening and modification of the order in the manner requested by respondent. Accordingly,

It is ordered that this matter be, and it hereby is, reopened and that Paragraph VI of the Commission's order shall be of no further force and effect as of the effective date of this modifying order.

By direction of the Commission.
Issued: March 16, 1983.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 83-9019 Filed 4-5-83; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[PP 2E2758/R530; PH-FRL 2334-5]

Tolerances and Exemptions From Tolerances For Pesticide Chemicals in or on Raw Agricultural Commodities; O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) Phosphorothioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide

O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate (Diazinon) in or on the raw agricultural commodity Chinese cabbage. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on April 6, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rule published in the *Federal Register* of February 9, 1982 (47 FR 5967) that announced the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 2E2758 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide O,O-diethyl O-2-isopropyl-6-methyl-4-pyrimidinyl phosphorothioate (Diazinon) in or on the raw agricultural commodity Chinese cabbage at 0.75 part per million (ppm). The petition was later amended to propose a tolerance of 0.7 ppm.

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

There were no comments or requests for referral to an advisory committee received in response to 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 would protect the public health and is established 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(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 18, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.153 is amended by adding and alphabetically inserting the raw agricultural commodity Chinese cabbage to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

Commodities	Parts per million
Cabbage, Chinese	0.7

[FR Doc. 83-8336 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2712/R528; PH-FRL 2337-5]

Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide carbaryl and its hydrolysis product 1-naphthol in or on the raw agricultural commodities prickly pear cactus fruit and pads. This regulation to establish maximum permissible levels for the residues of the

insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on April 6, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the *Federal Register* of February 9, 1983 (48 FR 5965) 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, had submitted pesticide petition 2E2712 to EPA on behalf of the RI-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide carbaryl (1-naphthyl N-methylcarbamate) including its hydrolysis product 1-naphthol, calculated as 1-naphthyl N-methylcarbamate, in or on the raw agricultural commodity prickly pear cactus at 12 parts per million (ppm). The petition was later amended to propose tolerances at 12 ppm in or on each of the raw agricultural commodities prickly pear cactus fruit and pads.

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

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would 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(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure; Agricultural commodities; Pesticides and pests.

Dated: March 23, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.169(a) is amended by adding and alphabetically inserting the commodities prickly pear cactus fruit and pads to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

(a) * * *

Commodities	Parts per million
Prickly pear cactus, fruit	12.0
Prickly pear cactus, pads	12.0

[FR Doc. 83-8472 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0E2377, 1E2580/R532; PH-FRL 2337-4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodities horseradish and pears. This regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested, pursuant to petitions

submitted, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on April 6, 1983.

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

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the *Federal Register* of February 16, 1982 (48 FR 6897) 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, had submitted pesticide petitions to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Illinois (PP 0E2377) and New York (PP 1E2580).

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)methanol (3 PBA) calculated as parent in or on the raw agricultural commodities horseradish (PP 0E2377) at 1.0 part per million (ppm) and pears (PP 1E2580) at 3.0 ppm.

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

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would 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(e), 68 Stat. 514 (21 U.S.C. 346(a)(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 23, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding and alphabetically inserting the commodity horseradish and increasing the tolerance for the commodity pears to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * *

(b) * * *

Commodities	Parts per million
Horseradish	1.0
Pears	3.0

[FR Doc. 83-0471 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[WH-FRL 2338-6]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing cellar dirt disposal site located in the New York Bight as an EPA approved ocean dumping site for the dumping of cellar dirt. This action is necessary to provide an ocean dumping site for the current and future disposal of this material.

DATE: This site designation shall become effective on May 6, 1983.

ADDRESSES: The final Environmental Impact Statement (EIS) and the letter of comment are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2404 (rear), 401 M Street Southwest, Washington, DC
EPA Region II Library, Room 1002, 26 Federal Plaza, New York, New York
EPA Region II Library, Woodbridge Avenue, GSA Raritan Depot, Edison, New Jersey
NOAA/RD/OMPA Northeast Office, Old Biology Building, State University of New York, Stony Brook, New York

FOR FURTHER INFORMATION CONTACT:

Mr. T. A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereafter "the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and extended on December 9, 1980 (45 FR 81042 et seq.). That list established this site as an interim site, pending completion of an EIS evaluation environmental effects of dumping material at this location.

On September 20, 1982, EPA proposed designation of this site for the disposal of cellar dirt (excavation dirt and rock, broken concrete, rubble, tile, and other nonfloatable debris) (47 FR 41402). The public comment period expired on November 4, 1982.

A final Environmental Impact Statement entitled "Environmental Impact Statement for New York Bight Cellar Dirt Disposal Site Designation" was prepared in accordance with EPA policy which provides for the voluntary preparation of EIS's for certain specific regulatory actions. This EIS addresses the general and specific criteria for selection of sites to be used for ocean dumping contained in §§ 228.5 and 228.6 of EPA's ocean dumping regulations. A notice of availability of the final EIS was published in the Federal Register on

September 24, 1982 (47 FR 42157). The public comment period expired on October 25, 1982.

One comment was received in response to the proposed rule. The New Jersey Department of Environmental Protection (NJDEP) did not object to the designation and continued use of this disposal site. However, the Department suggested that EPA should limit use of the site to permit applicants who can demonstrate the non-ocean alternatives are not prudent or feasible. In addition, the Department suggested that, in reviewing ocean dumping permits for this site, EPA should consult with them on the potential use of the material for expansion of artificial fishing reefs within the state's territorial waters or for other constructive purposes. EPA agrees that under the statute it is required to address the need for ocean dumping and the availability of alternative disposal methods. Such review and evaluation is accomplished on a case-by-case basis during the permitting process. As in the past, when applications for permits are received, the Agency will work with NJDEP on the potential use of the material for artificial reefs or other beneficial uses.

The Cellar Dirt Site has several advantages. It has been used historically, so that disposal would continue to occur within the range of influence of previous dumping. Localized shoaling is the only documented effect from dumping at the site. The major disadvantage of the Cellar Dirt Site is that it is within one of the more popular sportfishing areas in the New York Bight. As the character of cellar dirt has changed over the past eight years (more sand, less rubble), it is possible that the dumping of cellar dirt may adversely affect the productivity of the fishing bank by smothering the benthos. However, this effect will be localized and will not be severe. For a more complete discussion of the site selection criteria considered, interested persons should examine pages 2-7 through 2-21 of the final EIS.

The final EIS includes the Agency's assessment of the comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in Appendix B.

Based on the information reported in the final EIS and on the comment received, EPA has determined that the Cellar Dirt Site should be designated for

continuing use for the ocean disposal of cellar dirt where the applicant has demonstrated a need for ocean dumping, lack of acceptable alternatives to the dumping, and compliance with EPA's marine environmental impact criteria.

The designation of the existing New York Bight cellar dirt disposal site as an EPA Approved Ocean Dumping Site is being published as final rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region II. The location of the cellar dirt site is approximately 6.6 nautical miles east of Highlands, New Jersey, and 11.7 nautical miles south of Rockaway, Long Island, positioned in a circle with a radius of 0.6 nautical miles and center coordinates as follows:

40° 23' 00"N; 73° 49' 00"W.

The site occupies an area of approximately 1.1 square nautical miles. Water depths within this area range from 29 to 38 meters. Disposal operations at the site began in 1914.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for excavation dirt and other nonfloatable debris. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

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

List of Subjects in 40 CFR Part 228

Water pollution control.

(33 U.S.C. Sec. 1412 and 1418.)

Dated: March 28, 1983.

Frederic A. Eldness, Jr.,

Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by adding to § 228.12 an ocean dumping site for Region II. Section 228.12 is amended by adding a paragraph (b)(13) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(13) Cellar Dirt Site—Region II.

Location (center point): Latitude—40° 23' 00" N;

Longitude—73° 49' 00" W.

Size: 1.1 square nautical miles.

Depth: Ranges from 29 to 38 meters.

Primary Use: Cellar dirt.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to excavation dirt and rock, broken concrete, rubble, tile, and other nonfloatable debris.

[FR Doc. 83-8951 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-1, 1-2, 1-3 and 1-6

[FPR Amdt. 229]

Provisions for Purchases Under the Trade Agreements Act of 1979

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) provides a permanent implementation of the Trade Agreements Act of 1979 and the international Agreement on Government Procurement. The bases for the amendment are the referenced Act and the Agreement. The intended effect is to discharge the obligations of the United States Government.

EFFECTIVE DATE: This regulation is effective January 1, 1983, for all solicitations issued on and after that date.

FOR FURTHER INFORMATION CONTACT: Mr. Philip G. Read, Director, Office of Federal Procurement Regulations, Office of Acquisition Policy, (202) 523-4755.

SUPPLEMENTARY INFORMATION: FPR Temporary Regulation 57, January 12, 1981, and Supplement 1, February 2, 1982, implemented the policies and procedures under the Trade Agreements Act of 1979 and the related international Agreement on Government Procurement. This regulation cancels and codifies these temporary regulations

and makes certain other changes. The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under Section 301(b) of the Trade Agreements Act of 1979. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now \$169,000). The Buy American Act continues to apply to purchases of products that are not eligible products.

FPR Temporary Regulation 57 (46 FR 3519, January 15, 1981) and Supplement 1) (47 FR 6021, August 17, 1982) are canceled and, deleted from the appendix at the end of 41 CFR Chapter 1.

List of Subjects

41 CFR Part 1-1

Administrative practice and procedure, Environmental protection, Government procurement, Labor surplus areas, Minority businesses, Recycled material and Small business.

41 CFR Part 1-2

Government procurement, Procurement by formal advertising.

41 CFR Part 1-3

Cost accounting standards, Government procurement, Procurement by negotiation, Small purchases, Types of contracts.

41 CFR Part 1-6

Foreign purchases, Government procurement.

Therefore, 41 CFR Chapter 1 is amended as follows:

PART 1-1—GENERAL

Subpart 1-1.10—Publicizing Procurement Actions

1. Section 1-1.1003-7 is amended to add new paragraphs (b) (10) and (11) as follows:

§ 1-1.1003-7 Preparation and transmittal.

(b) * * *

(10) *Trade Agreements Act of 1979—eligible products.* For the procurement of a potentially eligible product from a designated country (see § 1-6.1601(b)), each synopsis sent to the Commerce Business Daily (CBD), in addition to other requirements of this section shall indicate:

(i) The nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;

(ii) Whether the purchase is open (competitive) or sole source;

(iii) Any delivery date requirements;

(iv) The address and final date for submitting an application to be invited to offer or for receiving offers;

(v) That offers must be submitted in the English language and in U.S. dollars;

(vi) The address of the activity that will award the contract and any information necessary for obtaining specifications and other documents;

(vii) Any economic and technical requirements, financial guarantees, and information required from suppliers that is stated in the solicitation; and

(viii) The amount and terms of payment of any sum required in order to obtain the solicitation documentation, if any.

(11) Each synopsis shall also include a reference, as appropriate, to numbered note 12, which will appear in the Commerce Business Daily as follows:

12. One or more items under this procurement may be subject to the requirements of the Agreement on Government Procurement approved and implemented in the United States by the Trade Agreements Act of 1979. All offers shall be in the English language and U.S. dollars. The procurement solicitation procedure is open; that is, all interested suppliers may submit an offer. Offers from non-designated countries will be rejected unless an exception is determined to be in the national interest.

PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

The table of contents for Part 1-2 is amended to add three entries, as follows:

Sec.	
1-2.202-7	Trade Agreements Act of 1979—eligible products
1-2.408-1	Rejection of offers (general).
1-2.408-2	Rejection of offers under the Trade Agreements Act of 1979.

Subpart 1-2.2—Solicitation of Bids

2. Section 1-2.202-1 is amended by revising paragraph (c) and adding a new paragraph (d) as follows:

§ 1-2.202 Miscellaneous rules for solicitation of bids.

§ 1-2.202-1 Bidding time.

(c) *Minimum bidding time.* As a general rule, bidding time (subject to the

provisions of paragraph (d) of this section) shall be not less than 20 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. (When brand name or equal purchase descriptions are used involving a modification of the brand name product, see § 1-1.307-4). This rule need not be observed in special circumstances or where the urgency of the need for the supplies or services does not permit such delay. Procurement activities shall develop procedures for ensuring that these bidding time requirements are observed.

(d) *Trade Agreements Act of 1979—eligible products.* When a solicitation involves potentially eligible products under the Trade Agreements Act of 1979 (see § 1-6.1601(b)), the solicitation shall specify at least a 30-day bidding time from the date of issuance of the solicitation (see § 1-6.1605-1(b)(4)). When solicitations will be sent outside the United States, international air mail shall be used (see § 1-6.1605-1(b)(2)).

3. Section 1-2.202-7 is added as follows:

§ 1-2.202-7 Trade Agreements Act of 1979—eligible products.

When a solicitation involves potentially eligible products (see § 1-6.1601(b)), the solicitation shall require that offers be submitted in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

4. Section 1-2.203-4 is revised by redesignating the existing paragraph as (a) and to add a new paragraph (b) as follows:

§ 1-2.203-4 Synopses of invitations for bids.

(a) Synopses of invitations for bids shall be prepared and publicized in the Commerce Business Daily in accordance with § 1-1.1003. Requests for invitations for bids received by the procuring activity as a result of publicizing shall be honored to the extent that copies are available, except that copies shall be provided when eligible products are involved. The names of prospective bidders who are furnished invitations for bids in response to their requests shall be added to the bidders mailing list for the particular procurement. However, when the request is made by a person or an organization known not to be a prospective bidder, no entry shall be made on the bidders mailing list.

(b) The synopsis of a proposed procurement of a potentially eligible product from designated countries, shall state that offers must be in the English

language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

Subpart 1-2.4—Opening of Bids and Award of Contract

5. Section 1-2.402 is amended by adding paragraph (d) as follows:

§ 1-2.402 Opening of bids.

(d)(1) When offers involving potentially eligible products from a designated country are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present.

(2) The name of the impartial witness, if any, shall appear on the abstract of offers.

6. Section 1-2.408 is redesignated as § 1-2.408-1 and a new 1-2.408-2 is added as follows:

§ 1-2.408 Information to bidders.

§ 1-2.408-1 Rejection of offers (general).

§ 1-2.408-2 Rejection of offers under the Trade Agreements Act of 1979.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country (see §§ 1-6.1601(b) and 1-6.1608(a)).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-1608(b)).

PART 1-3—PROCUREMENT BY NEGOTIATION

The Table of contents for Part 1-3 amended by adding five entries, as follows:

Sec.	
1-3.105	Trade Agreements Act of 1979—eligible products.
1-3.105-1	Time for the submission of offers.
1-3.105-2	English language and U.S. dollars.
1-3.105-3	Opening offers.
1-3.105-4	Notification of nonacceptance of offer.

Subpart 1-3.1—Use of Negotiation

7. Section 1-3.105 is added as follows:

§ 1-3.105 Trade Agreements Act of 1979—eligible products.

§ 1-3.105-1 Time for the submission of offers.

When solicitations involve potentially eligible products under the Trade Agreements Act of 1979 (see § 1-6.1601(b)), the solicitation shall specify at least 30 days for the submission of offers (see § 1-6.1605-1(b)(4)). When solicitations will be sent outside the United States, international air mail shall be used (see § 1-6.1605-1(b)(2)).

§ 1-3.105-2 English language and U.S. dollars.

When a solicitation involves potentially eligible products (see § 1-6.1601(b)), the solicitation shall require that offers are to be submitted in the English language and U.S. dollars (see § 1-6.1605-1(b)(6)).

§ 1-3.105-3 Opening offers.

(a) When offers involving potentially eligible products from designated countries are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present (see § 1-6.1606(a)). However, there shall be no disclosure of the offers.

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see § 1-6.1606(b)).

§ 1-3.105-4 Notification of nonacceptance of offer.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country (see §§ 1-6.1601(b) and 1-6.1608(a)).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

PART 1-6—FOREIGN PURCHASES

The table of contents for Part-6 is amended by adding the following entries:

Subparts 1-6.11—1-6.15 [Reserved].

Subpart 1-6.16—Purchases Under the Trade Agreements Act of 1979

Sec.

- 1-6.1600 Scope.
- 1-6.1601 Definitions.
- 1-6.1602 Policy.
- 1-6.1603 Applicability.
- 1-6.1604 Labor surplus area set-asides.

Sec.

- 1-6.1605 Procedures for the purchase of eligible products from designated countries.
- 1-6.1605-1 Solicitation procedures under this subject.
- 1-6.1606 Opening of offers.
- 1-6.1607 Evaluation of offers.
- 1-6.1608 Information to unsuccessful offerors.
- 1-6.1609 Certificate of eligible product.
- 1-6.1610 Reporting requirements.
- 1-6.1611 Buy American Act clause.
- 1-6.1612 Designated countries.
- 1-6.1613 Agencies covered by the agreement.
- 1-6.1614 Ineligibility to participate in U.S. procurement.

8. Subpart 1-6.16 is added as follows:

Subparts 1-6.11—1-6.15—[Reserved]

Subpart 1-6.16—Purchases Under the Trade Agreements Act of 1979

§ 1-6.1600 Scope.

This subpart implements the international Agreement on Government Procurement (hereafter referred to as the Agreement) which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral Trade Negotiations. The Agreements were entered into in Geneva on April 12, 1979, under Section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2511-2518) and Executive Order 12280, December 31, 1980, (46 FR 1653, January 6, 1981) and Determinations by the U.S. Trade Representative, December 31, 1980, (46 FR 1657, January 6, 1981).

§ 1-6.1601 Definitions.

The terms used in this subpart have meanings as follows:

(a) "Designated country" means a country or instrumentality designated by the President or the U.S. Trade Representative under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511). Designated countries are listed in § 1-6.1612.

(b) "Eligible product" means a product that (1) is being procured by a Government agency covered by the Agreement (see § 1-6.1613), (2) involves a purchase price which is equal to (or in the case of indefinite quantity contracts (see § 1-6.1603(b)) is expected to be equal to) or more than the established dollar threshold (see § 1-6.1601(e)), and (3) involves a purchase which is not otherwise exempt (see § 1-6.1603(e)). This includes service (other than transportation) incidental to the supply of products if the value of those incidental services does not exceed the value of the products themselves. It does not include service contracts. For the

United States, all products are eligible when the purchase price exceeds the dollar threshold, except to the extent that a product is purchased by an agency which is not listed (see § 1-6.1613) or is otherwise exempt (see § 1-6.1603(e)).

(c) "Product" means a line item in a solicitation. However, if two or more line items carry identical stock numbers or other identification, this situation shall be deemed to constitute a single line item.

(d) "Rule of Origin" means that an article is a product of a designated country if (1) it is wholly the growth, product, or manufacture of that country, or (2) in the case of an article which consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed (see § 1-6.1609).

(e) "Dollar threshold" means \$169,000 or such other dollar amount as may be established from time to time, by the U.S. Trade Representative.

§ 1-6.1602 Policy.

(a) Offers from designated countries to furnish potentially eligible products shall be solicited and evaluated in the same manner as offers of products from the United States. Designated countries are listed in § 1-6.1612.

(b) The Buy American Act (see Subpart 1-6.1) and the Balance of Payments Program (see Subpart 1-6.8) are applicable if the product purchased is not an eligible product (see § 1-6.1601(b)) and when the country of origin is not the United States and is not listed in § 1-6.1612.

(c) The Buy American Act, i.e., the preference for U.S. products in the award of contracts, and the Balance of Payments Program are waived for purchases of eligible products.

(b) Countries that benefit under the Agreement from open competition for contracts awarded by the Government are required to offer reciprocal competitive opportunities to U.S. products and suppliers. The Agreement prohibits discrimination against U.S. suppliers in procurements by foreign governments that are signatories to the Agreement. It also requires nondiscrimination and open and transparent application of required procurement procedures.

§ 1-6.1603 Applicability.

(a) The policies in this subpart apply only if a purchase involves an eligible product (see § 1-6.1601(b)).

(b) If a contracting officer determines that an individual requirement for the acquisition of a product or products of the same type, e.g., an indefinite quantity type contract, may result in payments during the fiscal year that are equal to or more than the specified dollar threshold, the policies in this subpart shall apply.

(c) No acquisition of a product (which would otherwise be an eligible product) shall be the subject of more than one solicitation for the purpose of reducing the value of the resulting offers to amounts less than the established dollar threshold.

(d) When a solicitation for a product results in two or more contract awards for the product, if the total amount of the contracts is equal to or more than the established dollar threshold and the product is otherwise an eligible product, the provisions of this Subpart 1-6.16 apply.

(e) The policies in this subpart do not apply to:

(1) Purchases under small business set-aside programs or minority business programs (see § 1-6.1604);

(2) Purchases of arms, ammunition, or war materials, or purchases indispensable for national security or national defense purposes, subject to policies established by the U.S. Trade Representative;

(3) Construction contracts;

(4) Service contracts (but services other than transportation incidental to the purchase of eligible products are covered by the Agreement, provided that the value of the service is not greater than the value of the product);

(5) Research and development contracts;

(6) Purchases for resale purposes;

(7) Purchases relating to the products of handicapped persons, of philanthropic institutions, or of prison labor;

(8) Leases or rentals of any items;

(9) Purchases for agencies not subject to the Agreement;

(10) Tied-aid procurements under AID foreign assistance programs; or

(11) Purchases by State and local governments, including purchases by State and local authorities with Federal funds.

§ 1-6.1604 Labor surplus area set-asides.

(a) Total or partial labor surplus area set-asides which are not limited to small business shall not be made for procurements covered by this Subpart 1-6.16.

(b) Total or partial set-asides for small and minority businesses, whether or not combined with a labor surplus area set-aside (see section 117(e) of Pub. L. 96-302), are not covered by the Agreement (see § 1-6.1603).

§ 1-6.1605 Procedures for the purchase of eligible products from designated countries.**§ 1-6.1605-1 Solicitation procedures under this subpart.**

When a potentially eligible product is included in a solicitation (see § 1-6.1601(b)), the solicitation procedures in this § 1-6.1605-1 apply.

(a) *Publicizing proposed purchases.* When a potentially eligible product is included in a solicitation and the estimated price is equal to or more than the specified dollar threshold (see § 1-6.1601(b)), a notice of proposed purchase shall be published in the Commerce Business Daily, in accordance with the requirements in § 1-1.1003-7(b) (10) and (11).

(b) *Solicitations involving potentially eligible products.* (1) Sources offering eligible products from designated countries shall be included, upon request by these sources, on bidders mailing lists and comparable source lists, in accordance with the procedures in § 1-2.205.

(2) Solicitations for potentially eligible products shall be sent directly to the sources for the product that appear on appropriate bidders mailing lists. When solicitations will be sent outside the United States, international airmail shall be used (see §§ 1-2.202-1(d) and 1-3.105-1).

(3) Solicitations involving a potentially eligible product shall be made available, on request, to the embassy or other designated place or representative of a designated country.

(4) At least 30 days from the date of a solicitation for supplies or services involving potentially eligible products shall be provided for the submission of offers (see §§ 1-2.202-1(d) and 1-3.105-1). However, in exceptional circumstances, a lesser period may be approved at a level above the contracting officer by reason of an exigency situation, i.e., when the Government will be injured financially or otherwise.

(5) No technical requirements may be imposed solely for the purpose of precluding the acquisition of eligible products from designated countries.

(6) Solicitations involving potentially eligible products shall require that offers be submitted in the English language and in U.S. dollars see §§ 1-2.202, and 1-3.105-2.

§ 1-6.1606 Opening of offers.

(a) When offers involving potentially eligible products are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present (see §§ 1-2.402(d)(1) and 1-3.105-3(a)).

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.402(d)(2) and 1-3.105-3(b)).

§ 1-6.1607 Evaluation of offers.

Offers involving potentially eligible products (see § 1-6.1601(b)), shall be evaluated without regard to the Buy American Act or Balance of Payments Program, except as provided in § 1-6.1603.

§ 1-6.1608 Information to unsuccessful offerors.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted (see §§ 1-2.408-2(a) and 1-3.105-4(a)) when an offer involves an eligible product and the offer is from a designated country (see § 1-6.1601(b)).

(b) Subsequent to the notice, if additional information is requested by an unsuccessful offeror, it shall be provided by an official above the level of the contracting officer (see §§ 1-2.408-2(b) and 1-3.105-4(b)).

§ 1-6.1609 Certificate of eligible product.

(a) Contracting officers shall rely on certificates by the offeror for purposes of satisfying the Rule of Origin. The following certificate shall be inserted in all solicitations for eligible products when the estimated price is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

Certificate of Eligible Product

(a) The offeror hereby certifies that each eligible product, as provided in 41 CFR 1-6.1601(b), which is delivered in accordance with any contract resulting from this solicitation is from a country designated by the President or the U.S. Trade Representative under section 301 of the Trade Agreements Act of 1969.

(b) Offerors are encouraged to obtain advance decisions from the Commissioner of Customs regarding the origin of eligible products, as provided in 19 CFR Part 177. Decisions rendered by the Commissioner should accompany the offer.

(End of Certificate)

(b) The reliance of the contracting officer on the certification for award purposes shall not be affected by a failure of an offeror to obtain an advance decision and to furnish a copy of the decision with its offer.

(c) Any question regarding the validity of a certification that the Contracting Officer receives from another offeror shall be referred to the Commissioner of Customs for consideration by the offeror whose certification is challenged. It shall not be treated as a basis for holding up an award. However, failure of a challenged offeror to refer the matter to the Commissioner of Customs, upon the request of the Contracting Officer, will result in rejection of the offer.

(d) If a certification subsequently is determined by the Commissioner of Customs to be invalid, the imposition of penalties as authorized by law shall be considered, e.g., criminal penalty for false representation under 18 U.S.C. 1001.

§ 1-6.1610 Reporting requirements.

The reporting requirements of the Trade Agreements Act of 1979 will be satisfied by Individual Agency Procurement Action Reports.

§ 1-6.1611 Buy American Act clause.

When a potentially eligible product (see 1-6.1601(b)) is involved, the clause prescribed by § 1-6.104-5 and by Standard Forms 32 and 147 shall be amended by adding an addendum to the solicitation which provides for the incorporation of a parenthetical phrase following the title of the clause as follows:

(This Buy American Act clause is not applicable to contracts involving eligible products that originate in designated countries)

§ 1-6.1612 Designated countries.

Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Federal Republic of Germany
Finland
France
Gambia
Guinea
Haiti
Hong Kong
Ireland
Italy
Japan
Lesotho
Luxembourg
Malawi
Maldives
Mali
Nepal

Netherlands
Niger
Norway
Rwanda
Singapore
Somalia
Sweden
Switzerland
Western Samoa
Sudan
Tanzania U.R.
Uganda
United Kingdom
Upper Volta
Yemen AR

§ 1-6.1613 Agencies covered by the Agreement.

Action
Administrative Conference of the United States
American Battle Monuments Commission
Board for International Broadcasting
Civil Aeronautics Board
Commission on Civil Rights
Commodity Futures Trading Commission
Community Services Administration
Consumer Product Safety Commission

Departments of—

Agriculture¹
Commerce
Defense²
Education
Health and Human Services
Housing and Urban Development
Interior³
Justice
Labor
State
Treasury

Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Trade Commission
General Services Administration⁴
Inter-State Commerce Commission
Maritime Administration of the Department of Transportation
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Personnel Management
Overseas Private Investment Corporation

¹The Agreement on Government Procurement does not apply to the procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.

²Excludes Corps of Engineers.

³Excludes the Bureau of Reclamation.

⁴Excludes purchases by the Commodity Tools Center, and the Region 9 Office (San Francisco, California).

Panama Canal Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Smithsonian Institution
United States Arms Control and Disarmament Agency
United States International Communication Agency
United States International Development Cooperation Agency
United States International Trade Commission
Veterans Administration

§ 1-6.1614 Ineligibility to participate in U.S. procurement.

No eligible product which originates in a nondesignated foreign country may be purchased after January 1, 1983. However, the U.S. Trade Representative may authorize the waiver of this limitation on a case-by-case basis when such waiver is determined to be in the national interest.

(Sec. 205(c), 63 Stat. 309; (40 U.S.C. 486(c)))

Dated: March 24, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-8721 Filed 4-5-83; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 654 and 658

[Docket No. 30321-48]

Stone Crab Fishery and Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) issues emergency regulations amending the Fishery Management Plans for the Stone Crab Fishery and the Shrimp Fishery of the Gulf of Mexico and their implementing regulations. This emergency rulemaking (1) closes an area in the Gulf of Mexico to stone crab fishing, (2) closes two adjacent areas to shrimp fishing, (3) prohibits the intentional placement of articles in the fishery conservation zone that may interfere with fishing gear or fishing vessels, (4) provides for the disposal of stone crab traps found in the closed area, and (5) provides the Secretary with authority to implement further similar emergency regulations for these fisheries by publication of a notice thereof in the Federal Register. The

intent of these regulations is to reduce gear conflicts between stone crab and shrimp fishermen.

EFFECTIVE DATE: Section 654.23(b)(1) is effective April 11, 1983, and will remain effective until 0001 hours May 16, 1983. Sections 654.23(b)(2) and 658.23(b)(2) are effective March 31, 1983, and will remain effective until June 29, 1983. All other provisions are effective on March 31, 1983 and will remain effective until 0001 hours May 16, 1983.

ADDRESS: Jack T. Brawner, Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (Stone Crab FMP), prepared by the Gulf of Mexico Fishery Management Council (Council), was approved by the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) on March 19, 1979, and implemented by the Secretary on September 14, 1979 (44 FR 53519), under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP), prepared by the same Council, was approved by the Assistant Administrator on November 7, 1980, and implemented by the Secretary on May 15, 1981 (46 FR 27489).

The Secretary is undertaking emergency rulemaking under section 305(e)(1) of the Magnuson Act to amend the Stone Crab and Shrimp FMPs and their implementing regulations. Section 305(e)(1) authorizes the Secretary to promulgate emergency regulations necessary to address an emergency in a fishery. The gear conflicts described below constitute such an emergency. The rulemaking (1) closes an area of the fishery conservation zone (FCZ) in the Gulf of Mexico off Florida to stone crab fishing (2) closes two adjacent areas to shrimp fishing (3) prohibits the intentional placement of any article in the FCZ that may interfere with fishing or obstruct fishing gear or fishing vessels, and (4) authorizes the removal and disposal of stone crab pots from the closed areas by authorized officers. This rulemaking also authorizes the Secretary to establish additional area closures, of limited duration and geographic scope, in the event similar conflicts occur in other areas.

Area Restrictions

Gear conflicts between stone crab and shrimp fishermen have occurred

intermittently during the past five years in an area west of Citrus County, Florida. Recently, these conflicts have increased in number and severity, resulting in a significant disruption in the peaceful and orderly prosecution of both fisheries. The affected fishermen have attempted unsuccessfully to reduce these conflicts. The State of Florida (State) has implemented remedial legislation, but it does not apply to those conflicts which are occurring within the FCZ. The Council is preparing an amendment to the FMPs which will serve to supplement the State law.

The National Marine Fisheries Service (NMFS) has recently documented cases where stone crab fishermen have placed barbed wire secured to cinder blocks or stone crab traps in the conflict area. Shrimp trawling gear encountering barbed wire has been damaged or destroyed. Damage and injury have occurred to fishing gear, to vessels, and to individuals attempting to disentangle the barbed wire.

Since January 31, 1983, twelve complaints have been received from shrimp fishermen concerning gear destruction and vessel damage. Stone crab fishermen have also complained about shrimp trawling gear being used to destroy stone crab traps.

Alternative actions were considered by NMFS for resolution of this escalating conflict. Earlier testimony by stone crab and shrimp fishermen at public hearings and meetings conducted by the Council indicated an acceptable resolution was a minor westward extension of State-implemented area closures into the FCZ adjacent to Citrus County. Though such an amendment to the FMPs is being considered by the Council, the area affected by the amendment does not include all of the locations to which the conflict has spread.

Information available to the Assistant Administrator indicates that the conflicts will continue to escalate. Threats of physical confrontations have intensified with a resulting increase in the potential for violence and further disruption of the fisheries without Federal intervention. Therefore, emergency regulatory action is being taken to address the situation.

Emergency regulations are implemented closing certain areas of the FCZ to the stone crab and shrimp fisheries. The area closed to stone crab fishing is approximately 28.6 square nautical miles. The area closed to shrimping is immediately adjacent and is approximately 116.9 square nautical miles.

The emergency regulations prohibit the placement of any article in the FCZ

to interfere with fishing or obstruct or interfere with fishing gear or fishing vessels, and further prohibit the use of fishing gear to obstruct or damage the fishing gear or fishing vessel of another. In addition, the regulations authorize the Secretary to establish further area closures during the remainder of the current stone crab season by publication of a notice thereof in the Federal Register. Any additional closures must be in response to gear conflicts similar to those giving rise to this emergency rulemaking and be of no greater duration or geographic scope than is necessary and appropriate to resolve the gear conflict.

Stone crab traps must be removed from the prohibited area within 10 calendar days of filing this rule for public inspection with the Office of the Federal Register; traps will be prohibited from that area until 0001 hours May 16. The prohibitions on placement of articles intended to interfere with fishing, and on the destructive use of fishing gear, are effective immediately and will continue for 90 days. All other provisions of these emergency regulations are effective immediately and will remain in effect until 0001 hours May 16, 1983, unless terminated earlier.

Classification

The Assistant Administrator has determined that these emergency regulations comply with the national standards, other provisions of the Magnuson Act, and other applicable law.

Because of the severity of conflicts between the stone crab and shrimp fishermen, the Council on Environmental Quality has waived the requirement of preparing an environmental assessment.

The Administrator, NOAA, has determined that these rules are not "major" under E.O. 12291 requiring a regulatory impact analysis.

These regulations respond to an emergency situation making it impracticable for the Agency to follow procedures otherwise required by E.O. 12291. Under section 8(a) of that Order, the Director of the Office of Management and Budget (OMB) has been notified of this emergency and a copy of these emergency regulations has been transmitted to the Director.

The Regulatory Flexibility Act is inapplicable as no proposed rule was published.

This amendment does not entail any Federal collection of information as defined by the Paperwork Reduction Act.

Because these regulations respond to an emergency situation with potential danger to human life and safety, the Agency finds good cause to waive the 30-day delayed effective date provisions of the Administrative Procedures Act.

The Assistant Administrator has determined that this action is consistent, to the maximum extent practicable, with Florida's approved coastal zone management program. This determination is being submitted for review to the State of Florida's Department of Environmental Regulations.

List of Subjects in 50 CFR Parts 654 and 658

Fish, Fisheries, Fishing.

Dated: March 31, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Parts 654 and 658 are amended as follows:

1. The authority citation for Parts 654 and 658 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 654—STONE CRAB FISHERY

§ 654.23 [Amended]

2. Section 654.23 is amended by redesignating the existing paragraph as

(a) and by adding a new paragraph (b) to read as follows:

(b)(1) Until 0001 hours May 16, 1983, it is unlawful to place stone crab traps in the water or harvest stone crabs from traps in that area of the FCZ bounded by a continuous line connecting the following points expressed by latitude and longitude (LORAN notations are unofficial, and are included only for the convenience of fishermen):

Point	Latitude	Longitude	LORAN rate 7980			
			W	X	Y	Z
Q.....	28°49.45' N.....	82°55.75' W.....	14375		45260	62971.4
R.....	28°49.77' N.....	82°56.31' W.....	14375			62975
Z.....	28°42.52' N.....	82°56.10' W.....	14355			62975
Y.....	28°42.07' N.....	82°55.37' W.....	14355			62970
U.....	28°31.25' N.....	82°55.15' W.....	14325			62970
V.....	28°29.80' N.....	82°52.86' W.....	14325			62955
X.....	28°37.86' N.....	82°53.02' W.....	14347.2	31285		62955

Thence northerly along the State boundary to Point Q.

¹ This point is on the State boundary.

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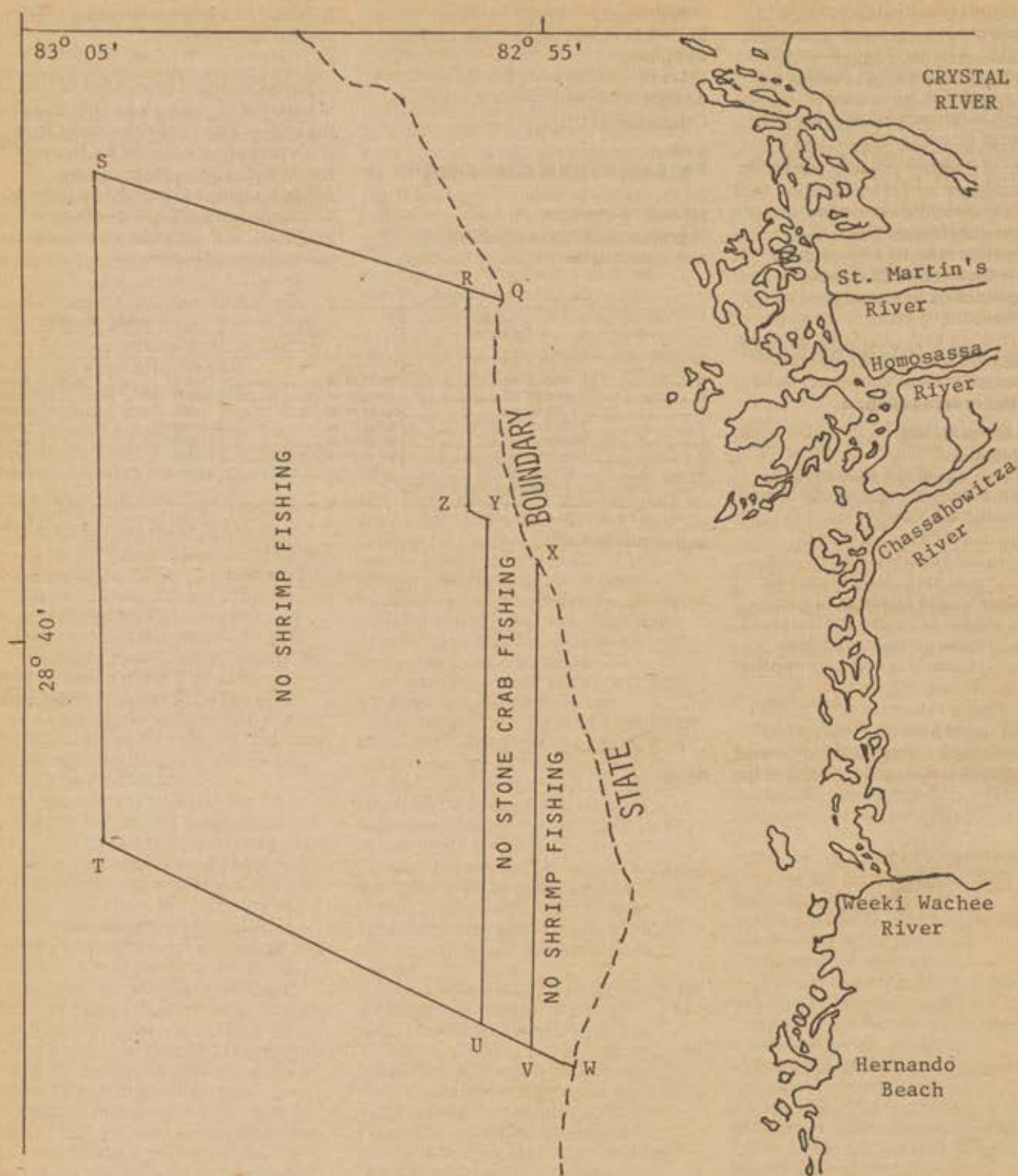


Figure 3. Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative proposes only).

(2) It is unlawful to place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of another; it is further unlawful to utilize fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) Stone crab traps found in the area described in paragraph (b)(1) of this section before May 16, 1983, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. Owners of these stone crab traps are subject to civil penalties.

(4) In the event that conflicts between stone crab and shrimp fishermen occur in other portions of the management area prior to May 16, 1983, the Secretary may establish additional area closures by publication of a notice of such closures in the Federal Register. Any such additional area closures may be established only in response to gear conflicts similar in nature and degree of severity to those giving rise to this emergency rulemaking and may only be of such duration and geographic scope as is necessary to resolve such conflict. Such additional area closures may be established only if they would otherwise be authorized under section 305(e) of the

Magnuson Act and if the notice published in the Federal Register sets forth the reason for the additional area closures.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

§ 658.23 [Amended]

2. Section 658.23 is amended by redesignating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

(b)(1) Until 0001 hours May 16, 1983, it is unlawful to fish for shrimp in the following two areas of the FCZ (see Figure 4):

(i) That area of the FCZ bounded by a continuous line connecting the following points expressed by latitude and longitude (LORAN notations are unofficial, and are included only for the convenience of fishermen):

AREA I

Point	Latitude	Longitude	LORAN rate 7980			
			W	X	Y	Z
R	28°49.77' N	82°56.31' W	14375			62975
S	28°53.55' N	83°02.89' W	14375			63020
T	28°36.11' N	83°02.77' W	14325			63020
U	28°31.25' N	82°55.15' W	14325			62970
Y	28°42.07' N	82°55.37' W	14355			62970
Z	28°42.52' N	82°55.15' W	14355			62975
R	28°49.77' N	82°56.31' W	14375			62975

(ii) That area of the FCZ bounded by a continuous line connecting the following points expressed by latitude and longitude (LORAN notations are unofficial, and are included only for the convenience of fishermen):

AREA II

Point	Latitude	Longitude	LORAN rate 7980			
			W	X	Y	Z
X ¹	28°37.88' N	82°53.02' W	14347.2	31285		62955
V	28°29.80' N	82°52.85' W	14325			62955
W ¹	28°28.93' N	82°51.50' W	14325		45060	62946.3

Thence northerly along the State boundary to Point X.

¹ This point is on the State boundary.

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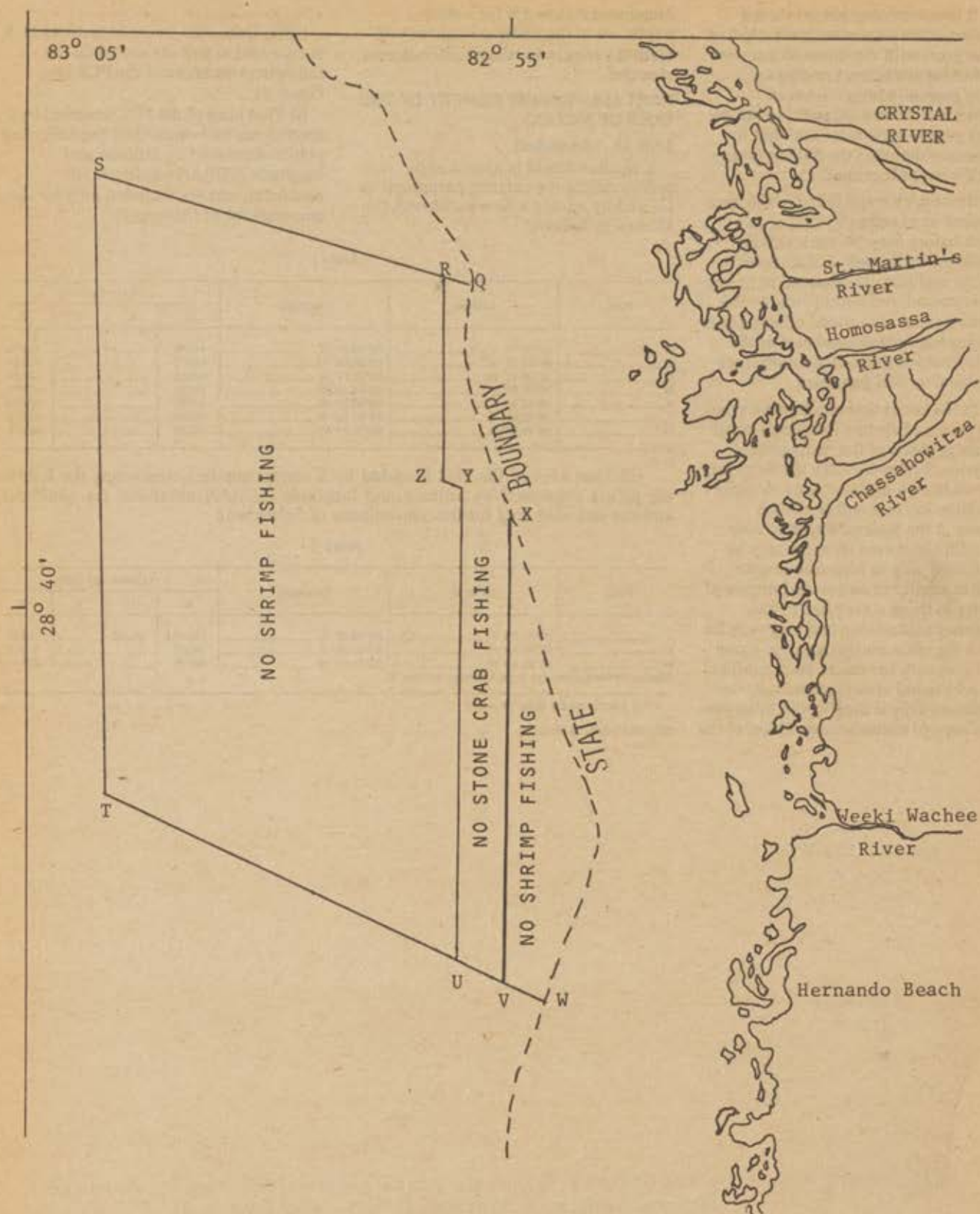


Figure 4. Chart delineating areas closed to fishing for shrimp or stone crab, (not to scale, for illustrative purposes only).

(2) It is unlawful to place into the FCZ any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of another; it is further unlawful to utilize fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) In the event that conflicts between stone crab and shrimp fishermen occur

in other portions of the FCZ prior to May 16, 1983, the Secretary may establish additional area closures by publication of a notice of such closures in the **Federal Register**. Any such additional area closures may be established only in response to gear conflicts similar in nature and degree of severity to those giving rise to this emergency rulemaking and may only be of such duration and

geographic scope as is necessary to resolve such conflict. Such additional area closures may be established only if they would otherwise be authorized under section 305(e) of the Magnuson Act and if the notice published in the **Federal Register** sets forth the reasons for the additional area closures.

[FR Doc. 83-8827 Filed 3-31-83; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 48, No. 67

Wednesday, April 6, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Exceptions Processes

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Request for comments.

SUMMARY: The Administrative Conference Committee on Regulation is considering a proposed recommendation on the subject of "administrative exceptions processes". This topic includes agency procedures involved in the granting of waivers, exemptions, exceptions, variances, or other individualized exceptions to rules of general applicability. Views and supporting factual material are requested to be submitted to aid the Committee on its consideration.

DATE: Comment deadline: April 21, 1983. One copy is sufficient. Comments received after the deadline will be considered to the extent feasible.

ADDRESS: Send comments to: William C. Bush, Administrative Conference of the United States, 2120 L. Street, N.W., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L. Street, N.W., Suite 500, Washington, D.C. 20037; telephone (202) 254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference Committee on Regulation is working toward development of a recommendation concerning agency procedures and practices in the operation of federal agency exceptions processes. The Committee's proposed recommendation, reproduced below, is based largely on a report by our consultant, Professor Peter Schuck of Yale Law School. Copies of Professor Schuck's report, *When the Exception Becomes the Rule: Regulatory*

Equity, the Exceptions Process, and the Formulation of Energy Policy (February 16, 1983), are available on request.

Although the consultant's report deals mainly with a study of the Office of Hearings and Appeals at the Department of Energy, the Committee has attempted to derive from the study such recommendations as appear to be useful government-wide. The Committee is particularly interested in the views of those who have had direct experience with exceptions processes in other regulatory agencies.

The Committee does not, by this proposal, intend to advocate the creation of additional exceptions processes for agency programs. Indeed, the proposal is intended more to aid the government-wide avoidance of problems perceived to have existed in one narrow program.

The Committee will meet shortly after the comment deadline to consider all comments received and to determine whether and in what form to propose a final recommendation to the full Administrative Conference in June. Notice of that meeting will appear in the *Federal Register*.

All comments submitted to the Committee will be placed in a file available for public inspection during normal business hours (9:00 a.m. to 5:30 p.m. Monday through Friday, excluding federal holidays) at the Office of the Chairman of the Administrative Conference, 2120 L. Street, N.W., Suite 500, Washington, D.C. 20037.

Activities of the Committee on Regulation are subject to the Federal Advisory Committee Act (Pub. L. 92-463).

Proposal on Which Comments Are Requested

Proposed Recommendation

Administrative Exceptions Processes

A. Congressional Oversight

1. Congress should review the effectiveness, procedural fairness, and political accountability of the administrative exceptions processes established under existing legislation, including the adequacy of legislative, administrative, and judicial controls over those processes. This may be accomplished during the course of periodic congressional oversight of agency programs.

2. Congress should prescribe the equitable or other criteria that shall govern an agency exception process. Congress should also require that agencies issue regulations further defining those criteria and prescribing the procedures to be used in exceptions proceedings.

3. Congress should determine whether and to what extent agencies are circumventing rulemaking requirements by excessive reliance upon exceptions processes. If an exceptions process is being used by an agency to resolve questions of broad policy significance, Congress should consider requiring that the official in charge of that process be subject to Senate confirmation.

4. Where an exceptions process is part of what was originally an emergency program, Congress should determine whether and to what extent the courts should continue to take the emergency into account in reviewing the legal validity of exceptions decisions.

B. Agency Procedures

1. Each agency with an exceptions program should establish procedures governing exceptions cases that reflect an analysis of the need for particularized regulatory equity in the applicable program. The procedures provided for relatively routine "hardship" applications and for those cases of broader policy significance should differ to take account of the differing demands for information, fairness, and legitimacy.

2. The procedures should provide for adequate notice to all interested members of the public of an application for exceptions relief. Relief should be granted or denied only after an opportunity for the development of relevant factual and policy issues. The degree of formality of the adjudicatory procedures used should depend upon the magnitude of the public and private interests at stake, the need for expeditious decision, the number of interested parties, the kinds of issues to be resolved, and the kinds of procedures that were originally employed to generate the "rule" from which relief is being sought. The agency should assume responsibility for ensuring that all significantly affected interests are in fact represented in the exceptions proceedings.

(3) Where the program allows for

emergency, interim relief, the procedures should include suitable mechanisms—such as an escrow fund, interest obligation, or expiration date for interim orders—to restore the *status quo ante* insofar as possible in the event that such relief is subsequently determined to be inappropriate.

4. The form and independence of the tribunal that is to decide exceptions cases should depend chiefly upon the regulatory policy significance of the exceptions decision and the value of exceptions relief to applicants. The greater the precedential and policy significance of an exceptions decision and the greater the advantage (competitive or otherwise) that the decision confers upon an applicant, the more closely the tribunal should be integrated into the policy-sensitive and politically-accountable decision processes of the agency. The more the exceptions decision is routine, without precedential significance, and purely equitable or "hardship" in nature, the more readily it may be delegated to other decision processes.

C. Coordination with Rulemaking

1. Where there is a relatively high degree or organizational independence between an agency's exceptions process and its rulemaking process, the two should be closely co-ordinated to ensure that important policy decisions and situation-specific equitable decisions are made using the procedures most appropriate to each.

2. When it appears to the exceptions tribunal that a decision under consideration is likely to have broad policy significance, it should promptly inform the agency office with primary rulemaking responsibility in order to give the rulemakers an opportunity to supplement or supplant the exceptions proceeding. Ordinarily, the exceptions tribunal should not decide such a case until the rulemaking office indicates that it does not intend to proceed.

3. If the exceptions tribunal proceeds to decide a case with broad policy significance, it should conduct the proceeding much as a rulemaker would, broadening participation in the pending adjudication and inviting public comments on all significant policy, factual, and remedial issues in the case. In addition, the exceptions tribunal should be expanded to include additional members drawn from the agency's policymaking organs, and the politically responsible agency head should review and sign personally the orders in such cases.

List of Subjects in 1 CFR Ch. III

Administrative practice and procedure, Exceptions.

Richard K. Berg,

General Counsel.

April 1, 1983.

[FR Doc. 83-9033 Filed 4-5-83; 8:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. F&V AO 198—All]

Raisins Produced From Grapes Grown in California; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on the proposed amendment of the California raisin marketing agreement and order program. The proposed amendment would: Change the method of establishing marketing policy and volume regulation to permit more timely responses to changing marketing conditions; change committee composition and nomination procedures; abolish the Executive Operations Committee and transfer its compliance responsibility to the Raisin Administrative Committee; add provisions for export merchandising programs; provide authority for advertising and promotion programs; provide authority for crediting a handler's assessments for certain kinds of advertising and promotion; and provide authority to charge interest fees on delinquent assessments. The intent of the proposed changes is to improve the effectiveness of the program.

DATE: Written exceptions to this recommended decision must be filed by April 19, 1983.

ADDRESSES: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of Hearing—Issued August 5, 1982, and published August 11, 1982 (47 FR 34790).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is not subject to the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated handlers.

It has been determined that a comment period of less than 60 days is warranted. The proposed amendment, if adopted, should be effective no later than August 1, 1983. That date represents the first day of the 1983-84 crop year, and producers and handlers need to know of any marketing order changes as soon as possible so they can plan their operations accordingly.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed further amendment of the marketing agreement and order, regulating the handling of raisins produced from grapes grown in California, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from the hearing Clerk or Richard P. Van Diest, AMS, F&V, 1130 "O" Street, Room 3114, Fresno, California, 93721 (209) 487-5175.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

This proposed amendment was formulated on the record of a public hearing held in Fresno, California, on August 19, 1982. The hearing notice was published in the August 11, 1982, issue of the Federal Register (47 FR 34790). That notice contained the proposals submitted by the Raisin Administrative Committee.

Material Issues

The material issues of record are as follows:

(1) Adding the raisin varietal type, Oleate and Related Seedless, to the list of varietal types specified in the order.

(2) Abolishing the Executive Operations Committee and transferring its compliance responsibility to the Raisin Administrative Committee.

(3) Permitting interest fees to be charged on delinquent assessments.

(4) Deleting provisions applicable to satisfying reserve requirements for Layer Muscat raisins.

(5) Changing the method for establishing marketing policy and volume regulation to permit more timely responses to changing marketing conditions.

(6) Changing the Raisin Administrative Committee composition, Committee nomination and acceptance procedures, and the terms of office of members and alternate members.

(7) Adding authority for export incentive programs and for promotion and paid advertising programs in domestic and export markets; adding authority for crediting a handler's assessment for certain kinds of promotion and advertising; and making changes in assessment and reporting requirements.

(8) Making such changes in the order as may be necessary to bring it into conformity with any amendment that may result from the hearing.

Findings and Conclusions

(1) Section 989.10 of the California raisin marketing agreement and order (hereinafter referred to collectively as the "order") contains a list of seven varietal types of raisins used in applying quality and volume regulations. Section 989.10 also contains authority for the Raisin Administrative Committee to change, subject to the approval of the Secretary, that list. Pursuant to such rulemaking authority, "Oleate and Related Seedless" was included as another varietal type in § 989.110 of the rules and regulations in 1981 to provide equity among the sun-dried and artificially dehydrated raisin segments of the industry in volume regulation computations.

Prior to the change, oleate raisins, which were developed in an attempt to hasten the sun-drying process and reduce problems resulting from untimely rains, were included with artificially dried water-dipped raisins. Experience with the volume regulation formula in § 989.54 established that whenever there was a substantial production of oleate raisins in any one year, the water-dipped portion of the free tonnage for that varietal type was reduced. In addition, the quantity of oleate raisins needed by the industry to develop free

tonnage markets for that type of raisin was restricted. To correct these problems, Oleate and Related Seedless was established as a separate varietal type. Section 989.10 should be revised by adding Oleate and Related Seedless to the list of varietal types contained in that section to conform with current industry operating practices and to conform with the list in § 989.110.

(2) When the order was amended in 1978, an Executive Operations Committee (EOC) was established pursuant to § 989.43 and given the power pursuant to § 989.51 to receive, investigate, and report to the Secretary complaints of violations of this part. It also was given the following duties under § 989.52: (a) To investigate compliance with and to use means available to it to prevent violations of the provisions of this part; and (b) to perform such other functions as assigned by the Committee (Raisin Administrative Committee).

Since its establishment, the EOC has functioned on a very limited basis, and the evidence of record is that the EOC should be abolished and its powers and duties reassigned to the Committee. To accomplish this, the following changes should be made in the order:

(a) Section 989.51, "Powers" should be deleted, and EOC's power to receive, investigate and report to the Secretary complaints of violations of Part 989 should be assigned to the Committee and included as a new paragraph (d) in § 989.35.

(b) Section 989.52 "Duties" should be abolished, and EOC's duty prescribed in § 989.52(a) to investigate compliance and prevent violations of Part 989 should be included as a committee duty, and should be specified as a new paragraph (b) in § 989.36. Accordingly, current paragraphs (b) through (k) in § 989.36 should be redesignated as paragraphs (c) through (l), respectively.

(c) The other duty of the EOC currently prescribed in § 989.52(b) of performing such other functions as assigned by the Committee would no longer be relevant and should be removed from the order.

Furthermore, the following provisions will no longer be necessary and should be removed from the order:

Section 989.19, the center heading "Executive Operations Committee" immediately preceding § 989.43, and §§ 989.43 through 989.50. In addition, the following minor conforming changes should be made:

(i) Current paragraph (j) of § 989.36 "Duties", to be redesignated paragraph (k), should be amended by deleting the words "and the making of nominations to the Secretary for member and alternate member positions on the

Executive Operations Committee", and changing the comma (,) after the words "made for such purposes to the Secretary" to a semicolon (;).

(ii) Section 989.39 "Compensation and expenses" should be amended by removing the words "and the Executive Operations Committee" from the first sentence.

(iii) Section 989.85 "Personal liability" should be amended by deleting the words "and no member or alternate member of the Executive Operations Committee".

(iv) Section 989.95 "Right of Secretary" should be amended by removing the words "and the Executive Operations Committee" from the first sentence; the words "or of the Executive Operations Committee" from the second sentence, and "or the Executive Operations Committee" from the third sentence.

(3) Section 989.80 requires each handler to pay assessments to the Raisin Administrative Committee for its maintenance and functioning. That section should be amended by adding a new paragraph (d) authorizing the Raisin Administrative Committee to charge handlers interest fees on delinquent assessments. Paragraph (d) should provide that each handler shall, with respect to administrative assessments not paid within 30 calendar days of the date of the Committee's invoice, pay to the Committee interest on the unpaid assessment at the rate of the prime rate established by the bank in which the Committee has its administrative assessment funds deposited, on the day that the administrative assessment becomes delinquent plus two percent; and further, that such rate of interest be added to the bill monthly until the delinquent handler's assessment plus applicable interest has been paid. That paragraph should also provide that the Committee may, with the approval of the Secretary, modify the interest rate applicable to delinquent handlers' assessments through the establishment of applicable rules and regulations.

Under the order, there is no provision for charging handlers interest on overdue assessments. The evidence of record is that handlers normally pay their assessments when invoiced, but that there have been occasions when assessments have been paid late or have been delinquent. When this occurs, handlers who pay their assessments promptly are placed in an unfair situation relative to other handlers. That is, delinquent handlers can use the money which is due the Committee for other financial obligations, and thus

eliminate interest charges on money that they might otherwise have to borrow. This money could also be invested and earn interest for the delinquent handler. The objective of the proposal is to encourage all handlers to pay assessments promptly, thereby avoiding additional and unnecessary collection costs.

Under the proposal, if a handler does not pay all of his assessments within thirty (30) calendar days of the date of the Committee's invoice, the unpaid portion of the account should be considered delinquent and under the order subject to a late payment charge. The Committee should advise the handler of the late payment charge under the order and that a failure to pay the assessment and late payment charge prior to a specified date will result in additional charges on the unpaid balance each month thereafter. In other words, handlers should be charged interest fees on unpaid assessments and interest fees on any unpaid interest charges until the total obligation is paid in full.

The amount of the late interest charge should reflect, in part, the current interest rate on loans. To accomplish this, the rate used to compute late charges should be the prime rate offered by the bank in which the Committee has its administrative funds on deposit on the day the assessment becomes due plus two percent. The record evidence is that some handlers may delay the payment of assessments if the interest charge is the same as or less than the rate at which they can borrow money to pay other obligations. The additional two percent is intended to discourage this from occurring.

At the hearing, concern was expressed that any charge might exceed limits authorized by California state and federal law. However, the rate of interest would have to be consistent with such laws.

To permit needed flexibility in establishing late interest charges according to existing conditions, the Committee, with the approval of the Secretary, should have authority to modify the interest rate applicable to delinquent handler assessment funds through the establishment of rules and regulations. Historically, the Committee has deposited its administrative funds in a single bank and no change is anticipated. However, if a change does take place, the Committee should be permitted to use such authority to modify the late payment formula or make any other changes necessary to reflect current conditions.

In the interest of equity and ease of application, the interest rate initially

applicable to a delinquent account should remain in effect until the delinquent assessments and any late interest charges have been paid in full.

(4) Section 989.69 and the proviso in § 989.66(b)(1) contain provisions applicable to satisfying reserve requirements for Layer Muscat raisins. Layer Muscats are muscat raisins marketed unstemmed and in bunches. These raisins are virtually nonexistent in the marketplace today, and volume regulations have not been imposed for such raisins since the order was initiated in 1949. Consequently, the proviso in § 989.66(b)(1) and the provisions in § 989.69 are unnecessary and should be removed.

(5) Section 989.54 concerns the establishment of marketing policy for all varietal types of raisins for a crop year. Through the marketing policy, the Committee computes free tonnage and reserve tonnage percentages which are submitted to the Secretary for approval. The objective of these percentages is to establish and maintain orderly marketing conditions for all California raisins in accordance with the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "Act").

Currently, the initial step in the seasonal computation of the free and reserve percentages is the computation of a free tonnage quantity. Pursuant to § 989.54(a), the Committee must meet on or before August 15 of each crop year and compute a free tonnage quantity for any varietal type of raisin for which volume regulation may be recommended. The free tonnage quantity is 90 percent of the prior crop year's free tonnage shipments for that varietal type, adjusted by the physical year-end carry-in inventory. However, in years following limited free tonnage shipments, the Committee may use the highest shipments of any one of the prior three years as a base to determine the free tonnage.

Prior to 1976, establishment of volume regulation for a crop year resulted in the institution of a two-pool two-price system for that year. The two pools were a free tonnage pool—which were the raisins necessary to meet market needs in the Western Hemisphere, and a reserve tonnage pool—which supplied export markets outside the Western Hemisphere. The Committee had total control of the reserve pool; that is, it had control over the amount of raisins that would be offered to handlers at any given time, the price handlers would be required to pay, the period during which handlers could sell reserve raisins, and the period during which those raisins could be exported. Volumes offered

handlers by the Committee were generally limited, prices were usually below the free tonnage price, and periods of sale and export were usually limited to 30 to 90 days.

Beginning in 1976, the phrase "free tonnage shipments" used in establishing a base for the subsequent year's marketing policy was interpreted to include all shipments of raisins for handlers' accounts (not on behalf of the Committee). The evidence of record is that this interpretation resulted in a change in the industry's marketing practices in that handlers began exporting free tonnage raisins and reserve tonnage raisins sold to them for use as free tonnage pursuant to § 989.54(d). This has given raisin handlers greater flexibility by allowing them to make long-term marketing decisions which they were unable to make under the prior system. For example, it allows handlers greater flexibility in deciding whether or not to market raisins in domestic or export outlets. At the same time, it preserves the reserve pool as a price stabilizer against unforeseen increases in demand and as a hedge against a short crop in succeeding years.

The term "free tonnage" is now defined in § 989.65 as either the designated free tonnage percentage of the standard raisins of a varietal type acquired by a handler, or all of the standard raisins of a varietal type acquired by the handler if no free tonnage percentage is designated by the Secretary. The term "free tonnage" also is used in § 989.55 in the same context as used in § 989.65. However, as previously discussed, under § 989.54(a) the term "free tonnage" is a computed quantity arrived at through the formula prescribed in that paragraph. To avoid possible confusion resulting from the use of the term "free tonnage" in different contexts that term should be changed to "trade demand" wherever it appears in § 989.54. Consistent with this, the heading of § 989.54(a) should be changed from "Free tonnage." to "Trade demand." and the paragraph should read as follows: On or before August 15 of each crop year, the Committee shall hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee shall compute trade demand. The trade demand shall be 90 percent of the prior crop year's shipments (converted to a natural condition weight) of free tonnage and reserve tonnage sold for free use for that varietal type, into all

market outlets, adjusted by the carryin on August 1 of the current crop year and the desirable carryout for that varietal type at the end of that crop year. If the prior year's shipments were limited because of crop conditions, the Committee may select the shipments of one of the three years preceding the prior crop year.

Section 989.54(a) currently includes a minimum desirable carryin quantity of 35,000 tons for Natural (sun-dried) Seedless raisins but for no other varietal type. The evidence of record is that the term "desirable carryin" pertains to year-end supplies and therefore should be changed to "desirable carryout" to more accurately reflect the marketing policy considerations. And further, the quantity for Natural (sun-dried) Seedless should be increased to 50,000 tons. Because of changing marketing practices, this quantity is needed to fill market requirements until new crop raisins are available in October. The 50,000 ton figure is based on historical data of shipments of this varietal type in past seasons. However, making such a change initially for one season could over-supply the market and disrupt the stability of free tonnage supplies. Therefore, the adjustment should occur at a rate of 5,000 tons per year for the first three crop years following the effective date of any change resulting from this amendatory action.

The evidence of record is that a desirable carryout also should be included in the computations of trade demand for Dipped Seedless and Oleate and Related Seedless raisins, and that a carryout of 1,500 tons for each should be prescribed, upon annual data of shipments of these two varietal types in past years.

In view of this, § 989.54(a) should also provide that the desirable carryout shall be increased from 35,000 to 50,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years, following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and Oleate and Related Seedless raisins, 1,500 tons. The trade demand computed by the Committee shall be announced by the Committee in accordance with paragraph (b) of this section.

Section 989.55 should be shortened and changed to correspond with the changes made in § 989.54. Section 989.55 should provide that whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee or from other available information, that to designate final free and reserve percentages for any varietal type of

standard raisins acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. In the event the Secretary finds that suspension or termination of any percentages computed by the Committee or designated by the Secretary tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such percentages.

In conformity with the objectives of the preceding changes, the title of § 989.65 should be changed to "Free and reserve tonnage" and provisions should be added specifying that a handler's reserve tonnage of a varietal type shall be the reserve percentage of the standard raisins of that varietal type acquired by him.

The current reference to a "free tonnage percentage" in that section should be changed to "free percentage" to shorten the term. As a conforming change, references to "free tonnage percentage" and "reserve tonnage percentage" in §§ 989.54 and 989.55 should be changed to "free percentage" and "reserve percentage," respectively, wherever the former terms appear in those sections.

To promote orderly marketing conditions for raisins, § 989.54(b) currently provides for volume regulation when appropriate. That paragraph prescribes the method whereby free and reserve percentages are recommended by the Committee. Section 989.55 currently provides for the designation or modification of free and reserve percentages by the Secretary.

While the methods prescribed in §§ 989.54(b) and § 989.55 generally have proven satisfactory, the evidence of record is that § 989.54(b) should be changed to provide a more expeditious method for the establishment of seasonal volume regulations. The method proposed at the hearing would permit more timely implementation of volume regulation percentages by allowing the Committee (through one of its designated employees) to compute and announce preliminary percentages for any varietal type of raisin for which a trade demand has been computed. The computation and announcement would be required to be accomplished on or before October 5 of each crop year (except the date may be extended five business days if warranted by a late crop), the same timing the Committee now is required to follow.

Over the years, a variety of factors have sometimes unduly delayed the designation of seasonal free and reserve percentages recommended by the Committee. These delays tend to cause uncertainty in the marketplace and

impair sales. Handlers must know as soon as possible of the designation of marketing percentages so they can plan their operations accordingly. Under the proposal, handlers would have this information in more timely fashion and be able to make firm marketing plans.

In addition, raisin handlers normally begin paying growers for their raisins when percentages are designated by the Secretary. Delays in the designation, therefore, result in delayed grower payments. Growers have an enormous amount of time and money committed to each raisin crop and any delay in payments to them results in substantial hardships.

Further, the Committee does not pay for the insurance on the reserve raisins until the reserve pool is established, which does not occur until the free and reserve percentages are designated by the Secretary. Prior to that time, all standard raisins acquired by handlers are free tonnage, and thus it is necessary for handlers to insure all raisins acquired until the reserve pool is established. The delays in the establishment of reserve pools have required handlers to carry insurance on that portion of their acquisitions which eventually become reserve raisins longer than is warranted. To assure better market planning, speed up producer payments for raisins delivered to handlers, and to reduce handler insurance payments, § 989.54(b) should be revised to allow the Committee to compute and announce preliminary percentages for which it has computed a trade demand.

Revised paragraph (b) should provide that on or before October 5 of each crop year (except that the Committee may extend this date not more than five business days if warranted by a late crop), the Committee shall estimate the production of any varietal type of raisins for which it has computed a trade demand. If the Committee determines that volume regulation is desirable during the crop year for that varietal type, it shall compute and announce preliminary free and reserve percentages for that varietal type. The Committee shall compute a preliminary free percentage to release 85 percent of the computed trade demand, if it determines that a field price has been established for that varietal type, or 65 percent of the trade demand if no field price has been established. The preliminary free percentage shall be computed by multiplying the trade demand by either 85 percent or 65 percent (as the case may be) and dividing the product by the estimated production of that varietal type and

rounding the resulting percentage to the nearest full percent. The difference between 100 percent and the preliminary free percentage shall be the preliminary reserve percentage.

With the exception of the authority allowing the Committee to compute and announce the preliminary free and reserve percentages, this procedure is exactly the same as currently provided in § 989.54(b). In addition § 989.54(b) currently provides that no later than February 15, the Committee shall recommend to the Secretary a free tonnage percentage which will tend to release the full free tonnage for any varietal type. That paragraph also provides that prior to February 15, interim changes of percentages may be recommended by the Committee to the Secretary to release less than the full free tonnage for any varietal type and that the difference between any free tonnage percentage designated and 100 percent shall be the reserve tonnage percentage.

For better organization and recognition of the proposed changes allowing the computation and announcement of volume regulation percentages, the provisions in current paragraphs (c) and (d) should be redesignated as paragraphs (f) and (g) respectively, as hereinafter discussed, and the provisions in § 989.54(b) pertaining to interim percentage changes and the designation of final percentages should be redesignated as new paragraphs (c) and (d), respectively. New paragraph (c) should be titled "Interim percentages.", and provided that prior to February 15, the Committee may modify the preliminary free and reserve percentages to release less than the trade demand. New paragraph (d), should be titled "Final percentages.", and provide that no later than February 15, the Committee shall recommend, to the Secretary, final free and reserve percentages which will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. The difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage. With its recommendation, the Committee shall report on its consideration of the factors in paragraph (e) of § 989.54.

The current provisions of § 989.54(e) regarding the submission by the Committee to the Secretary of a verbatim record of marketing policy discussions should be deleted because this requirement is cumbersome and unnecessary. The minutes of the meetings prepared by the Committee's

staff adequately reflect actions taken by the Committee at its meetings. The factors currently contained in § 989.53(b) which the Committee must consider in computing and determining free and reserve percentages for any varietal type of raisin should be redesignated as a new paragraph (e).

In recognition of the proposed change in designating free and reserve percentages, new paragraph (e) should be titled "Factors." and provide that when computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Committee shall give consideration to the factors to be enumerated in new paragraph (e). In the notice of hearing, the factors to be considered by the Committee were the same as those now contained in § 989.54(b). However, to reflect the proposed change in volume regulation implementation, a minor change should be made in factors (4) and (5). Factor (4) currently requires the Committee to consider estimated trade demand for raisins in free tonnage outlets, if different than the free tonnage. Under proposed § 989.54(a), the Committee would compute a "trade demand", not a "free tonnage". Consequently, the phrase "If different than the computed free tonnage" should be changed to "If different than the computed trade demand". Factor (5) currently requires the Committee to make an estimate of desirable carryout at the end of the crop year for free tonnage and, if applicable, for reserve tonnage. Under proposed § 989.54(a), a desirable carryout would be specified for Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins. Consequently, the Committee would only have to estimate a desirable carryout for any other varietal type. To recognize this, the phrase "If not estimated as provided in paragraph (a) of this section, "(i.e., § 989.54) should be placed at the beginning of factor (5).

Current § 989.54(c) pertains to the modification of marketing policy for a crop year. Consistent with the proposed changes in the method for the establishment of volume regulation and for better organization, § 989.54(c) should be redesignated § 989.54(f), and the phrase "as well as the recommendation of the Committee" should be deleted. That phrase is no longer needed. Further, the word "and" should be inserted before the phrase "the basis therefore" to complete the sentence.

Current § 989.54(d) now provides for the controlled release of reserve raisins to augment the supply of free tonnage

raisins released by the initial preliminary percentage. By November 15, the Committee must make two offers to sell reserve raisins of each varietal type to handlers for disposition as free tonnage. The quantity in each offer must be equal to ten percent of the preceding years free tonnage shipments. The balance of any reserve is disposed of by the Committee pursuant to § 989.67.

Consistent with the reorganization of § 989.54, the current § 989.54(d) should be redesignated as § 989.54(g) and be revised to recognize that free tonnage, and reserve tonnage sold for free use into all market outlets, will be used in computing preliminary free percentages and that these percentages will be announced by the Committee under the recommended changes in the volume regulation mechanism. In addition, changes should be made to improve the clarity of the current provisions, and to change the length of time of the first-come first-served offers of reserve for free use. Currently, these offers are made for two days. The evidence of record indicates that one day would be adequate time for interested handlers to take advantage of these offers.

Consequently, proposed § 989.54(g) should provide that on or before November 15 of the crop year, the committee shall make two simultaneous offers of reserve tonnage to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced. One offer shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of § 989.54) shipments of free tonnage and reserve tonnage sold for free use into all market outlets to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. The second offer, for market expansion, shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of § 989.54) shipment of free tonnage and reserve tonnage sold for free use. This offer shall be allocated to handlers on the basis of their prior year's shipments of free tonnage and reserve tonnage sold for free use. Each offer shall be open to handlers not more than five business days, and subsequently, two offers of any tonnage unsold in the original offers open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers, and shall be on the basis of the quantity

each handler purchased, as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer, any remaining tonnage may be offered to handlers who purchased all of their allocations from previous offers on a first-come first-served basis and such offer shall be open to handlers for one business day.

Proposed § 989.54(g) should continue the current stipulation that any handler who had no shipments or acquisitions during the prior crop year will be allocated raisins under these offers on the basis of his acquisition (up to the time the original offer is made) of raisins in the current crop year. If field prices are not established, the offer shall be made not more than fifteen days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage, pursuant to this paragraph, shall be the established field price for free tonnage raisins of that varietal type, 3 percent of the established field price, plus the estimated costs incurred by the Committee for equity holders. Section 989.67(j) now contains a reference to reserve offers pursuant to § 989.54(d). This reference should be changed to 989.54(g) consistent with the reorganization of § 989.54.

The last sentence of current § 989.54(f) nor requires the Committee to notify handlers, dehydrators, and cooperative bargaining association(s) of the Secretary's actions on percentages by registered or certified mail. In recognition of the recommended changes in volume regulation computation, implementation, and designation, and the reorganization of § 989.54, the current § 989.54(f) should be redesignated as paragraph (h) and the last sentence should be revised to provide that the Committee shall notify handlers, dehydrators, and the cooperative bargaining association(s), and give reasonable publicity to producers, of its computation of the trade demand, preliminary percentages, and interim percentages. That paragraph should also require the Committee to notify handlers, dehydrators, and the cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail. These changes should be made so that these persons will be informed adequately of volume regulation actions to enable them to plan their operations accordingly.

(6) The provisions of § 989.26 dealing with the establishment and membership of the Raisin Administrative Committee should be revised to assure adequate

and equitable representation for all segments of the raisin industry on the Committee, to recognize changes that have occurred, and to provide for changes that may occur, in the relative importance of these segments. The Committee currently consists of 35 producer members, nine handler members, one dehydrator member, one cooperative bargaining association member, and one public member. Each member of the Committee has an alternate member with the same qualifications as the corresponding member. The producer, handler, dehydrator, and cooperative bargaining association members and alternates are nominated by their peers. The public member is nominated by the members of the Committee. All members and alternate members are selected by the Secretary. Handler, dehydrator, bargaining association, and public members and alternate members serve one year terms; producer members and alternate members serve three year terms, with approximately one-third nominated each year. Currently, the 35 producer members are apportioned among 19 districts in the area of production, based on the tonnage of raisins produced in the districts. Section 989.26a authorizes the Secretary, on recommendation of the Committee, to change the total number of producer members on the Committee, to change the number of districts designated in the rules and regulations, to redefine such districts into which the production area is divided, or to change the number of producers members which shall be selected to represent particular districts.

However, there is no allocation of producer representation on the Committee among the various producer groups and, as a result, some of these groups have engaged in spirited and competitive campaigning in recent nominations. While this resulted in much interest and large attendance at nomination meetings, the side effects were not always beneficial to the raisin industry. In addition to the time and effort expended by the interested groups in encouraging and organizing their members to attend nomination meetings, considerable time and effort was also expended by the Committee in verifying eligibility of persons seeking to vote in the nominations, and this was not always accomplished to the satisfaction of all parties involved. Furthermore, because the primary campaigners were the two major cooperative associations of producers, unaffiliated producers were in the minority and lacked sufficient voting strength to obtain their

proportionate share of Committee membership.

Based on the evidence of record, § 989.26 should be revised to establish three categories for producer representation. The first category, established in § 989.26(a), should represent major cooperative marketing association(s). These representatives should be members of cooperative marketing associations engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year. The number of such producer representatives should be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 (the total number of producer representatives) by the ratio of the cooperative marketing association(s)' raisin acquisitions to the acquisitions of all handlers during the preceding crop year.

The second category, established in § 989.26(b), should represent cooperative bargaining association(s). The number of such producer members should be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio of raisins acquired by handlers from bargaining association members to the total acquisitions of all handlers during the preceding crop year. Such representatives must be members of cooperative bargaining association(s).

An overwhelming majority of raisin producers currently belong to cooperative associations within one of these categories. In order to effect industry-wide savings in time, effort, and expense involved in holding nomination meetings, the associations within each category should nominate persons from their membership to serve on the Committee. If more than one association is in a category, they should submit one slate made up of one nominee for each position to which they are entitled on the Committee.

The third category, containing the balance of the 35 producer members on the Committee, should be set forth in proposed § 989.26(c). It was proposed in the notice of hearing that § 989.26(c) include independent producer members who are neither members of cooperative marketing associations, cooperative bargaining associations, nor sell for cash to cooperative marketing associations, to represent all producers not defined in § 989.26(a) or (b). The notice also provided that producer members covered by that paragraph would be selected in the number and for the districts designated in the rules and regulations. Thus, as proposed in the

notice, members of cooperative marketing associations acquiring less than 10 percent of the total raisin acquisitions during the base period would have been excluded from participating in producer nomination meetings or serving on the Committee as producer members. In order to rectify this, and consistent with the testimony in the record, § 989.26(c) should provide that all other producer members who shall not be members of a cooperative bargaining association(s), or a cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to such cooperative marketing association(s), shall represent all producers not defined in paragraphs (a) or (b) of this section and shall be selected in the number and, when appropriate, for the districts as designated in the rules and regulations.

Under the proposal, the cooperative marketing and bargaining associations would nominate their Committee representatives independent of each other and without regard to districts. Thus, § 989.26 also should be revised by deleting the requirement that all producer representation be selected in the number and for the districts specified in the rules and regulations.

However, since the number of members representing the third category of producers may be subject to a greater degree of variability than the other two categories, § 989.26(c) should provide for the selection of the third category in the number designated in the rules and regulations. Moreover, since those members may be nominated from and represent an extensive area, paragraph (c) also should provide for their selection by districts, when appropriate. Although, specific criteria were not developed at the hearing for delineating these districts in the rules and regulations, such districts should be delineated on a basis which would give such producers equitable representation throughout the designated production area. Delineation of these districts in the rules and regulations would maximize the flexibility of the industry in accomplishing this goal.

Currently, § 989.26(a) through (e) provide for the selection of handler representatives to represent the nine handler groups described in those paragraphs. The first group, described in paragraph (a), consists of one handler doing business as cooperative marketing association(s) or cooperative marketing organization(s) engaged in the business of packing raisins, each of which acquired not less than 10 percent of the

total raisin acquisitions during the 12-month period preceding the then current crop year. The second group, described in paragraph (b), consists of three handlers, other than cooperatives, who acquired the largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year. The third group, described in paragraph (c), consists of the three handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during such 12-month period. The fourth group, described in paragraph (d), consists of the four handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during such period. The fifth group of handlers, described in paragraph (e) consists of two members from all other handlers, including cooperatives, each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and all processors.

The evidence of record is that the provision for dehydrator representation on the Committee should be deleted, and that position converted to a handler position, thus increasing the number of handler member positions on the Committee to ten. Approximately two-thirds of all raisin dehydrators are either handlers, members of the major cooperative marketing association, or under contract with that association. Consequently, an adequate opportunity exists for the views of dehydrators to be expressed on program matters at Committee meetings and there is no longer any need for separate dehydrator representation on the Committee.

The evidence of record also is that the 10 handler members should be divided into two groups, those representing major marketing associations and all others. The representation for those two groups should be according to the ratio that each group's raisin acquisitions is to the total acquisitions by all handlers during the preceding crop year.

The first handler group should include cooperative marketing association(s) each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year. The number of Committee members allocated to this handler group should equal the product, rounded to the nearest whole number, of 10 (the total number of proposed handler members) and the ratio of the group's raisin acquisitions to the total acquisitions of all handlers during the preceding crop year. The second group should include all other handlers, which would include

all independent handlers and any small cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group should be nominated by all the handlers in this group in a manner to be determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations. Since processors are handlers pursuant to § 989.15, the current reference to processors in § 989.26(e) is unnecessary and need not be repeated in proposed § 989.26 (d)(2).

In the notice of hearing § 989.26a, pertaining to changes in producer representation, was proposed to be revised to delete provisions regarding the establishment of districts and the revision of those districts, but to retain the authority to change the total number of producer members on the Committee. At the hearing, all of § 989.26a was proposed to be deleted by the proponents because the authority to change the total number of producer members (35) on the Committee was not expected to be needed in the foreseeable future. Therefore, 989.26a should be removed from the order.

It was also proposed in the notice of hearing that § 989.26b be revised by removing the authority of the Secretary, on recommendation of the Committee, to change the size of the handler groups set forth in § 989.26 from which handler members shall be selected, the number of handlers comprising any such size group, or the number of handler members to represent any such size group. The factors to be considered in making such changes also were proposed to be removed. The proposal retained the authority in § 989.26b permitting the Secretary to change the total number of handler members on the Committee. At the hearing, the proponents testified that this authority is not needed, and therefore all of § 989.26b should be removed from the order.

Authority for the Secretary to make changes in dehydrator representation on the Committee is contained in § 989.26c. In accordance with the deletion of the provision for a dehydrator member on the Committee, as discussed earlier, § 989.26c is not needed and should be deleted from the order.

Section 989.27 should be revised by deleting the last sentence requiring the Committee to certify during April of each crop year the eligibility of each member and alternate member to serve on the Committee. The certification requirement is unnecessary because each member or the member's

organization should inform the Committee of any change in status affecting eligibility. That section should also be revised by revising the proviso at the end of the first sentence providing that any handler eligible to represent a particular size group shall continue to represent for the entire term the size group for which he was selected. The second group of handler members and alternate members would be nominated in a manner to be determined by the Committee, with the approval of the Secretary. It is possible that the Committee may decide to group handlers by size, geographic location, or other means. In recognition of this and to allow a handler member or alternate member to complete a term of office if that handler for some reason falls outside a particular group, but remains a handler, that proviso should provide that any handler eligible to represent a particular group shall continue to represent handlers for the entire term for which he was selected.

When proposed § 989.29(b) was set forth in the notice, the first sentence of § 989.29(b)(2) provided that only producers, as defined in § 989.11, and engaged as such with respect to the most recent grape crop are eligible to serve on the Committee. Also, the first sentence of § 989.29(b)(3), as published in the notice provided that only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee. Both of these sentences prescribe eligibility requirements and should be placed in § 989.27 dealing with eligibility.

As revised, § 989.27 should provide that no person shall be selected or continue to serve as a member or alternate member of the Committee who is not actively engaged in the business of the group he represents either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That only producers, as defined in § 989.11 engaged as such with respect to the most recent grape crop are eligible to serve on the Committee. Only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee. Any handler eligible to represent a particular group shall continue to represent handlers for the entire term for which he was selected.

The term of office in § 989.28 now prescribes staggered three-year terms ending April 30 for producers and one year terms ending April 30 for handler, dehydrator, cooperative bargaining association, and public members. Over

the last several years, a substantial number of incumbents have been renominated in each nomination and thus it is unnecessary to stagger terms of office to achieve continuity and the provision for staggered terms should be deleted. Furthermore, as a result of the changes in the composition of the Committee, annual nominations are unnecessary, and unduly expensive. Therefore, § 989.28 should be revised to provide that the terms of office of all Committee representatives shall be two years ending April 30 of even numbered calendar years and that each such member and alternate member shall continue to serve until the person's successor is selected and has qualified. This change would reduce the time and expense of conducting nominations annually.

In the notice of hearing, it was proposed that the term of office of Committee members and alternates end each April 30 of every odd numbered calendar year. This proposal was made in anticipation of the completion of this amendatory action in early 1983. However, at the hearing, the proponents indicated that this amendatory action should be effective by August 1, 1983, and that the incumbent members and alternates should continue to serve until April 30, 1984, not April 30, 1983, as initially proposed. In view of this, the terms of office of all Committee members and alternate members should end on April 30 of even numbered years.

Section § 989.29 pertains to the selection of initial members and the nomination of successor members of the Committee. Changes should be made in § 989.29 to conform it with the changes proposed to be made in Committee representation in § 989.26.

Section 989.29(a) pertains to the selection of initial members and alternate members of the Committee, and the nomination of successors. To conform with the changes proposed to be made in the Committee representation prescribed in § 989.26, § 989.29(a) should be revised to provide for an orderly transition from one Committee to another by specifying that members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 1984, and until their respective successors have been selected and have qualified.

Because of the change in the composition of the Committee, some changes should be made in the provisions in § 989.29(b) on nominations for successor members. The

recommended changes in composition provide for the major cooperative marketing association(s) and cooperative bargaining association(s) to nominate their candidates for producer membership, separate from independent producers and producers who are members of cooperative marketing associations who acquire less than 10 percent of the total industry acquisitions during the preceding crop year. Similar changes also are necessary in the handler nomination procedures to recognize that the major cooperative marketing association(s) would not participate with other handlers in nominating persons to fill the positions to which it was entitled.

In the notice of hearing, it was proposed to modify § 989.29(b)(1) to state that the Committee notify the cooperative marketing association(s) and the cooperative bargaining association(s) of the date by which nominations to fill Committee member and alternate member positions shall be made. The Committee also would be required to give reasonable publicity of a meeting or meetings of independent producers and independent handlers for the purpose of making nominations to fill member and alternate member positions and provide that member and alternate member nominations of independent handlers may be made to the Committee by mail in lieu of meetings.

At the hearing, the proponents indicated that producers affiliated with cooperative marketing association(s) handling a small volume of raisins (less than 10 percent of total industry acquisitions) should be eligible to represent and participate in the nomination of producers not affiliated with the major cooperative marketing association(s), and the cooperative bargaining association(s) and in the nomination of handlers not affiliated with the major cooperative marketing association(s). In recognition of this, the first sentence of § 989.29(b)(1) should be changed to provide that the Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The second sentence of § 989.29(b)(1) should specify that the Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s)

which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing associations who handled less than 10 percent of total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (c) and (d). The second sentence should also contain a proviso specifying that member and alternate member nominations by independent handlers and cooperative marketing associations who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

The proposed § 989.29(b)(2) in the notice specified nomination procedures which were limited to independent producers. However, as discussed earlier in connection with this material issue, producers affiliated with small cooperative marketing association(s) (those associations handling less than 10 percent of the total industry acquisitions during the preceding crop year) would also participate with independent producers in nominating persons to fill the producer positions allocated to the producers not associated with the major cooperative marketing association(s) or cooperative bargaining association(s) and also be able to fill these positions on the Committee if nominated. Thus, § 989.29(b)(2) should be revised so the proposed nomination procedures include both independent producers and producers affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions of the preceding crop year. As revised, § 989.29(b)(2) should provide that any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which he is nominated, to represent said district as a producer member or alternate producer member on the Committee. In the event any such nominees are engaged as producers in more than one district, they may be a nominee for only one district. One or more independent producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year may be nominated for each such producer member or alternate member position. Each independent producer

and producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. The person receiving the majority of the votes with respect to each such position to be filled shall be the person to be certified to the Secretary as the nominee. In the event no person receives a majority, there shall be a run-off vote between the two persons receiving the largest number of votes. The eligibility of each producer voting in a producer nomination meeting shall be certified by the Committee during or after the meeting, and in the event one or more producers who voted were not eligible and this may have affected the result of any nomination vote, another meeting with respect to such nominations shall be held.

The nomination procedures proposed in § 989.29(b)(3) applied only to independent handlers. However, to recognize that cooperative marketing associations which handled less than 10 percent of the total raisin acquisitions during the preceding crop year would also be able to nominate persons to fill the handler positions not allocated to major cooperative marketing association(s), § 989.29(b)(3) should provide that one or more eligible handlers for each handler position to be filled may be proposed for nomination to represent independent handlers and cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year on the Committee. Nominations shall be made by and from handlers, or employees, representatives, or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

Section 989.29(b)(4) now prescribes eligibility and nomination procedures for dehydrator members and alternate members on the Committee. As previously discussed, such representation is proposed to be deleted. Therefore, these provisions are no longer needed and they should be deleted.

Section 989.29(b)(5) now provides that each vote cast shall be on behalf of the person voting, his agents, subsidiaries, affiliates, and representatives, and that voting at each meeting shall be in

person. The results of each ballot at each such meeting shall be announced at that meeting. Voting at each such meeting of producers shall be by secret ballot, and at each meeting of handlers, and dehydrators, voting may be by secret ballot. This subparagraph was proposed to be redesignated as subparagraph (4). The third sentence was proposed to provide for the announcement of independent handler nomination results, and the last sentence was proposed to provide for the announcement of independent producer nomination results. Because representatives of cooperative marketing associations which handled less than 10 percent of the total acquisitions of the preceding crop year would participate with independent producers and independent handlers under the proposed representation and nomination procedures, the third and last sentences of redesignated § 989.29(b)(4) should provide, respectively that the results of each ballot at each handler meeting shall be announced at that meeting, and that the results of the voting at producer meetings shall be announced by the Committee following verification of the eligibility of those producers participating at such meetings.

Section 989.29(b)(6) dealing with the certification by the Committee to the Secretary of nominees for member and alternate member positions to be filled on the Committee should be redesignated as § 989.29(b)(5) to conform with the renumbering of § 989.29.

Section 989.30 relates to the selection of Committee members and alternate members by the Secretary. In the notice of hearing, that section was proposed to be revised by deleting references to dehydrator members and dehydrator alternates to conform with the proposed abolishment of the dehydrator member and alternate member positions on the Committee, as discussed earlier. At the hearing, testimony was given to make additional conforming changes in § 989.30 to reflect the recommended deletion of §§ 989.26a and 989.26b (concerning changes in producer and handler representation on the Committee). Consequently, § 989.30 should provide that the Secretary shall select producer, handler, cooperative bargaining association(s), and public members and alternate members in the number specified in § 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, handlers, or

cooperative bargaining association(s) officers or employees.

Counsel representing an independent raisin handler at the hearing opposed any change in the current Committee structure, and method of nominating and selecting members and alternate members to the Committee. It was contended that the current Committee structure and nomination system protected the interest of minority groups on the Committee. The attorney was concerned that the Committee, rather than the handlers themselves, would nominate handler representatives for the positions to which they were entitled, and urged that the handler representatives be nominated by the handlers within each group. As discussed earlier, such a procedure for nominating handler membership would be used under the proposed change. Also, the proposed changes provide a means for the producers unaffiliated with the two major cooperative associations to obtain their share of Committee membership.

Section 989.32 should be revised to delete the requirement that a member or alternate member selected to serve on the Committee must file a signed acceptance with the Secretary indicating that he/she will serve on the Committee in the position for which selected. Completion of this form is unnecessary because all the nominated members and alternate members, prior to being selected by the Secretary for the position, are given an opportunity to indicate whether or not they are willing to serve if selected. Elimination of this requirement would eliminate unnecessary paperwork.

Therefore, § 989.32 should specify that each person to be selected by the Secretary as a member or as an alternate member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

In the notice of hearing, § 989.38 "Procedure" was proposed to be changed to delete references to dehydrator members and alternate members on the Committee consistent with the proposed change in Committee composition. Testimony presented at the hearing established the need for additional conforming changes in that section; namely, to delete the fifth sentence containing references to §§ 989.26a, 989.26b, and § 989.26c because those sections are proposed to be deleted from the order. Likewise, the phrase in the second sentence, "Except as otherwise provided in § 989.45" should be deleted because § 989.45 also would be eliminated.

Therefore, § 989.38 should provide that the Committee shall meet at the call of the chairman, or vice chairman when acting as chairman, or at the call of any three members. All decisions of the Committee reached shall be by majority vote of the members present. All votes shall be cast in person and a quorum must be present. The presence of 25 members shall be required to constitute a quorum. The Committee shall give to the Secretary the same notice of meetings of the Committee as it gives to its members.

(7) Prior to 1976, the raisin industry tended to view the domestic and export markets as separate markets. Thus, when volume regulations were in effect, most reserve raisins were exported to non-Western Hemisphere markets under a two-price system. That is, the Committee would offer reserve tonnage raisins to handlers at prices set by the Committee and in a manner intended to maximize producer returns and achieve disposition of such raisins before reserve tonnage raisins from the subsequent crop year were available. In order to achieve these goals, the terms and conditions of sale set by the Committee, at times included incentives, bonuses, and special pricing terms for individual countries or groups of countries.

Since 1976, however, and as discussed in Material Issue (5), the industry has changed its marketing practices and has exported significant quantities of free tonnage to markets traditionally supplied by reserve tonnage raisins. This free tonnage included reserve raisins sold to handlers pursuant to § 989.54(d) for free use. In recent years, California's traditional export markets have been eroded by competition from lower priced raisins produced in other countries. Subsidies and other governmental aid programs have enabled other countries to undercut California's export efforts. Increasing world production of raisins, especially in South Africa, Australia, and Mexico, could result in a further erosion of U.S. exports.

The California raisin industry estimates that about 30 percent of its normal raisin production could be forced into the domestic market if it loses its export markets because of foreign government-aid programs, and increasing foreign supplies. If this occurs, U.S. producers and handlers might suffer severe losses. While consumer prices of raisins would decline in the short-run, it is expected that these prices would rise in the long-run because of production declines in response to lower producer returns.

Section 989.53 now authorizes the Committee, with the approval of the Secretary, to establish, or provide for the establishment of, marketing research and development projects designed to assist, improve, or promote the marketing distribution and consumption of raisins. The section contains examples of projects able to be implemented under that authority and guidelines for financing such activities. That section should be revised to clarify and expand that authority in order to maintain and stimulate raisin sales in domestic and foreign markets.

To give the industry the means of responding to changing marketing conditions, § 989.53 should authorize the Committee to undertake projects for the purpose of promoting the marketing, distribution, or consumption of raisins in foreign markets through the use of merchandising programs. While no specific programs were suggested at the hearing, the authority for such programs should be broad enough to permit the use of free tonnage and reserve tonnage raisins in these programs.

In order to reduce the sales price to ultimate purchasers, merchandising programs could include price or volume discounts. For example, a merchandising program could provide a handler with X tons of reserve tonnage for so many tons of free tonnage raisins sold in foreign markets. A price discount could be provided to a foreign purchaser for purchasing a certain amount of California raisins regardless of whether or not he purchased free or reserve tonnage. Another example would be Committee sales of reserve raisins to handlers at reduced prices if they reached certain quantity goals set by the Committee in a particular export market or markets to encourage them to continue to ship raisins into that market or markets. Any price or volume discounts must be consistent with all applicable trade and antitrust regulations.

The Secretary should be able to determine whether a need existed for a particular merchandising program and whether the program was an effective and equitable way to promote the marketing of California raisins in foreign markets before it is implemented by the Committee. Therefore, the order should provide that each such program be developed by the Committee and presented to the Secretary for review and approval.

Merchandising programs could involve the use of administrative assessments collected pursuant to § 989.80, and/or proceeds from sales of reserve raisins. If a merchandising

program involves only free tonnage raisins, the cost of this program should be from assessment funds collected pursuant to § 989.80. The expense of any project relating solely to reserve raisins should be paid from reserve pool proceeds. If a program involves both free and reserve raisins, and is designed to promote the consumption of raisins generally on a long-term basis, the expenses should be allocated between assessment and reserve funds. Any allocation system should be developed by the Committee subject to the approval of the Secretary.

Considerations by the Committee in arriving at an allocation could include but not be limited to such factors as whether sufficient assessment and reserve funds are available to sustain a viable merchandising program. Or, the decision could be based on the relative benefits to California raisin producers of using the reserve to offset the necessary promotional costs to assure the full marketing of all California raisins. Other factors, unforeseen at this time, but relevant to the particular marketing situation, may also be used in the future.

The Act was amended May 15, 1978, to authorize the addition of marketing promotion including paid advertising to the order to promote the marketing, distribution, and consumption of raisins. The industry has been conducting raisin promotion and paid advertising under a state order and it plans to continue to promote and advertise raisins under that authority. However, the evidence of record is that the authority in the Act for such activities should be included in § 989.53. Proponents testified that, at some future time, the industry may need to conduct generic marketing promotion and advertising activities under the order. These could be either in domestic or foreign markets and similar to those now being conducted under the state order. Before such activities are undertaken under the order, operational and procedural guidelines should be recommended by the Committee and established in rules and regulations approved by the Secretary.

The Act contains provisions authorizing the crediting of the pro rata expense assessment obligation of a handler with such portion of his direct expenditures for marketing promotion including paid advertising as may be authorized under the order.

It was testified that the order should provide for such crediting and that criteria applicable to crediting should be set forth in rules and regulations before any such activities are undertaken by the Committee. It also was testified that the order should provide the Committee with flexibility to implement crediting

activities like those current under the state order. Of course, any such activities would have to be consistent with the Act to be implemented under the order.

The major responsibility for applications and justification of crediting under the order should rest with the individual handlers. Also, under the proposed crediting system, a handler should not be permitted to qualify for excess credits. That is, the amount of credit a handler could claim should be limited to the amount of his total assessment obligation designated for marketing promotion, including paid advertising.

For example, the assessment obligation of a handler is \$200 and \$100 of this is earmarked for marketing promotion including paid advertising; if the handler spends \$110 for creditable advertising, his credit should be limited up to the amount of his assessment attributable to marketing promotion including paid advertising, or \$100. The remaining \$10 should not be carried over into subsequent crop years nor should such excess amount be transferable to another handler. If a handler claims credit for less than that portion of his assessment obligation attributable to marketing promotion including paid advertising, the balance of such obligation should be payable to the Committee for use by the Committee in generic promotion or paid advertising projects, in all likelihood in a succeeding crop year.

Operations under § 989.53, which would authorize the Committee's generic promotion and advertising program and the assessment crediting for handler generic and brand promotion and advertising, should conform to such guidelines for those activities as the Secretary may require. Guidelines could stipulate that no promotion or advertising should disparage the quality, use, value, or sale of any other agricultural commodity or product, and that no false or unwarranted claims be made in conjunction with an advertised or promoted product. Any such guidelines should be recommended by the Committee and approved by the Secretary and set forth in rules and regulations. Also, the Committee, upon the conclusion of each activity, but at least annually, should cause the results of such activities to be summarized to its members and to the Secretary.

At the hearing, an attorney representing a raisin handler indicated that his client supported the proposed changes in § 989.53 allowing the industry to respond quickly to changing marketing conditions. However, the attorney expressed concern whether the

proposal gives the industry necessary flexibility and whether proposed § 989.53(b) would allow crediting to be applied to all handlers on a uniform basis. Proponents' objective was to give general direction to the Committee within the authority in the Act in the areas discussed on this material issue. The operational and procedural criteria together with specific programs would be developed by the Committee after the effective date of this amended subpart and be established in rules and regulations approved by the Secretary. The rules and regulations would establish the basis for the uniform regulation of any activity carried out under the proposed changes in § 989.53.

Consistent with the proponents' desire for flexibility, the order should not restrict or prohibit any generic or brand promotion or advertising activity deemed desirable by the Committee to promote the consumption of raisins, raisin products, or their uses in domestic or foreign outlets, or prevent it from granting assessment credit for handler guidelines for those activities as the Secretary may require. Guidelines could stipulate that no promotion or advertising should disparage the quality, use, value, or sale of any other agricultural commodity or product, and that no false or unwarranted claims be made in conjunction with an advertised or promoted product. Any such guidelines should be recommended by the Committee and approved by the Secretary and set forth in rules and regulations. Also, the Committee, upon the conclusion of each activity, but at least annually, should cause the results of such activities to be summarized to its members and to the Secretary.

At the hearing, an attorney representing a raisin handler indicated that his client supported the proposed changes in § 989.53 allowing the industry to respond quickly to changing marketing conditions. However, the attorney expressed concern whether the proposal gives industry the necessary flexibility and whether proposed § 989.53(b) would allow crediting to be applied to all handlers on a uniform basis. Proponents' objective was to give general direction to the Committee within the authority in the Act in the areas discussed on this material issue. The operational and procedural criteria together with specific programs would be developed by the Committee after the effective date of this amended subpart and be established in rules and regulations approved by the Secretary. The rules and regulations would establish the basis for the uniform

regulation of any activity carried out under the proposed changes in § 989.53.

Consistent with the proponents' desire for flexibility, the order should not restrict or prohibit any generic or brand promotion or advertising activity deemed desirable by the Committee to promote the consumption of raisins, raisin products, or their uses in domestic or foreign outlets, or prevent it from granting assessment credit for handler expenditures for activities in these areas when the Committee determines that they are needed to maintain existing raisin markets or stimulate raisin sales. In view of all of the foregoing, proposed § 989.53 should be adopted, except for changing the word "incentive" to "merchandising".

As discussed earlier under Material Issue (3), § 989.80 provides for the collection of handler assessments for the maintenance and functioning of the Committee. In order to implement proposed § 989.53, the first sentence of § 989.80(a) should be amended by adding at the end of that sentence the words, "less any amounts collected pursuant to § 989.53". This conforming change is necessary to eliminate the possibility of handlers having to remit assessments, and of the Committee having to refund excess assessments to handlers when the handlers make expenditures for authorized creditable promotion or advertising.

There was some discussion at the hearing concerning the need to specify reporting and recordkeeping authority in conjunction with handler creditable advertising. Any implementing rules and regulations would prescribe the documents necessary for a handler to establish proof of performance to the satisfaction of the Committee. If the Committee cannot determine any handler's performance from the documentation submitted, it should have the authority to request additional information before granting assessment credit to the handler. Authority to require reports and other information to enable the Committee to administer effectively any assessment credit program it later implements should be contained in § 989.73. Any such reporting requirements should be recommended by the Committee and approved by the Secretary. To accomplish this, current § 989.73(c) should be redesignated as paragraph (d), and a new paragraph (c) should require each handler to file such reports of creditable promotion including paid advertising as recommended by the Committee and approved by the Secretary.

Rulings on Briefs of Interested Persons: At the end of the hearing, the

Administrative Law Judge fixed October 1, 1982, as the final date for interested persons to file proposed findings and briefs, based upon the evidence presented at the hearing. A brief was filed by the Raisin Administrative Committee.

Each point included in the brief was carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. To the extent that any suggested findings or conclusions contained in the brief or argument are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of facts found and stated in connection with the recommended decision.

General Findings: Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins produced from grapes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(5) There are no differences in the production and marketing of raisins produced from grapes grown in the

production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of raisins produced from grapes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Recommended Amendment of the Marketing Agreement and Order. The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. Section 989.10 is revised to read as follows:

§ 989.10 Varietal types.

"Varietal types" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Seedless, Dipped Seedless, Golden Seedless, Muscats (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Oleate and Related Seedless: *Provided*, That the Committee may, subject to approval of the Secretary, change this list of varietal types.

§ 989.19 [Removed]

2. Section 989.19 is removed.

3. Section 989.22 is revised to read as follows:

§ 989.22 District.

"District" means any one of the geographical areas referred to in § 989.26, and designated in the rules and regulations.

4. Section 989.26 is revised to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 47 members of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association(s) and 1 shall be a public member. The producer members shall be selected as follows:

(a) Producer members representing the cooperative marketing association(s) shall be members of such association(s)

engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year.

(b) Producer members representing cooperative bargaining association(s) shall be members of such associations, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(c) All other producer members who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraph (a) or (b) of this section and shall be selected in the number and, when appropriate, for the districts as designated in the rules and regulations.

(d) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 10 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(e) The bargaining association(s) member shall be selected from the cooperative bargaining association(s).

The public member shall be nominated by the Committee and selected by the Secretary as a public member.

(f) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.26a [Removed]

5. Section 989.26a is removed.

§ 989.26b [Removed]

6. Section 989.26b is removed.

§ 989.26c [Removed]

7. Section 989.26c is removed.

8. Section 989.27 is revised to read as follows:

§ 989.27 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the Committee who is not actively engaged in the business of the group which he represents either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That only producers, as defined in § 989.11, engaged as such with respect to the most recent grape crop, are eligible to serve on the Committee. Only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee. Any handler eligible to represent a particular group shall continue to represent handlers for the entire term for which he was selected.

9. Section § 989.28 is revised to read as follows:

§ 989.28 Term of office.

The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified.

10. Section § 989.29 is revised to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 1984, and until their respective successors have been selected and qualified.

(b) *Nominations for successor members.* Nominations for successor members and alternate members of the Committee shall be made as follows:

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing associations which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing associations who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (c) and (d): *Provided*, That member and alternate member nominations by independent handlers and cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which he is nominated, to represent said district as a producer member or alternate producer member on the Committee. In the event any such nominees are engaged as producers in more than one district, they may be a nominee for only one district. One or more producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year may be nominated for each such producer member or alternate member position. Each independent producer and producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. The person receiving the majority of the votes with respect to each such position to be filled shall be the person to be certified to the Secretary as the nominee. In the event no person receives a majority, there shall be a run off vote between the two

persons receiving the largest number of votes. The eligibility of each producer voting in a producer nomination meeting shall be certified by the Committee during or after the meeting, and in the event one or more producers who voted were not eligible and this may have affected the result of any nomination vote, another meeting with respect to such producer nominations shall be held.

(3) One or more eligible handlers for each handler position to be filled may be proposed for nomination to represent independent handlers and cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year on the Committee. Nominations shall be made by and from handlers, or employees, representatives or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Each vote cast shall be on behalf of the person voting, his agent, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The results of each ballot at handler meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot. The results of the voting at producer meetings shall be announced by the Committee following the verification of the eligibility of those participating at such meetings.

(5) Each nomination shall be certified by the Committee to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

11. Section 989.30 is revised to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, cooperative bargaining association(s), and public members and alternate members in the number specified in 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, handlers, or cooperative bargaining association(s) officers or employees.

12. Section 989.32 is revised to read as follows:

§ 989.32 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

13. Section 989.35 is amended by adding a new paragraph (d) reading as follows:

§ 989.35 Powers.

(d) To receive, investigate, and report to the Secretary complaints of violations of this part.

14. Section 989.36 is amended by redesignating *seriatim* current paragraphs (b) through (k) as paragraphs (c) through (l), and adding a new paragraph (b) reading as follows:

§ 989.36 Duties.

(b) To investigate compliance and to use means available to it to prevent violations of this part.

15. Section 989.38(j), redesignated as § 989.36(k) is amended by removing the words "and the making of nominations to the Secretary for member and alternate member positions on the Executive Operations Committee".

16. Section 989.38 is amended by removing the phrase "Except as otherwise provided in § 989.45," from the second sentence, and by removing the fifth sentence. As amended, § 989.38 reads as follows:

§ 989.38 Procedure.

The Committee shall meet at the call of the chairman, or vice-chairman when acting as chairman, or at the call of any three members. All decisions of the Committee reached shall be by majority vote of the members present. All votes shall be cast in person and a quorum must be present. The presence of 25 members shall be required to constitute a quorum. The Committee shall give to the Secretary the same notice of meetings of the Committee as it gives to its members.

§ 989.39 [Amended]

17. Section 989.39 is amended by removing the words "and the Executive Operations Committee," from the first sentence.

§ 989.43 through 989.52 [Removed]

18. Sections 989.43 through 989.52 and the center heading "Executive Operations Committee" preceding § 989.43 are removed:

19. Section 989.53 is revised to read as follows:

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving marketing research and development and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

(1) Improve through research the accuracy of raisin production estimates;

(2) Improve through research the preparation for market, sanitation, quality, condition, storability, processing, or packaging of raisins;

(3) Ascertain through research the factors affecting acceptance of raisins by manufacturers or consumers;

(4) Promote the marketing, distribution, or consumption of raisins in domestic and foreign markets by collecting data thereon, consulting with members of the trade, and making the information available to producers, handlers, and exporters; and

(5) Promote the marketing, distribution, or consumption of raisins in foreign markets through the use of merchandising programs.

The expense of any such project relating solely to free tonnage raisins shall be paid from funds collected pursuant to § 989.80. The expense of any such project relating solely to reserve tonnage raisins shall be paid from the sale proceeds of such raisins. If any such project encompasses both free tonnage and reserve tonnage raisins, such as one which is designed to promote the consumption in export outlets of raisins generally on a long-term basis, the expense of the project may be allocated between the assessment fund and the pool fund.

(b) *Creditable expenditures.* The Committee, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion, including paid advertising, that promotes the sale of raisins, raisin products, or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of his assessment obligation which is attributable to that portion of his assessment designated for marketing promotion including paid advertising.

(c) *Criteria.* Before any project involving marketing promotion, including paid advertising, and the

crediting of the handler's pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary, after recommendation by the Committee, shall approve appropriate criteria to effectively regulate such activity.

20. Section 989.54 is revised to read as follows:

§ 989.54 Marketing policy.

(a) *Trade demand.* On or before August 15 of each crop year, the Committee shall hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee shall compute a trade demand. The trade demand shall be 90 percent of the prior crop year's shipments (converted to a natural condition weight) of free tonnage and reserve tonnage sold for free use for that varietal type, into all market outlets, adjusted by the carry-in on August 1 of the current crop year and the desirable carryout for that varietal type at the end of that crop year. If the prior year's shipments were limited because of crop conditions, the Committee may select the shipments of one of the three years preceding the prior crop year. The desirable carryout shall be increased from 35,000 to 50,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years, following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and for Oleate and Related Seedless raisins, 1,500 tons. The trade demand computed by the Committee shall be announced by the Committee in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or before October 5 of each crop year (except that the Committee may extend this date not more than five business days if warranted by a late crop), the Committee shall estimate the production of any varietal type of raisins for which it has computed a trade demand. If the Committee determines that volume regulation is desirable during the crop year for that varietal type, it shall compute and announce preliminary free and reserve percentages for that varietal type. The Committee shall compute a preliminary free percentage to release 85 percent of the computed trade demand, if it determines that a field price has been established for that varietal type, or 65 percent of the trade demand if no field price has been established. The preliminary free percentage shall be computed by multiplying the trade

demand by either 85 percent or 65 percent (as the case may be) and dividing the product by the estimated production of that varietal type and rounding the resulting percentage to the nearest full percent. The difference between 100 percent and the preliminary free percentage shall be the preliminary reserve percentage.

(c) *Interim percentages.* Prior to February 15, the Committee may modify the preliminary free and reserve percentages to release less than the trade demand.

(d) *Final percentages.* No later than February 15, the Committee shall recommend, to the Secretary, final free and reserve percentages which will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. The difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage. With its recommendation, the Committee shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Committee shall give consideration to the following factors:

(1) The estimated tonnage held by producers, handlers, and for the account of the Committee at the beginning of the crop year;

(2) The expected general quality and any modifications of the minimum grade standards;

(3) The estimated tonnage of standard and off-grade raisins which will be produced;

(4) If different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets;

(5) If not estimated as provided in paragraph (a) of this section, an estimated desirable carryout at the end of the crop year for free tonnage and, if applicable, for reserve tonnage;

(6) The estimated market requirements for raisins outside free tonnage outlets, considering the estimated world raisin supply and demand situation;

(7) Current prices being received and the probable general level of prices to be received for raisins by producers and handlers;

(8) The trend and level of consumer income;

(9) Any prohibition of trade practices, pursuant to § 989.62, intended for the crop year; and

(10) Any other pertinent factors bearing on the marketing of raisins including the estimated supply of and demand for other varietal types and regulations applicable thereto.

(f) *Modification.* In the event the Committee subsequently deems it advisable to modify its marketing policy on any crop, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the Committee shall make two simultaneous offers of reserve tonnage to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced. One offer shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use into all market outlets to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. The second offer, to provide for market expansion, shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use. This offer shall be allocated to handlers on the basis of their prior year's shipments of free tonnage and reserve tonnage sold for free use. Each offer shall be open to handlers not more than five business days, and subsequently, two offers of any tonnage unsold in the original offers open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers, and shall be on the basis of the quantity each handler purchased, as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer, any remaining tonnage may be offered to handlers who purchased all of their allocations from previous offers on a first-come first-served basis and such offer shall be open to handlers for one business day. Any handler who had no shipments or acquisitions of raisins

during the prior crop year will be allocated raisins under these offers on the basis of this acquisitions (up to the time the original offer is made) of raisins in the current crop year. If field prices are not established, the offer shall be made not more than fifteen days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage, pursuant to this paragraph, shall be the established field price for free tonnage raisins of that varietal type, plus 3 percent of the established field price, plus the estimated costs incurred by the Committee for equity holders.

(h) **Publicity.** The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators, and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation of the trade demand, preliminary percentages, and interim percentages and shall notify handlers, dehydrators, and the cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail.

21. Section 989.55 is revised to read as follows:

§ 989.55 Regulation by the Secretary.

Whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee or from other available information, that to designate final free and reserve percentages for any varietal type of standard raisins acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. In the event the Secretary finds that suspension or termination of any percentages computed by the Committee or designated by the Secretary tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such percentages.

22. Section 989.65 is revised to read as follows:

§ 989.65 Free and reserve tonnage.

The standard raisins acquired by handlers which are free tonnage, and any reserve tonnage purchased for free use, may be disposed of by him in any marketing channel, subject to the applicable provisions of this part. A handler's free tonnage of a varietal type of raisin shall be either the free percentage of the standard raisins of the varietal type acquired by him or all of the standard raisins of the varietal type acquired by him if not free percentage is established by the Committee or designated by the Secretary for that varietal type. A handler's reserve tonnage of a varietal type shall be the reserve percentage of the standard raisins of that varietal type acquired by him.

§ 989.66 [Amended]

23. Section 989.66 is amended by removing the proviso in paragraph (b)(1) and changing the punctuation after the word "control" from a colon (:) to a period (.)

§ 989.67 [Amended]

24. Section 989.67(j) is amended by changing the reference from "§ 989.54(d)" to "§ 989.54(g)".

§ 989.69 [Removed]

25. Section 989.69 is removed.

26. Section 989.73 is amended by redesignation current paragraph (c) as (d), and adding a new paragraph (c) reading as follows:

§ 989.73 Reports.

(c) Each handler shall file such reports of creditable promotion including paid advertising as recommended by the Committee and approved by the Secretary.

§ 989.76 [Amended]

27. Section 989.76 is amended by adding the following sentence at the end of that section reading as follows: "The Committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail promotion and advertising activities which the Committee may need to perform its functions under § 989.53."

§ 989.77 [Amended]

28. Section 989.77 is amended by adding at the end of the first sentence the phrase "and promotion and advertising activities conducted by handlers under § 989.53".

29. The first sentence of § 989.80(a) is amended by adding at the end of the sentence the words, "less any amounts credited pursuant to § 989.53."

30. Section 989.80 is revised by adding paragraph (d) to read as follows:

§ 989.80 Assessments.

(d) Each handler shall, with respect to administrative assessments not paid within 30 calendar days of the date of the Committee's invoice, pay to the Committee interest on the unpaid assessment at the rate of the prime rate established by the bank in which the Committee has its administrative assessment funds deposited, on the day that the administrative assessment becomes delinquent plus 2 percent; and further, that such rate of interest be added to the bill monthly until the delinquent handler's assessment plus applicable interest has been paid: *Provided*, That the Committee may, with the approval of the Secretary, modify the interest rate applicable to delinquent handler's assessment through the establishment of applicable rules and regulations.

§ 989.85 [Amended]

31. Section 989.85 is amended by removing the words "and no member or alternate member of the Executive Operations Committee".

§ 989.95 [Amended]

32. Section 989.95 is amended by removing the words: "and the Executive Operations Committee" from the first sentence; "or of the Executive Operations Committee" from the second sentence, and "or the Executive Operations Committee" from the third sentence.

Signed at Washington, D.C. on March 29, 1983.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-6699 Filed 4-5-83; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Temporary Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to adopt amendments to its "Rules of Practice for Domestic Licensing

Proceedings" in 10 CFR Part 2 and to its regulations in 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," providing for the issuance of temporary operating licenses for nuclear power reactors. Public Law 97-415, enacted on January 4, 1983, amended section 192 of the Atomic Energy Act of 1954 (the Act), to authorize the NRC to issue such licenses. Section 192, initially added to the Act on June 2, 1972, authorized the Atomic Energy Commission (AEC) to issue temporary operating licenses for nuclear power reactors under certain prescribed circumstances. (The AEC's licensing authority was transferred to the NRC in 1975.) The authority under the original section 192 expired, however, on October 30, 1973. To the extent that the amended section 192 is in substance the same as the original section, the implementing regulations in the amendments to Parts 2 and 50 are also similar in substance to the now expired regulations which were initially published in 1972 to implement the section. The proposed amendment to Part 2 and 50 set out below are designed to conform Commission regulations and procedures to the new temporary operating licensing authority.

DATE: Comment period expires May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as the comments received on or before this date.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received on the amendments as well as on the Regulatory Analysis prepared in connection with the amendments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Background

After the March 1979 accident at the Three Mile Island nuclear power plant, the NRC focused its attention on evaluating the accident and its implications for the safe regulation of nuclear power in this country and on developing the necessary regulatory

improvements for continued operation of nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although NRC applied only very limited effort to preparing and meeting the necessary safety reviews and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this state of affairs, in late 1980 it was argued that there was a possibility that delays would occur between the time when construction of some of these plants would be sufficiently completed to allow fuel loading and the start of operations and the time when all requirements for the issuance of operating licenses (including the hearing requirements of the Atomic Energy Act) would be met.

Under the Atomic Energy Act of 1954, as amended (the Act), no person may operate a nuclear power plant without first obtaining an operating license from the NRC. A formal on-the-record evidentiary hearing must be held—and a decision rendered on the basis of that record—if requested by any person whose interest may be affected, before the Commission may issue an operating license. Before the enactment of Pub. L. 97-415, in a case where a hearing is held, the Commission lacked the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; a utility was required instead to await authorization in the course of the hearing process. See 10 CFR 50.57(c).

It continues to be argued that, notwithstanding the administrative changes to the licensing process designed to reduce the time required to complete the licensing of these plants, there remains a possibility that some licensing delays might occur for some of the plants scheduled to be completed before the end of 1983. In order to obviate the possibility of such delays ever occurring, on March 18, 1981, the Commission submitted a legislative proposal to amend the Act so as to authorize the Commission to issue a temporary operating license for a nuclear power plant, allowing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues relating to the final operating license. Pub. L. 97-415 is the final legislative product of the Commission's proposal. It is an "extraordinary and temporary cure for an extraordinary and temporary situation." Conf. Rep. No. 97-884, 97th Cong., 2d Sess. at 35 (1982).

General

A person applying for an operating license for a nuclear power plant, which is licensed under sections 103 or 104b. of the Act and as to which a hearing is otherwise required under section 189a. of the Act, could apply for a temporary operating license, pending final action by the Commission on the application for the final operating license. The temporary operating license for the facility would authorize fuel loading, testing and operation at a specific power level to be determined by the Commission. The initial petition would have to be limited to power levels not to exceed 5 percent of the nuclear facility's rated full thermal power, and the Commission could not initially authorize a higher power level. After the temporary operating license is issued, the licensee may file one or more additional petitions with the Commission to allow facility operation up to full power in staged increases in power level beyond the initial 5 percent limitation. All authorizations for temporary operating licenses under section 192 and these implementing regulations must be pursuant to a vote and a final order of the Commission itself and cannot be delegated to the NRC staff. The authorizations themselves lie within the discretion of the Commission. This means, among other things, that the Commission in a temporary operating license would authorize both a given power level and the time it deems appropriate for operation at that level before issuance of the full power license.

The present authority and procedures in § 50.57(c) of the regulations (under which a presiding Atomic Safety and Licensing Board may, on motion, and after a decision based on the evidentiary record or upon agreement of the parties to the contested proceeding, authorize the issuance of a fuel load or low-power and testing license) remain available and are not affected at all by these regulations implementing section 192 of the Act. In other words, the new § 50.57(d) (described below) for temporary operating license authority is not coupled to the present § 50.57(c), and a licensee proceeding under § 50.57(c) may also proceed separately under § 50.57(d) without any rights being waived under § 50.57(c). If a licensee already has a low power license and wishes to go to higher or full power using the temporary operating license procedure (that is, it wants to translate its low power authority under § 50.57(c) to low power authority under § 50.57(d) and then to go to higher power under

§ 50.57(d) for some specified time period), it should show that it is in satisfactory compliance with § 50.57(d) and that the temporary operating license for low power would be in all respects the same as or more restrictive than the low power license. Although the Commission does not wish to require *pro forma* acts, a licensee in the situation described above should show that the time periods and authorized power level for both types of licenses are compatible. Additionally, to simplify the Commission's considerations, it should show that the parties affected by this situation (ordinarily the parties in the proceeding under § 50.57(c)) have not waived their rights and agree to its proposed course of action; consequently, to make sure that there truly is an agreement and that everyone's rights are being protected, the Commission expects licensees to demonstrate to it (under the procedures described in § 2.301 *et seq.*, described later) that affected parties were on notice of and have not objected to the licensee's proposed action. If a licensee does not or can not make such a showing, the Commission may still issue the temporary operating license, but may use additional procedures to make its decision.

In delineating the circumstances under which petitions may be filed and conditions under which the Commission may exercise its authority, the proposed rule carefully follows the prescriptions in section 11 of Pub. L. 97-415. These provisions are reflected in the proposed amendments to Parts 2 and 50 set out below. In essence, these amendments would establish a detailed procedural framework for considering and issuing temporary operating licenses. Section 192, as amended, and its accompanying legislative history clearly contemplate that the procedural framework is both useful and needed to govern the Commission's actions in exercising the new authority and to preserve for the public its right to participate in licensing decisions.

**Proposed Subpart C to CFR Part 2—
"Procedures Under Section 192 for the
Issuance of Temporary Operating
Licenses."**

Subpart C would simply add procedural requirements to 10 CFR Part 2 needed to implement the temporary operating licensing authority in section 192 of the Act as provided for in a new § 50.57(d) of 10 CFR Part 50. Unlike the hearing process on the final operating license, the temporary operating licensing process would not be subject to the hearing requirements of section 189a. of the Act, to the requirements of

subpart A, or to all the requirements of subpart G of the Rules of Practice in 10 CFR Part 2. However, certain sections of subpart G would be applied to resolve needless controversy about such items as the filing of papers, service on parties, and so on. These are 10 CFR 2.701, 2.702 and 2.708—2.712, relating to service and filing of documents, maintaining a docket, and time computations and extensions; § 2.713, relating to appearance and practice before the Commission; § 2.758, generally prohibiting challenges to the Commission's rules; and § 2.772, generally granting the Commission's Secretary the authority to rule on procedural matters.

It should be noted that 10 CFR 2.719 and 2.780, relating to separation of functions and *ex parte* communications, would not apply. However, the Commission is sensitive to the concern that the informal contacts that would be allowed thereby should not be extensive and that they should not result in significant data or argument that are both relied on by the Commission in its temporary operating licensing decision and unavailable to the parties for comment before the decision. Thus, if informal contacts do take place which provide significant data or argument and which are both relied on by the Commission and unavailable to the parties, then that data or argument will be made available for comment before the decision. The Commission's decision not to apply separation of functions and *ex parte* rules to temporary operating licensing reflects a preference not to apply rules intended for formal, trial type proceedings, and is based on the belief that operating licensing and temporary operating licensing proceedings on a given plant are separate proceedings for the purpose of application of the formal hearing requirements of the Administration Procedure Act (APA). The amendment to section 192 of the Atomic Energy Act (Act) states that section 189a. of the Act does not apply to a temporary operating licensing proceeding; thus, if section 189a. does not apply, then the APA's formal hearing requirements do not apply either. Furthermore, the Commission's consideration of informal communications with the parties in an informal temporary operating licensing proceeding would not prevent the Commission from eventually considering, as necessary, issues arising from the formal operating licensing proceeding. Information provided in the informal proceeding will not be used in the formal proceeding, unless it is formally included in the record.

It bears mention that the Conference Committee noted that, under section 192 the Commission cannot issue a temporary operating license before "all significant safety issues specific to the facility in question have been resolved to the Commission's satisfaction." See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. at 35 (1982).

Subpart C provides all of the necessary procedural guidance regarding requests for, and Commission authorization of, temporary operating licenses. Briefly, Subpart C would provide:

- For the petition for a temporary operating license or for an amendment to that license to be filed in the form of a written motion. The written motion, with supporting affidavits, must be served on all parties to the proceeding for the issuance of the final operating license.

- The initial petition must be limited to power levels not to exceed 5 percent of rated full thermal power. After the issuance of the temporary operating license, the licensee may file subsequent petitions with the Commission to amend the temporary operating license by incremental increases in power levels in excess of the initial 5 percent limitation. Each new petition can request only one incremental increase.

- The proposed subpart provides general guidance on the contents and requirements for affidavits which may be filed in support of or in opposition to petitions for the issuance, or the amendment, of temporary operating licenses.

- The Proposed rules provide for prompt publication of notices of petitions for temporary operating licenses as well as for amendments to such licenses and also provide for a 30-day period for public comment. The notice will inform interested persons about the way they can obtain access to the petition and its supporting affidavits. Such access is needed so that such persons might, as the rules also provide, file responsive affidavits to the petition.

- The proposed rules do not specify a time after the 30-day public comment period for Commission action on the petition. In keeping with the purpose of the temporary operating license authority, the proposed rules provide that the Commission will act as expeditiously as possible on petitions for temporary operating licenses and for amendments to such licenses.

- Issuance of a temporary operating license or an amendment must be pursuant to a final order of the Commission itself, which recites the reasons called for in section 192 of the Act and in § 50.57(d) of the regulations.

As called for by the legislation, the order would be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission would be subject to judicial review under section 189b. of the Act. It should be noted that, pursuant to the legislation, the requirements of section 189a. of the Act would not apply to the issuance or amendment of a temporary operating license. Thus, the legislation authorizes the Commission to use procedures other than formal adjudicatory procedures in issuing a temporary operating license. In this regard, the Commission will develop informal procedures case-by-case to resolve particular issues as they arise.

- The proposed rules restate the procedural constraints in section 192 to assure that the issuance of a temporary operating license does not prejudice the outcome of the licensing hearing for the final operating license for that nuclear power plant or prejudice the rights of any party to the hearing to raise any proper issue in that hearing and to have that issue decided.

- The proposed rules require, as does section 192, that any party to the final operating license hearing, or any licensing board member conducting the hearing, promptly notify the Commission about any information made available as part of that hearing: (1) That the terms and conditions of the temporary operating license are not being met or (2) that they are insufficient to provide reasonable assurance that operation of the facility during the period of the temporary operating license will provide adequate protection to the public health and safety and to the environment.

- The proposed rules state that a temporary operating license is subject to modification, suspension or revocation, or to the imposition of civil penalties pursuant to sections 186 and 234 of the Atomic Energy Act and subpart B of 10 CFR Part 2.

- Finally, it should be noted that, pursuant to section 192d. of the Act, the Commission will exert its best efforts to adopt appropriate administrative remedies to minimize the need for the issuance of temporary operating licenses. This is in keeping with the conferees' agreement in the Conference Report that a temporary operating license should be a "last resort remedy, to be employed only when no other alternative is available." Conf. Rep. No. 97-884, 97th Cong., 2d Sess. at 36 (1982).

The Commission will also ensure that any administrative remedies it adopts will not themselves infringe upon the right of any party to a full and fair hearing under the Act, again in keeping with the conferees' expectations. *Id.* And, lastly, the Commission will notify the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate of all administrative remedies it proposes to adopt, also in keeping with the conferees' intentions. *Id.*

Proposed § 50.57(d) of 10 CFR Part 50

A new § 50.57(d) would be added to reflect the substance of the temporary operating licensing authority granted by Public Law 97-415 and the special provisions which must be satisfied before the Commission exercises this authority. Pursuant to section 11 of Pub. L. 97-415 and § 50.57(d), the following requirements would be applicable to a petition for and the issuance of a temporary operating license and amendments to that license:

- A petition for the issuance of a temporary operating license could not be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff's initial safety evaluation report (SER) and the staff's supplement to this report (SSER) prepared in response to the ACRS report for the plant, the NRC staff's final environmental statement, and, a State, local or utility emergency plan have been filed.

- The initial petition for a temporary operating license and amendments to that license would be handled as described before.

- After the issuance of a temporary operating license, subsequent petitions from the utility for increased power levels, notice and public comment periods on each new petition, and the determinations by the NRC called for by section 192 (and implemented in this new § 50.57(d)) would be required before the Commission could allow operation at power levels beyond the initial 5 percent low-power testing level.

- Before issuing a temporary operating license or amending the license to allow the operation at an increased power level, NRC must provide notice of the request for such authority and a 30-day period for public comment.

- Upon the expiration of the 30-day comment period, the Commission could issue the temporary operating license, or amend the license to allow temporary operation at a power level in excess of

the initial license limitation, as the case may be, if the Commission itself determined that: (1) All requirements of law other than the conduct or completion of any required hearing on the final operating license are met; (2) in accordance with such requirements, there is reasonable assurance temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection to the public health and safety and the environment; and (3) denial of the temporary operating license will result in delay between the time when the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the time when a final operating license for the facility would otherwise be issued. For a petition to amend the temporary operating license to permit operation at a power level in excess of 5 percent of the facility's rated full thermal power, the Commission's findings must, of course, be directed to operation at the increased power level which would be authorized by the amendment.

- Any final Commission order authorizing the issuance of a temporary operating license pursuant to section 192 (*i.e.*, as distinguished from an order which may be issued by a presiding Atomic Safety and Licensing Board under paragraph (c) of § 50.57) of the Act must recite with specificity the reasons justifying the findings required by that section and § 50.57(d). The order must be sent upon issuance to the Committees described before.

- The temporary operating license would contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

- The Commission would suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license (and on which a hearing under section 189a. is being conducted) with due diligence. The Commission could, of course, suspend the license for other reasons, such as in the interest of public health and safety.

- Section 192 provides that the Commission's authority to issue new temporary operating licenses shall expire on December 31, 1983. Since the Commission cannot issue new temporary operating licenses after December 31, 1983, it expects any licensee that wishes to apply for such a license to do so before November 23, 1983, to allow it to act before its

authority expires. See § 2.301. Licensees should also note that their licenses will not expire on that date. Section 192 simply states that the Commission's authority to issue a new temporary operating license, if it finds that the applicant is not prosecuting its application for the final operating license with due diligence. See § 2.306. Finally, where the Commission has issued a new temporary operating license before December 31, 1983, and, subsequently, the licensee requests an amendment to that license, this provision does not preclude the Commission from amending that license after December 31, 1983.

Paperwork Reduction Act Statement

This proposed rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection reviewable by the Office of Management and Budget under the Paperwork Reduction Act.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these proposed amendments, assessing the costs and benefits and resource impacts. It may be examined at the address indicated above.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 2 and 50 is contemplated.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information,

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Inter-governmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 68 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 68 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135). The provisions of subpart C also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133).

2. A new Subpart C is added to 10 CFR Part 2 to read as follows:

Subpart C—Procedures under Section 192 for the Issuance of Temporary Operating Licenses.

§ 2.300 Scope of subpart.

This subpart prescribes the procedures for issuing a temporary operating license and specifies the framework for Commission determinations. These procedures apply in any proceeding where an applicant has applied for a final operating license for a utilization facility (licensable under sections 103 or 104b. of the Atomic Energy Act (Act) and otherwise requiring a licensing hearing pursuant to section 189a.) and the applicant,

pursuant to section 192 of the Act and § 50.57(d) of this chapter, petitions the Commission for a temporary operating license authorizing fuel loading, testing, and initial low power operation (or for an amendment authorizing operation at an increased power level), pending action by the Commission on the application for the final operating license.

§ 2.301 Filing of petition and accompanying affidavits.

(a) Before November 23, 1983, an applicant for an operating license may file a written petition for a temporary operating license with the Commission for each such facility. The applicant must serve the petition, including the accompanying affidavits, on all parties to the proceeding for the issuance of the final operating license. The applicant may file any such petition at any time after the documents called for by section 192 of the Act and § 50.57(d) of this chapter are issued.

(b) The initial petition for a temporary operating license for each such facility shall, in accordance with section 192 of the Act and § 50.57(d) of this chapter, be limited initially to a specified time and to a power level not to exceed 5 percent of the facility's rated full thermal power for that specified time. After the Commission issues a temporary operating license for any such facility, the licensee may file subsequent petitions with the Commission, using the procedure described in paragraph (a), requesting the Commission to amend the temporary operating license to allow facility operation at incremental stages beyond the initial 5 percent level for specified times, up to and including operation at full power, pending completion of the proceeding on the final operating license.

(c) The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted, and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

§ 2.302 Contents of affidavits.

The applicant's petition for a temporary operating license or an amendment to that license shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to

justify issuance of the issuance of the temporary operating license or the amendment to that license. Any such affidavit and any affidavit filed in response shall state separately the specific facts and arguments and include the exhibits upon which the person relies. The facts asserted in any affidavit filed shall be sworn to or affirmed by persons having knowledge of those facts, and a statement to this effect shall affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would be available to substantiate orally the facts asserted, as the Commission deems appropriate. Any such affidavit shall be accompanied by a list of documents relied on to support the facts stated in the affidavit and the place where such documents, other than those issued by the Commission's staff, are available for inspection.

§ 2.303 Notice of petition.

The Commission will promptly publish notice of each petition for issuance of a temporary operating license and any subsequent petitions for amendments to that license in the *Federal Register* and in such trade or news publications as the Commission deems appropriate in order to give reasonable notice to persons who might have a potential interest in the grant of such a temporary operating license or an amendment to that license. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the *Federal Register*. The Commission thereafter will act as expeditiously as possible to reach a determination on such petitions.

§ 2.304 Responsive affidavits.

Responsive affidavits in opposition to the petition shall be accompanied by a short and concise statement of the material facts as to which it is contended that there exists a substantial issue concerning the issuance of the temporary operating license or an amendment to that license. Any responsive affidavit and any accompanying statement shall be served on all parties to the proceeding for the issuance of the final operating license.

§ 2.305 Commission authorization.

(a) Issuance of a temporary operating license or an amendment to that license shall be pursuant to a final order of the Commission itself which recites the reasons for such authorization as called

for in section 192 of the Act and § 50.57(d) of this chapter.

(b) The requirements of section 189a. of the Act with respect to the issuance of or an amendment to a utilization facility license shall not apply to the issuance of or an amendment to a temporary operating license. Thus, subpart A of this part does not apply to the consideration of a petition for the issuance of or an amendment to such a temporary operating license; and only §§ 2.701, 2.702, 2.708-2.713, 2.758 and 2.772 of subpart G of this part apply to the consideration of such a petition.

§ 2.306 Hearing on the final operating license.

(a) Issuance of a temporary operating license under section 192 of the Act and § 50.57(d) of this chapter shall not prejudice the right of any party to a proceeding for the issuance of the final operating license to pursue properly admitted issues in a hearing required pursuant to section 189a. of the Act. Failure to assert any ground for denial or limitation of such a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. No party shall argue the issuance or denial of a temporary operating license by the Commission as support for its position in a proceeding for the issuance of the final operating license.

(b) Any hearing on the application for the final operating license for a facility required pursuant to section 189a. of the Act shall be concluded as promptly as practicable. The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. The Commission may suspend the license for other public health and safety or common defense and security reasons.

§ 2.307 Notification to the Commission.

Any party to a hearing required pursuant to section 189a. of the Act on the final operating license for a facility for which a temporary operating license has been issued under section 192 of the Act and § 50.57(d) of this chapter, and any member of the Atomic Safety and Licensing Board conducting such a hearing, shall promptly notify the Commission of any information that:

(a) The terms and conditions of the temporary operating license are not being met; or that

(b) Such terms and conditions are not sufficient to provide reasonable assurance that operation of the facility will provide adequate protection to the

public health and safety and to the environment during the period of the facility's temporary operation.

§ 2.308 Use of informal procedures.

The Commission ordinarily will not use formal adjudicatory procedures in issuing a temporary operating license and will develop informal procedures case-by-case to resolve particular issues as they arise.

§ 2.309 Enforcement.

The Commission may modify, suspend or revoke a temporary operating license, or impose a civil penalty pursuant to sections 186 and 234 of the Act and subpart B of this part.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 U.S.C. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54, are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 50.57 of 10 CFR Part 50, a new paragraph (d) is added to read as follows:

§ 50.57 Issuance of operating license.

(d)(1) *Temporary operating license.* An applicant for an operating license, in a case where a hearing is required in a pending proceeding for the final operating license for a facility required to be licensed under sections 103 or 104b. of the Act, pending final action by the Commission on the application for the final operating license, may petition the Commission by a written motion, pursuant to section 192 of the Act and this paragraph for (i) a temporary operating license for the facility

authorizing fuel loading, testing, and operation at up to 5 percent rated full thermal power for a specified time and (ii) an amendment to the temporary operating license requesting for a specified time an incremental increase of the power level beyond that initially granted by the Commission up to full power. The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted, and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

(2) The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (i) the report of the Advisory Committee on Reactor Safeguards (ACRS) required by subsection 182b. of the Act; (ii) the initial safety evaluation report (SER) on the application by the regulatory staff and the staff's first supplement to the SER prepared in response to the ACRS report; (iii) the staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; and (iv) a State, local, or utility emergency preparedness plan for the facility.

(3) Each petition for the issuance of a temporary operating license, or for an amendment to that license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment to that license.

(4) The Commission will publish a notice of each such petition in the *Federal Register* and in such trade or news publications as it deems appropriate to give reasonable notice to any persons who might have a potential interest in the grant of such a temporary operating license or amendment. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the *Federal Register*.

(5) With respect to any such petition, the Commission may issue a temporary

operating license, or subsequently amend the license to authorize temporary operation at a specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that:

(i) in all respects, other than the conduct or completion of any required hearing, the requirements of law are met;

(ii) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and to the environment during the period of temporary operation; and

(iii) denial of the temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license and the date on which a final operating license for such facility would otherwise be issued under the Act.

(6) Any final Commission order authorizing the issuance of any temporary operating license or an amendment to that license pursuant to section 192 of the Act and this paragraph will recite with specificity the reasons justifying the findings required by that section and this paragraph, and will be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(7) The temporary operating license will become effective upon its issuance and will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

(8) The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

(9) The authority to issue new temporary operating licenses under section 192 of the Act and this paragraph expires on December 31, 1983.

The views of Commissioners Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 4th day of April, 1983.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary to the Commission.

Commissioner Gilinsky's Separate Views Regarding the Proposed Rule on Temporary Operating Licenses (Amendments to 10 CFR Parts 2 and 50)

April 1, 1983.

I have voted against the Temporary Operating License rule because of the Commission's decision to exempt Temporary Operating License proceedings from the *ex parte* and separation of functions rules. "This would mean that the Commission's staff, applicants and intervenors would be free to contact individual Commissioners as well as the Commission's Office of General Counsel and Office of Policy Evaluation to argue their respective position on the temporary operating license." (A sentence of explanation which appeared in the penultimate draft and which the Commission was too modest to leave in the final version.)

This decision is but another example of the Commission's deep-seated hostility toward informing the public and involving it in NRC's proceedings. The decision is incompatible with the basic notions of fairness which underlie the *ex parte* rules since the temporary operating license issues will inevitably be quite similar to the issues in the operating license hearing which will be going on at the same time. As has so often happened, the course chosen by the Commission is likely to be self-defeating: it is bound to result in endless litigation.

Additional Views of Commissioner Asselstine

I strongly disagree with the Commission majority's decision *not* to apply the provisions of 10 CFR Sections 2.719 and 2.780, relating to separation of functions and *ex parte* communications, as part of the procedural requirements for implementing the temporary operating license authority in Section 192 of the Atomic Energy Act of 1954, as amended.

In all likelihood, the issues that will be raised before the Commission in the temporary operating license proceedings under the provisions of Section 192 will be similar to, or the same as, the issues being adjudicated in the hearing in the final operating license proceedings. By permitting the NRC staff and the applicant, among others, to make informal off-the-record contacts with the Commission on these issues during the

temporary operating license proceedings, the Commission majority's proposed rule presents a grave risk of contaminating the formal on-the-record operating license proceeding. I do not believe that this risk of contaminating the final operating license proceeding can be avoided easily if informal, off-the-record contacts on similar issues arising in the temporary license proceedings are permitted. In order to assure procedural fairness in our operating license proceedings, I would apply our regulations relating to separation of functions and *ex parte* communications to temporary operating license proceedings, just as we now do for final operating license proceedings.

[FR Doc. 83-9050 Filed 4-5-83; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 10, 15, 21, 145, 147, 155, 166, and 170

Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rules to implement recent amendments to the Commodity Exchange Act ("Act") which establish four new categories of persons who must be registered with the Commission. Specifically, the Futures Trading Act of 1982 has amended the Act generally to require the registration of introducing brokers and the associated persons ("APs") of introducing brokers, commodity trading advisors, and commodity pool operators. The Commission is accordingly proposing rules and rule amendments which would establish registration requirements and procedures for those new categories of registrant, prescribe minimum financial, reporting, and recordkeeping requirements for introducing brokers, create certain exemptions from registration, change the fees charged for registration with the Commission, and specify appropriate regulatory responsibilities, such as trading standards, for those new categories of registrant.

DATE: Comments must be received by May 6, 1983.

ADDRESS: Comments on the proposal should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, or Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing rules and rule amendments to implement recent modifications to the Commodity Exchange Act which require the registration of introducing brokers and the associated persons of introducing brokers, commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs"). Specifically, the Futures Trading Act of 1982 (Pub. L. No. 97-444, 96 Stat. 2294) amends Sections 4d, 4f, and 4k of the Act¹ to require, *inter alia*, those persons who could formerly be characterized as "agents" of futures commission merchants ("FCMs") to register with the Commission as introducing brokers and to require the registration of individuals engaged in the solicitation of customers, discretionary account clients, or pool participants (or the supervision of any person or persons so engaged) to register as associated persons.

Prior to the enactment of the Futures Trading Act of 1982, the Commodity Exchange Act allowed FCMs to operate through networks of unregistered "agents" whose principal function was to procure customer business.² The clearing (or "carrying") FCM which handled such business on a "fully-disclosed" basis often attempted to disavow any responsibility for violations of the Act committed by these agents,³ even though customers may have viewed the agent and the FCM as one entity and did not distinguish between services provided by the agent and those provided by the FCM.⁴ Congress recognized that a registration requirement would ensure that individuals or firms who were formerly engaged as agents would be subject to the same fitness requirements that apply to other Commission registrants who

deal with commodity customers.⁵ Thus, the Commission's legislative proposal to Congress would have required agents engaging in the activities described above to register as associated persons of the FCM for whom they procured business.⁶ Although Congress ultimately determined that agents should instead be required to register as introducing brokers or as APs of a futures commission merchant, it was the intent of Congress to eliminate the existing regulatory disparity whereby certain individuals were required to register as associated persons while others escaped the Commission's direct scrutiny by being designated as "agents" of FCMs.⁷

The new legislation defines the term "introducing broker" to mean:

any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.⁸

Accordingly, and as discussed elsewhere in this Federal Register notice, the Commission is proposing regulations which would delineate, consistent with the amendments to the Act and pursuant to the Commission's general rulemaking authority, the permissible activities and corresponding obligations of introducing brokers and which would require certain commodity trading advisors to register as introducing brokers. The Commission has not, however, specifically addressed in this Federal Register notice the extent of an FCM's responsibility for accounts which it carries on a fully-disclosed basis because it does not view the Futures Trading Act of 1982 as having altered the law in this regard.

Prior to the enactment of the Futures Trading Act of 1982, only those persons who were associated with futures commission merchants ("FCMs") in certain specified capacities were required to register as associated persons.⁹ That legislation, however, has extended the AP registration requirement to the sales and supervisory personnel of introducing brokers, CTAs, and CPOs, in order to "make the

¹ 7 U.S.C. 6d, 6f, 6k, as amended by Pub. L. No. 97-444 sections 207, 208, 212.

² S. Rep. No. 384, 97th Cong., 2d Sess. 111 (1982); H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 133 (1982).

³ S. Rep. No. 384 at 40; H.R. Rep. No. 565 (Part 1) at 49; 36 FR 28110, 28111 (December 1, 1971).

⁴ S. Rep. No. 384 at 70.

⁵ S. Rep. No. 384 at 111; see H.R. Rep. 565 (Part 1) at 49.

⁶ See, e.g., S. Rep. No. 384 at 40, 111.

⁷ H.R. Rep. No. 565 (Part 1) at 49 (1982).

⁸ Futures Trading Act of 1982, section 201(1), amending Section 2(a) of the Act (7 U.S.C. 2).

⁹ Section 4k of the Act, 7 U.S.C. 6k (Supp. V 1981) (amended by Futures Trading Act of 1982, Pub. L. No. 97-444, section 212).

[Commission's] registration program more consistent * * * [by] requir[ing] persons who essentially function in the same capacity as persons associated with futures commission merchants to register as associated persons" and to permit the Commission to conduct fitness checks to uncover past misconduct which may render an applicant unfit for registration as an AP.¹⁰ In order to implement the intent of that legislation, the Commission is proposing to extend to these new associated persons the "sponsorship" and fingerprinting requirements which presently apply to the APs of futures commission merchants.

The Commission is proposing, in § 1.57(b), that any person who, directly or indirectly, is compensated either (1) on a per-trade basis, or (2) for the referral of customers to an FCM (e.g., a "finder's fee"), be required to register under the Act as an introducing broker. An FCM, as floor broker, an associated person of an FCM, or an associated person of an introducing broker would be exempt from that registration requirement. The Commission is also proposing that an introducing broker would have to register under the Act as a CTA if it either (1) directs a client's commodity interest account, or (2) guides the client's commodity interest trading by means of a systematic program that recommends specific transactions. See proposed § 4.14(a)(6). If those two proposals are adopted, persons currently operating as "agents" of FCMs may have to register as both introducing brokers and as CTAs. The Commission is also aware that if these proposals are adopted, several presently-registered CTAs may have to register as introducing brokers as well, unless they modify the form and manner in which they are compensated. The Commission believes that these proposals are consistent with the intent of Congress, since the Commission notes that, in enacting the Futures Trading Act of 1982, Congress did not provide a general exclusion from the definition of "commodity trading advisor" for introducing brokers comparable to that provided for futures commission merchants and floor brokers.

The Commission has proposed few restrictions on the operations and activities of introducing brokers. Proposed § 1.57(a) states that each introducing broker would have to open and carry each customer's account with a carrying FCM on a fully-disclosed basis, and that each introducing broker

would have to transmit promptly for execution all customer orders to either a carrying FCM or to a floor broker, if the introducing broker "gives up" the name of its carrying FCM. Although an introducing broker cannot carry a regulated customer account, the proposed regulations contain no restrictions upon an introducing broker's ability to trade for its own account or to carry proprietary accounts or accounts in non-regulated commodities (i.e., foreign futures). The Commission is concerned, however, that it may not be appropriate for introducing brokers to have any "back office" operations whatsoever.¹¹ The Commission is, therefore, requesting specific comment as to whether there should be additional restrictions upon the operations and activities of introducing brokers and, in particular, whether introducing brokers should be permitted to carry any accounts other than the firm's own house account.

The Commission is, however, proposing to restrict the operations and activities of introducing brokers in the options area. The Commission's position is that introducing brokers may not solicit or accept orders for "dealer" options, and that introducing brokers may not solicit or accept orders for exchange-traded options until the National Futures Association ("NFA") has a program in place to supervise such activity. This position is consistent with the Commission's commitment to Congress, which is required by statute, to assure that the options pilot program is limited so that it may be regulated successfully.

The Commission's proposed minimum adjusted net capital requirement for introducing brokers would be \$25,000 (\$50,000 for each introducing broker which is not a member of a designated self-regulatory organization ("DSRO")). See proposed § 1.17(a)(1)(ii). The Commission has been advised that NFA's bylaws will be amended to provide for the membership category of introducing broker and further provide that no NFA member may carry an account, accept an order or handle a transaction in commodity futures contracts, for or on behalf of any non-member of NFA or suspended member that is required to be registered with Commission as an introducing broker, and that is acting in respect to the account, order or transaction for a customer, a commodity pool or participant therein, client of a commodity trading advisor, or any other person, unless (a) such

member of NFA is a member of another futures association registered with the Commission under Section 17 of the Act, or is exempted from this prohibition by an NFA Board resolution, or (b) such suspended member is exempted from this prohibition by the NFA Appeals Committee.¹² The effect of the change in NFA's bylaws would mean that introducing brokers would generally become NFA members, so that the minimum capital requirement for introducing brokers would effectively be \$25,000. By comparison, the minimum adjusted net capital requirement for FCMs is \$50,000 for those which are members of a DSRO, and \$100,000 for non-members.¹³

The Futures Trading Act of 1982 contains certain exemptions from registration. The Commission is proposing three additional exemptions, contained in proposed § 3.12(h), as follows:

1. A registered CPO need not re-register in order to be an associated person of a CTA;
2. A registered CTA need not re-register in order to be an associated person of a CPO; and
3. An individual who is registered with the National Association of Securities Dealers as registered representative or as registered principal need not register as an associated person of a CPO in order to solicit funds, securities or property for a participation in a commodity pool, or to supervise any person or persons so engaged.

The Commission is proposing to modify the prohibition on dual and multiple associations of associated persons so that an associated person would only be prohibited from having more than one affiliation with the same category of registrant. Thus, an individual could be an associated person of one firm in each of the following categories: FCM, introducing broker, CTA, and CPO. As a consequence, it will be possible for an individual to be employed by four separate firms as an associated person, as long as no two of the firms in the

¹⁰The Commission notes that NFA has already amended its Articles of Incorporation to make introducing brokers eligible for membership in NFA.

¹¹The Commission is aware that a securities introducing broker is subject to a minimum dollar requirement of net capital of \$5,000. The Securities and Exchange Commission ("SEC") adopted a requirement of \$2,500 in 1985, raised it to \$5,000 in 1975, and it has remained unchanged since then. The Commission is also aware, however, that a securities introducing broker is required to maintain the higher of the minimum dollar amount or 6% percent of aggregate indebtedness, which could require such a firm to maintain more than \$25,000 of net capital.

¹²S. Rep. No. 384, 97th Cong., 2d Sess. 39 (1982); accord, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 48-49 (1982).

¹³A securities introducing broker is subject to greater restrictions in these areas. See 17 CFR 240.15c3-1(a)(2) (1982).

same registration category. See proposed § 3.12(f).

The Commission is proposing a temporary rule, proposed § 3.12-a(T), to allow associated persons of FCMs to become associated persons of a CTA, CPO or introducing broker without re-registration. This temporary "transfer" provision would apply to any associated person of an FCM who is so registered on the effective date of § 3.12-a(T). Section 3.12-a(T) would expire 180 days after it becomes effective. A major purpose of the provision would be to allow those person currently associated with an FCM through an agent to become associated persons of an introducing broker, without re-registration, when the agent for whom they work becomes registered as an introducing broker.

The Commission is proposing substantial revisions to the registration fee schedule, which for the first time would include a fee for the newly-added principals of a firm. The actual fee levels would be subject to adjustment as the staff develops further information about the Commission's registration processing costs. See proposed § 3.3.

Persons intending to file applications for registration as introducing brokers should be aware that the Commission is considering delegating the function of registering introducing brokers and their associated persons to the NFA, in accordance with statutory authority provided in the Futures Trading Act of 1982.¹⁴ The Commission is specifically requesting comment on this issue.

The Commission believes that two other portions of the regulations not included herein will need to be amended to include references to introducing brokers and the new categories of associated persons. They are Part 12, which governs reparations proceedings, and Part 180, which governs arbitration proceedings. Since there are ongoing rulemaking proceedings affecting those parts of the regulations,¹⁵ the Commission is not proposing the text of specific amendments thereto at this time. The Commission expects to include references to introducing brokers and the new categories of associated persons in those rules when rules are adopted for introducing brokers and the new categories of associated persons. The Commission is, accordingly, specifically requesting

comments on the appropriateness of any such amendments.

II. Registration

A. Introducing Brokers

The Commission is proposing to establish registration requirements for introducing brokers which would be essentially identical to the procedures for the registration of FCMs. Proposed § 3.15. Specifically, the Commission is proposing to require each applicant for initial registration as an introducing broker to file a Form 7-R, accompanied by a Form 1-FR containing certain financial information¹⁶ and by a Form 8-R and a fingerprint card for those of the applicant's principals who do not already have a current Form 8-R (and, in appropriate cases, a fingerprint card) on file with the Commission. Proposed § 3.15(a). The Commission is also proposing to require the filing of a Form 8-R and a fingerprint card for newly-added principals of an introducing broker. Proposed § 3.15(c). As discussed below, this provision would parallel proposed changes to the applicable filing requirements for floor brokers and the principals of FCMs, CTAs, and CPOs. Applications for renewal of registration, however, would require only the annual filing of a Form 7-R. Proposed § 3.15(b).¹⁷

The legislative history of the Futures Trading Act of 1982 makes clear that Congress intended to eliminate the former unregistered statutory category of "agents" of FCMs and to require those persons who performed the types of activities traditionally engaged in by agents to register with the Commission as introducing brokers.¹⁸ Historically,

agents have carried all of their accounts on a fully-disclosed basis with an FCM which provided "back office" services for those accounts and as such, was responsible for compliance with the minimum financial, recordkeeping, and reporting requirements established by the Commission and its predecessor agency, the Commodity Exchange Authority ("CEA").¹⁹ The FCM also provided confirmation, purchase and sale, and monthly statements (as well as any cash remittances) directly to the customers which had been "introduced" by the agent to the carrying FCM. Generally, the agent was compensated by the FCM on a per-trade basis—i.e., the agent would in some manner be allocated a percentage of the commissions charged by the FCM on the trades made by the agent's customers.

In view of the express Congressional intention to require the registration as an introducing broker of those persons who would continue to operate in the same manner as an agent of an FCM, the Commission is proposing generally that any person who receives per-trade compensation—whether from a futures commission merchant (such as in the form of "split" commissions) or from a customer (e.g., by the monthly debiting of the customer's account)—be required to register with the Commission as an introducing broker. Proposed § 1.57(b). This proposal is intended to effectuate the Congressional intent that persons who were formerly agents must now register as introducing brokers or as associated persons of a futures commission merchant. The Commission is further proposing in § 1.57(b) to require registration as an introducing broker by any person who is compensated for the referral of customers to an FCM. Specifically, the Commission is of the opinion that the phrase "soliciting or accepting orders," as it is used in Section 2(a) of the Act, must be construed to encompass not just the literal solicitation or acceptance of customers' orders, but also the solicitation of customers or acceptance of their orders for referral to an FCM for the institution of a trading relationship and the execution of those orders.²⁰

Schroeder; *id.* at 542 (statement of Edmund R. Schroeder).

¹⁹ See, e.g., 17 CFR 1.17, 1.33-1.36. Furthermore, because an agent was not authorized to accept customer funds, it was excused from compliance with the Commission's and the CEA's segregation regulations (17 CFR 1.20-1.30, 1.32). See generally 36 FR 22810, 22811 (December 1, 1971) (abolition of "§ 1.31a broker").

²⁰ In this connection, the Report of the Commission's Advisory Committee on Commodity Futures Trading Professionals, in discussing the AP registration requirements enacted in 1974, noted

¹⁴ See proposed §§ 1.10(a)(2), 3.15(a)(1).

¹⁵ Section 4f(1) of the Act provides that the registrations of FCMs, floor brokers and introducing brokers "shall expire on December 31 of the year for which issued or at such other time * * * as the Commission may rule, regulation, or order prescribe * * *." 7 U.S.C. 6f(1), as amended by Section 208 of the Futures Trading Act of 1982, 96 Stat. 2302. The Commission has previously deferred the registration expiration dates of registered FCMs and floor brokers from December 31, 1982 to March 31, 1983 and from December 31, 1983 to March 31, 1984. 47 FR 52954 (November 23, 1982). The Commission contemplates that it will make permanent this April 1-March 31 cycle when it adopts revisions to the Form 7-R to reflect the registration requirements established by the new legislation. With respect to introducing brokers, however, the Commission anticipates that it will require introducing brokers to file their applications for renewal of registration on or before June 30 of each year, the expiration date presently in effect for CTAs and CPOs.

¹⁶ See, e.g., H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 49, 87 (1982); S. Rep. No. 394, 97th Cong., 2d Sess. 40-41, 70, 87, 111 (1982); *Hearings on S. 2109 Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry*, 97th Cong., 2d Sess. 222 (1982) (testimony of Edmund R.

¹⁴ See Futures Trading Act of 1982, Pub. L. No. 97-444, sections 224(6), 233(5), 96 Stat. 2315, 2321, which adds new Sections 6a(10) and 17 (c) to the Commodity Exchange Act (to be codified at 7 U.S.C. 12a(10) and 21 (c)).

¹⁵ 48 FR 6720 (February 15, 1983) (reparations) and 46 FR 60834 (December 14, 1981) (arbitration).

Similarly, the Commission believes that persons who are currently compensated on a per-trade basis or by a referral fee as described above would be deemed to be the "agent" of a futures commission merchant for the purpose of the acceptance of those customer orders. As such, any person who continues to engage in those activities would be within the definition of, and generally required to register as, an introducing broker.

Furthermore, the Commission views the forms of compensation discussed above as typical of an FCM-agent relationship and thus believes it is appropriate to require those persons who continue to be compensated in this fashion to register as introducing brokers unless they are registered as a futures commission merchant, floor broker, or an AP of a futures commission merchant or of an introducing broker. Although the Commission has not proposed an exemption from this rule for commodity pool operators, the Commission anticipates that its proposal generally would not apply to CPOs insofar as they do not ordinarily receive per-trade compensation from either FCMs or from pool participants nor are they compensated for the referral of customers (*i.e.*, the pool itself) to a particular FCM. Moreover, the Commission does not view the pertinent activities of CPOs and their APs—the solicitation of funds, securities, or property for a participation in a commodity pool—as equivalent to the customer solicitation activities formerly engaged in by agents. For example, whereas an agent or an introducing broker may solicit customers' accounts, a CPO solicits participations in a commodity pool and may accept funds, securities, or other property only in the name of the pool. Thus, the Commission does not believe that its proposal will significantly affect the operations and activities of most CPOs.

The Commission is aware that its proposal would, if adopted, require certain commodity trading advisors either to modify the form and manner in

which they are compensated by their customers or to register as introducing brokers. In this regard, the Commission notes that, in enacting the Futures Trading Act of 1982, Congress did not provide a general exclusion from the definition of "commodity trading advisor" for introducing brokers comparable to that provided for futures commission merchants and floor brokers.²¹ The Commission therefore believes that it would be contrary to the statutory design to allow those commodity trading advisors who are compensated in the manner described above and who are, therefore, the functional equivalent of introducing brokers to avoid registration and the corresponding responsibilities of an introducing broker merely by registering as commodity trading advisors.

Section 2(a) of the Act defines the term "commodity trading advisor", in pertinent part, to mean "any person who, for compensation or profit, engages in the business of advising others * * * as to the value or advisability of trading in any contract of sale of a commodity for future delivery * * *".²² As noted above, introducing brokers—unlike FCMs and floor brokers—are not excluded from the definition of a CTA even if their advisory activities are "solely incidental to the conduct of their business or profession." Thus, absent an appropriate exemption, an introducing broker would also be required to register as a commodity trading advisor, even where the introducing broker's advice was limited to analyses of market conditions and the issuance of generalized recommendations to purchase or sell particular futures contracts. The Commission is therefore proposing to exempt from CTA registration those introducing brokers who neither direct customers' accounts²³ nor guide customers' accounts by means of a systematic program that recommends particular transactions. Proposed § 4.14(a)(6).

B. Associated Persons

The amendments to the Act also establish three new categories of associated person. Thus, for the first time, APs of commodity trading advisors and commodity pool operators will be required to register as such. Furthermore,

individuals who formerly would have been associated with an FCM through an "agent" as an AP of that FCM will now be required to register as APs of introducing brokers.²⁴ and is now proposing to apply those standards and requirements to all categories of associated persons²⁵ and is now proposing to apply those standards and requirements to all categories of associated persons.

Sponsorship. When it adopted the AP sponsorship and fingerprinting requirements for APs of FCMs, the Commission indicated that:

The new sponsorship requirements are necessary to establish a uniform industry-wide minimum standard for pre-employment evaluation of associated persons; to insure that all FCMs develop programs that will result in the overall upgrading of APs registered with the Commission; to implement fully the provisions of the Commodity Exchange Act that require an individual to be registered as an associated person of a particular FCM; and to reduce a regulatory burden by eliminating the present biennial renewal requirement for all APs and by substituting therefor registration for as long as the person remains associated with a specified registered FCM or its agent. The fingerprinting requirements are necessary to permit improvements in the Commission's background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.²⁶

The Commission believes that these considerations are equally applicable to the APs of CTAs, CPOs, and introducing brokers and is proposing to amend § 3.12 of its regulations to achieve these goals. Thus, an applicant for registration as an associated person would not be registered as such unless that individual is associated with a "sponsor," which is defined in proposed § 3.1(c) to mean the FCM, CTA, CPO, or introducing broker "which makes the certifications required by [§ 3.12] * * * for the registration of an associated person * * *". An AP registered in accordance with those procedures would, however, generally remain registered as long as he remained associated with that sponsor as an associated person and the sponsor itself remained registered. Proposed § 3.12(b).

As indicated above, the Act expressly provides for four different categories (or "capacities") of AP registration. The Act

that some FCMs employed individuals to direct customers to the firm. Specifically, the Advisory Committee concluded that: "[w]hile these 'introducers' or 'openers' might not handle orders, they should be required to register as associated persons if their compensation from the FCM is based to any extent upon commission revenues generated by the account. It is the incentive of sharing in commissions that creates a potential for misconduct and thus these persons should be required to register. *Report of the Commodity Futures Trading Commission Advisory Committee on Commodity Futures Trading Professionals*, Comm. Fut. L. Rep. (CCH), No. 29, Part II (August 20, 1976) at 20.

²¹ Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(2), 96 Stat. 2297-98 (1982).

²² *Id.*; proposed § 1.3(bb).

²³ Commission rule 4.10(f) (17 CFR 4.10(f)) specifies that term "direct" refers to those agreements "whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization."

²⁴ Futures Trading Act of 1982, Pub. L. No. 97-444, § 212, 96 Stat. 2303-05.

²⁵ 17 CFR 3.12; see 45 FR 80485 (December 5, 1980); 46 FR 24940 (May 4, 1981).

²⁶ 45 FR 80485, 80485 (December 5, 1980).

further provides, however, that with two limited exceptions, AP registration in one capacity (e.g., as an AP of an FCM) does not eliminate the need to be separately registered as an AP in another capacity (e.g., as an AP of an introducing broker). With respect to the APs of CTAs and CPOs, the Act does permit an individual to be associated with a CTA or CPO in a capacity which would otherwise require AP registration if that individual is registered "as an associated person of another category of registrant."²⁷ The Commission has carefully considered and, for the reasons set forth below, declined to propose any further exemptions from AP registration which would be based merely on the fact of AP registration in some other capacity.

Because an AP's registration will generally be co-extensive with his association with the sponsor,²⁸ an FCM, CTA, CPO, or introducing broker which elected to rely solely on the fact that an AP was registered with another sponsoring employer would be subject to the risk that the AP's association (and simultaneously, the AP's registration) with that employer might be terminated at any time. In such a case, the second employer would be in violation of Section 4k of the Act—which generally makes it unlawful for an FCM, CTA, CPO, or introducing broker to permit an unregistered individual engaging in the activities described therein to be associated with that FCM, CTA, CPO, or introducing broker—as soon as the AP's association with his initial sponsor was terminated, which could, of course, happen without the second employer being aware of that termination.²⁹

Secondly, Section 4k of the Act further provides that it is

unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in Section 8a(2) of [the] Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person

should be registered or temporarily licensed.³⁰

An FCM, CTA, CPO, or introducing broker which must make the certifications necessary to the registration of an associated person will be in a position to know whether one of its employees is subject to a statutory disqualification. By comparison, mere reliance on the fact of an AP's registration would not excuse a violation of this provision when the firm with which the AP is to be associated should have, in fact, known of the statutory disqualification. Thus, the Commission believes that there are sound policy reasons for its decision not to extend further the limited exemptions from AP registration now provided by the Act. The Commission further believes that in light of these considerations, a commodity trading advisor or a commodity pool operator may be ill-advised to allow an already-registered AP to become associated with it without first requiring that individual's reregistration as an AP of that sponsoring CTA or CPO.

As indicated above, the sponsor of an AP's application would be required to make certain certifications regarding the applicant for AP registration which are essentially identical to those which must presently be made by FCMs for the registration of an associated person. Specifically, proposed § 3.12(c)(1)(i) would require the sponsor to certify on the Form 8-R being filed as an application for AP registration that the applicant is currently associated with the sponsor or will be so associated within thirty days after the receipt of the notification from the Commission provided by proposed § 3.12(c)(4). Proposed § 3.12(c)(1)(i) would further require the sponsoring FCM to certify that the applicant will not be permitted to act as an AP (as defined in proposed § 1.3(aa)) until registered in accordance with § 3.12.³¹

Proposed § 3.12(c)(1)(ii) requires the sponsoring FCM to make whatever inquiries are necessary to certify that it has investigated and verified the

preceding five years of the applicant's education and employment history and that such history is accurately presented in the Form 8-R. This "screening" requirement would not apply, however, in the case of "grandfathered" APs who were registered as such prior to July 1, 1982 and who, at the time of the first expiration of their AP registration subsequent to that date, will remain associated with the sponsor at the time of that expiration. Proposed § 3.12(c)(1)(iii) further requires the sponsor to certify that all of the publicly available information supplied by the applicant on the Form 8-R is accurate and complete to the best of its knowledge, information and belief.³²

As the Commission has earlier indicated, these "screening" requirements "do no more than make uniform what should be the ordinary and customary practice" for every responsible registrant employer.³³ Furthermore, the Commission anticipates that the continued upgrading of quality overall among registrants will ultimately lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.³⁴ Although the proposed regulations do not prescribe procedures which must be employed by the sponsor prior to making the required certifications, the Commission contemplates that a sponsor would use methods comparable to those customarily employed by the financial community for sensitive positions. For example, some firms may follow the practice commonly used for registration screening in the securities industry, which is to hire investigative agencies to perform some or all of the screening functions. Although the Commission does not object to such a practice, the proposed regulations make clear that,

²⁷ The Commission has previously construed this requirement to apply primarily to the questions in the existing Form 8-R which relate to regulatory or judicial sanctions (Items 16-21). If, for example, an AP applicant or registrant answered "Yes" in response to any of those questions, the sponsor would be required to make whatever inquiries were necessary to certify that the individual's representations about, and documentation of, the status or disposition of the matter were, in fact, accurate and complete. Further, while proposed § 3.12(c)(1)(iii) would require the sponsor to investigate and document any adverse, publicly available information which is reflected in the application, the Commission wishes to emphasize that the regulation would not require the sponsor to obtain negative information regarding the applicant when there is no indication of such in the application. See 45 FR 80485, 80489 (December 5, 1980).

²⁸ 45 FR 18356, 18357 (March 20, 1980); 45 FR 80485, 80488 (December 5, 1980).

²⁹ *Id.*

²⁷ Futures Trading Act of 1982, Pub. L. No. 97-444, § 212, 96 Stat. 2304 (to be codified at 7 U.S.C. 6k(2), (3)).

²⁸ Proposed § 3.1(b).

²⁹ The Commission is proposing, however, to continue its present policy and practice of allowing those APs who were registered prior to July 1, 1982 to continue to act as such until their current registrations expire. Thus, for example, an AP of an FCM who was registered in February 1982 and whose registration will not expire until two years after that date would, subject to the reporting requirements of proposed § 3.31(e), be able to be associated with an FCM, CTA, CPO, or introducing broker without having to reregister as such until that registration expires. See proposed § 3.1(a).

³⁰ Futures Trading Act of 1982, Pub. L. No. 97-444, section 212, 96 Stat. 2305 (emphasis added). As used in section 4k(5) of the Act, the term "statutory disqualification" means any of eight enumerated conditions—such as suspension or revocation of a prior registration, a court order barring specified conduct involving commodities or securities, or a recent conviction for felonies such as embezzlement or fraud—specified in the amended provisions of Section 8a(2) of the Act. See Futures Trading Act of 1982, Pub. L. No. 97-444, section 224, 96 Stat. 2310-12.

³¹ If, after the filing of the Form 8-R, the applicant either fails to become an associated person of the sponsor or if that relationship is terminated, the sponsor must promptly report the fact to the Commission. Proposed § 3.31(c)(1).

ultimately, it is the sponsor's responsibility to assure itself of the accuracy of the representations that are made to the Commission.

The Commission recognizes, however, that were it to require these certifications to be completed prior to the submission of an application for AP registration, the overall processing time could be increased by as much as 4-8 weeks—the amount of time which may be needed by a sponsor to complete its background checks on the applicant. The Commission therefore presently permits a sponsoring FCM to submit a Form 8-R without the required "Sponsor's Certification," thereby allowing the Commission to commence its background checks of the applicant³⁵ while the sponsor conducts its own screening of the applicant prior to its submission of a completed Sponsor's Certification. See Commission rule 3.12(c)(2). The Commission contemplates that the same procedure would be available to all sponsors—whether FCMs, CTAs, CPOs, or introducing brokers—and is not, therefore, proposing any change to that portion of its regulations.

Expedited AP registration procedures. Proposed § 3.12(d) would extend the existing expedited registration procedure which is presently available to certain APs of FCMs to applicants for AP registration in any capacity. Specifically, this expedited procedure would be available to: (1) Any person whose AP registration in another capacity is still in effect so that, for example, an AP of a CTA could use this procedure to become registered without delay as an AP of an FCM; (2) any person whose AP registration in any capacity has terminated within the preceding sixty days; and (3) any person who, on or prior to the first expiration of that person's AP registration subsequent to July 1, 1982, becomes associated with a sponsor which has hired or otherwise employed the AP.

These criteria would differ in certain minor respects from those which are currently applicable to APs of FCMs. In particular, in view of the fact that an individual may be registered as an AP in more than one capacity, the Commission is proposing to allow an AP to use the expedited procedure to become registered with more than one sponsor. By comparison, § 3.12(d)(1) currently provides that an AP whose registration was granted within the preceding year is

also eligible for this expedited procedure. This procedure was adopted because Section 4k(2) of the Act specified a minimum one-year duration for certain AP registrations. That requirement of Section 4k(2) has now been repealed.³⁶ The Commission is therefore proposing to delete this latter provision from the bases of eligibility for the expedited registration procedure contained in § 3.12(d).

An individual who is eligible for expedited registration would be registered as an AP on such person's new sponsor upon the mailing to the Commission of a completed Form 8-S, the one-page "Certificate of Special Registration." The Form 8-S, requires a certification by the sponsor that the individual has been hired or otherwise employed by the sponsor as an AP. The applicant would have to personally certify on that Form that his AP registration in any capacity is neither suspended nor revoked, that he qualifies for expedited registration under the criteria described above, and that, if there is a proceeding pending to suspend, revoke, or condition his registration (or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration), the sponsor has been given a copy of the complaint or letter issued in that proceeding. Proposed §§ 3.12(d)(1), (2). Within sixty days of the filing of the Form 8-S, the AP and the sponsor would have to complete and the sponsor would have to file with the Commission a completed Form 8-R (including the "Sponsor's Certification" described above), the registration fee and, except where these Forms are being filed at the time of the first expiration of that individual's registration as an associated person subsequent to July 1, 1982, a fingerprint card. Proposed § 3.12(d)(3).

Fingerprinting. This exemption from the fingerprinting requirement would also apply to those APs for whom their sponsors elect to file only a Form 8-R (instead of Forms 8-S and 8-R, as required under the expedited procedure) when their registration as associated persons first expires subsequent to July 1, 1982. See proposed § 3.12(c)(3).³⁷ Thus, such an AP would not need to be fingerprinted if he remains associated with that sponsor on and after the first expiration of his AP registration subsequent to July 1, 1982. In all other cases, however, where a Form 8-R is

being filed in connection with the registration of an associated person, that Form would have to be accompanied by a fingerprint card, irrespective of whether the individual is applying for registration in the first instance or has retained his AP registration in another capacity. This requirement would, if adopted, merely extend to all associated persons the rule that the Commission now applies to APs of FCMs which requires an applicant for AP registration to be fingerprinted each time he changes his affiliation (unless, of course, his pre-July 1, 1982 registration has not yet expired). See Commission rule 3.12(c)(3), (d)(3). By comparison, floor brokers and the principals of FCMs, CTAs, CPOs, and introducing brokers who are not "grandfathered" are generally required to be fingerprinted only once.

The Commission has previously explained that this increased scrutiny of associated persons was necessary because:

The FBI check reveals criminal records for a significantly greater percentage of AP applicants than for either floor broker applicants or principals. Further, based upon the Commission's experience through its administrative proceedings against registrants, the volume of complaints received, and the reparations cases which have been brought, it appears that APs are the category of registrant most likely to be involved in activities which bring into question their fitness. Moreover, such activity frequently occurs in a time frame fairly contiguous to the AP's change in firm.³⁸

In the absence of contrary evidence, the Commission believes that these considerations would apply equally to all categories of associated person and therefore, that its present practice with respect to APs of FCMs should be extended to all categories of associated persons. The Commission notes, however, that any burden which may result from this requirement would be minimized by the Commission's policy of allowing the simultaneous submission of applications for registration in more than one capacity or the simultaneous use of such an application as a biographical supplement for a new principal, in which cases only one fingerprint card would be required for the same individual. The Commission further notes that § 3.21, which the Commission is now proposing to extend to all categories of registrant, allows the filing of a photocopy of the FBI report in lieu of a fingerprint card in certain cases where the applicant has simultaneously applied for registration in the securities industry.³⁹ The Commission is further

³⁵ The Commission screens each applicant and principal with the Federal Bureau of Investigation ("FBI") and the Securities and Exchange Commission and, where necessary, conducts or causes to be conducted further investigations of the individual's fitness.

³⁶ See 7 U.S.C. 6k(2), as amended by Futures Trading Act of 1982, Pub. L. No. 97-444, section 212, 96 Stat. 2305.

³⁷ See 7 U.S.C. 6k(2), as amended by Futures Trading Act of 1982, Pub. L. No. 97-444, section 212, 96 Stat. 2305.

³⁸ 45 FR 80485, 80487 (December 5, 1980).

³⁹ See *id.*

proposing to extend § 3.21 to make it available to any individual whose initial registration in any capacity was granted within the preceding ninety days if that initial registration required the filing of a fingerprint card. Thus, for example, a person who applied for registration as an AP of a CTA and, in connection therewith, submitted a fingerprint card could, within ninety days after registration was granted, apply for registration in another capacity (such as an AP of an introducing broker) and be excused from the otherwise-required filing of a second fingerprint card.

Multiple associations. Commission rule 3.12(f) currently prohibits an AP from being associated with more than one FCM.⁴⁰ When it adopted this restriction, the Commission explained that "the obvious difficulties of supervision in such a situation and . . . the inherent possibilities of conflict of interest that might arise if an AP were to have more than one sponsor" outweighed any possible adverse effects upon competition which might result from such a prohibition.⁴¹ In view of the establishment of three new categories of associated person, the Commission is proposing to modify this limitation to provide instead that an AP may be associated with only one registrant in each capacity. Proposed § 3.12(f). Thus, for example, if the Commission's proposal were adopted, an AP could be associated with a futures commission merchant and with a commodity trading advisor but could not, absent an exemption,⁴² be simultaneously associated with a second FCM or CTA. The Commission specifically requests comments as to the appropriateness of such a limitation and whether the Commission's rule should be modified further to prohibit all such simultaneous associations other than those expressly permitted by Sections 4K(2) and (3) of the Act for APs of commodity trading advisors and APs of commodity pool operators.⁴³

Exemptions from AP registration. Section 4k of the Act, as amended, provides several exemptions from AP registration. For example, an individual registered as an FCM, floor broker, or as an introducing broker need not register

as an AP in any capacity.⁴⁴ In addition, and as discussed above, the Act provides an exemption from registration as an AP of a CTA or of a CPO for any AP who is registered in another capacity. Finally, the Act also provides that a CPO need not register as an AP of a commodity pool operator and that a CTA need not register as an AP of a commodity trading advisor.⁴⁵

The Commission is proposing to augment these statutory provisions by exempting those individuals who are registered as CPOs from registration as APs of commodity trading advisors. Proposed § 3.12(h)(1). The Commission is similarly proposing to exempt individuals who are registered as CTAs from having to register as APs of commodity pool operators. Proposed § 3.12(h)(2).

The Commission is also proposing to exempt from registration as an AP of a commodity pool operator any individual who is registered with the National Association of Securities Dealers ("NASD") as a registered representative or a registered principal.⁴⁶ Proposed § 3.12(h)(3). The Commission has earlier proposed to require the registration, as a commodity trading advisor, of certain persons who solicited customers on behalf of CTAs or CPOs.⁴⁷ The Commission's proposed rule, however, would have provided an exemption from that registration requirement to any individual who solicited customers in connection with the public offering of a commodity pool if that offering was made pursuant to the provisions of section 5 of the Securities Act of 1933 and if that individual was associated with a broker or dealer which was registered as such with the Securities and Exchange Commission. As the Commission observed at that time:

[S]ome CPOs register their pool offerings with the Securities and Exchange Commission ("SEC") and, as part of that process, furnish a written "prospectus" to prospective pool participants containing much of the information required by Commission rule 4.21 * * * In recognition of this practice, the Commission has permitted CPOs who choose to provide a prospectus to prospective pool participants to supplement that prospectus to comply with the specific requirements of § 4.21 * * *

⁴⁰ *Id.*, Section 212, 96 Stat. 2303-04. The Act separately provides that an individual who is registered as an AP of an FCM need not register as an introducing broker. See *id.*, section 201(1), 96 Stat. 2297.

⁴¹ *Id.*, section 212, 96 Stat. 2304.

⁴² See ANSD Bylaws, Schedule C, Parts I and II, [1987] NASD Manual (CCH) ¶1102A at 1047-54.

⁴³ 47 FR 2325 (January 10, 1982). In view of the subsequent amendments to the Act and the rules the Commission is now proposing to implement those amendments, the Commission hereby withdraws that earlier proposal.

The Commission believes that similar considerations may apply to the actual solicitation of pool participants * * *

The Commission has subsequently had occasion to provide a temporary no-action position to certain applicants for AP registration who were associated with registered securities brokers or dealers and who were themselves registered with the NASD as a registered representative or registered principal.⁴⁸ In that context, the Commission noted that the fitness investigations conducted by the NASD are similar to those conducted by the Commission and that the Commission and the NASD apply similar standards of registration fitness.⁴⁹ Furthermore, inasmuch as the Commodity Exchange Act does not relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 and the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of commodity pool,⁵¹ the Commission contemplates that a not insubstantial number of persons who would otherwise be required to register as APs of a commodity pool operator will already be registered with the NASD. In view of these considerations, the Commission believes that its proposed exemption will appropriately limit regulatory duplication and overlap by eliminating the need to register the large numbers of individuals who may only occasionally solicit pool participants.

The following examples are intended to illustrate the operation of the Commission's proposed regulations in certain representative situations:

(1) "A", an individual, is registered as an AP of FCM "W" on January 1, 1984 after "W" filed a completed Form 8-R, a fingerprint card, and the \$50 registration fee. Proposed §§ 3.12(c); 3.3(a)(3). "A" continues to be associated with FCM "W" but, on June 15, 1985, also decides to become an AP of CTA "X". Although "A" is not required to register as an AP of "X" (Section 4k(3) of the Act), if CTA "X" elects to register "A" as an AP, it may file Form 8-S and "A" will be registered as an AP of CTA "X" upon the mailing of that Form. "X" must then file a complete Form 8-R (i.e., including the Sponsor's Certification), fingerprint card, and the registration fee within 60

⁴⁴ *Id.* at 2326.

⁴⁵ 47 FR 53764 (November 29, 1982).

⁴⁶ *Id.* at 53765 nn. 3 & 4.

⁵¹ Futures Trading Act of 1982, Pub. L. No. 97-444, Section 103, 96 Stat. 2296-97.

⁴⁰ See generally 48 FR 4650 (February 2, 1983).

⁴¹ 45 FR 80485, 80489 (December 5, 1980) (footnote omitted).

⁴² See proposed § 3.12(g)(1).

⁴³ As discussed earlier, new Sections 4k(2) and (3) of the Act expressly exempt from re-registration as an AP of a CTA or of a CPO any individual who is already registered "as an associated person of another category of registrant." Futures Trading Act of 1982, Pub. L. 97-444, Section 212, 96 Stat. 2304.

days. Proposed § 3.12(d). (If "X" does not elect to re-register "A" as its AP, it must notify the Commission of "A"'s new association on Form 3-R and provide the \$10 registration fee. Proposed §§ 3.31(d), 3.3(a)(3). Furthermore, "X" is subject to the risk that FCM "W" may terminate "A"'s employment—and therefore, "A"'s registration—without "X"'s knowledge. In such a case, "X" could be in violation of Section 4k of the Act since "A" would no longer be registered as an AP of another category of registrant.")

(2) The facts are the same as in Example (1) except that "A"'s association with FCM "W" terminated on May 1, 1985. Because "A"'s registration with "W" terminated within the preceding sixty days (*i.e.*, on May 1), "X" may use Form 8-S (as described in Example 1) to register "A" as an AP of "X". Proposed § 3.12(d).

(3) "B" applies to become an associated person of "Y", which is registered as both an FCM and as an introducing broker. "Y" has to file only one Form 8-R to register "B" as an AP of an FCM and as an AP of an introducing broker, but the application would have to be accompanied by the registration fee for each capacity. Proposed §§ 3.2, 3.3(a)(7).

(4) "C" applies for registration as an AP of FCM "W". In this connection, "W" files a Form 8-R, fingerprint card, and the \$50 registration fee on behalf of "C". (The Sponsor's Certification may be submitted separately at a later date.) Proposed §§ 3.12(c), 3.3(a)(3). Before "C" becomes registered, he decides to become simultaneously associated with "Z", an introducing broker. "Z" must refile a Form 8-R, fingerprint card, and the \$50 registration fee to register "C" as an associated person of an introducing broker. "Z"'s Sponsor's Certification may be filed separately from the new Form 8-R.) Proposed §§ 3.2, 3.12(c), 3.3(a)(3). Alternatively, assume that (C) has become registered as an AP of FCM "W" on April 1, 1984. "Z" can now file Form 8-S (which is effective upon mailing) as long as "C" remains registered as an AP of "W". Proposed § 2.12(d). Although "Z" must thereafter file a complete Form 8-R and the \$50 registration fee, "Z" would not have to file a fingerprint card for "C" if "Z" files the Form 8-R on or before June 30, 1985, the 90th day after "C" was registered as an AP of FCM "W". Proposed §§ 3.12(d), 3.21(a)(2).

(5) "D", an associated person of CTA "Y", leaves "Y"'s employment on March 1, "D", may become immediately re-registered as an AP of another CTA, or as an AP of an FCM, CPO, or introducing broker, at any time prior to

May 1, (the sixty-first day after March 1st) if his new employer files Form 8-S and thereafter files Form 8-R, a fingerprint card, and the registration fee. Proposed § 3.12(d). On and after May 1, "D"'s new employer would have to file a Form 8-R, a fingerprint card, and the registration fee and "D" would not be permitted to act as an associated person until registration is granted. Proposed §§ 3.12(c), 3.12(a).

(6) "E" was registered as an associated person of FCM "W" in May 1982. Under the provisions of former Section 4k of the Act and Commission regulation 1.10b, "E"'s registration was granted for two years and will expire on May 31, 1984. Even though "E" ceased to be associated with FCM "W" in January 1983, he may become associated with another FCM, or with a CTA, CPO, or introducing broker without having to register until May 1984. Proposed § 3.12(a). "E"'s new employer must report "E"'s new association on Form 3-R. Proposed § 3.31(e). (When "E" left "W"'s employment, "W" reported "E"'s termination on Form 8-T. Proposed § 3.31(c).) On or prior to the date that "E"'s "old" two-year registration expires, his new employer must file either the Form 8-S or a complete Form 8-R and the \$50 registration fee. If the new employer chooses to file the Form 8-S, it must also file a complete Form 8-R and the registration fee within 60 days. In either case, the new employer does not have to verify "E"'s education and employment history (as presented in the Form 8-R) nor does the new employer have to file a fingerprint card for "E". Proposed §§ 3.12(c)(1)(ii), 3.12(c)(3), 3.12(d)(1), 3.12(d)(3).

(7) "F" is registered as an AP of CTA "Y". While still associated with "Y", "F" accepts an offer of employment with another CTA. His application for registration, filed on Form 8-S, will be rejected if "F" continues to be associated with "Y" because "F" cannot be associated with two sponsors who are registered in the same capacity. Proposed § 3.12(f).

"Transfer" of associated persons. The Commission recognizes that a not insubstantial number of APs are associated with FCMs through agents of those FCMs. Absent appropriate relief, those APs would generally remain registered in that capacity (*i.e.*, as persons associated with a futures commission merchant) even if the agent by whom they are employed becomes registered as an introducing broker. In those circumstances, an AP would have to re-register as an AP of the introducing broker if he is to continue to solicit or accept customers' orders or supervise any person or persons so engaged.

Similarly, an AP would have to re-register under the sponsorship of the new introducing broker if the FCM which had formerly sponsored that AP terminated its sponsorship (and, with it, the AP's registration) upon the registration of its former agent as an introducing broker. See proposed § 3.12(b).

The Commission is therefore proposing to exempt these APs on a one-time basis from certain otherwise applicable registration requirements. Specifically, the Commission is proposing in § 3.12a(T) to allow the "transfer" of any registered AP from an FCM to an introducing broker, a commodity trading advisor, or a commodity pool operator.⁴² This "transfer" rule, which would be effective for 180 days, would allow the FCM with whom the APs are presently registered and the introducing broker, commodity trading advisor, or commodity pool operator with whom the APs will thereafter be associated to file a statement with the Commission specifying which APs are to be "transferred" from the FCM to the new sponsor. That statement, which the Commission anticipates will be incorporated into Commission Form 3-R, would also require the transferee registrant (*i.e.*, the introducing broker, commodity trading advisor, or commodity pool operator) to acknowledge that the "transferred" APs will thereafter be registered as APs of that registrant as long as they remain associated with that firm and further, that such transferee shall be fully responsible for the conduct of those APs as if they had been sponsored by that firm.

The Commission's proposal would therefore eliminate the need for each of these APs to be formally re-registered. Specifically, the introducing broker, CTA, or CPO to whom an AP is "transferred" in accordance with § 3.12a(T) would be excused from filing Forms 8-S and 8-R, a fingerprint card, and the registration fee for each of those associated persons. Compare proposed §§ 3.3(a)(3), 3.12(c), 3.12(d). Furthermore, the FCM with whom the APs were formerly associated would not have to file a termination notice for each of those associated persons. Compare proposed § 3.31(c). The Commission

⁴² In view of the new registration requirements for APs of commodity trading advisors and commodity pool operators, the Commission is proposing to make this procedure equally available to permit transfer of such APs of FCMs to CTAs and CPOs. In this regard, the Commission notes that some agents of FCMs are presently registered under the Act as CTAs or as CPOs.

therefore anticipates that its proposal would, if adopted, streamline the transfer process, resulting in substantial savings of time and expense to the industry and the Commission while greatly minimizing the adverse effects upon customers which might otherwise result from the disruption of previously-existing business relationships.

C. Floor Brokers and Principals of FCMs, CTAs, CPOs, and Introducing Brokers

The Commission is proposing to make minor, technical amendments to its rules relating to the filing of a fingerprint card by floor brokers and the filing of a Form 8-R and a fingerprint card by principals of an FCM, CTA, or CPO. When those rules were first adopted in December 1980, the Commission determined to "grandfather" from those requirements any individual who had a "current" Form 8-R (or the former Form 94) on file with the Commission on the date those rules first became effective.⁵³ It has come to the attention of the Commission, however, that this latter exemption is somewhat broader than originally contemplated in that the definition of "current" contained in § 3.1(b), when read in conjunction with the "grandfather" clauses contained in the regulations relating to the registration of FCMs, floor brokers, CTAs, and CPOs, could be interpreted to allow an individual who had a then-current Form 8-R or Form 94 on file with the Commission on July 1, 1982 to leave the industry for an extended period of time and later return without having to file an updated Form 8-R and fingerprint card. This unintended exception, which is contrary to the Commission's intent, may be of particular significance because the duty to update and periodically correct a registrant's or principal's registration filings would generally be abated when an individual is no longer acting in a registered capacity or as a principal.⁵⁴

The Commission is therefore proposing to amend the definition of the term "current" (proposed § 3.1) and to amend pertinent portions of other of its regulations to require the filing of a Form 8-R and a fingerprint card in the limited circumstances described above.⁵⁵ The Commission is also

proposing to apply the same standard to the principals of introducing brokers.⁵⁶ The Commission wishes to emphasize, however, that it is not proposing to change those regulations which specify that principals or floor brokers who are not so "grandfathered" (and who therefore must be fingerprinted in accordance with the Commission's registration regulations) will, in general, only be required to file one fingerprint card and, except in the case of floor brokers, one Form 8-R.⁵⁷

D. Registration Fees

The Commission is proposing to increase the registration fees for all categories of registrants, to establish a fee for introducing brokers, and to charge a fee for the filing of a biographical supplement (Form 8-R) on behalf of a principal. Proposed § 3.3. Specifically, the fees for registration (both initial and renewal) would be increased from \$200 to \$300 for FCMs, from \$50 to \$100 for CTAs and CPOs,⁵⁸ and from \$20 to \$50 for APs and floor brokers. Proposed §§ 3.3(a)(1)-(4). The Commission is further proposing to increase from \$6 to \$10 the fee for each branch office and to make explicit that this latter charge would apply uniformly to the branch offices to FCMs, CTAs, CPOs, and introducing brokers. Proposed § 3.3(a)(5). The Commission is also proposing to charge \$50 for each Form 8-R submitted on behalf of a principal; this latter fee would not be assessed, however, where the same Form 8-R is being used simultaneously to apply for registration as an AP or as a floor broker or where an FCM, CTA, CPO, or introducing broker merely notifies the Commission of the addition of a principal on Form 3-R.⁵⁹ Proposed § 3.3(a)(6). Finally, the Commission is proposing to continue its present practice of requiring separate registration fees for each registration capacity. Proposed § 3.3(a)(7). Thus, for example, if an individual were simultaneously applying for registration in two capacities (e.g., as an AP of a CTA and as an AP of an introducing broker), the application would have to

be accompanied by a fee of \$100 for those two registration capacities.

The Commission believes that these fees are both reasonable and equitable. The Commission further believes that its proposal would not result in the adoption of fees which "exceed the actual cost . . . to the Commission" ⁶⁰ of registering each of the enumerated categories of registrant. The Commission is nonetheless continuing to develop data and information which will allow it to assess more precisely the actual cost to the Commission of registering each category of registrant and will, of course, consider that data and information when it adopts final rules.⁶¹ The Commission notes, however, that the applicability of this schedule of registration fees would be suspended once a registered futures association (such as NFA) assumes the Commission's registration processing responsibilities.⁶²

E. Other Registration Regulations

The Commission is proposing to make conforming, non-substantive amendments to certain of its other registration regulations to reflect the addition of the four new categories of registrant. Thus, for example, the Commission is proposing to amend § 3.2, which presently specifies that registration in one category under the Act does not include registration in any other capacity, to emphasize that except as may be provided in the Act or by Commission regulation, registration as an AP in any one capacity (e.g., as an AP of a commodity trading advisor) does not include registration in any other capacity (e.g., as an AP of a futures commission merchant).

The Commission is similarly proposing to amend §§ 3.21 and 3.30 to add appropriate references to introducing brokers and the new categories of associated persons. Section 3.21 allows the filing of a photocopy of an applicant's or principal's fingerprint card and criminal history sheet, if any, received from the FBI in certain instances where the applicant or principal was simultaneously fingerprinted for a position which requires registration both with the Commission and, for example, with a securities industry self-regulatory

⁵³ See proposed §§ 3.15(a)(2)(i), (c)(1).

⁵⁴ Those persons would, of course, remain subject to the provisions of § 3.12, which governs the registration of associated persons, and to the supplemental filing provisions of § 3.22. Furthermore, a floor broker would continue to be required to file a Form 8-R to apply for initial registration or for renewal thereof.

⁵⁵ The Commission is similarly proposing to charge \$100 for the registration of introducing brokers.

⁵⁶ Furthermore, and as discussed earlier, the Commission's proposed regulations would generally require only the one-time filing of a Form 8-R for a principal.

⁶⁰ Futures Trading Act of 1982, Pub. L. No. 97-444, section 237, 96 Stat. 2320, amending Futures Trading Act of 1978, section 26, 92 Stat. 877.

⁶¹ The Commission also intends to provide this data and information to its Congressional oversight committees. See H.R. Rep. 97-964, 97th Cong., 2d Sess. 37-56 (1982) (Conference Committee).

⁶² *Id.* at 57.

⁵³ 45 FR 80485, 80487 (December 5, 1980). The effective date of those rules was substantially deferred from July 1, 1981 to July 1, 1982. 46 FR 24940 (May 4, 1981).

⁵⁴ See Commission rule 3.31(b).

⁵⁵ See Commission rules 3.10(a)(2)(i), (c)(1) (FCMs); 3.11(b)(1) (floor brokers); 3.13(a)(2)(i), (c)(1) (CTAs); 3.14(a)(2)(i), (c)(1) (CPOs).

organization.⁶³ Section 3.30, which merely makes explicit a registrant's or principal's continuing duty to furnish a current address for the receipt of communications from the Commission, would be amended to add references to introducing brokers and to provide that communications from the Commission relating to the registration of an associated person may be addressed to a CPO, CTA, or introducing broker as well as to a futures commission merchant.

Section 3.31, which requires each applicant, registrant, and principal to report changes to the registration information on file with the Commission, would similarly be amended to make those requirements applicable to the four new registration categories. The Commission is also proposing to require any CTA or CPO which allows APs who are already registered in some other capacity to become associated with that CTA or CPO without re-registration to file a Form 3-R to report that association. Proposed § 3.31(d). The Commission hereby gives notice that, although the precise terms are not delineated in § 3.31(d), the Commission is proposing to amend Form 3-R to specify that any such CTA or CPO must make certifications for those newly-added associated persons which would be comparable to those required by proposed § 3.12a-(T). These latter requirements would not apply, however, where the CTA or CPO sponsored the re-registration of the AP in accordance with the provisions of § 3.12 or where the AP's pre-July 1, 1982 registration had not yet expired. See proposed §§ 3.31(d), (e).

Proposed § 3.31(e) is essentially the same as current § 3.31(d) and, in conjunction with proposed § 3.12(a), allows any associated person who was registered as such prior to July 1, 1982 and whose registration has not yet expired to change firms without having to re-register. The Commission is proposing to broaden those provisions so as to allow any such AP to be employed not only by an FCM, but also by a CTA, CPO, or introducing broker. The new employer would be required to report that association on Form 3-R but would not have to make certifications comparable to those which would be required under proposed §§ 3.12a-(T) or 3.31(d).⁶⁴

The Commission is also proposing to amend § 3.32(a) to require an introducing broker to re-register in the event of a change in the name of the registrant. A similar requirement already applies to FCMs, CTAs, and CPOs. Finally, the Commission is proposing to incorporate references to introducing brokers into § 3.33, which establishes the procedures for withdrawal from registration.

III. Minimum Financial and Related Reporting Requirements

A. Minimum Adjusted Net Capital Requirement

The Commission's proposals relating to the registration of introducing brokers are designed to fully integrate those persons into the Commission's regulatory framework. Another purpose of the proposals is to eliminate "the current ambiguity and the resulting uncertainties of the regulatory status of agents."⁶⁵ Agents are not now directly subject to the Commission's registration authority, but introducing brokers will be directly subject to the Commission's registration authority. Direct regulatory authority over such businesses is needed due to the recent proliferation of such businesses, and concomitant increased contact between such businesses and the public. The Commission recognizes that its authority to register and regulate introducing brokers is intended primarily to close certain regulatory gaps which currently exist and is not intended to facilitate the development of a new segment of the commodity industry nor to facilitate the entry of new firms. In order that the Commission may fully integrate introducing brokers into its regulatory program, Section 4f(2) of the Act has been amended to prohibit registration of introducing brokers who do not meet minimum financial requirements established by the Commission.⁶⁶

The Commission is authorized to establish minimum financial requirements for introducing brokers to insure that they meet their obligations as registrants. Congress stated that a purpose of those requirements should be "to guarantee accountability and responsible conduct of [introducing brokers]."⁶⁷ The Commission believes

that requiring a registered introducing broker to have a permanent capital base not only would establish a benchmark of economic viability, but would also be an important element of customer protection. The Commission further believes that the proposed minimum adjusted net capital requirement for introducing brokers must be based on several factors: (1) Requiring sufficient capitalization so that an introducing broker will be encouraged to employ the appropriate personnel, resources and equipment to safeguard its stake in the business; (2) insuring that such registrants have a sense of commitment and obligation to their business sufficient to produce responsible, reliable operations; (3) insuring that introducing brokers are not judgment proof; and (4) providing coverage for potential liabilities arising from business operations, customer relations and the handling of proprietary accounts. Another factor which the Commission has considered is its concern that if the adjusted net capital requirement for introducing brokers is set too low, persons who are currently directly supervised by and under the responsibility of FCMs (*i.e.*, associated persons of FCMs) may establish introducing broker firms for which the FCM will have no responsibility. Such a result could lead to a weakening in the current system of supervision and responsibility under the Act, which is directly contrary to the idea behind establishing a comprehensive regulatory scheme for introducing brokers, which is intended to strengthen supervision and responsibility.

The Commission therefore is proposing to amend § 1.17 of its regulations to establish minimum financial requirements for introducing brokers. The Commission, with these factors in mind, has determined to propose a minimum adjusted net capital requirement for introducing brokers of the greater of:

(A) \$25,000 (\$50,000 for each person registered as an introducing broker who is not a member of a designated self-regulatory organization), or

(B) For securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).⁶⁸

The Commission assumes, however, that all introducing brokers will join the NFA, and that therefore the effective minimum dollar amount of adjusted net capital will be \$25,000.

The Commission is aware that the Securities and Exchange Commission

⁶³ See 45 FR 80485, 80487 & n.18 (December 5, 1980).

⁶⁴ By comparison, the former employer would be required to report the termination of such an associated person in the same fashion as it reports the termination of any of its APs or principals. See proposed § 3.31(c).

⁶⁵ H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982). See also S. Rep. No. 384, 97th Cong., 2d Sess. 40 (1982).

⁶⁶ 7 U.S.C. 6f(2), as amended by Futures Trading Act of 1982, Pub. L. No. 97-444, section 208, 96 Stat. 2302 (1983). See also H.R. Rep. No. 565 at 48 and S. Rep. No. 384 at 40.

⁶⁷ See S. Rep. No. 384 at 41.

⁶⁸ See proposed § 1.17(a)(1)(ii).

has established a minimum net capital requirement for securities introducing brokers based on the greater of (1) \$5,000, or (2) 6% percent of aggregate indebtedness. The Commission believes that the higher minimum dollar amount proposed herein is necessary because introducing brokers in commodities will have fewer restrictions on their activities than is the case for securities introducing brokers. The Commission also notes that securities introducing brokers may be required to maintain net capital of more than \$25,000, in order to meet the requirement based on 6% percent of aggregate indebtedness.

The Commission is also proposing that an introducing broker who is not in compliance with the minimum adjusted net capital requirement, or is unable to demonstrate such compliance, would have to immediately cease doing business as an introducing broker until such time as the firm is able to demonstrate such compliance. However, if the introducing broker could immediately demonstrate to the satisfaction of the Commission or its designated self-regulatory organization ("DSRO") the ability to achieve compliance, the Commission or the DSRO may allow the introducing broker up to a maximum of 10 business days in which to achieve compliance without having to cease doing business. If the introducing broker were required to cease doing business because it was undercapitalized, the introducing broker would have to immediately notify each of its customers, and the FCM carrying the account of each customer, that it has ceased doing business. Regardless of whether the introducing broker is forced to cease doing business, the Commission or the DSRO could take action against an introducing broker for non-compliance with any of the provisions of § 1.17. See proposed § 1.17(a) (3) and (5).

The proposals relating to an introducing broker's compliance with the minimum adjusted net capital requirement are similar to those in effect for FCMs. See proposed § 1.17(a)(4). However, there is no provision for an introducing broker to transfer all its customer accounts, as there is for an FCM, since customer accounts will not be carried by the introducing broker but will be carried on a fully-disclosed basis by the FCM. The introducing broker would have to immediately notify each of its customers, and the FCM carrying the account of each customer, that it has ceased doing business. The customer and the FCM can then determine how to proceed, and commercial prudence suggests that this circumstance should

be addressed in the customer agreement.

B. Computation of Adjusted Net Capital

The minimum amount of adjusted net capital which would have to be maintained by introducing brokers, and what introducing brokers would have to do in the event they failed to maintain that level of adjusted net capital, are set forth in proposed § 1.17(a), and those requirements have been discussed above. In order to compute its actual adjusted net capital and thus determine whether it is complying with the minimum adjusted net capital requirement, the introducing broker would have to follow the provisions set forth in the remainder of § 1.17. Most of those provisions are not being amended and would apply to introducing brokers as well as FCMs although, as is the case with FCMs, whether any particular provision is relevant to a particular introducing broker depends upon the introducing broker's operations and activities. All introducing brokers should become familiar with all aspects of § 1.17.⁶⁹

Certain definitions applicable only to § 1.17 are contained in § 1.17(b). Generally, if an introducing broker is also a securities broker or dealer, assets and liabilities which are related to the firm's securities business would be treated in accordance with the SEC's financial rules, unless there is a specific provision for different treatment in § 1.17.⁷⁰ See § 1.17(b)(1).

The definition of a proprietary account for purposes of § 1.17 is more restrictive than the general definition of a proprietary account contained in § 1.3(y). For purposes of § 1.17, a proprietary account means only a commodity futures or option account carried on the books of an applicant or registrant for the applicant or registrant itself (i.e., the firm's house account), or for general partners of the applicant or registrant. Accounts for those persons included in the proprietary account definition in § 1.3(y) but not included in the more restrictive proprietary account definition of § 1.17 are deemed to be "noncustomer" accounts for purposes of

§ 1.17. See § 1.17(b) (2), (3) and (4). Another definition applicable only to § 1.17, the definition of the term "cover," may be found in § 1.17(j).

An introducing broker's net capital would be determined by computing the amount by which its current assets exceed its liabilities. Current assets means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold during the next twelve months. Specific items which would be included or excluded from current assets are set forth in § 1.17(c)(2).⁷¹ The conditions for determining whether a receivable is secured, which can affect the calculation of current assets,⁷² are set forth in § 1.17(c)(3). Those paragraphs are not being amended.

Liabilities would be determined in accordance with the provisions of § 1.17(c)(4). The Commission is proposing two amendments to the liabilities provisions. The first proposed amendment would restrict to FCMs only the applicability of the provision which excluded from liabilities those funds which are properly segregated and due to customers or option customers, if such funds have been excluded from current assets, since introducing brokers will not accept any customer segregated funds. See proposed § 1.17(c)(4)(ii). The other proposed amendment would affect an introducing broker who is a sole proprietor. Such an introducing broker would have to include in its liabilities the excess of any liabilities which have not been incurred in the course of business as an introducing broker over assets not used in the course of business as an introducing broker. A similar provision is currently applicable to FCMs which are organized as sole proprietorships, of which there are very few. See proposed § 1.17(c)(4)(iii). The other specific provisions of § 1.17(c)(4), which related to subordinated debt, certain tax liabilities, can certain long-term liabilities, are not being amended. An introducing broker would have to consider whether those provisions are

⁶⁹ Section 1.17 may be found at 17 CFR 1.17 (1982), as amended by 47 FR 22352 (May 24, 1982) and 47 FR 41513 (September 21, 1982) and 47 FR 56990 (December 22, 1982).

⁷⁰ Similarly, the SEC's financial rules generally defer to those of the Commission with respect to the treatment of commodity-related items. See 17 CFR 240.15c3-1b (1982). The Commission and the SEC have undertaken cooperative efforts intended to eliminate, to the extent practicable, duplicate or under regulatory burdens on FCM/broker-dealers and the Commission expects to continue those efforts with regard to firms which are introducing brokers and securities brokers or dealers.

⁷¹ For example, inventories generally would be excluded from current assets. However, spot commodities or securities which adequately collateralize indebtedness may be included in current assets. See § 1.17(c)(2)(iv)(A) and (B). Indebtedness would be considered adequately collateralized for those purposes when, pursuant to a legally enforceable written instrument, such indebtedness is secured by identified assets that are otherwise unencumbered and the market value of such assets exceeds the amount of such indebtedness. See § 1.17(c)(7).

⁷² Except for certain specified types of items, all unsecured receivables, advances and loans would have to be excluded from current assets. See § 1.17(c)(2)(i).

relevant to its particular operations and activities when it computes net capital.

The Commission wishes to note one other point with respect to an introducing broker's liabilities. The Commission assumes that introducing brokers will enter into agreements with clearing FCMs relating to the respective responsibilities of the introducing broker and the FCM for accounts introduced to the FCM by the introducing broker. The Commission further assumes that such agreements will contain an indemnity clause, whereby the introducing broker will agree to indemnify the FCM under specified circumstances, including the failure of any customer promptly to pay any amount due to the FCM. The Commission believes that such a contingent liability of the introducing broker, as well as any other contingent liabilities of the introducing broker, should be reflected in a footnote to the introducing broker's financial statements, but that while such liabilities remain contingent, they need not affect directly the introducing broker's computation of net capital. However, if a contingent liability appears likely to become an actual liability, the introducing broker would have to estimate the amount of actual liability and record that amount on its books.⁷⁵ The Commission specifically requests comment on the likelihood of such indemnification agreements between an introducing broker and an FCM, and on the appropriate accounting treatment for contingent liabilities of the introducing broker or the FCM contained in such agreements.

C. Adjustments to Net Capital.

When an introducing broker has computed its net capital, it would then have to follow the provisions of § 1.17(c)(5) to ascertain what adjustments, if any, would have to be made to its net capital to determine the firm's adjusted net capital. These adjustments, variously referred to as "safety factor charges" or "haircuts," are percentage deductions in the valuation of various assets which would have to be made in order to reflect the possibility of a decline in the value of such assets prior to their disposition.

⁷⁵ The Commission recognizes that while an indemnification agreement as described above could have a potential adverse impact on an introducing broker's net capital, conversely there could be a potential positive impact on an FCM's net capital. FCMs should be aware, however, that any such agreements will not affect the exclusion of debit/deficit accounts from current assets, nor will they affect the safety factor charges required to be taken for undermargined accounts, although an indemnification agreement may serve to reduce some or all of the impact of such charges on the FCM's adjusted net capital.

The Commission is proposing two amendments to the safety factor charges. The first proposed amendment relates to the recently-adopted safety factor charge for FCMs which requires FCMs to adjust their net capital by an amount equal to "four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market."⁷⁶ That safety factor charge for FCMs was added in conjunction with an amendment to the minimum adjusted net capital requirement for FCMs. That amendment to the minimum adjusted net capital requirement for FCMs permits an FCM to exclude the market value of exchange-traded commodity options purchased by the FCM's option customers when it calculates the required minimum amount of adjusted net capital based on segregated funds requirements.⁷⁸ The safety factor charge for short option customer positions is related to the proper segregation treatment for exchange-traded option transactions.⁷⁹ Since an introducing broker will not accept customer segregated funds and since an introducing broker's minimum adjusted net capital requirement will not be based on segregated funds requirements, the Commission is proposing not to apply to introducing brokers the safety factor charge referred to in this paragraph, but to limit the applicability of that charge to FCMs only.

The second proposed amendment to the safety factor charges is also related to segregation of customer funds. Section 4d(2) of the Act⁷⁷ permits an FCM, in accordance with rules set forth by the Commission, to invest customer funds "in obligations of the United States, in general obligations of any State or any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States." If an FCM makes any of those permissible investments using customer funds, § 1.17(c)(5)(v) requires the haircuts specified in that paragraph to be applied to those investments. Since an introducing broker will not accept customer

segregated funds and cannot therefore make any permissible investments using customer funds, the Commission is proposing not to apply to introducing brokers the safety factor charge for investment of customer segregated funds. The introducing brokers should be aware, however, that the Commission is not proposing to amend the first clause of § 1.17(c)(5)(v), which refers to "securities and obligations used by the applicant or registrant in computing net capital." Therefore, if an introducing broker uses its own funds to purchase securities, including securities purchased under an agreement to resell, the haircuts specified in § 1.17(c)(5)(v)⁷⁸ would have to be applied to such securities, as well as to securities owned by partners of an introducing broker if the introducing broker is organized as a partnership, to determine adjusted net capital.

The Commission's proposals place no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing the accounts of noncustomers, or soliciting or accepting orders and funds from customers for purposes of trading in non-regulated commodities. The Commission is, however, concerned that if an introducing broker were to engage in some or all of those activities, a "back office" operation would have to be established, and that this could have an adverse impact on what should be the introducing broker's primary function. It would also require back office as well as front office audits of introducing brokers. The Commission is also concerned that the introducing broker could have a much greater financial exposure if it chooses to engage in some or all of the activities referred to earlier in this paragraph. The Commission also notes that the SEC is more restrictive on these matters with securities introducing brokers.⁷⁹ For all of these reasons, the Commission, as noted elsewhere in this release, is specifically requesting comment on whether the permissible activities of introducing brokers should be further restricted.

Since the Commission's proposals place no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing the accounts of noncustomers, or soliciting or accepting orders and funds from customers for purposes of trading in non-regulated commodities, the Commission is not proposing to amend

⁷⁶ FR 41513, 41517 (September 21, 1982). This provision will appear in the next edition of the Code of Federal Regulations at 17 CFR 1.17(c)(5)(iii).

⁷⁷ FR 41513, 41516-17 (September 21, 1982). This provision will appear in the next edition of the Code of Federal Regulations at 17 CFR 1.17(a)(1)(ii).

⁷⁸ See Division of Trading and Markets, "Financial and Segregation Interpretation No. 8—Proper Accounting, Segregation and Net Capital Treatment of Exchange-Traded Option Transactions" (August 12, 1982), 1 Comm. Fut. L. Rep. (CCH) ¶ 7118.

⁷⁹ U.S.C. 6d(2) as amended by the Futures Trading Act of 1982, Pub. L. No. 97-444, section 207, 96 Stat. 2302 (1982).

⁷⁸ Those haircuts incorporate by reference the securities haircuts established by the SEC. See 17 CFR 240.15c-1(c)(2)(vi) and (c)(2)(vii), as well as 17 CFR 240.15c-1(f) (1982).

⁷⁹ See 17 CFR 240.15c-3-1(a)(2) (1982).

the provisions providing for safety factor charges for undermargined accounts. Therefore, introducing brokers would have to take safety factor charges for undermargined commodity futures and commodity option accounts of noncustomers, if the introducing broker acts as the clearing firm for such accounts. See § 1.17(c)(5)(ix). In addition, in the unlikely event that an introducing broker accepts funds (or extends credit in lieu thereof) from customers trading in non-regulated commodities (e.g., contracts traded on the Winnipeg Commodity Exchange), an introducing broker would have to take safety factor charges for undermargined commodity futures and commodity option accounts of customers, and for undermargined omnibus accounts trading in non-regulated commodities. See § 1.17(c)(5)(viii) and (ix).

The other safety factor charges contained in § 1.17(c)(5), which related to advances paid on cash commodity contracts, inventory, fixed price commitments, forward contracts, securities options, proprietary account positions in commodity futures and commodity options, contractual commitments⁸⁰ and certain unsecured receivables, are not being amended. An introducing broker would have to apply those charges to its net capital, if such charges are relevant to assets used by the introducing broker in computing its net capital, to determine its adjusted net capital. In addition, if an introducing broker is also a securities broker or dealer, it would have to apply any other haircuts specified in the SEC's net capital rule. See 17 CFR 1.17(c)(5)(xiv).

D. Other Provisions Relating to Adjusted Net Capital

The only other proposed amendments to § 1.17 are those necessitated by the inclusion of a minimum adjusted net capital requirement for introducing brokers in proposed § 1.17(a)(1)(ii). That proposed addition would require conforming changes in § 1.17(e)(1) regarding the withdrawal of equity capital, and in paragraphs (h)(2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii)(A),

(h)(3)(ii) and (h)(3)(v) of § 1.17, relating to subordinated debt. There are, however, several other provisions in § 1.17 which the Commission is not proposing to amend and which the Commission intends to apply to introducing brokers in the same manner as they currently apply to FCMs. A brief description of those provisions is set forth below for the convenience of introducing brokers who wish to familiarize themselves with how the capital rules would apply to them.

Section 1.17(d) sets forth the "debt-equity" requirement. This requirement means that thirty percent of a firm's required adjusted net capital would have to consist of equity capital. If an introducing broker's required adjusted net capital is \$25,000, \$7,500 would have to consist of equity capital. Therefore, if an introducing broker maintained adjusted net capital of \$37,500 so that it was not under the early warning system,⁸¹ it could have \$30,000 of outstanding debt governed to satisfactory subordination agreements (see proposed § 1.17(h), discussed *infra*) and \$7,500 of equity capital. No matter how much adjusted net capital is maintained by the introducing broker, the thirty percent equity requirement would apply only to the amount of required adjusted net capital.

What constitutes equity capital is set forth in § 1.17(d). Certain subordinated debt may qualify as equity capital if specified conditions are met, in addition to those which apply to subordinated debt in general. These additional conditions are: (1) The lender must be a partner or stockholder of the firm; (2) the initial term of the debt must be at least three years, and there must be a remaining term of not less than twelve months;⁸² (3) the governing subordination agreement does not contain most of the otherwise permissible provisions relating to accelerated maturity; (4) the governing subordination agreement allows no special prepayment of the debt (i.e., prepayment before one year from the date such subordination agreement becomes effective); and (5) the debt in question is maintained as equity capital subject to the provisions on withdrawal

of equity capital contained in § 1.17(e). If a firm is organized as a partnership, however, additional conditions (3) and (4) need not be met for subordinated debt to qualify as equity capital, if "the partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in [§ 1.17(h)] shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by [§ 1.17(e)]."⁸³

In addition to certain subordinated debt, equity capital includes the following:

(i) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts.

(ii) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodities, options and securities accounts subject to the provisions of [§ 1.17(e)]), and unrealized profit and loss.

(iii) In the case of a sole proprietorship, the sum of its capital accounts of the sole proprietorship and unrealized profit and loss.⁸⁴

Section 1.17(e) governs withdrawal of equity capital. If the proposed minimum adjusted net capital requirement of \$25,000 is adopted for introducing brokers, no withdrawals of equity capital could be made if that would leave the introducing broker with less than the greater of \$30,000 (120 percent of the applicable minimum dollar requirement of \$25,000) or, if the introducing broker is also registered with the SEC as a securities broker or dealer, the amount specified in the SEC's comparable provision limiting withdrawal of equity capital.⁸⁵ Also, a withdrawal of equity capital could not be made if it would cause an introducing broker to violate the thirty percent equity capital requirement set forth in § 1.17(d).

Section 1.17(f) governs the consolidation of assets and liabilities of a subsidiary or affiliate for purposes of computing net capital. Such a consolidation would be required to be made with any subsidiary or affiliate for which an introducing broker guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities. Such a consolidation would be permitted, but would not be required, if a subsidiary or affiliate is (1) majority owned and controlled by the introducing broker, and (2) the introducing broker can demonstrate, by an opinion of

⁸⁰ Section 1.17(c)(8) defines contractual commitments as follows:

The term 'contractual commitments' shall include underwriting, when issued, when distributed, and delayed delivery contracts; and the writing or endorsement of security puts and calls and combinations thereof; but shall not include uncleared regular way purchases and sales of securities. A series of contracts of purchase or sale of the same security, conditioned, if at all, only upon issuance, may be treated as an individual commitment.

The safety factor charge for contractual commitments will be relevant only to an introducing broker which is also a securities broker or dealer.

⁸¹ The proposed early warning level is 150 percent of the required minimum dollar amount or, if the introducing broker is registered with the SEC as a securities broker or dealer, and higher amount set by the SEC. See proposed § 1.12(b)(2).

⁸² Subordinated debt entered into today with a maturity date of July 1, 1986 could, therefore, qualify as equity capital if all other requirements were met. On July 1, 1985, however, such subordinated debt would no longer be counted as equity capital unless an extension of the maturity date had been agreed to by the parties, since the remaining term of the debt would be less than one year at that time.

⁸³ 17 CFR 1.17(d)(1) (1962), as amended by 47 FR 22352, 22355 (May 24, 1982).

⁸⁴ 17 CFR 1.17(d)(1)(i), (ii) and (iii) (1982).

⁸⁵ 17 CFR 240.15c3-1(e) (1982).

counsel, that the net asset values, or the portion related to the introducing broker's interest in the subsidiary or affiliate, may be caused by the introducing broker, or an appointed trustee, to be distributed to the introducing broker within 30 calendar days. The particular requirements relating to the opinion of counsel and the preparation of a consolidated computation of adjusted net capital are set forth in paragraphs (f)(2)(ii), (f)(3) and (f)(4) of § 1.17.

Section 1.17(h) sets forth the minimum and nonexclusive requirements for a satisfactory subordinate agreement. Unless debt is governed by a satisfactory subordination agreement, such debt may not be excluded from liabilities for purposes of computing net capital.

There are two types of subordination agreement. One type is a subordinated loan agreement, which governs a subordinated borrowing of cash. The other type is a secured demand note agreement, which governs the contribution of a secured demand note and the pledge of securities and/or cash as collateral to secure payment of the secured demand note by a lender.

The general requirements for a satisfactory subordinated loan agreement (cash only) include: (1) A minimum term of one year; (2) that it be enforceable in accordance with the terms of the agreement against both parties and their respective heirs, executors, administrators, successors and assigns; (3) that it govern subordinated debt of a specific dollar amount; (4) a provision that the cash proceeds thereof shall be used and dealt with by the borrower as part of its capital and shall be subject to the risks of the business; (5) a provision giving the borrower the right to deposit any cash proceeds in an account or accounts in its own name in any bank or trust company; (6) a prohibition on cancellation by either party; (7) a provision prohibiting payment under the agreement, or the termination, rescission or modification of the agreement, if those actions would have an effect inconsistent with § 1.17(h);¹⁷ and (8) a clause which effectively subordinates any right of the lender to receive any payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the applicant or registrant arising out of any

matter occurring prior to the date on which the related payment obligation matures, except for claims which are the subject of subordination agreements which rank on the same priority as, or junior to, the claim of the lender such subordination agreement.¹⁷

A secured demand note agreement must include items (1), (2), (3), (6), (7) and (8) from the preceding paragraph as well as: (1) A provision giving the borrower the right to deposit any cash pledged as collateral in an account or accounts in its own name in any bank or trust company; (2) a provision giving the borrower the right to pledge, repledge, hypothecate and rehypothecate any or all of the securities pledged as collateral, without notice, separately or in common with other securities or property for the purpose of securing any indebtedness of the borrower; (3) a provision giving the borrower the right to lend to itself or others any or all of the securities and cash pledged as collateral; and (4) a provision requiring that, if the secured demand note becomes undercollateralized, either the lender must restore sufficient collateral, the borrower must commence sale of the collateral for the lender's account, or the lender must reduce the unpaid principal amount of the secured demand note, subject to the approval of the borrower and the appropriate regulatory authority.

Collateral for a secured demand note may consist only of (1) cash, and (2) securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933 and which are not otherwise restricted regarding offer, sale and transfer. Such securities must also be in bearer form or registered in the name of the borrower or the borrower's nominee or custodian. See § 1.17(h)(2)(vi) and (h)(3)(iv). The collateral value of such securities is their market value after applying the percentage deductions contained in § 1.17(c)(5), which are described above. See § 1.17(h)(1)(iii). *Subject to the borrower's prior rights as pledgee, the lender may retain certain rights with respect to the securities used for collateral.* See § 1.17(h)(1)(v)(C) and (D).

If a secured demand note is not paid upon presentment and demand, the borrower has the right to liquidate all or any part of the securities then pledged as collateral and the right to apply the net proceeds of such a liquidation, together with any cash then included in the collateral, in payment of the secured demand note. The secured demand note agreement may provide that neither the

lender, nor the lender's heirs, executors, administrators or assigns, shall be personally liable on the secured demand note, and that in the event of default, the borrower may obtain payment of the note solely from the collateral then pledged to secure the note. See § 1.17(h)(1)(v)(AA) and (C).

In addition to the provision which must be included in subordination agreements, such agreements may also contain provisions for prepayment and/or special prepayment under certain conditions (see § 1.17(h)(2)(vii)) and provisions for accelerated maturity under certain conditions (see § 1.17(h)(2)(ix) and (x)). Accelerated maturity of the borrower's payment obligation under a subordination agreement is required in the event of any receivership, insolvency, liquidation, bankruptcy, assignment for the benefit of creditors, reorganization, or any other marshalling of the borrower's assets and liabilities. Even in such an event, however, the lender's right to receive payment remains subordinate as set forth in § 1.17(h)(2)(iii). See § 1.17(h)(2)(ix)(B).

In addition to the normal type of subordination agreement described above, there are two other types of subordination agreements, a temporary subordination agreement and a nonconforming subordination agreement. A firm may be permitted to enter into a temporary subordination agreement so that it can participate as an underwriter of securities or undertake other extraordinary activities and still remain in compliance with the minimum adjusted net capital requirement. Special conditions applicable to a temporary subordination agreement are set forth in proposed § 1.17(h)(3)(v).

A nonconforming subordination agreement is an agreement governing subordinated debt which is borrowed by a firm when the firm becomes undercapitalized, and such borrowing is permitted in order to assist the firm in achieving compliance with applicable capital requirements. Special conditions applicable to such debt are set forth in § 1.17(h)(4).

Requirements for filing subordination agreements are set forth in § 1.17(h)(3)(iv). Two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) must be submitted to the Commission's Division of Trading and Markets in Washington, D.C., to the attention of the Chief Accountant, at least ten days prior to the proposed effective date of the agreement or at such other time as the Chief Accountant may, for good cause, accept such filing.

¹⁷ Repayment of subordinated debt must be suspended if such repayment would cause the borrower's capital to fall below certain specified levels. See proposed § 1.17(h)(2)(viii)(A).

¹⁷ 17 CFR 1.17(h)(2)(iii)(1962).

If the borrower is a member of a designated self-regulatory organization ("DSRO"), copies of any proposed agreement must be filed in such quantities and at such time as the DSRO requires. If the borrower is an applicant for registration or is not a member of any DSRO, the Commission will examine the agreement, and it must be approved by the Commission to be considered a satisfactory subordination agreement for net capital purposes. If the borrower is a DSRO member, the DSRO must examine the agreement, and only approval by the DSRO is necessary (although two copies must still be submitted to the Commission). If the borrower is a DSRO member, the Commission will only be involved directly under certain conditions, such as in the case of a request for prepayment, which requires approval by both the DSRO and the Commission.

Several commodity exchanges and other entities have developed subordination agreement forms that are generally acceptable under the Commission's regulations, and those interested in applying for registration as an introducing broker may want to obtain a copy of such forms and begin to become familiar with such forms.

E. Financial Reporting Requirements

Section 1.10 of the regulations contains most of the requirements relating to the filing and contents of financial reports for FCMs. The Commission is proposing to amend § 1.10 to include such requirements for introducing brokers, which will be very similar to those for FCMs.

Under the proposed amendments, an initial application for registration as an introducing broker would have to be accompanied by a financial report, and the introducing broker applicant would have the choice of two options to meet that requirement. The firm could either file a current form 1-FR (*i.e.*, a form 1-FR dated as of a date not more than 45 days prior to the date on which the registration application is filed) certified by an independent public accountant,** or the firm could file a current uncertified form 1-FR together with a form 1-FR certified by an independent public accountant as of a date not more than one year prior to the date of filing. In addition, each introducing broker applicant, as is the case with FCM applicants, would be required to submit with its financial report a statement which describes the source of its current assets and which represents that its

capital has been contributed for the purpose of operating the business and will continue to be used for that purpose. See proposed § 1.10(a)(2).

An exception to the requirement to file a certified financial report with an application for registration as an introducing broker would be made for an introducing broker applicant which is succeeding to and continuing the business of another introducing broker. (A similar exception presently exists for an FCM applicant which is succeeding to and continuing the business of another FCM.) Such an applicant would not need to file any financial report with its application, but would need to file an uncertified form 1-FR as of the first monthend following the date on which registration is granted. Thereafter, such a firm would file financial reports like any other introducing broker. See proposed § 1.10(a)(3).

The requirements for filing financial reports after a firm is granted registration as an introducing broker are set forth in proposed § 1.10(b). Each introducing broker would have to file a quarterly form 1-FR, and the report which is filed as of the firm's fiscal year-end date would have to be certified by an independent public accountant in accordance with § 1.16. If the introducing broker elects a fiscal year which does not coincide with the calendar year (see proposed § 1.10(e)), the introducing broker would nevertheless be allowed to file a quarterly uncertified form 1-FR as of each calendar quarter. However, the year-end certified form 1-FR would have to be filed as of the close of the introducing broker's fiscal year. Uncertified reports would have to be filed within forty-five days after the end of the quarter for which the report is being filed; the certified report would have to be filed within ninety days after the end of the fiscal year. Therefore, an introducing broker with a calendar year fiscal year would have to file its year-end certified report by March 31, and the first quarter report would be due on May 15. See proposed § 1.10(b)(1) and 17 CFR 1.10(b)(2) (1982).

The Commission has been advised that the bylaws of the National Futures Association ("NFA"), which at present is the only registered futures association, will be amended to provide for the membership category of introducing broker and effectively to require all introducing brokers to become NFA members. The NFA is a designated self-regulatory organization ("DSRO") under the Commission's regulations. See 17 CFR 1.3(ee) (1982) and proposed § 1.3(ff). Proposed § 1.10(b)(3) would provide that if an

introducing broker is a member of a DSRO which has minimum financial and related reporting requirements which have been approved by the Commission pursuant to Section 4f(2) of the Act and § 1.52 of the regulations, the introducing broker can satisfy its financial report filing requirement by filing its report with the DSRO and promptly providing the Commission with a copy of the report.⁸⁹ The rules of a DSRO may provide for the filing of a year-end certified financial report and a semiannual uncertified interim report, rather than quarterly filing. See proposed § 1.52(a).

The Commission is not proposing to amend § 1.10(b)(4), but it intends to extend the coverage of that provision to introducing brokers as well as FCMs. It would require an introducing broker to furnish more frequent reports on form 1-FR, or to supply additional information, upon the written request of the Commission or a self-regulatory organization of which the introducing broker is a member (*e.g.*, the NFA). This would enable the Commission or the self-regulatory organization to obtain more timely information than is supplied by the quarterly financial report. The Commission typically makes such requests with respect to FCMs when a firm is thought to be in a questionable financial condition and expects to apply the rules similarly to introducing brokers.

Form 1-FR is the standard financial reporting form for FCMs, and the Commission is proposing to have introducing brokers use form 1-FR for their financial reporting as well. See proposed § 1.10(d). The Commission believes that form 1-FR is familiar to the industry and that using the existing form will make completion of the form by the industry, and its review by the Commission and DSROs, easier than would be the case if a separate form for introducing brokers were developed. The Commission is proposing that introducing brokers also use form 1-FR because a separate form for introducing brokers would necessarily be very similar to, and largely duplicative of, form 1-FR. The Commission believes that having introducing brokers and FCMs both use form 1-FR will result in more efficient compliance with and

⁸⁹ The requirements relating to accountant certification are contained in proposed § 1.16, discussed *infra*.

⁸⁹ Any financial report or copy thereof which an introducing broker would be required to file with the Commission (exclusive of financial reports submitted with the initial registration application, which would have to be submitted with the firm's application for registration and filed with the Commission's Chicago regional office) would have to be filed with the regional office of the Commission nearest the principal place of business of the introducing broker. See 17 CFR 1.10(c) (1982).

administration of financial reporting requirements, but the Commission specifically requests comment as to whether a separate financial reporting form for introducing brokers should be developed.

The form 1-FR would be left essentially unchanged, since much of the same information regarding the financial condition of an FCM will also be required to be furnished by an introducing broker. The instructions to the form would be modified, however, to make it clear that certain items do not apply to introducing brokers, which would include most of those items relating to commodity customer funds and commodity customer accounts. For instance, introducing brokers would not be required to complete the schedule of segregation requirements and funds on deposit in segregation, since introducing brokers would obviously have none. Introducing brokers should complete form 1-FR in accordance with the instructions to the form.⁹⁰

Every certified form 1-FR filed by an introducing broker would be required to contain the following items: (1) A statement of financial condition; (2) statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors; (3) a statement of computation of minimum capital requirements; (4) appropriate footnote disclosures; and (5) such further material information as may be necessary to make the required statements not misleading.⁹¹ For the interim uncertified reports, an introducing broker would be required to file the statement of financial condition, the statement of changes in ownership

equity, the minimum capital computation, and such further material information as may be necessary to make the required statements not misleading.

Introducing brokers should also be aware that § 1.10(d)(4), which is not being amended, would also apply to them. Section 1.10(d)(4) states that:

Attached to each form 1-FR filed pursuant to this § 1.10 must be an oath or affirmation that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained in the form 1-FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer.

F. Fiscal Year Elections

Section 1.10(e) relates to a firm's fiscal year. Proposed § 1.10(e)(1) provides that each introducing broker or applicant therefor may establish a fiscal year other than the calendar year. Proposed § 1.10(e)(2) provides that each introducing broker or applicant therefor may elect to file its financial reports as of each calendar quarter in lieu of each fiscal quarter, if the firm's fiscal year is other than the calendar year. Each introducing broker or applicant therefor would be able to establish a fiscal year other than the calendar year by notifying the Commission and all self-regulatory organizations of which it is a member, if any, of its election of such fiscal year. Similarly, each introducing broker may elect to file its financial reports as of each calendar quarter in lieu of each fiscal quarter by similar notification of its intent. Such notification would have to be made in writing concurrently with the filing of a form 1-FR submitted with the registration application. An introducing broker would not be able to change such elections unless it made written application to, and received approval from, the Commission.

G. Extension of Time To File Financial Reports

Another provision which would apply to introducing brokers, but which is not being amended, is § 1.10(f) (17 CFR 1.10(f) (1982)). That paragraph governs requests for extension of time to file unaudited financial reports.⁹² In the

event that an introducing broker found that it could not file an unaudited financial report within the time limits set forth in the regulations without substantial undue hardship, the introducing broker could apply for an extension of time to a specified date not more than 90 days beyond the required filing date. Using the example referred to earlier of an introducing broker with a calendar year fiscal year, the first quarter unaudited report would be due on May 15, which is 45 days after the end of the first quarter. A request for an extension of time for filing such a report would have to contain an agreement to file the report on or before a specified date, which could be no later than August 13, since that is 90 days after May 15. An application for an extension of time would have to state the reasons why the requested extension is necessary, and it would have to be received by the principal office of the Commission in Washington, D.C. (the request should be sent to the attention of the Chief Accountant of the Division of Trading and Markets) prior to the report due date, which would be May 15 for the first quarter report. Notice of the extension request would have to be given to the introducing broker's DSRO concurrently with the filing of the request with the Commission. Introducing brokers should be aware of the fact that merely filing a request for an extension of time would not operate as an automatic extension of the time for submitting a financial report.

The Commission shall, within 10 calendar days after receipt of the extension of time request, either notify the introducing broker that the request has been granted or denied, or indicate to the introducing broker that the Commission needs a specified amount of additional time to review the request. The Commission will notify any DSRO of which the introducing broker is a member of the action taken with respect to the extension request. The Commission anticipates that, as has been the experience with FCMs, extensions will be granted only in those rare cases where an introducing broker can demonstrate that substantial undue hardship will be incurred if the extension is not granted.

H. Nonpublic Treatment of Financial Reports

Section 1.10(g) concerns the treatment of financial reports for purposes of the Freedom of Information Act⁹³ and the Government in the Sunshine Act⁹⁴ and

⁹⁰ The changes to the form 1-FR which would be necessitated by the proposed amendments to the regulations discussed herein are not being published in this release because those changes are of a minor, technical nature and because form 1-FR does not appear in the Code of Federal Regulations. Anyone interested in further information regarding the changes to form 1-FR may contact Mr. Patent at the address or telephone number listed in this release. Form 1-FR is available upon request from the Commission.

⁹¹ The statement of financial condition and the statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors included in the certified financial reports would not need to be filed in accordance with the format set forth in form 1-FR if the independent public accountant determines that such format would be inconsistent with generally accepted accounting principles for the financial statements of the applicant or registrant. If such a determination were made, the statement of financial condition would have to be presented in a format which is as consistent as possible with form 1-FR, and a reconciliation would have to be provided which reconciles the statement of financial condition to the statement of computation of minimum capital requirements.

⁹² Section 1.10(f) governs extensions of time for reports filed in accordance with § 1.10(b)(1) (the normal periodic interim reports), § 1.10(b)(4) (a report filed pursuant to a written request from the Commission or a DSRO), or § 1.12(b) (reports required by the financial early warning system, discussed *infra*). Requests for extension of time to file a certified financial report are governed separately by § 1.16(f), discussed *infra*.

⁹³ 5 U.S.C. 552.

⁹⁴ 5 U.S.C. 552b.

the Commission's regulations promulgated in accordance with those Acts, Parts 145 and 147, respectively. The proposed treatment of a form 1-FR filed by an introducing broker under those Acts and regulations will essentially be the same as it is for an FCM. The introducing broker's statement of financial condition and minimum capital computation, as well as the independent accountant's opinion included with a certified form 1-FR, would be treated as public information. If those portions of the financial report are bound separately by the introducing broker from the remainder of the report (i.e., on certified reports, the income statement, the statement of changes in financial position, the statement of changes in subordinated liabilities, footnote disclosures, and the accountant's report on material inadequacies, and, on all financial reports, the statement of changes in ownership equity) the items referred to in parentheses would be treated as nonpublic records. Introducing brokers are advised that the nonpublic treatment of certain portions of the financial report is a waivable option. If the introducing broker does not follow the separate binding procedure, all of the financial report may be treated as a public record by the Commission.⁹⁶

I. Filing Option for Firms Registered With the SEC

Another option which will be available to introducing brokers is contained in proposed § 1.10(h). If the introducing broker is also registered with the SEC as a broker or dealer, it would be able to elect to file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 ("FOCUS Report") in lieu of form 1-FR. If the introducing broker is a securities clearing broker-dealer, it would file a copy of the FOCUS Report, Part II; if the introducing broker is a securities introducing broker, it would file a copy of the FOCUS Report, Part IIA.⁹⁷ The

filing option would be permitted on the condition that all of the information which is required to be furnished on and submitted with form 1-FR is provided in the FOCUS Report. Section 1.10(h) includes this proviso to take into account the possibility that the SEC might fail to amend its financial reporting requirements if the Commission in the future requires additional information to be furnished on or submitted with form 1-FR. At present, an introducing broker would be able to use the FOCUS Report, Part II or Part IIA, in lieu of form 1-FR.⁹⁷

J. Outdated References

The Commission also wishes to note that it is eliminating certain outdated references in paragraphs (b)(1), (d)(1)(ii), (d)(2)(ii), (e)(1) and (e)(2) of § 1.10. Such references, which refer to such things as the time for filing certain financial reports or the time within which to make certain elections, no longer have any relevance to FCMs, and separate references for introducing brokers would be unnecessarily confusing and would also shortly become outdated. However, the Commission expects to treat introducing brokers in a manner similar to the treatment accorded FCMs following the effective date of the amendments to the minimum financial and related reporting requirements adopted in 1978. For example, an introducing broker's election of a fiscal year other than the calendar year, and an introducing broker's election to file interim reports based on the calendar year rather than the fiscal year, could always be made concurrently with the introducing broker's registration application. For the 90-day period following the effective date of the amendments to § 1.10(e), the Commission also intends to allow introducing brokers to make such elections even after the filing of their registration application. See 17 CFR 1.10(e) (1982).

K. Certification of Financial Reports and the Role of Independent Public Accountants

Under proposed § 1.10(a)(2), an applicant for registration as an introducing broker would have to submit a certified financial report with its

application. Under proposed § 1.10(b)(1), a registered introducing broker would have to file a certified financial report as of its fiscal year-end date. See also § 1.10(b)(2). The certification of those financial reports would have to be made by a certified public accountant or a licensed public accountant in accordance with § 1.16.

Section 1.16 contains the provisions which relate to accountants and their role in the preparation of certified financial reports. Persons planning to file an application for registration as an introducing broker should become familiar with those provisions, and they should have their accountants become familiar with § 1.16 as well. The Commission, because of the proposal of regulations to govern introducing brokers, is also proposing two minor technical amendments to § 1.16 which are described below, but the substance of that section would remain basically unchanged.

The first proposed amendment would merely conform § 1.16(c)(5) to the proposed amendment to the broker-dealer filing option contained in proposed § 1.10(h), and would allow an FCM or an introducing broker which is also registered as a securities broker or dealer with the SEC to file a copy of either Part II or Part IIA of the FOCUS Report in lieu of form 1-FR. The second proposed amendment would restrict the requirements for auditing funds in segregation and segregation requirements to audits of FCMs only, since only FCMs will be able to hold customer segregated funds. See proposed paragraphs (d) and (f)(1) of § 1.16.

As stated above, the substance of § 1.16 would remain basically unchanged. Definitions for purposes of § 1.16 are contained in paragraph (a). Paragraph (b) sets forth the requirements for an accountant who certifies a firm's financial statements, both with respect to professional standing and in terms of independence from the firm being audited. Paragraph (c) sets forth the items which would have to be contained in the accountant's report, which include such things as the accountant's manual signature, the accountant's representation and opinion on certain matters, and an identification of any matters in the firm's financial statements to which the accountant takes exception. The procedures which would have to be followed in the event of the replacement of the accountant are set forth in paragraph (g).

The required objectives of the audit by the independent accountant are set forth in proposed § 1.16(d). The audit

⁹⁶ An introducing broker would, of course, be free to petition the Commission for confidential treatment of all or any portion of any financial report, or any other material submitted to the Commission, in accordance with and subject to the conditions of § 145.9 of the Commission's regulations (17 CFR 145.9 (1982)). However, the separate binding procedure set forth in § 1.10(g) is intended to eliminate the need for such a petition in connection with a financial report.

⁹⁷ The Commission is aware that some FCMs who are securities introducing brokers are filing a copy of the FOCUS Report, Part IIA, in lieu of form 1-FR. Section 1.10(h) is being clarified to allow any FCM or introducing broker to file Part II or Part IIA of the FOCUS Report, as appropriate.

⁹⁸ In connection with the proposed expansion of the filing option to allow the filing of Part IIA of the FOCUS Report, the Commission is also proposing to add § 145.5(d)(1)(i)(D) and § 147.3(b)(4)(i)(A)(4) of the regulations under the Freedom of Information Act and Government in the Sunshine Act, respectively. Those new paragraphs would provide for nonpublic treatment of the FOCUS Report, Part IIA, to the same extent as presently provided for the FOCUS Report, Part II. See 17 CFR 145.5(d)(1)(i)(C) and 147.3(b)(4)(i)(A)(3) (1982).

would have to include all procedures necessary under the circumstances of the particular introducing broker to enable the accountant to express an opinion on the introducing broker's financial statements and schedules. An audit of an introducing broker would also have to include a review of the practices and procedures followed by the introducing broker in making periodic computations of the firm's adjusted net capital requirement and its actual adjusted net capital. The proper extent and timing of audit procedures are matters for the accountant to determine based on the introducing broker's accounting system and internal accounting controls. See § 1.16(e)(1).

One of the principal reasons why the Commission is proposing to require auditing of an introducing broker by an independent licensed or certified public accountant is so that a determination can be made by the accountant as to whether any material inadequacies exist in the introducing broker's accounting system, internal accounting controls and procedures for safeguarding the firm's assets. Under proposed § 1.16(d)(2), such a material inadequacy includes any conditions which contributed substantially to, or if appropriate corrective action is not taken, could reasonably be expected to:

- (i) Inhibit an applicant or registrant from promptly completing transactions or promptly discharging his responsibilities to customers or other creditors;
- (ii) Result in material financial loss;
- (iii) Result in material misstatement of the applicant's or registrant's financial statements and schedules; or
- (iv) Result in violations of the Commission's * * * recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs * * * (i), (ii), or (iii) * * *.

Under § 1.16(e)(2), if an accountant discovers a material inadequacy, the accountant would have to call that inadequacy to the attention of the introducing broker. The firm would then be required, as part of the financial early warning system,⁹⁸ to inform the Commission and the DSRO. If any, of the fact that the accountant has discovered a material inadequacy. The introducing broker would also have to furnish the accountant with a copy of the introducing broker's notice to the Commission, and if there are statements in that notice with which the accountant disagrees, or if there are items omitted in the notice, or if a copy of the notice is not received by the accountant, the accountant would have to file a report

with the Commission and the DSRO, if any regarding those matters.

In addition, under proposed § 1.16(c)(5), whenever an introducing broker or applicant therefor would be required to file a certified financial report, the firm filing their report would have to file concurrently a supplemental report of the independent accountant describing any material inadequacies found to exist as of the date of the audit, or found to have existed since the date of the previous audit. The supplemental accountant's report on material inadequacies would have to indicate any corrective action taken or proposed by the firm with respect to any such material inadequacies. If the audit did not disclose any material inadequacies, the accountant's supplemental report would be required to so state. See proposed § 1.16(c)(5).

As stated above in the discussion of requests for extension of time to file unaudited financial reports, requests for extension of time to file certified financial reports are governed separately by proposed § 1.16(f). In the event that an introducing broker found that it could not file its certified financial report within the time limit set forth in the regulations, which is 90 days after the end of the firm's fiscal year (see proposed § 1.10(b)(1)), the introducing broker could apply for an extension of time to a specified date not more than 90 days beyond the required filing date. Continuing the example referred to earlier of an introducing broker with a calendar year fiscal year, the certified year-end financial report would be due on March 31, and an extension of time request could specify a date no later than June 29 for filing such a report.

As in the case for a request for extension of time to file an unaudited financial report, an introducing broker's request for extension of time to file a certified financial report would have to: (1) State the reasons why the requested extension is necessary; (2) contain an agreement to file the report on or before a specified date (which, in the example cited in the preceding paragraph, can be no later than June 29); and (3) be received by the principal office of the Commission in Washington, D.C. (the request should be sent to the attention of the Chief Accountant of the Division of Trading and Markets) and by the introducing broker's DSRO, if any, prior to the date on which the report is due. In addition, an introducing broker's request for extension of time to file a certified financial report would have to: (1) Indicate that the introducing broker's inability to make a timely filing is due to circumstances beyond the introducing

broker's control, if such is the case, and describe briefly the nature of those circumstances; (2) be accompanied by the introducing broker's latest available formal computation of adjusted net capital and minimum financial requirements, computed in accordance with § 1.17; and (3) be accompanied by a letter from the introducing broker's independent public accountant answering the following questions:

A. What specifically are the reasons for the extension request?

B. On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

C. Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 1.17, or has any significant financial or recordkeeping problems?

Introducing brokers should be aware of the fact that merely filing a request for an extension of time would not operate as an automatic extension of the time for submitting a financial report. The Commission shall, within 10 calendar days after receipt of the extension request, either notify the introducing broker that the request has been granted or denied, or indicate to the introducing broker that the Commission needs a specified amount of additional time to review the request. The Commission will notify any DSRO of which the introducing broker is a member of the action taken with respect to the extension request. The Commission anticipates that, as has been the experience with FCMs, extensions will be granted only in those rare cases where an introducing broker can demonstrate that substantial undue hardship will be incurred if the extension is not granted.

L. Financial Early Warning System

The Commission's financial early warning system for FCMs is contained in § 1.12. When the Commission first proposed the present financial early warning system it stated:

In short, the system is designed to afford the Commission and the appropriate industry self-regulatory organizations sufficient advance notice of an FCM's problems to allow the necessary protective, as opposed to enforcement, action to be taken to insure the safety of the FCM's customers' funds and the integrity of the marketplace.⁹⁹

⁹⁸ See 17 CFR 1.12(d) (1982).

⁹⁹ 42 FR 31740 [June 22, 1977].

The Commission is proposing a similar financial early warning system for introducing brokers. The Commission recognizes, however, that there are certain significant differences between the operations of FCMs and introducing brokers, and the Commission is therefore also requesting specific comments on this matter.

The principal element of the financial early warning system, as currently in effect for FCMs, becomes operational when an FCM, or applicant therefor, knows or should have known that its adjusted net capital at any time is less than the greatest of: (1) 150 percent of the required minimum dollar amount; (2) six percent of the customer funds required to be segregated less the market value of exchange-traded commodity options purchased by customers;¹⁰⁰ or (3) if the firm is also a securities broker or dealer, any higher amount required by the SEC's early warning system.¹⁰¹ The Commission is proposing to add a similar provision for introducing brokers and introducing broker applicants, except that, since introducing brokers will not accept segregated funds, the provision would become operational when an introducing broker, or applicant therefor, knows or should have known that its adjusted net capital at any time is less than the greater of: (1) 150 percent of the required minimum dollar amount, or (2) if the firm is also a securities broker or dealer, any higher amount required by the SEC's early warning system.

An introducing broker which fails to maintain adjusted net capital equal to or in excess of the early warning level would be required to make the same filings as an FCM. The firm would have to file written notice that its adjusted net capital fell below the early warning level within five business days of such event. Further, the firm would have to file a financial report as of the close of business for the month during which its adjusted net capital fell below the early warning level, and as of the close of business for each month thereafter until three successive months have elapsed during which the firm's adjusted net capital is at all times equal to or in excess of the early warning level. Each of those financial reports must be filed within thirty calendar days after the end of the month for which the report is being made. See proposed § 1.12(b).

¹⁰⁰ The deduction for each option customer is limited to the amount of customer funds in such option customer's account. The early warning level based on segregation requirements can be viewed as being 150 percent of the required minimum adjusted net capital amount based on segregation requirements (6 percent as compared to 4 percent).

¹⁰¹ 17 CFR 240.17a-11 (1982).

Another important element of the early warning system, which requires an FCM to give telegraphic notice within 24 hours after it knows or should have known that it is undercapitalized, would be applied to introducing brokers as well. See proposed § 1.12(a). The only difference in the requirements for FCMs and introducing brokers under proposed § 1.12(a) relates to what would have to be filed within 24 hours of the notice of undercapitalization. FCMs must file a statement of financial condition, a capital computation, and a segregation schedule, all as of the date of undercapitalization. Introducing brokers would only have to file a statement of financial condition and capital computation, since they will not accept segregated funds.

Those persons intending to apply for registration as introducing brokers should become familiar with certain other elements of the financial early warning system which are not being amended but which the Commission intends to apply to introducing brokers. If an introducing broker at any time failed to make or keep current the books and records required to be maintained by the regulations promulgated under the Act, the introducing broker would be required, on the same day such event occurs, to give telegraphic notice of such fact, specifying the books and records which have not been prepared or which are not current. In addition, within five business days after giving such notice the introducing broker would have to file a written report stating what steps have been and are being taken to correct the situation. See § 1.12(c).

If an introducing broker were to discover or be notified by an independent public accountant of the existence of a material inadequacy in its accounting system, its internal accounting controls, or its procedures for safeguarding customer and firm assets,¹⁰² the introducing broker would have to give telegraphic notice of such material inadequacy within three business days. In addition, within five business days after giving such notice, the introducing broker would have to file a written report stating what steps have been and are being taken to correct the material inadequacy. See § 1.12(d).

Those persons intending to apply for registration as introducing brokers, and the NFA, should be aware that § 1.12(e) also requires any self-regulatory organization which learns that a member registrant has failed to file a

notice or written report required under the financial early warning system to immediately report such member's failure to do so.

Every notice which an introducing broker would have to file under the financial early warning system would have to be submitted to the principal office of the Commission in Washington, D.C. (to the attention of the Chief Accountant, Division of Trading and Markets), to the Commission's regional office for the region in which the firm has its principal place of business, to the firm's designated self-regulatory organization, if any, and, if the firm is a securities broker or dealer, to the SEC. All follow-up written reports and financial statements would have to be filed with the same entities, except for the principal office of the Commission. See § 1.12(g).

As stated above, the Commission is requesting specific comment on the appropriate financial early warning system for introducing brokers. Commentators should consider the following factors. The early warning level based on the required minimum dollar amount of net capital is 120 percent for securities brokers or dealers, whether the firm engages in a general securities business or merely acts as an introducer of customer accounts to a clearing broker.¹⁰³ Furthermore, because introducing brokers will not accept customer funds, an introducing broker's adjusted net capital should be subject to far less fluctuation than that of an FCM. Also, if the Commission establishes an early warning level of adjusted net capital for introducing brokers which is higher than the minimum adjusted net capital requirement, introducing brokers would have to either maintain the early warning level of adjusted net capital or file a form 1-FR each month until three successive months have elapsed during which the firm's adjusted net capital is at all times equal to or in excess of the early warning level. Such a monthly filing requirement (as opposed to a quarterly or semiannual filing requirement) could be burdensome, especially for a small firm, and could

¹⁰² See 17 CFR 240.17a-11(b) (1982). The Commission also wishes to point out, however, that the early warning level for a securities broker or dealer using the aggregate indebtedness ("AI") method of computing net capital is 125 percent of the minimum amount, since minimum net capital must be 6% percent of AI and the early warning level is 8% percent of AI. Such a firm which uses the "alternative" method of computing net capital, based on aggregate debit items ("ADI"), has an early warning level which is 250 percent of the required minimum level of net capital since minimum net capital must be 2 percent of ADI and the early warning level is 5 percent of ADI.

¹⁰³ For an explanation of what constitutes a material inadequacy, see proposed § 1.16(d)(2), discussed *supra*.

divert regulatory resources to firms which do not necessarily require enhanced surveillance from those firms which may require closer scrutiny.

Taking all of those factors into account, the Commission is specifically requesting comment as to whether the financial early warning system for introducing brokers should be essentially the same as it is for FCMs, as the Commission is proposing. One alternative would be to establish the early warning level of adjusted net capital at 120% of the required minimum dollar amount, rather than the proposed 150%, which would be the same as it is for introducing securities brokers or dealers.¹⁰⁴ Another alternative would be to require only notice of undercapitalization, and have no higher early warning level of adjusted net capital for introducing brokers. Commentators should also address whether other elements of the early warning system relating to maintenance of books and records and material inadequacies should apply to introducing brokers.

M. Recordkeeping and Monthly Capital Computation

The Commission is proposing certain other minor amendments in the financial area. The Commission is proposing to amend § 1.18(a) to require an introducing broker to prepare and keep current the same type of financial records which an FCM must keep. The Commission is also proposing to amend § 1.18(b) to require an introducing broker to make a formal computation of its adjusted net capital and of its minimum financial requirements as of the close of business each month. The Commission currently requires an FCM to make such monthly computations.

N. Financial Surveillance and Monitoring by Self-Regulatory Organizations

As stated elsewhere, the Commission has been advised that NFA's bylaws will be amended to provide for the membership category of introducing broker and effectively to require all introducing brokers to become members of NFA. The Commission is proposing to amend § 1.52(a) to require each self-regulatory organization other than a contract market to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for all of its member who are registered introducing brokers. The Commission is proposing to amend

§ 1.52(a) in this manner so that it would apply only to NFA and to any other futures association which may be registered under the Act (*see also* proposed § 1.3(ff)) because the Commission assumes that even if some introducing brokers are contract market members, the contract markets will not undertake financial surveillance and monitoring of introducing brokers as they do for member FCMs, since introducing brokers will not accept customer segregated funds. The Commission is also proposing to add references to introducing brokers in paragraphs (c), (g), (j), (k) and (l) of § 1.52.

IV. Amendments to Existing Regulations

The Commission is proposing to amend several of the definitions contained in § 1.3 either to conform to the recent amendments to the Act or to incorporate references to the new registration categories. Thus, the Commission is proposing to amend the definitions of "associated person" and "commodity trading advisor" and to add a definition of "introducing broker" to parallel the revisions to the Act made by the Futures Trading Act of 1982. Proposed §§ 1.3(aa), 1.3(bb), 1.33(mm).¹⁰⁵ The Commission is also proposing to amend the definition of the term "designated self-regulatory organization" to include references to introducing brokers. Proposed § 1.3(ff). Finally, the Commission is proposing to delete references to particular registrants in § 10.1(a) in order to make the Commission's Rules of Practice generally applicable to proceedings pursuant to Section 6(b) and 8a of the Act to deny, suspend, or revoke registration in any capacity.

The Commission is proposing to amend § 1.19 in order to extend to introducing brokers the prohibition on granting commodity options currently applicable to FCMs, except where those options are traded on or subject to the rules of a contract market. The

Commission's proposals would allow introducing brokers to trade options only for their own accounts; nothing in the rules the Commission is proposing today would authorize an introducing broker to engage in option transactions for or on behalf of option customers. Thus, the Commission is not proposing to amend § 33.3(b) of its regulations¹⁰⁶ which, in general, restricts the solicitation and acceptance of orders from option customers to FCMs (and persons associated with those FCMs) which are members of the contract market on which the option is traded or which are a members of a registered futures association, such as the National Futures Association, which has established a program for the regulation of the option-related activities of its members. Thus, until such time as the Commission approves rules of a registered futures association which specifically provide for the regulation by that futures association of the option-related activities of introducing brokers, an introducing broker will be precluded from participation in the Commission's option pilot program other than as a purchaser or seller of options for its own account. Furthermore, and as discussed more fully below, the Commission is specifically requesting comments as to whether there should be further restrictions on the ability of an introducing broker to trade for its own account or to carry proprietary accounts, including proprietary accounts with option positions.

An introducing broker will also not be authorized to engage in dealer option transactions conducted pursuant to the provisions of Section 4c(d) of the Act¹⁰⁷ and Part 32 of the Commission's regulations.¹⁰⁸ In this regard, the Commission notes that the Futures Trading Act of 1982 in no way alters the previously-existing statutory proscriptions on who may offer and sell dealer options. The Commission therefore does not intend to amend Part 32 of its regulations to permit anyone other than registered futures commission merchants to engage in such transactions.

The Commission is proposing to require introducing brokers to open and carry each customer's account with a carrying FCM on a fully-disclosed basis. An introducing broker would similarly be required to transmit all customer

¹⁰⁴ The proposed definition of the term "commodity trading advisor" would specify that only "the named fiduciary" of a defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") is to be excluded from that definition. *See* proposed § 1.3(bb)(v). The Commission's proposal is intended to make clear that only those persons who meet the statutory definition of an ERISA fiduciary (*see* 29 U.S.C. 1002(21)) and are subject to another regulatory framework covering their fiduciary activities may be excluded from the definition of "commodity trading advisor" and the Commission's regulatory framework for commodity trading advisors. The Commission specifically requests comment as to the proper interpretation regarding which ERISA fiduciaries, other than named fiduciaries of the plan, should be considered to be excluded from the definition of "commodity trading advisor."

¹⁰⁵ Based on a required minimum dollar amount of \$25,000 (*see* proposed § 1.17(a)(1)(ii)(A)), the early warning level would be \$30,000 instead of \$37,500.

¹⁰⁶ 17 CFR 33.3(b), as amended by 47 FR 56996, 57016 (December 22, 1982).

¹⁰⁷ U.S.C. 6c(d), as amended by Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(4), 96 Stat. 2301.

¹⁰⁸ 17 CFR Part 32, as amended by 47 FR 56996, 57016 (December 22, 1982).

orders either to that carrying futures commission merchant or to a floor broker, if the introducing broker "gives up" the name of (i.e., identifies) its carrying FCM. Proposed § 1.57(a). In view of these proposed requirements, the Commission has not deemed it necessary to amend its segregation regulations (17 CFR 1.20-1.30, 1.32) or most of its other rules relating to customer accounts. For example, the Commission has not proposed to amend §§ 1.33 and 1.46 of its regulations because the FCM which carries accounts for an introducing broker will continue to supply the required confirmation, monthly, and purchase-and-sale statements.

The Commission is proposing, however, to require introducing brokers to prepare a time-stamped record of each customer order and a daily record or journal of all customer trades. These requirements currently apply to FCMs. By comparison, because introducing brokers would not be allowed to carry customer accounts, they would not be required to prepare the financial or contract ledgers required by §§ 1.35(b)(1) and (b)(2).

Although the Commission is proposing to require introducing brokers to introduce all of their customer accounts to a futures commission merchant on a fully-disclosed basis, the Commission has not proposed a similar rule for the "house" or other proprietary accounts¹⁰⁹ of the introducing broker. The Commission is nonetheless concerned that allowing introducing brokers to carry such accounts will necessarily increase the complexity of their operations and require the establishment and daily supervision of a "back office" solely for this purpose. The Commission is further concerned that allowing an introducing broker to carry these accounts could jeopardize the firm's stability in the event that any of the proprietary accounts became undermargined or had a debit balance which required the infusion of additional capital by the introducing broker. The Commission is, therefore, requesting comments on whether it should prohibit introducing brokers from carrying proprietary accounts, as well as accounts in non-regulated commodities such as those traded on foreign boards of trade. The Commission is specifically requesting comments on the appropriateness of such a restriction and advises interested persons that it may impose such a restriction as part of

the final regulations adopted in this rulemaking proceeding. As discussed subsequently in this *Federal Register* release, further amendments to the Commission's reporting regulations may be required to extend those regulations to introducing brokers if such restrictions are not adopted.

The Commission is proposing amendments to two other sections of Part 1 of the regulations so that coverage of those provisions will be extended to introducing brokers as well as FCMs. Under Commission rule 1.55, an FCM must furnish a customer with a disclosure statement which sets forth the risks of commodity trading, and the customer must sign and date an acknowledgment stating that he received and understood the disclosure statement, before a commodity futures account may be opened for the customer. If a customer were to use the services of an introducing broker, the introducing broker would generally be responsible for furnishing such a disclosure statement to the customer and for obtaining and retaining the required customer acknowledgment. See proposed § 1.55(a) and (c). Although such a customer would open an account on a fully-disclosed basis with an FCM, and would be considered a customer of the FCM, the FCM would not have to furnish the same or an additional disclosure statement to any such customer which has received the disclosure statement from, and provided the required acknowledgment to, the introducing broker. Commercial prudence suggests that the introducing broker and FCM establish clearly between themselves which entity is responsible for furnishing the customer with the risk disclosure statement and obtaining and retaining the customer acknowledgment.

The Commission has also included a proposed new paragraph (d) of § 1.55. The Commission recently proposed a new § 1.55(d) which would require FCMs to disclose all material information to their customers.¹¹⁰ The Commission has included in these proposals the language of proposed § 1.55(d) as it appeared in that earlier release and has merely added a reference to introducing brokers so that the provision would apply equally to introducing brokers and FCMs. The Commission is presently evaluating the comments received in response to its earlier proposal of § 1.55(d), so those persons who commented on that proposal need not comment again on this point. The Commission may in the near future adopt a final rule on this

subject which would be applicable solely to FCMs. If such a rule is adopted, the Commission expects to include a reference to introducing brokers in that rule when final rules relating to introducing brokers are adopted. The substance of any such rule would, therefore, be the same for FCMs and introducing brokers.

The Commission is also proposing to amend § 1.56, which relates to the prohibition of guarantees against loss, so that it would apply to introducing brokers as well as to FCMs. The Commission believes, for essentially the same reasons that caused the Commission to adopt such a rule for FCMs,¹¹¹ that introducing brokers should not be able to represent that they will guarantee a customer against loss.

The Commission is proposing to amend §§ 4.23 and 4.32 of its regulations relating to CPOs and CTAs, respectively, to require pool operators and trading advisors to indicate in their itemized daily records whether a trade was placed with an introducing broker. The Commission is not proposing, however, to amend §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker. Compare §§ 4.21(a)(3), 4.31(a)(5). The Commission believes that such amendments are unnecessary in view of the existing requirements in the Commission's CPO and CTA regulations which specify that disclosure of the information specified in those rules does not relieve a CPO or CTA from the obligation to disclose all material information to existing or prospective pool participants or clients. See §§ 4.21(h), 4.31(g).

The Commission is proposing to amend certain of its regulations relating to market surveillance in order to establish for introducing brokers duties which are similar to those which presently apply to futures commission merchants. Specifically, under § 15.05, the introducing broker which introduces an account of any foreign broker or trader would be deemed an agent of the foreign broker and its customers and an agent of the foreign trader for purposes of accepting service of any communication issued by the Commission.¹¹² Similarly, §§ 21.01, 21.02

¹⁰⁹ See 46 FR 62841 (December 29, 1981).

¹¹² Although the futures commission merchant effecting a transaction for a foreign account would also continue to be the agent of both a foreign broker and its customers and of a foreign trader, the Commission is proposing to amend § 15.05 because it believes that there may be instances in which service on the foreign parties could be better effected through the introducing broker.

¹¹⁰ The term "proprietary account" is defined in Commission rule 1.3(y) to include, *inter alia*, the accounts of partners, officers, employees, and certain related individuals.

¹¹¹ 47 FR 52723 (November 23, 1982).

and 21.03 would be amended to prescribe for introducing brokers duties similar to those imposed on futures commission merchants with regard to special calls for information. Thus, for example, introducing brokers would be obligated to provide certain information upon special call, as set forth in those rules, and introducing brokers would be prohibited from accepting any orders from customers who do not respond to selected special calls issued pursuant to § 21.03.¹¹³

The Commission is proposing to amend its trading standards regulations in Part 155 to make them applicable to introducing brokers. The definition of "affiliated person" would be extended to include the affiliated person of an introducing broker as well as affiliated person of an FCM and would have the same meaning in both contexts. As affiliated person of an introducing broker would thus be any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the introducing broker, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons. See proposed § 155.1.

Minor amendments are also being proposed to § 155.3, which sets forth the trading standards for FCMs. These amendments are intended to ensure that an FCM handles an account of an affiliated person of an introducing broker on the same basis that the FCM handles an account of an affiliated person of another FCM. The FCM would have to receive written authorization from a person designated by the introducing broker with the responsibility for surveillance of the account of that affiliated person before the FCM could knowingly handle such an account. In addition, the FCM would have to prepare written records of all orders for such an account. In addition, the FCM would have to prepare written records of all orders for such an account, and transmit such records on a regular basis to the introducing broker.

¹¹³ As discussed elsewhere in this Federal Register notice, the Commission is considering whether it should prohibit introducing brokers from carrying proprietary accounts and is requesting comments on that issue. If introducing brokers are allowed to carry such accounts, and such accounts are carried on an omnibus basis, the Commission contemplates that it will need to amend §§ 1.37(b), 15.01(b), Part 17, 21.02(g)(3), 21.03(e)(1), and 21.03(e)(1)(iv) of its regulations. The Commission wishes to give notice that if, after consideration of the comments on this issue and the Commission's own further deliberations, the Commission allows introducing brokers to carry proprietary accounts, it will likely amend those regulations to make them applicable to introducing brokers.

along with all statements for such account. See proposed §§ 155.3(c) (1) and (3) and § 155.3(c)(2).

The Commission is also proposing a new rule, § 155.4, which would set forth trading standards for introducing brokers. The proposed rule is patterned after § 155.3. The proposed rule is designed to ensure that the "customer first" principle which applies to orders given to an FCM is extended to an introducing broker as well. Customer orders would thus have to be transmitted to the FCM carrying the account before the transmission of any similar order for a proprietary account of the introducing broker, for an account in which an affiliated person of the introducing broker has an interest, or for any account over which an affiliated person of the introducing broker has discretion. See proposed § 155.4(a).

The introducing broker would not be permitted to disclose that it or any of its affiliated persons was holding the order of another person, nor could the introducing broker or any of its affiliated persons knowingly take the other side of a customer's order, except under certain specified conditions. See proposed § 155.4(b).

An affiliated person of an introducing broker could maintain an account with an FCM only if the affiliated person received written authorization to do so from a person designated by the introducing broker with the responsibility for surveillance of such activity. Copies of all statements for such an account, as well as all written records of orders for such an account prepared by the FCM, would have to be transmitted to the introducing broker on a regular basis. See proposed § 155.4(c).

The Commission assumes that some customers may grant discretion to introducing brokers and to associated persons of introducing brokers to make trades for them. (Such a grant of discretion will require the introducing broker to register as a CTA as well. Compare proposed § 4.14(a)(6).) The Commission is therefore proposing to amend § 166.2, which requires a customer's prior authorization to trade the customer's account, so that it would refer to introducing brokers and their associated persons.

The Commission is proposing two amendments in the Part 170 regulations, which relate to registered futures associations. The first amendment is a technical change to § 170.2 concerning membership restrictions. The references to particular registration categories would be eliminated so that the new categories discussed herein, as well as any additional categories created in the

future, would be included. The second amendment would add a new § 170.10 relating to proficiency examinations and would permit a futures association to establish different training standards and proficiency examinations for persons registered in more than one capacity. Furthermore, if a person were exempt from registrations in a particular capacity, yet performed the functions of a person registered in such capacity, a futures association could require that person to meet training standards and pass a proficiency examination related to that exempted capacity.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")¹¹⁴ requires that agencies, in proposing rules, consider the impact of those rules on small businesses.¹¹⁵ The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.¹¹⁶ In that statement, the Commission concluded that neither FCMs nor registered CPOs should be considered to be small entities for purposes of the RFA. With respect to FCMs, the Commission's determination was based in part upon their obligation to meet the Capital requirement established by the Commission and the purposes of protecting financial integrity, as well as the fiduciary nature of the FCM-customer relations.¹¹⁷ As for CPOs, the Commission determined that registered CPOs are not small entities based upon its existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.¹¹⁸ (A CPO need not register with the Commission if the gross capital contributions for all pools under its management do not exceed \$200,000 and there are not more than fifteen participants in any one of the those pools.) Thus, with respect to FCMs and registered CPOs, pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a

¹¹⁴ 5 U.S.C. 601 *et seq.*

¹¹⁵ By its terms, the RFA does not apply to "individuals." Compare S. 299, 96th Cong., 1st Sess. (Jan. 31, 1979). Because associated persons must be individuals, (see Section 4k of the Act and proposed § 1.3(a)), the RFA does not apply to APs and no analysis of the economic impact of this rule proposal on such persons is required.

¹¹⁶ 47 FR 18618-21 (April 30, 1982).

¹¹⁷ *Id.* at 18619.

¹¹⁸ *Id.* at 18619-20.

substantial number of small entities. The Commission nonetheless invites comments from any firm which believe that these rules would have a significant economic impact on its operations.

The Commission has also determined that, with respect to floor brokers, any rule proposal should be evaluated for its economic impact at the time it is proposed.¹¹⁹ To the extent that floor brokers can be considered to be small entities, both the proposed increase in the registration fee and the proposed fingerprinting requirement for certain floor brokers upon re-entry into the business following a lapse of registration implement the regulatory scheme contained in the Futures Trading Act of 1982, as discussed above, and the economic effect on floor brokers of both provisions, if adopted, would be slight.

As with floor brokers, the Commission similarly decided in its policy statement to evaluate within the context of a particular rule proposal whether all or some CTAs should be considered to be small entities, and if so, to then analyze the economic impact on them of any such rule.¹²⁰ In this regard, as is the case with floor brokers, the Commission does not consider either the proposed increase in the registration fee or the proposed fingerprinting requirement for certain CTAs upon re-entry into the business following a lapse of registration to have significant economic impact. The Commission is also aware that, if adopted as proposed, § 1.57 would require those CTAs which are compensated either by their customers or by an FCM on a "per-trade" basis or which receive a fee from an FCM for the referral of customers, to register as introducing brokers and to comply with the rules governing introducing brokers. Assuming *arguendo* that, for purposes of § 1.57, some CTAs are in fact small entities, the Commission has considered whether such a rule would have a significant impact on such entities.¹²¹

As discussed more fully above, the Commission believes that it is necessary to include within the introducing broker category those CTAs which, in essence, accept or solicit orders for the purchase or sale of futures contracts on behalf of one or more FCMs. Significantly, an alternative to registration as an introducing broker is available to those small CTAs which do business as sole proprietorships in that any such introducing broker may instead register as an AP of an FCM, thereby making compliance with the principal obligations of an introducing broker

(such as the minimum capital and reporting requirement) unnecessary. An extensive description of the proposed regulatory responsibilities of introducing brokers has already been provided above. In general, the regulations governing CTAs and introducing brokers neither conflict nor are inconsistent. To the extent that the rules relating to CTAs and introducing brokers would overlap (as, for example, with respect to certain recordkeeping requirements), any such duplication would simply mean that the particular task need not be performed twice.

As discussed above with respect to floor brokers, the Commission does not believe that the registration fee proposed herein for introducing brokers would constitute a significant financial burden and the Commission further believes that the fee for obtaining an introducing broker license is a relatively insignificant cost of doing business. Moreover, the Futures Trading Act of 1982 specifically authorizes the assessment of fees for the processing of applications for registration.¹²² The Commission further notes that the proposed fee would be the same as that proposed for CTAs and floor brokers; by comparison, the fee for FCMs would be substantially higher.

Inasmuch as introducing brokers did not exist when the Commission drafted its April 1982 policy statement concerning the definition of small entities, the Commission has not addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. The Commission has sought to integrate introducing brokers into the existing regulatory structure governing FCMs with such modifications as appear to be appropriate. The Commission does not believe that there are regulatory alternatives to those being proposed which would be consistent with the statutory mandate to provide protection to the public against irresponsible or fraudulent business practices.

For purposes of the RFA and future rulemakings, the Commission is hereby proposing that introducing brokers not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.¹²³ As with FCMs, a requirement to maintain a specified level of adjusted net capital would be imposed upon introducing brokers to ensure that they maintain sufficient capital resources to guarantee their financial accountability and to promote

responsible and reliable business operations. The Commission's proposed determination is also based on its experience with agents of FCMs, through which a considerable volume of customer business is secured.

As explained in the text above, once those agents are registered as introducing brokers and come within the regulatory framework governing introducing brokers, the Commission does not believe that these entities should continue to be viewed as small businesses for purposes of the RFA. The Commission's position is not inconsistent with the statement in the House Report accompanying the bill which became the Futures Trading Act of 1982 that many agents are individuals or small businesses.¹²⁴ This passing reference in the House Report was not intended to require application of the RFA to introducing brokers. In fact, insofar as many agents are individuals, the RFA does not directly apply to them. Moreover, Congress intended to apply standards of financial integrity for both introducing brokers and FCMs, regardless of size. Thus, the House Report stated:

Although agents may perform the same functions as branch officers of futures commission merchants, agents generally are separately owned and run. Futures commission merchants frequently disavow any responsibility for sales abuses or other violations committed by these agents. The Committee believes that the best way to protect the public is to create a new and separate registration category for "agents" (e.g., as introducing brokers.) * * *

The new registration category of "introducing broker" would encompass persons who solicit or accept futures orders but who do not handle customer funds, and in the case of individuals, who elect to be registered as introducing brokers rather than associated persons * * *

In addition to permitting greater review of qualifications, the proposed amendment would allow the Commission or NFA to set minimum financial and other standards for introducing brokers, analogous to those presently in effect for futures commission merchants. Compliance with these standards could be monitored and enforcement action could be taken when necessary. Thus, in place of the lack of regulation that now exists for agents, the proposed amendment would fully integrate these persons into the regulatory structure administered by the Commission under the Act.¹²⁵

The Commission believes that, as with FCMs, no regulatory distinctions can be made among introducing brokers in spite of any size differences that may

¹¹⁹ *Id.* at 18620.

¹²⁰ *Id.*

¹²¹ See 5 U.S.C. 603.

¹²² Pub. L. No. 97-444, §§ 223, 237, 96 Stat. 2310, 2326.

¹²³ 47 FR at 18619.

¹²⁴ H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982).

¹²⁵ *Id.*

exist among them in light of the nature of the relationship between an introducing broker and its customers and the need to protect financial integrity. The minimum capital, bookkeeping, and recordkeeping requirements authorized by Congress apply equally to all introducing brokers regardless of size, and are necessary to provide adequate customer protection. Moreover, the Commission wishes to note that it has sought to fashion its proposed regulatory program for introducing brokers in a manner which is responsive to the function, purposes, and size of the entity being regulated consistent with the objective of the RFA. In particular, the Commission believes that its proposed \$25,000 minimum capital requirement would appropriately effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable yet would not be so onerous as to constitute a barrier to the entry into, or continuation, in the commodities industry. For the reasons stated above, the Commission hereby proposes not to define introducing brokers as small entities for RFA purposes.

Consequently, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules contained herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operations.

B. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Since several of the proposals contained herein consist of proposed amendments to rules which have already been assigned OMB control numbers, the Commission assumes that the amended rules will be assigned the same OMB control number. Similarly, since the Commission is proposing that the new categories of registrant use amendments to existing forms in order to comply with registration and financial reporting requirements, those forms, as amended, will in all likelihood retain the same OMB control number which they have at present.

Interested members of the public may obtain a complete copy of the information collection proposals relating to the proposed rules contained herein by contacting Joseph Salazar at (202) 254-9735. Persons wishing to comment on the Paperwork Reduction Act implications of these proposals are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, and to the OMB Desk Officer for the agency, Robert Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of Subjects

17 CFR Part 1

Financial requirements, Reporting and recordkeeping requirements, Customer protection, Definitions, Registration requirements, Risk disclosure statements, Segregated funds, Introducing brokers.

17 CFR Part 3

Registration requirements, Authority delegations, Fingerprinting, associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants.

17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Associated persons, Recordkeeping requirements.

17 CFR Part 10

Administrative practice and procedure.

17 CFR Part 15

Reports by agents, Foreign brokers, Foreign traders, Introducing brokers.

17 CFR Part 21

Special calls for information, Introducing brokers.

17 CFR Part 145

Records, Freedom of Information Act.

17 CFR Part 147

Records, Sunshine Act.

17 CFR Part 155

Trading standards, Introducing brokers.

17 CFR Part 166

Authorization to trade, Customer protection.

17 CFR Part 170

Futures association, Authority delegation.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4, 4b, 4d, 4e, 4f, 4g, 4h, 4i, 3k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15 and 17 thereof, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19 and 21, as amended by the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983), and pursuant to the authority contained in Pub. L. No. 97-444, § 237, 96 Stat. 2326, and in 5 U.S.C. 552 and 552b, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3 is proposed to be amended by revising paragraphs (aa), (bb), and (ff) and by adding paragraph (mm) to read as follows:

§ 1.3 Definitions.

(aa) *Associated person*. This term means any natural person who (as provided in Section 4k of the Act) is associated in any of the following capacities with:

(1) A futures commission merchant as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged;

(2) An introducing broker as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged;

(3) A commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged; or

(4) A commodity trading advisor as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's

or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged.

(bb) *Commodity trading advisor.* This term means any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under Section 4c of the Act, or any leverage transaction authorized under Section 19 of the Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the named fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided further*, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.

(ff) *Designated self-regulatory organization.* This term means a self-regulatory organization of which a futures commission merchant or an introducing broker is a member, or if a futures commission merchant or an introducing broker is a member of more than one self-regulatory organization and such futures commission merchant or introducing broker is the subject of an approved plan under § 1.52, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant or introducing

broker for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant or introducing broker is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant or introducing broker.

(mm) *Introducing broker.* This term means any person, except a natural person who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

2. Section 1.10 is proposed to be amended by revising the section heading and paragraphs (a)(2), (a)(3), (b)(1), (b)(3), (d)(1), (d)(2), (e), (g), and (h) of § 1.10 to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, each person who files an application for registration as a futures commission merchant or as an introducing broker, and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either: (i) A form 1-FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed, or (ii) a form 1-FR as of a date not more than 45 days prior to the date on which such report is filed and a form 1-FR certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current asset and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant or another introducing broker. Each such person who files an application for registration as a futures

commission merchant or as an introducing broker and who is not so registered in that capacity at the time of such filing must file a form 1-FR as of the first monthend following the date on which his registration is approved. Such report must be filed with the Commission and the designated self-regulatory organization, if any, not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1) Except as provided in paragraph (b)(3) of this section, each person registered as a futures commission merchant or as an introducing broker must file a form 1-FR for each fiscal quarter of each fiscal year unless the registrant elects pursuant to paragraph (e)(2) of this section to file a form 1-FR for each calendar quarter of each calendar year. Each form 1-FR must be filed no later than 45 days after the date for which the report is made: *Provided, however*, That any form 1-FR which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each registrant's fiscal year.

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after the effective date of these regulations by the Commission pursuant to Section 4(f) of the Act and § 1.52: *Provided, however*, That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(d) *Contents of financial reports.* (1) Each form 1-FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) A statement of financial condition as of the date for which the report is made; (ii) a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made; (iii) a statement of the computation of

the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made; (iv) for a futures commission merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made; and (v) in addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each form 1-FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain: (i) A statement of financial condition as of the date for which the report is made; (ii) statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made; *Provided*, That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition; (iii) a statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made; (iv) for a futures commission merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made; (v) appropriate footnote disclosures; and (vi) in addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

(e) *Election of fiscal year.* (1) Any applicant or registrant wishing to establish a fiscal year other than the calendar year may do so by notifying the Commission and the designated self-regulatory organization, if any, of its election of such fiscal year in writing, concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section, but in no event may such fiscal year end more than one year from the date of the form 1-FR filed pursuant to paragraph (a)(2) of this section. An applicant or registrant which does not so notify the Commission and the designated self-regulatory organization, if any, will be deemed to have elected the calendar year as its fiscal year. A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal

year is approved upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

(2) Any applicant or registrant may elect to file its form 1-FR for each calendar quarter in lieu of each fiscal quarter by notifying the Commission and the designated self-regulatory organization, if any, of its election, in writing, concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section. Any registrant wishing to change such election or to make such election other than concurrently with the filing of the form 1-FR pursuant to paragraph (a)(2) of this section may do so only if such change or election is approved by the Commission upon written application to the principal office of the Commission in Washington, D.C., and written notice of such change is given to the designated self-regulatory organization, if any.

(g) *Nonpublic treatment of reports.* All of the forms 1-FR filed pursuant to this section will be public: *Provided*, however, That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 1.17, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of form 1-FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All of the copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, filed pursuant to paragraph (h) of this section will be public: *Provided*, however, That if the statement of financial condition, the computation of net capital, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, trade secrets and certain

other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition. The independent accountant's opinion filed pursuant to this section will be deemed public information.

(h) *Filing option available to a futures commission merchant or an introducing broker which is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a)(2), (b) and (c) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR: *Provided*, however, That all information which is required to be furnished on and submitted with form 1-FR is provided with such Report.

3. Section 1.12 is proposed to be amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) Each person registered as a futures commission merchant or as an introducing broker, or who files an application for registration as a futures commission merchant or as an introducing broker, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 1.17 or by the capital rule of any self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in paragraph (g) of this section that such applicant's or registrant's adjusted net capital is less than is required by § 1.17 or by such other capital rule, identifying the applicable capital rule. This notice

must be given with 24 hours after such applicant or registrant knows or should have known that its adjusted net capital is less than is required by any of the aforesaid rules to which such applicant or registrant is subject; and

(2) If the person is a futures commission merchant or applicant therefor, within 24 hours after giving such notice file a statement of financial condition, a statement of the computation of the minimum capital requirements pursuant to § 1.17 (computed in accordance with the applicable capital rule), and a schedule of segregation requirements and funds on deposit in segregation, all as of the date such applicant's or registrant's adjusted net capital is less than the minimum required; or

(3) If the person is an introducing broker or applicant therefor, within 24 hours after giving such notice file a statement of financial condition and a statement of the computation of the minimum capital requirements pursuant to § 1.17 (computed in accordance with the applicable capital rule) all as of the date such applicant's or registrant's adjusted net capital is less than the minimum required.

(b)(1) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the greatest of:

(i) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i)(A);

(ii) 6 percent of the following amount: the customer funds required to be segregated pursuant to section 4d(2) of the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or,

(iii) For securities brokers or dealers, the amount of net capital specified in Rule 17a-11(b) of the Securities and Exchange Commission (17 CFR 240.17a-11(b)).

must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a form 1-FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single

Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

(2) Each person registered as an introducing broker, or who files an application for registration as an introducing broker, who knows or should have known that its adjusted net capital at any time is less than the greater of:

(i) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(ii)(A), or,

(ii) For securities brokers or dealers, the amount of net capital specified in Rule 17a-11(b) of the Securities and Exchange Commission (17 CFR 240.17a-11(b)).

must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a form 1-FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

4. Section 1.16 is proposed to be amended by revising paragraphs (c) (5), (d), and (f)(1) to read as follows:

§ 1.16 Qualifications and reports of accountants.

(c) * * *

(15) *Accountant's report on material inadequacies.* A registrant must file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the form 1-FR being filed: *Provided, however*, That if such applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, and it files (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR the accountant's supplemental report must be made as of the date of such report. The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report must so state.

(d) *Audit objective.* (1) The audit must be made in accordance with generally accepted auditing standards and must include a review and appropriate tests of the accounting system, the internal accounting control, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets (including, in the case of a futures commission merchant, the segregation requirements of Section 4d(2) of the Act

and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making (a) periodic computations of the minimum financial requirements pursuant to § 1.17 and (b) in the case of a futures commission merchant, daily computations of the segregation requirements of Section 4d(2) of the Act and these regulations.

(2) A material inadequacy in the accounting system, the internal accounting controls, the procedures for safeguarding customer and firm assets, and the practices and procedures referred to in paragraph (d)(1) of this section which is to be reported in accordance with paragraph (e)(2) of this section includes any conditions which contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to:

- (i) Inhibit an applicant or registrant from promptly completing transactions or promptly discharging his responsibilities to customers or other creditors;
- (ii) Result in material financial loss;
- (iii) Result in material misstatement of the applicant's or registrant's financial statements and schedules; or
- (iv) Result in violations of the Commission's segregation (in the case of a futures commission merchant), recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs (d)(2) (i), (ii), or (iii) of this section.

(f) *Extension of time for filing audited reports.* (1) In the event any applicant or registrant finds that it cannot file its certified financial statements and schedules for any year within the time specified in § 1.10 without substantial undue hardship, it may file with the principal office of the Commission in Washington, D.C., an application for extension of time to a specified date not more than 90 days after the date as of which the certified financial statements and schedules were to have been filed. Notice of such application must be sent to the designated self-regulatory organization, if any. The application must be made by the applicant or registrant and must: (i) State the reasons for the requested extension; (ii) indicate that the inability to make a timely filing is due to circumstances beyond the control of the applicant or registrant, if such is the case, and describe briefly the nature of such circumstances; (iii) be accompanied by the latest available formal computation of his adjusted net

capital and minimum financial requirements computed in accordance with § 1.17; (iv) in the case of a futures commission merchant, be accompanied by the latest available computation of required segregation and by a computation of the amount of money, securities, and property segregated on behalf of customers as of the date of the latest available computation; (v) contain an agreement to file the report on or before the date specified by the applicant or registrant in the application; (vi) be received by the principal office of the Commission in Washington, D.C. and by the designated self-regulatory organization, if any, prior to the date on which the report is due; and (vii) be accompanied by a letter from the independent public accountant answering the following questions:

- (A) What specifically are the reasons for the extension request?
- (B) On the basis of that part of your audit to date, do you have any indication that may cause you to consider commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?
- (C) Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 1.17 or (in the case of a futures commission merchant) the segregation requirements of Section 4d(2) of the Act and these regulations, or has any significant financial or recordkeeping problems?

5. Section 1.17 is proposed to be amended by revising the section heading and paragraphs (a), (c)(4)(ii), (c)(4)(iii), (c)(5)(iii), (c)(5)(v), (e)(1), (h) (2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii)(A), (h)(3)(ii) and (h)(3)(v) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of:

- (A) \$50,000 (\$100,000 for each person registered as a futures commission merchant who is not a member of a designated self-regulatory organization), or
- (B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by

option customers on or subject to the rules of a contract market: *Provided, however,* The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account, or

(C) For securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

(ii) Except as provided in paragraph (a)(2) of this section, each person registered as an introducing broker must maintain adjusted net capital equal to or in excess of the greater of:

- (A) \$25,000 (\$50,000 for each person registered as an introducing broker who is not member of a designated self-regulatory organization), or
- (B) For securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

(2) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to Section 4f(2) of the Act and § 1.52 after the effective date of this regulation.

(3) No person applying for registration as a futures commission merchant or as an introducing broker shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this § 1.17. Each registrant must be in compliance with this § 1.17 at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization.

(4) A futures commission merchant who is not in compliance with this § 1.17, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the firm is able to demonstrate such compliance: *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization: *And, Provided further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or

the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(5) An introducing broker who is not in compliance with this § 1.17, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease doing business as an introducing broker until such time as the registrant is able to demonstrate such compliance: *Provided, however, That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to cease doing business as required above. If the introducing broker is required to cease doing business in accordance with this paragraph (a)(5), the introducing broker must immediately notify each of its customers and the future commission merchants carrying the account of each customer that it has ceased doing business. Nothing in this paragraph (a)(5) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.*

(c) ***

(4) ***

(ii) Excludes, in the case of a futures commission merchant, the amount of money, securities and property due to commodity futures or option customers which is held in segregated accounts in compliance with the requirements of the Act and these regulations: *Provided, however, That such exclusion may be taken only if such money, securities and property held in segregated accounts have been excluded from current assets in computing net capital;*

(iii) Includes, in the case of an applicant or registrant who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a futures commission

merchant or as an introducing broker over assets not used in the business;

(5) ***

(iii) In the case of a futures commission merchant, four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market;

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to Section 4d(2) of the Act and these regulations which were not deposited by customers, the percentages specified in Rule 240.15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3-1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3-1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3-1(c)(2)(vii)), or where appropriate, for securities brokers or dealers the percentages specified in Rule 240.15c3-1(f) of the Securities and Exchange Commission (17 CFR 240.15c3-1(f));

(e) ***

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of: (i) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (ii) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (iii) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1(e) of the Securities and Exchange Commission (17 CFR 240.15c3-1(e)); or*

(h) ***

(2) ***

(vi) ***

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant or registrant and the

designated self-regulatory organization, or, if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided, That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greatest of: (1) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (2) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market: *Provided, however, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (3) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(6)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(6)(iii)); *Provided, further, That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.***

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however, That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment*

obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of: (1) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (2) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market; *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (3) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(7) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(7)). Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of: (1) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (2) for a futures commission merchant or applicant therefor, 10 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options

purchased by option customers on or subject to the rules of a contract market; *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (3) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(5)(ii)); *Provided further*, That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no special prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of: (1) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (2) for a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value commodity options purchased by option customers on or subject to the rules of a contract market; *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (3) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(b)(8)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(b)(8)(i)); *Provided*, That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest

or compensation, shall remain subordinate as required by the provisions of this section.

(3) ***

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the designated self-regulatory organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements, then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than: (A) 120 percent of the minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (B) for a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or subject to the rules of a contract market; *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or (C) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(2) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(2)).

(v) *Temporary Subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective; *Provided*, That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of: (A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section; (B) for a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations less the market value of commodity options purchased by option customers on or

subject to the rules of a contract market: *Provided, however*, The deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; (C) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3-1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1d(c)(5)(i)); or (D) the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

6. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on form 1-FR or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR, the account classification subdivisions specified on such Report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the

computation requirements of this paragraph by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. Such computations must be completed and made available for inspection by any representative of the Commission or designated self-regulatory organization, if any, within 30 days after the date for which the computations are made, commencing the first monthend after the date the application for registration is filed.

7. Section 1.19 is proposed to be revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except for commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter.

8. Section 1.35 is proposed to be amended by revising paragraphs (a), (a-1)(1), and the introductory paragraph of (b) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

(a) *Futures commission merchants, introducing brokers, and members of contract markets.* Each futures commission merchant, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options, and cash commodities. Each futures commission merchant, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by any authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of its business of dealing in commodity futures, commodity options, and cash commodities.

(a-1) *Futures commission merchants, introducing brokers, and members of contract markets: Recording of customers' and option customers' orders.* (1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of such order, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(b) *Futures commission merchants, introducing brokers, and clearing members of contract markets.* Each futures commission merchant and each clearing member of a contract market and, solely for purposes of paragraph (b)(3) of this section, each introducing broker shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

9. Section 1.37 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

(a) Each futures commission merchant, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity futures or option account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant and member of a contract market must also show the name of the person who has solicited and is responsible for each option customer's account, the appropriate occupational code or codes for such account from the list of such codes that may be promulgated by the Commission, and a symbol indicating whether the option customer is a commercial or non-commercial for each commodity option for which commodity

option positions are carried for the option customer.

10. Section 1.52 is proposed to be amended by revising paragraphs (a), (c), (g), (j), (k) and (l) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c). *Provided, however, A designated self-regulatory organization may determine the number of form 1-FRs it receives from its member registrants so long as it requires at least semiannual form 1-FRs, one of which must be certified in accordance with § 1.16 for each such registrant: Provided, further, A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of form 1-FR.*

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant or any registered introducing broker which is a member of more than one such self-regulatory organization, the responsibility of:

- (1) Monitoring and auditing for compliance with the minimum financial and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and
- (2) Receiving the financial reports necessitated by such minimum financial and related reporting requirements.

Such plan may also delegate the responsibility of monitoring, and examining the books and records kept by, such registered futures commission merchant or registered introducing broker relating to its business of dealing in commodity futures, commodity options, and cash commodities, insofar as such business relates to its dealings on contract markets, as required by § 1.51(a)(3) and/or Part 33 of this chapter.

(g) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

- (1) Is necessary or appropriate to serve the public interest;
- (2) Is for the protection and in the interest of customers or option customers;
- (3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the self-regulatory organizations submitting the plan for any futures commission merchant or introducing broker which is a member of more than one self-regulatory organization;
- (4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant or introducing broker which is a member of more than one self-regulatory organization;
- (5) Promotes cooperation and coordination among the contract markets; and
- (6) Does not hinder the development of a registered futures association under Section 17 of the Act.

(j) Whenever a registered futures commission merchant or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C. and send a copy of that notification to such futures commission merchant or such introducing broker.

(k) Nothing in this § 1.52 shall preclude the Commission from examining any futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements to which such futures commission

merchant or introducing broker is subject.

(l) In the event a plan is not filed and/or approved for each registered futures commission merchant or for each registered introducing broker which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants or introducing brokers which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

11. Section 1.55 is proposed to be amended by revising paragraphs (a) and (c) and by adding paragraph (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a) No futures commission merchant or introducing broker may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first: (1) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions); and (2) receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

(c) The acknowledgment required by paragraph (a) of this section must be retained by the futures commission merchant or introducing broker in accordance with § 1.31.

(d) This section does not relieve a futures commission merchant or introducing broker from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective customers even if the information is not specifically required by this section.

12. Section 1.56 is proposed to be amended by revising the introductory paragraph of (b), (c) and the introductory paragraph of (d) to read as follows:

§ 1.56 Prohibition of guarantees against loss.

(b) No futures commission merchant or introducing broker may in any way represent that it will, with respect to any

commodity interest in any account carried by the futures commission merchant for or on behalf of any person:

(c) No person may in any way represent that a futures commission merchant or introducing broker will engage in any of acts or practices described in paragraph (b) of this section.

(d) This section shall not be construed to prevent a futures commission merchant or introducing broker from:

13. Section 1.57 is proposed to be added and, as added, would read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) Each introducing broker must—
(1) Open and carry each customer's account with a carrying futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all customer orders to: (i) A carrying futures commission merchant; or (ii) a floor broker, if the introducing broker identifies its carrying futures commission merchant.

(b) Any person who, directly or indirectly, is compensated (i) on a per-trade basis, or (ii) for the referral of customers to a futures commission merchant, must register under the Act as an introducing broker: *Provided*, That the provisions of this paragraph (b) shall not apply to any person who is registered under the Act as a futures commission merchant, a floor broker, an associated person of a futures commission merchant, or as an associated person of an introducing broker.

PART 3—REGISTRATION

14. The authority citation for Part 3 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a and 13c; Sec. 237, Pub. L. 97-444.

15. Section 3.1 is proposed to be amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 3.1 Definitions.

(b) *Current*. As used in §§ 3.10-3.15, a current Form 8-R or Form 94 is any such Form which was filed by or on behalf of a registrant or principal on or before July 1, 1982 if, subsequent to the filing of that Form, the registrant or principal has been continuously registered or continuously affiliated with a registrant as a principal.

(c) *Sponsor*. Sponsor means the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, respectively, which makes the certifications required by § 3.12(c)(1) or the certifications provided by § 3.12(d)(1) for the registration of an associated person of such sponsor.

16. Section 3.2 is proposed to be revised to read as follows:

§ 3.2 Registration in one capacity not included in registration in any other capacity.

Except as otherwise provided in the Act or in any rule, regulation, or order of the Commission, registration in one capacity under the Act shall not include registration in any other capacity: *Provided further*, That except as may be provided in the Act or in any rule, regulation or order of the Commission, registration as an associated person in one capacity shall not automatically include registration as an associated person in any other capacity.

17. Section 3.3 is proposed to be revised to read as follows:

§ 3.3 Registration fees.

(a) *Amount of fees.*—(1) *Futures commission merchants*. Each application for registration, or for renewal thereof, as a futures commission merchant must be accompanied by a fee of \$300.

(2) *Introducing brokers, commodity trading advisors, and commodity pool operators*. Each application for registration, or for renewal thereof, as an introducing broker, commodity trading advisor, or commodity pool operator must be accompanied by a fee of \$100.

(3) *Associated persons*. Each Form 8-R submitted in connection with the registration of an associated person must be accompanied by a fee of \$50 for each registration capacity for which application is made. Each Form 3-R submitted in accordance with the provisions of § 3.31(d) must be accompanied by a fee of \$10 for each associated person specified on that Form 3-R.

(4) *Floor brokers*. Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of \$50.

(5) *Branch offices*. In addition to the fees specified in paragraphs (a)(1) and (a)(2) of this section, each futures commission merchant, introducing broker, commodity trading advisor, and commodity pool operator must provide a fee of \$10 for each branch office of the applicant or registrant, specified in Form 7-R or in any Schedule thereto or in any

Form 3-R filed with the Commission to report the addition of a branch office, operating within the United States and authorized to engage in activities subject to regulation by the Commission on behalf of the applicant or registrant. The fee specified by this paragraph (a)(5) must accompany each Form 7-R filed as an application for initial registration or for renewal of registration and each Form 3-R filed to report the addition of a branch office.

(6) *Principals*. Each Form 8-R submitted for or on behalf of a principal must be accompanied by a fee of \$50 unless the same Form 8-R is being submitted in connection with the registration of an associated person or floor broker.

(7) *Separate fees for each registration capacity*. An applicant for registration, or for renewal thereof, must provide the fees specified in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section for each capacity for which application is made.

(b) *Form of remittance; fees not refundable*. Registration fees must be remitted by check, bank draft, or money order, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable, unless the applicant withdraws the application before any processing of that application has occurred.

18. Section 3.4 is proposed to be revised to read as follows:

§ 3.4 Notification of registration.

Upon receipt of an application for registration or renewal thereof, the Commission will, if registration is granted, notify the registrant that he has been registered under the Act, except that with respect to an application for registration of an associated person, the Commission will notify the sponsor.

19. Section 3.10 is proposed to be amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 3.10 Registration of futures commission merchants.

(a) * * *

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) has a current Form 8-R Form 94 on file with

the Commission; or (ii) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

(c) *Addition of principals subsequent to filing of Form 7-R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7-R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8-R with the Commission. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) has a current Form 8-R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided*, That the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3-R.

20. Section 3.11 is proposed to be amended by revising paragraph (b) to read as follows:

§ 3.11 Registration of floor brokers.

(b) *Initial registration.* Application for initial registration as a floor broker must be on Form 8-R, completed and filed with the Commission in accordance with the instructions thereto. Each applicant for initial registration as a floor broker must file his fingerprints with the Form 8-R on a fingerprint card provided by the Commission for that purpose except that a fingerprint card need not be filed by any applicant who: (1) has a current Form 8-R or Form 94 on file with the Commission; or (2) has filed a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

21. Section 3.12 is proposed to be amended by revising paragraphs (a), (b), (c)(1), (c)(3), (c)(4), the introductory paragraph of (d)(1), (d)(1)(i), (d)(1)(ii), (d)(1)(iv), (d)(1)(v), (d)(2), (d)(3), (e), (f), and (g)(1) and by adding paragraph (h) to read as follows:

§ 3.12 Registration of associated persons.

(a) *Registration required.* Except as otherwise provided in Section 4k of the Act or in paragraph (h) of this section, it

shall be unlawful for any person to be associated with a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker as an associated person unless that person shall have registered under the Act as an associated person of the sponsor in accordance with the procedures in paragraphs (c) or (d) of this section, except that this section does not preclude any registered associated person who was so registered on July 1, 1982 from continuing to act as such until that person's current registration expires.

(b) *Duration of registration.* A person registered in accordance with paragraph (c) or (d) of this section and whose registration has neither been suspended nor revoked will continue to be so registered until the cessation of the association of the registrant with, or the revocation, suspension, lapse, or withdrawal of the registration of, the associated person's sponsor.

(c) *Application for registration.* Except as otherwise provided in paragraph (d) of this section, application for registration as an associated person must be on Form 8-R, completed and filed with the Commission in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragraph (c) unless an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship, of such sponsor has signed and dated a certification in writing, stating that:

(i) It is the intention of the sponsor to hire or otherwise employ the applicant as an associated person and that it will do so within thirty days after the receipt of the notification provided in accordance with paragraph (c)(4) of this section and that the applicant will not be permitted to engage in any activity requiring registration as an associated person until the applicant is registered as such in accordance with this section;

(ii) The sponsor has verified the information supplied by the applicant in response to the questions on Form 8-R which relate to the applicant's education and employment history during the preceding five years, except that this paragraph (c)(1)(ii) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1982, is associated with the sponsor;

(iii) To the best of the sponsor's knowledge, information, and belief, all of the publicly available information supplied by the applicant on Form 8-R is accurate and complete: *Provided*, That it is unlawful for the sponsor to make the

certification required by this paragraph (c)(1)(iii) if the sponsor knew or should have known that any of that information is not accurate and complete; and

(iv) The sponsor has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the Form 8-R, or in the records and documents obtained in support of the certifications required by this section.

(3) Each Form 8-R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose, except that this paragraph (c)(3) does not apply to any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1982, is associated with the sponsor as an associated person.

(4) When the Commission determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the sponsor which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special registration procedures for certain persons.* (1) Any person whose registration as an associated person in another capacity is still in effect, whose registration as an associated person in the same capacity or in another capacity has terminated within the preceding sixty days, or who, on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1982 becomes associated with a sponsor which makes the certification provided by paragraph (d)(1)(i) of this section, will be registered as, and in the capacity of, an associated person of such sponsor upon the mailing by that sponsor to the Commission of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iv) Whether there is a pending proceeding under Section 6(b) of the Act or § 3.20 or former § 1.10e to deny, suspend, revoke, or condition such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the

withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.20 or former § 1.10e and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

(v) That the sponsor has received a copy of the complaint or letter issued by the Commission if the applicant for registration has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

(2) The certifications permitted by paragraphs (d)(1)(i) and (d)(1)(v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)-(iv) of this section must be signed and dated by the applicant for registration as an associated person.

(3) Within sixty days of mailing the certifications permitted by paragraph (d)(1) of this section, the associated person and the sponsor must complete and the sponsor must file with the Commission a Form 8-R in accordance with the instructions thereto. The Form 8-R must contain the certifications required by paragraphs (c)(1)(ii)-(iv) of this section and must be accompanied by the fingerprint card provided by the Commission or that purpose except that a fingerprint card does not have to be submitted for any person who, at the time of the first expiration of that person's registration as an associated person subsequent to July 1, 1982, is associated with the sponsor as an associated person.

(e) *Retention of records.* The sponsor must retain in accordance with § 1.31 of this chapter such records as are necessary to support the certifications required by this section.

(f) *Certain dual and multiple associations prohibited.* No person may be simultaneously associated as an associated person with more than one futures commission merchant, or with more than one commodity trading advisor, or with more than one commodity pool operator, or with more than one introducing broker.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.12 may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why

that person believes that an applicant should be exempted from the requirements of this section and why such a exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions of the Commission as the Commission may find appropriate.

(h) *Exemption from registration for certain persons.* In addition to the exemptions from registration as an associated person specified in Section 4k of the Act:

(1) An individual registered under the Act as a commodity pool operator need not register as an associated person to be associated with a commodity trading advisor as an associated person;

(2) An individual registered under the Act as a commodity trading advisor need not register as an associated person to be associated with a commodity pool operator as an associated person; and

(3) An individual who is registered with the National Association of Securities Dealers as a registered representative or as a registered principal need not register as an associated person of a commodity pool operator.

22. Section 3.12a-(T) is proposed to be added and, as added, would read as follows:

§ 3.12a-(T) "Transfer" of associated persons; temporary exemption.

Notwithstanding the provisions of § 3.12(a)-(d) and of § 3.31, any associated person of a futures commission merchant who is registered as such on the effective date of this section will be registered as an associated person of a registered commodity trading advisor, as an associated person of a registered commodity pool operator, or as an associated person of a registered introducing broker, if the futures commission merchant and the commodity trading advisor, commodity pool operator, or introducing broker with which the associated person will be associated submit to the Commission, not later than 180 days after the effective date of this section, a statement, signed and dated by the futures commission merchant and by the commodity trading advisor, commodity

pool operator, or introducing broker, respectively, specifying:

(a)(1) The name of each such associated person;

(2) The identification number, if any, assigned by the Commission to each such associated person;

(3) The registration expiration date of each such associated person if the associated person was registered as such prior to July 1, 1982 and such registration has not yet expired; and

(b) That the commodity trading advisor, commodity pool operator, or introducing broker acknowledges that—

(1) The associated persons specified in accordance with the requirements of paragraph (a)(1) of this section will, upon the effective date of the transfer of their association to the commodity trading advisor, commodity pool operator, or introducing broker, be registered as associated persons of the commodity trading advisor, commodity pool operator, or introducing broker and will remain registered in such capacity in accordance with the provisions of § 3.12(b) as if the commodity trading advisor, commodity pool operator, or introducing broker had been the sponsor with respect to each of those associated persons; and

(2) It is fully responsible for the conduct of the associated persons specified in accordance with the requirements of paragraph (a)(1) of this section as if those associated persons had been registered in accordance with the procedures specified in § 3.12.

23. Section 3.13 is proposed to be amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 3.13 Registration of commodity trading advisors.

(a) * * *

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) Has a current Form 8-R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

(c) *Addition of principals subsequent to filing of Form 7-R.* Within twenty

days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7-R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8-R with the Commission. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8-R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided*, That the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3-R.

24. Section 3.14 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.14 Registration of commodity pool operators.

(a) *Initial registration.* (1) Application for initial registration as a commodity pool operator must be on Form 7-R, completed and filed in accordance with the instructions thereto and the provisions of § 4.13(c) of this chapter.

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) has a current Form 8-R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

(c) *Addition of principals subsequent to filing of Form 7-R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7-R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8-R with the Commission. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a

fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) has a current Form 8-R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided*, That the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3-R.

25. Section 3.15 is proposed to be added and, as added, would read as follows:

§ 3.15 Registration of introducing brokers.

(a) *Initial registration.* (1) Application for initial registration as an introducing broker must be on Form 7-R, completed and filed with the Commission in accordance with the instructions thereto and the provisions of § 1.10 of this chapter.

(2) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who: (i) Has a current Form 8-R or Form 94 on file with the Commission; or (ii) has submitted or caused to be submitted a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15.

(b) *Renewal of registration.* Application for renewal of registration as an introducing broker must be on Form 7-R, completed and filed with the Commission in accordance with the instructions thereto.

(c) *Addition of principals subsequent to filing of Form 7-R.* Within twenty days after any natural person becomes a principal of the applicant or registrant subsequent to the filing of a Form 7-R in accordance with the requirements of paragraphs (a) or (b) of this section, the applicant or registrant must file a Form 8-R with the Commission. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8-R or Form 94 on file with the Commission; or (2) has submitted or caused to be submitted

a Form 8-R and a fingerprint card in accordance with the requirements of §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15: *Provided*, That the introducing broker must notify the Commission within twenty days of the name of such added principal on Form 3-R.

26. Section 3.21 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by §§ 3.10, 3.11, 3.12, 3.13, 3.14, or 3.15 to submit a fingerprint card may file, or cause to be filed, in lieu of such card: (1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card is such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the Commission of the photocopy; or (2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days: *Provided*, That the provisions of this paragraph (a)(2) shall not be available to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration.

(b) Each photocopy and statement filed in accordance with the provisions of paragraph (a)(1) or (a)(2) of this section must be signed and dated. Such signature shall constitute a certification by that individual that the photocopy or statement is accurate and complete and must be made by:

(1) *With respect to the fingerprints of an associated person:* An officer, if the sponsor is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship;

(2) *With respect to fingerprints of a floor broker:* The applicant for registration; or

(3) *With respect to the fingerprints of a principal:* An officer, if the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the principal will be affiliated is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

27. Section 3.30 is proposed to be revised to read as follows:

§ 3.30 Current address for purpose of service to be filed with the Commission.

The residence address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal of any communications from the Commission, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided*, That the Commission may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker with which the associated person or the applicant for registration is or will be associated as an associated person. Each registrant, while registered, and each principal, while affiliated with a registrant, must keep current the address on the application for registration, biographical supplement, or other address filed with the Commission for the purpose of receiving communications from the Commission. An order of default or other appropriate relief may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest such address filed with the Commission.

28. Section 3.31 is proposed to be amended by revising paragraphs (a), (b), (c)(1), (c)(2), and (d) and by adding paragraph (e) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Except as is otherwise provided in paragraph (c) of this section, each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Schedules A, B or C of Form 7-R which no longer

renders accurate and current the information contained therein. Each such correction must be made on Form 3-R and must be prepared and filed in accordance with the instructions thereto.

(b) Each applicant or registrant as a floor broker or associated person and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8-R or supplemental statement. Each such correction must be made on Form 3-R and must be prepared and filed in accordance with the instructions thereto.

(c)(1) After the filing of a Form 8-R, a Certificate of Special Registration (Form 8-S), or a Form 3-R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, that futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within ten days after the occurrence of either of the following, file a notice thereof with the Commission indicating: (i) The failure of that person to become associated with the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, and the reasons therefor; or (ii) the termination of the association of the associated person with the futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker, and the reasons therefor.

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker must, within ten days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the Commission.

(d) Except as provided in paragraph (e) of this section, each commodity trading advisor and commodity pool operator must promptly file with the Commission a report on Form 3-R, prepared and filed in accordance with the instructions thereto, stating the name of each newly hired or otherwise employed associated person who is already registered as such under the Act

in accordance with the procedures set forth in § 3.12 unless the commodity trading advisor or commodity pool operator is the sponsor with respect to that associated person.

(e) Each futures commission merchant, commodity trading advisor, commodity pool operator, and introducing broker must promptly file with the Commission a report on Form 3-R, prepared and filed in accordance with the instructions thereto, stating the name of each newly hired or otherwise employed associated person who was registered as such prior to July 1, 1982 unless such associated person is registered in such capacity under the Act as an associated person of the sponsor in accordance with the procedures set forth in § 3.12.

29. Section 3.32 is proposed to be amended by revising paragraph (a) to read as follows. The introductory paragraph of § 3.32 is set out for the convenience of the reader.

§ 3.32 Changes requiring new registration.

A new registration is required in the event of a change:

(a) In the name of the registrant if the registrant is a futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker;

30. Section 3.33 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.33 Withdrawal from registration

(c) Where a futures commission merchant or an introducing broker is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a form 1-FR which contains the information specified in § 1.10 (d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

31. Section 4.14 is proposed to be amended by revising paragraphs (a)(4) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) A person is not required to register under the Act as a commodity trading advisor if:

(4) It is registered under the Act as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it has so registered;

(5) It is exempt from registration as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt; or

(6) It is registered under the Act as an introducing broker and it does not (i) direct a client's commodity interest account, or (ii) guide the client's commodity interest trading by means of a systematic program that recommends specific transactions.

32. Section 4.23 is proposed to be amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 4.23 Recordkeeping.

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

33. Section 4.32 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 4.32 Recordkeeping.

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

PART 10—RULES OF PRACTICE

Subpart A—General Provisions

34. Section 10.1 is proposed to be amended by revising paragraph (a) to read as follows. The introductory paragraph of § 10.1 is set out for the convenience of the reader.

§ 10.1 Scope and applicability of rules of practice.

These rules of practice are generally applicable to adjudicatory proceedings before the Commodity Futures Trading Commission under the Commodity Exchange Act. These include proceedings for:

(a) Denial, suspension, or revocation of registration in any capacity under the Act pursuant to Sections 6(b) and 8a of the Act, 7 U.S.C. 9, 12a, or denial, suspension, or revocation of designation as a contract market pursuant to sections 6 and 8(a) of the Act, 7 U.S.C. 8;

PART 15—REPORTS—GENERAL PROVISIONS

35. Section 15.00 is proposed to be amended by revising paragraph (f) to read as follows:

§ 15.00 Definitions.

(f) "Customer trading program" means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an

expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

36. Section 15.05 is proposed to be amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 15.05 Designation of a futures commission merchant or introducing broker to be the agent of foreign brokers, customers of a foreign broker, and foreign traders.

(b) Any futures commission merchant who makes or causes to be made any futures contract or option contract for the account of any foreign broker or foreign trader, and any introducing broker who introduces such an account to a futures commission merchant, shall thereupon be deemed to be the agent of the foreign broker or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker or the foreign trader with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. In the case of a futures commission merchant who makes or causes to be made any futures or option contract for the account of a foreign broker, the futures commission merchant and the introducing broker, if any, shall also be the agent of the customers of the foreign broker (including any customer who is also a foreign broker and its customers) who have positions in the foreign broker's futures or option contract account carried by the futures commission merchant for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the customer with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. Service or delivery of any communication issued by or on behalf of the Commission to a futures commission merchant or to an introducing broker pursuant to such agency shall constitute valid and effective service or delivery upon the foreign broker, a customer of the foreign broker or the foreign trader.

A futures commission merchant or an introducing broker who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, a customer of the foreign broker or the foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, a customer of the foreign broker or the foreign trader.

(c) It shall be unlawful for any futures commission merchant and for any introducing broker to open a futures or options contract account for, or to effect transactions in futures contracts or option contracts for an existing account of, a foreign broker or foreign trader unless the futures commission merchant or introducing broker informs the foreign broker or foreign trader prior thereto, in any reasonable manner which the futures commission merchant or introducing broker deems to be appropriate, of the requirements of this section.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to any account carried by a futures commission merchant or introduced by an introducing broker if the foreign broker, customer of a foreign broker, or foreign trader for whose benefit such account is carried or introduced has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the futures commission merchant and to the introducing broker, if any, prior to the opening of an account, or placing orders for transactions in futures contracts or option contracts of an existing account, with the futures commission merchant or introducing broker. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker and customers of the foreign broker or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, customers of the foreign broker, or foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the futures commission merchant or introducing broker prior to opening an account for the foreign broker or foreign trader or effecting transactions in futures or option contracts for an existing account

of a foreign broker or foreign trader. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at 2033 K Street, N.W., Washington, D.C. 20581. A foreign broker, customer of a foreign broker, or foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked or is otherwise no longer in effect. If a futures commission merchant carrying, or an introducing broker introducing, an account for a foreign broker or foreign trader knows or should know that the agreement has expired, has been terminated or is otherwise no longer in effect, the futures commission merchant or introducing broker shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates or is not in effect, the futures commission merchant, introducing broker, and the foreign broker, customers of the foreign broker, or foreign trader are subject to the provisions of paragraphs (b) and (c) of this section.

PART 21—SPECIAL CALLS

37. Section 21.01 is proposed to be revised to read as follows:

§ 21.01 Special calls for information on controlled accounts from futures commission merchants and introducing brokers.

Upon call by the Commission, each futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures on contract markets.

38. Section 21.02 is proposed to be amended by revising the introductory paragraph and paragraphs (a), (b), and (f) to read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a contract market, introducing broker, or foreign broker, and, in addition, for options information, each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or option positions as may be specified in the call:

(a) The name and address of the person for whom each account is introduced or carried;

(b) The principal business or occupation of the person for whom each account is introduced or carried, as specified in the call;

(f) The number of open futures and/or option positions introduced or carried in each account, as specified in the call; and

39. Section 21.03 is proposed to be amended by revising paragraphs (a), (b), (e), (e)(1), (e)(1)(i), (e)(1)(v), and (f) to read as follows:

§ 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, introducing brokers, and contract markets.

(a) For purposes of this section, the term "accounts of a futures commission merchant or foreign broker" means all open contracts and transactions in futures and options on the records of the futures commission merchant or foreign broker; the term "beneficial interest" means having or sharing in any rights, obligations or financial interest in any futures or options account; the term "customer" means any futures commission merchant, introducing broker, foreign broker, or trader for whom a futures commission merchant makes or causes to be made a futures or options contract. Paragraphs (e), (g) and (h) of this section shall not apply to any futures commission merchant or customer whose books and records are open at all times to inspection in the United States by any representative of the Commission.

(b) It shall be unlawful for a futures commission merchant to open a futures or options account or to effect transactions in futures or options contracts for an existing account, or for an introducing broker to introduce such an account, for any customer for whom the futures commission merchant or introducing broker is required to provide the explanation provided for in § 15.05(c) of this chapter until the futures commission merchant or introducing broker has explained fully to the customer, in any manner the futures commission merchant or introducing broker deems appropriate, the provisions of this section.

(e) The futures commission merchant, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, contract market, and delivery months or

option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

(1) For each account of a futures commission merchant, introducing broker, or foreign broker, including those accounts in the name of the futures commission merchant or foreign broker, on the dates specified in the call issued pursuant to this section, a futures commission merchant, introducing broker, or foreign broker shall provide the Commission with the following information:

(i) The name and address of the person in whose name the account is carried or introduced and, if the person is not an individual, the name of the individual to contact regarding the account;

(v) For the accounts which are not carried for and in the name of another futures commission merchant, introducing broker, or foreign broker, the name and address of any other person who controls the trading of the account, and the name and address of any person who has a ten percent or more beneficial interest in the account.

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the contract market specified in the call and that contract market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the contract market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

PART 145—COMMISSION RECORDS AND INFORMATION

40. Section 145.5 is proposed to be amended by adding paragraph (d)(1)(i)(D) to read as follows:

§ 145.5 Nonpublic matters.

- (d) . . .
- (1) . . .
- (i) . . .

(D) The following portions, and footnote disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934,

Part IIA, filed pursuant to 17 CFR 1.10(h), if the procedure set forth in 17 CFR 1.10(g) is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement denoted "Exemptive Provision Under [SEC] Rule 15c3-3," the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of Net Capital, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);

PART 147—OPEN COMMISSION MEETINGS

41. Section 147.3 is proposed to be amended by adding paragraph (b)(4)(i)(A)(f) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

- (b) . . .
- (4) . . .
- (i) . . .
- (A) . . .

(f) The following portions and footnotes disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part IIA, filed pursuant to 17 CFR 1.10(h), if the procedure set forth in 17 CFR 1.10(g) is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement denoted "Exemptive Provision Under [SEC] Rule 15c3-3," the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of Net Capital, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);

PART 155—TRADING STANDARDS

42. Section 155.1 is proposed to be revised to read as follows:

§ 155.1 Definitions.

For purposes of this part, the term "affiliated person" of a futures

commission merchant or of an introducing broker means any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the futures commission merchant or of the introducing broker, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

43. Section 155.3 is proposed to be amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

(c) No futures commission merchant shall knowingly handle the account of an affiliated person of another futures commission merchant or of an introducing broker unless the futures commission merchant:

(1) Receives written authorization from a person designated by such other futures commission merchant or introducing broker with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section or § 155.4(a)(2), respectively;

(3) Transmits on a regular basis to such other futures commission merchant or introducing broker copies of all statements for such account and pursuant to paragraph (c)(2) of this section.

44. 17 CFR part 155 is proposed to be further amended by adding a new § 155.4 to read as follows:

§ 155.4 Trading standards for introducing brokers.

(a) Each introducing broker shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Insure, to the extent possible, that each order received from a customer or from an option customer which is executable at or near the market price is transmitted to the futures commission merchant carrying the account of the customer or option customer before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's or option customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in

which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

(2) Prevent affiliated persons from placing orders, directly or indirectly, with any futures commission merchant in a manner designed to circumvent the provisions of paragraph (a)(1) of this section.

(b) No introducing broker or any of its affiliated persons shall:

(1) Disclose that an order of another person is being held by the introducing broker or any of its affiliated persons, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, the contract market on which such order is to be executed, or a futures association registered with the Commission pursuant to Section 17 of the Act; or

(2) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by the Commission.

(c) No affiliated person of an introducing broker shall have an account, directly or indirectly, with any futures commission merchant unless:

(1) Such affiliated person receives written authorization to maintain such an account from a person designated by the introducing broker with which such person is affiliated with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such futures commission merchant upon receipt of orders for such account pursuant to § 155.3(c)(2) are transmitted on a regular basis to the introducing broker with which such person is affiliated.

PART 166—CUSTOMER PROTECTION RULES

45. Section 166.2 is proposed to be revised to read as follows:

§ 166.2 Authorization to trade.

No futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—

(a) Specifically authorized the futures commission merchant, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies (1) the precise commodity interest to be purchased or sold and (2) the exact amount of the commodity interest to be purchased or sold); or

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization.

PART 170—REGISTERED FUTURES ASSOCIATIONS

46. The authority citation for Part 170 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

Subpart A—Standards Governing Commission Review of Applications for Registration as a Futures Association Under Section 17 of the Act

47. Section 170.2 is proposed to be revised to read as follows:

§ 170.2 Membership restrictions (Section 17(b)(2) of the Act).

If it appears to the Commission to be necessary or appropriate in the public interest and to carry out the purposes of Section 17 of the Act, a futures association may restrict its membership to individuals registered by the Commission in a particular capacity or to individuals doing business in a particular geographical region or to firms having a particular level of capital assets or which engage in a specified amount of business per year.

48. Section 170.10 is proposed to be added, and as added, would read as follows:

§ 170.10 Proficiency examinations (Sections 4p and 17(p) of the Act).

A futures association may prescribe different training standards and proficiency examinations for persons registered in more than one capacity: *Provided*, That nothing contained in the Act or these regulations, including any exemption from registration for persons registered in another capacity, shall be deemed to preclude the establishment of training standards and a proficiency examination requirement for functions performed in such other capacity.

Issued in Washington, D.C. on March 29, 1983, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-8574 filed 4-5-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 11

[Docket No. RM83-10-000]

Annual Charges Policy Group

Issued March 31, 1983.

AGENCY: Federal Energy Regulatory Commission

ACTION: Order granting petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants the petition of the Annual Charges Policy Group (ACPG) to institute a rulemaking for the determination and assessment of annual charges for non-Federal hydroelectric power projects at Government dams. By action taken on March 30, 1983, the Commission has authorized the issuance of a Notice of Proposed Rulemaking on that subject (Docket No. RM83-13-000). The action requested by ACPG has, therefore, been taken and their petition for rulemaking granted.

FOR FURTHER INFORMATION CONTACT: Fredric D. Chananian, Deputy Assistant General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On December 13, 1982, the Annual Charges Policy Group (ACPG) filed with the Commission a petition for rulemaking¹ seeking the institution of rulemaking procedures for the determination and assessment of annual charges for non-Federal hydroelectric power projects at Government dams. By action taken on March 30, 1983, the Commission has authorized the issuance of a Notice of Proposed Rulemaking on that subject (Docket No. RM83-13-000). Accordingly, the request for action in the ACPG petition had been satisfied.

Therefore, the Commission orders:

That the petition for rulemaking submitted by the Annual Charges Policy Group is hereby granted.

¹The petition is styled "Petition of Annual Charges Policy Group to Institute Formal Rulemaking Proceedings."

By the Commission:

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8075 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-182 (Texas-8 Amendment)]

High-Cost Gas Produced From Tight Formations; Texas

(Issued April 1, 1983)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Geopressed Wilcox Lobo Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on May 16, 1983.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on April 18, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

I. Background

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79-76-182 (Texas-8 Amendment); Notice of Proposed Rulemaking by Director, Oppr.

On January 24, 1983, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation,

in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that additional areas found in the Geopressed Wilcox Lobo Formation in Zapata County, Texas, be designated as a tight formation. On June 10, 1981, the Commission issued Order No. 153 in Docket No. RM79-76 (Texas-8) in which the Commission designated portions of the Geopressed Wilcox Lobo Formation in Webb and Zapata Counties as a tight formation under § 271.703. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the additional areas of the Geopressed Wilcox Lobo Formation be added to the previously designated tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

On June 10, 1981, in Order No. 153, the Commission approved Texas' recommendation that the Geopressed Wilcox Lobo Formation in Webb and Zapata Counties, Texas, Railroad Commission District 4, be designated as a tight formation. The area designated under that order consists of all of Webb and Zapata Counties with the exception of approximately 130 square miles in the southwestern corner of Webb County and approximately 12.5 square miles in the northwestern corner of Zapata County. This area was excluded from the tight formation recommendation because the well data for that area did not meet the permeability standard set forth in § 271.703(c)(2)(i)(A) of the Commission's regulations.

Texas proposes to amend the Geopressed Wilcox Lobo tight formation designation, as established by Order No. 153, by recommending that the proration units assigned to Gulf Oil Company's Antonio Martinez Well No. 2 and E.T. Martinez Well No. 4, located within the excluded area in Zapata County, be added to the tight formation designation established by Order No. 153. The recommended areas consist of the 320 acre proration unit assigned to the Antonio Martinez Well No. 2, located primarily in the Manuel Garza Heirs Survey, A-565 and the 176 acre proration unit assigned to the E.T. Martinez Well No. 4, located primarily in the Jose Antonio Trevino Survey, A-97 and the Jose Ma De La Garza Survey, A-424.

The Geopressed Wilcox Lobo Formation is encountered at a log depth of 7,752 feet in the A. Martinez Well No. 2 and 7,874 feet in the E.T. Martinez

Well No. 4. The formation is approximately 700 feet thick.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) the average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil a day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the additional areas of the Geopressed Wilcox Lobo Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 16, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-182 (Texas-8 Amendment) and should give reasons including supporting data for any recommendations.

Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for

public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than April 18, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, a set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,
Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by revising paragraph (d)(35)(i) to read as follows:

§ 271.703 Tight formations.

(d) Designated tight formations.

(35) Geopressured Wilcox Lobo Sandstone Formation in Texas. RM79-76 (Texas-8)

(i) *Delineation of formation.* The Geopressured Wilcox Lobo Sandstone Formation is located in the southern part of Texas in Webb and Zapata Counties, Railroad Commission District 4. The area underlines all of Webb and Zapata Counties, excluding portions of the following surveys: Pablo Mendiola A-66—Webb County, A-156—Zapata County; Manuel Garza Hrs. A-423—Webb County, A-565—Zapata County; Jose Ma De La Garza A-424; Jose Antonio Trevino A-295—Webb County, A-97—Zapata County; City of Laredo A-465; Basilio Benavides A-20; Leonardo Sanchez A-281—Webb County, A-82—Zapata County; City of Laredo A-464, A-236, A-716, A-1529, A-237, and A-238; Blas Trevino A-478; Dolores Garcia A-55 and A-54; Jose Cayetano De La Garza A-45; Eugenio Sanchez A-285; Eugenio R. Rodriguez A-269; L. Marulanda A-726; M. R. De Marulanda A-776 and A-777; W. W. Winslow A-2505 and A-2506; GC & SF RR A-588 and A-589; Jose Antonio

Nasario A-250; Todeo Sanchez A-472; Jose Bartolo Chapa A-410; Laureano Salinas A-473; R. H. Rains A-594; Lucas De Bois A-587; Jose Miguel Diaz A-548; J. & H. Wormser A-3264; Teoddsio Gutierrez A-3629; Mrs. M. A. Eistetter A-3260; Delia Edwards A-3253; Jose Antonio Diaz A-762; Jose Dionicio Trevino A-3084; Antonio Trevino A-298; Jose Trevino A-3116; Jose Francisco Cordova Moreno A-469; Juan B. Villareal A-3086; Eugenio Martinez Hrs. A-241, Dona Maria G. Sanchez A-284; Laredo City A-239; GB & CNG RR A-62; Rafael Vidaurri A-780; Jane Guyman A-517; Chas. Callaghan A-422; A. B. & M. A-385; E. H. Sauvignat A-687; Mrs. E. A. Billingsley A-664; Manuel Villarreal A-2497; GC & SF RR A-1365; and A. L. Juarez A-2993.

[FR Doc. 83-8076 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-183 (Texas—11 Addition IV)]

High-Cost Gas Produced From Tight Formations; Texas

(Issued April 1, 1983)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking contains the recommendation of the Railroad Commission of Texas that the Wilcox First Hinnant Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on May 18, 1983.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on April 18, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

I. Background

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79-76-183 (Texas—11 Addition IV) Notice of Proposed Rulemaking by Director, Oppr.

On January 24, 1983, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Wilcox First Hinnant Formation located in Jim Hogg County, Texas, be designated as a tight formation. The Commission previously adopted recommendations that portions of the Wilcox Formation in Webb and Starr Counties, Texas, be designated as tight formations (Orders Nos. 199, 208, 241 and 279 issued December 16, 1981, February 5, 1982, July 8, 1982 and February 3, 1983, respectively, in Docket No. RM79-76 (Texas—11). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Wilcox First Hinnant Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Wilcox First Hinnant Formation, located entirely within the northwestern portion of Jim Hogg County in south Texas, Railroad Commission District 4, be designated as a tight formation. The recommended area encompasses approximately 26 square miles and is located approximately 7 miles northeast of the city of Roundado, Texas. The area is rectangular and is delineated as follows: Beginning at a point at the southwest corner of Section 164, C. Gutierrez Survey A-145, Jim Hogg County, Texas, then due north 22,700 feet to a point in Section 98, E. L. Armstrong A-3 Survey (scaled 2,100 feet FWL and 1,800 feet FSL of Survey), then due west 32,200 feet to a point in Los Animos, Heirs of Felipe de la Pena Grant, A-244 (scaled 9,200 feet FSL and 24,500 feet FEL of said Grant), then due south 22,700 feet to a point scaled on the common boundary between Section 578, R. L. Robinson A-267, and Section 575, W. W. Ferguson A-104, being 6,000 feet south of the north line of the common north boundary of said Sections 578 and 575, then due east 32,200 feet to point of

beginning, comprising 16,700 acres, more or less. The recommended interval is the completion zone from 12,292 feet to 12,350 feet in the Edwin L. Cox and Berry R. Cox, Martinez No. 1 well, identified as the First Hinnant 12,300' sand. The Wilcox First Hinnant reaches a maximum thickness of 100 feet in the Northeast Thompsonville Field area, located 4½ miles northwest of the Cox Martinez No. 1 well. Downdip from the Northeast Thompsonville Field area, at the Cox Martinez No. 1 well, the sand has noticeably thinned and become shallier, with a thickness of only 58 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Wilcox First Hinnant Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 16, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-183 (Texas—11 Addition IV), and should

give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection of the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than April 18, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(63)(v) to read as follows:

§ 271.703 Tight formations.

(d) *Designated tight formations.* * * *

(63) *Wilcox Formation in Texas.*

RM79-76 (Texas—11). * * *

(v) *Wilcox First Hinnant Formation in Jim Hogg County.*

(A) *Delineation of formation.* The Wilcox First Hinnant Formation is located entirely within the northwestern portion of Jim Hogg County in south Texas, Railroad Commission District 4, approximately 7 miles northeast of the city of Randado, Texas. The rectangular area recommended begins at a point at the southwest corner of Section 164, C. Gutierrez Survey A-145, then due north 22,700 feet to a point in Section 98, E. L. Armstrong A-3 Survey (scaled 2,100 feet FWL and 1,800 feet FSL of Survey), then due west 32,200 feet to a point in Los Animas, Heirs of Felipe de la Pena Grant, A-244 (scaled 9,200 feet FSL and

24,500 feet FEL of said Grant), then due south 22,700 feet to a point scaled on the common boundary between Section 578, R. L. Robinson A-267, and Section 575, W. W. Ferguson A-104, being 6,000 feet south of the north line of the common north boundary of said Sections 578 and 575, then due east 32,200 feet to point of beginning, comprising 16,700 acres, or approximately 26 square miles.

(B) *Depth.* The top of the Wilcox First Hinnant Formation is encountered at 12,292 feet in the Edwin L. Cox and Berry R. Cox, Martinez No. 1 well. The thickness reaches a maximum of 100 feet in the Northeast Thompsonville Field area, located 4½ miles northwest of the Cox Martinez No. 1 well. Downdip from the Northeast Thompsonville Field area, at the Cox Martinez No. 1 well, the sand has noticeably thinned and become shallier, with a total thickness of 58 feet.

[FR Doc. 83-0977 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Park and Preserve, Alaska; Protection of Humpback Whales

AGENCY: National Park Service, Interior.
ACTION: Proposed rule.

SUMMARY: The National Park Service proposes a limited extension of existing, temporary regulations for the protection of the humpback whale, an endangered species, at Glacier Bay National Park and Preserve. The affected regulations define terms, limit large and small vessel entry into Glacier Bay, place certain operating restrictions on all vessels within the Bay, and restrict certain commercial fishing activities at the mouth of Glacier Bay. The National Park Service proposes to extend the regulations applicable to vessel entry and operation for three and one-half months, *i.e.*, through August 31, 1983, and to extend the regulations applicable to certain commercial fishing activities through December 31, 1983. The extension will give the National Park Service time to review research now being prepared by the National Marine Fisheries Service, and subsequently issue, as necessary, permanent regulations which may be less or more stringent according to the conclusions of the research. Minor technical changes

reflecting a name change of the park will be incorporated with the extension.

DATE: Written comments, suggestions or objections will be accepted until May 6, 1983.

ADDRESS: Comments should be directed to: Superintendent, Glacier Bay National Park and Preserve, P.O. Box 1089, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Donald D. Chase, Chief of Operations, Glacier Bay National Park and Preserve, P.O. Box 1089, Juneau, Alaska 99802, Telephone: (907) 586-7137.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay, a marine body of water within Glacier Bay National Park, has been recognized since the early 1950's as a summer feeding ground for the humpback whale, a declining species placed on the Endangered Species List in 1970. Research showed an average of 20 to 25 whales used the Bay in the several years prior to 1978 for summer feeding. In 1978 and 1979 this pattern drastically altered when whales entered the Bay, but shortly after abandoned it, leaving only three or four whales that spent the entire summer. On August 6, 1979, the National Park Service requested a formal consultation with the National Marine Fisheries Service (NMFS) to assess the problem, in accordance with the Endangered Species Act. NMFS concluded that the uncontrolled increase of vessel traffic, particularly of erratically traveling charter and pleasure craft, may have altered humpback behavior and that a continued increase was likely to jeopardize the existence of the humpback in Southeast Alaska. NMFS recommended that the amount of vessel traffic should be restricted to 1976 levels, that additional research be conducted and that regulations should be developed that would address vessel routing, maneuvering, and speed.

Existing Regulations

Responding to NMFS conclusions and recommendations, the National Park Service promulgated regulations, 36 CFR 7.23 (b)-(d), on May 15, 1980 (45 FR 32228), to remain in effect three years from the date of publication. In summary, these regulations limit the entry of cruise ships into Glacier Bay to 89 vessels during the whale season (June 1 through August 31), with not more than two entries per day. Without regard to size or kind of vessel, all motorized vessels are prohibited from intentionally positioning themselves within $\frac{1}{2}$ mile of whale, or otherwise pursuing or attempting to pursue a whale.

Requirements are also established to govern operations in the event of a vessel-whale encounter to restore the $\frac{1}{2}$ mile separation safely and with as little disturbance to the whale as possible. Finally, the superintendent is authorized to designate areas in Glacier Bay as "whale waters" where vessels must maintain a constant speed (not to exceed 10 knots) and course, except to avoid coming within $\frac{1}{2}$ mile distance from a whale.

On the same day the above regulations were published, interim rules were published (46 FR 32234) to limit the adverse impact of small vessels on whales within Glacier Bay, and to prohibit commercial harvesting of four major organisms upon which humpback whales feed. Under this regulation small vessel entries into Glacier Bay are limited to 538 during the whale season. The final rule, 36 CFR 7.23 (e)-(f), was published in the *Federal Register* December 30, 1980 (45 FR 85741) and became effective September 1, 1981. A further amendment pertaining to the collection of information, involved in the issuance of small-vessel entry permits as authorized by 36 CFR 7.23(e), was published October 13, 1981 (46 FR 50370) and codified as 36 CFR 7.23(g).

Proposed Action

The existing regulations were intended to be temporary until more conclusive research on the whales at Glacier Bay could be completed. At that time, the National Park Service would again request formal consultation with the National Marine Fisheries Service to review the research and seek recommendations. The Park Service would then propose any changes necessary in the regulations based upon the conclusions of the research. NMFS has indicated that the final research reports will not be completed and available to the National Park Service until April 15, 1983, one month before the existing temporary regulations expire on May 15, 1983. A period on one month between the notice of research results and the expiration of the regulations is inadequate for the process of reviewing the research data, reinitiating a consultation with NMFS, and developing regulations that properly address the results. The extension of regulations should not be construed to signify any premature conclusions about the need for or nature of any future rulemaking. As necessary, a permanent regulation, which may be more or less stringent than that now in effect, will be promulgated based on NMFS' research reports. Expiration of the regulations is not considered feasible since an unregulated situation, as the NMFS

biological opinion states, may have created the disruption in humpback behavior, which the Endangered Species Act and other laws requires the National Park Service to address.

Consequently the National Park Service proposes to extend paragraphs (b)-(e), applicable to vessel entries and operations for three and one-half months, i.e., through August 31, the end of the 1983 whale season. Paragraph (c)(1)(ii) is amended to reflect the extension by revising the phrase "For 1981 and 1982" to read "For 1981, 1982, and 1983."

Paragraph (f), relating to the fishing of certain food species important to the humpback whale, will be extended through December 31, 1983. This latter extension represents an effort to protect food stock for whales during the longer fishing season.

A technical revision is also included at this time i.e., changing the name "Glacier Bay National Monument" to "Glacier Bay National Park and Preserve" where it appears in the title and text of section 7.23. This change conforms to the redesignation of the park pursuant to the Alaska National Interest Lands Conservation Act (94 Stat. 2371).

Public Participation

It is the policy of the Department of the Interior that whenever practicable, the public will be afforded an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed extension of existing regulations to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of this regulation: Arthur Eck, Division of Ranger Activities and Protection, National Park Service; Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service; Molly Ross, Division of Conservation and Wildlife, Office of the Solicitor; all in Washington, D.C.

Paperwork Reduction Act

The information collection requirement contained in 36 CFR 7.23 will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulations impose no new costs on small entities, nor are any new indirect or nonquantifiable costs anticipated. Thus, the aggregate effect of this extension on small entities is not considered significant.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the National Park Service determined that these temporary regulations do not represent a major Federal action significantly affecting the quality of the human environment, which would require the preparation of an Environmental Impact Statement. An Environmental Assessment and Finding of No Significant Impact were prepared for the original regulation. These documents, which hold equally for the proposed extension, are available at the address listed at the beginning of this rulemaking.

Authority

Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Alaska National Interest Lands Conservation Act (Pub. L. 96-487; 94 Stat. 2371).

List of Subjects in 36 CFR Part 7

National parks.

PART 7—[AMENDED]

In consideration of the foregoing, § 7.23 of Title 36 of the Code of Federal Regulations is hereby amended by the extension of paragraphs (b), (c), (d) and (e) to remain in effect through August 31, 1983, and paragraph (f) to remain in effect through December 31, 1983, as set forth below.

§ 7.23 [Amended]

1. Section 7.23(c)(1)(ii) is amended by removing the phrase "For 1981 and 1982" and inserting, in its place, the phrase "For 1981, 1982 and 1983".

2. Section 7.23 is amended by removing the words "Glacier Bay National Monument" and inserting, in their place, the words "Glacier Bay National Park and Preserve" in the title of the section and the following paragraphs:

(a) Section 7.23 (b)(5) and (b)(8); and
(b) Section 7.23(e)(3)

3. Section 7.23(a)(1) is amended by removing the word "monument" and

inserting, in its place, the words "park and preserve".

Dated: March 11, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-9081 Filed 4-5-83; 6:45 am]

BILLING CODE 4310-70-M

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides for the permanent closure of certain areas within Denali National Park and Preserve, Glacier Bay National Park and Preserve, and Katmai National Park and Preserve, to snowmachines, motorboats, motor vessels and aircraft use. These closures are authorized by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371, and its implementing regulations, 36 CFR 13.30.

DATE: Written comments, suggestions or objections will be accepted until June 6, 1983.

ADDRESS: Comments should be directed to: Regional Director, Alaska Region, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT:

Robert Cunningham, Superintendent, Denali National Park and Preserve, McKinley Park, Alaska, (907) 683-2294
Superintendent, Glacier Bay National Park and Preserve, P.O. Box 1089, Juneau, Alaska 99802, (907) 586-7137
David Morris, Superintendent, Katmai National Park and Preserve, P.O. Box 7, King Salmon, Alaska 99613, (907) 246-3305

SUPPLEMENTARY INFORMATION:

Background

ANILCA became law on December 2, 1980. It is a broad-ranging act, which established new or enlarged National Park System units in Alaska and provided special management direction for those areas. Section 1110(a) of that statute requires the Secretary of the Interior to allow the use of snowmachines, motorboats and airplanes within units of the National Park System in Alaska for traditional activities and for travel to and from villages and homesites. Those uses are subject to reasonable regulations and may be prohibited if, after notice and hearing in the vicinity of the affected unit, it is determined that such use

would be detrimental to the resource values of the unit.

On June 17, 1981, the National Park Service promulgated regulations to implement this statute (46 FR 31836). Section 13.30 of these regulations authorizes the superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. Section 13.30(e) requires that permanent closures or restrictions be published as rulemaking in the Federal Register, with a minimum public comment period of 60 days, and must be accompanied by public hearings in the area affected and other locations as appropriate.

This proposed rule seeks to close permanently certain areas within Denali, Katmai and Glacier Bay National Parks and Preserves to one or more of the following: Snowmachines, motorboats, motor vessels, aircraft, motor vehicles, all-terrain vehicles, and foot traffic. All closures are intended to prohibit uses which will be detrimental to the resources of the three units.

Denali National Park and Preserve

One of the primary purposes for establishing Denali National Park and Preserve was to provide protection to certain species of wildlife and their habitats. Since 1917 when Mount McKinley National Park was established, much of the area proposed for closure by this regulation has been protected and, in fact, has been the only place in the interior and northern Alaska where protection of wildlife through minimal disturbance of natural wildlife conditions was provided for. Thus, a near-natural ecosystem developed where predator-prey relationships have functioned without significant human interference. A key factor to the development of this natural balance was the past policy of restricting motorized access.

Motorized use of certain areas of Denali National Park is believed to be detrimental to its ecosystem and the values for which it was established. Accordingly, the following permanent closures are proposed:

1. Close the Denali Park Road and road corridor from its junction with Alaska State Highway 3 to the point where the road crosses to the immediate north of Wonder Lake to motorized transportation, including but not limited to motor vehicles, all terrain vehicles, aircraft, motorboats, motor vessels, and snowmachines, with the following exceptions:

(a) Aircraft are permitted to land at the park airstrip east of the railroad station.

(b) Trains are authorized within their right-of-way.

(c) Motor vehicles are authorized on all park roads except:

(1) West of the Savage River Entrance Station from approximately Memorial Day to Labor Day each year. When this section is closed, access will be provided to private properties, and limited numbers of permits will be available for those with camping reservations for Wonder Lake.

(2) When roads are posted as closed due to deep snows, road repairs, landslides, flooding or similar reasons.

The road corridor is defined as all lands and waters within five miles on each side of the road. The authorized Visitor Transportation System for the Park will be permitted to utilize its established route.

For a number of years, the park road and road corridor have been closed to private vehicles during the height of the visitor season and during the winter when snows prohibit travel. Exceptions are granted to those who travel through the park to an inholding or secure permits to travel to camp at Wonder Lake. The majority of the visitors travel into the park on buses provided by the National Park Service and the concessioner during the summer months. The result is a greatly reduced flow of traffic which is less disruptive to the wildlife. This allows a reasonably normal wilderness scene, and visitors are able to see an abundance of moose, bear, Dall sheep and caribou.

Several studies have been conducted in Denali National Park to determine what happens to wildlife when an unchecked flow of traffic. Generally, the road is open to all traffic for a few weeks in the fall and spring. After three or four days of this use, wildlife abandon the road corridor and visitors are deprived of the opportunity to see and photograph these species. As a result, the normal ecosystem is severely disrupted. By restricting motorized use of the road and road corridor to past levels of use, it is anticipated that wildlife values will be maintained and visitor use enhanced. This proposal is labeled Closure 1 on the attached map.

2. Close two areas marked as Closure 2, on a map available at park address noted above, to all types of motorized transportation, including but not limited to aircraft, snowmachines, motorboats, motor vessels, all terrain vehicles and motor vehicles.

These two areas contain the majority of the park's dwindling caribou herd and wolf population. For unknown reasons, the Denali caribou herd has declined steadily for the past few years and is now at its lowest level. Wolves, the

prime predator for caribou, are also in serious decline. The introduction of motorized equipment would be an additional stress factor that would disrupt the herd. These areas also contain a significant nesting population of Trumpeter Swans, which are particularly sensitive to aircraft and other motorized equipment. Permanent closure of these areas is therefore considered necessary to protect the unit's valuable wildlife resources.

3. Close Sable Pass within one mile of the road to foot traffic, except for road shoulders and established pullouts.

Sable Pass has an exceptionally high concentration of grizzly bears which are attracted by feed in the area. Foot traffic drives the bears from the area and is a serious hazard to the hiker. This is a prime location for those on the tour buses to see bears close up. Foot traffic would destroy that opportunity. This is designated as Closure 3 on the map.

4. Close the areas marked on Denali map number 2, available at park address noted above, to entry from April 15 to September 30 each year.

The boundaries of the identified areas may vary slightly from year to year, and corrected versions of the map will be posted in numerous locations as that occurs. The size of the areas will increase or decrease not more than 10% each year. Although the boundary locations may vary slightly, they have remained fairly constant over the past few years. If the change in any of these areas constitutes more than a minor boundary change, notice and comment opportunities will be provided.

These areas are prime denning areas for the dwindling wolf population. Each year surveys are taken, and areas surrounding wolf denning sites are closed. The proposed closures will prevent human interference with this important wildlife activity, which is essential to the viability of the wolf population in the park and the unit's wildlife conservation goals.

Glacier Bay National Park and Preserve

In its 56 year history, Glacier Bay National Park and Preserve (formerly Glacier Bay National Monument) did not have appreciable use by aircraft, snowmachines or motorized vessels, except on some marine (salt water) areas. These uses were deemed incompatible with wilderness solitude and uses, and detrimental to the protection of the natural features for which the area was set aside. Accordingly, motorized use was prohibited. In addition, the protection of mammals, waterfowl, marine life and their habitats is an important objective of the park (and the original monument),

as it contains many nesting, breeding and foraging areas and provides significant opportunities for wildlife viewing.

In subsection 701(3) of ANILCA, certain federally owned water areas are designated as "wilderness in accordance with subsection 3(c) of the Wilderness Act." Under section 707, those areas are to be administered in accordance with the Wilderness Act. Subsection 4(c) of the Wilderness Act prohibits motor vehicles, motorboats, the landing of aircraft, and other motorized uses in wilderness areas. 16 U.S.C. 1133(c).

Consistent with these requirements, it is proposed to close the following wilderness water areas to motorboats, motor vessels and aircraft landings from May 1 to September 1 each year:

Those portions of the following waterways which are designated wilderness: Adams Inlet, the Hugh Miller Inlet/Scidmore Bay/Charpentier Inlet/Weird Bay complex, Beardslee Islands waterway, except the Beardslee Islands entrance area due north of Young Island and immediately east of Strawberry Island, and Rendu Inlet.

Under paragraph 4(d)(1) of the Wilderness Act, established aircraft and motorboat use may be permitted to continue subject to restrictions deemed desirable. Consistent with park management objectives and the protection of wilderness values, it is proposed to allow these uses to continue in Dundas Bay and the unclosed portions of the Beardslee Islands wilderness waterways. If appropriate, special restrictions on such use will be developed.

These closures would provide sheltered areas free from the disruptive presence of motorized equipment for recreation use and the protection of unique concentrations of mammals and birds, some of which are threatened and/or endangered. These areas have been identified as rich in nutrients and food supplies which attract animal life for feeding and hold them for other activities such as breeding, nesting and rearing of young. All of these water areas are utilized by large numbers of diving ducks and various seabirds for nesting and feeding. Several areas contain extremely fragile rookeries that are very important to individual species. The areas contain a large percentage of the total population of *Branta canadensis fulva*, The Dusky Canada Goose, during the time these birds are nesting and moulting, when they are flightless. Eagle populations are high in these areas, and they nest close to this abundant food supply. The concentrated

food supply attracts and holds a variety of marine mammals including the endangered humpback whale. The Beardslee Islands contain a large concentration of harbor seals. Orcas routinely use the area. These areas have also been recognized as providing unique opportunities for non-motorized recreational activities such as kayaking and canoeing.

However, these areas are important for recreational use and wildlife conservation for only a portion of the year, and the National Park Service is seeking to close it only for that time period. By May 1 of each year, many birds have started their nesting activities and marine mammals are present in large numbers. By September 1, most of these seasonal residents have moved on. High levels of recreational use also coincide with this season.

In addition to the proposed closure of the specified wilderness waters to motorboats, motor vessels and aircraft landings, the following closures are proposed:

1. All beaches within the Glacier Bay portion of the park and all beaches from Cape Fairweather south to the mouth of the De Langle Mountain Creek on the outer coast to aircraft landings, snowmachines, and vehicles.

Beaches play an unusual and highly significant role in Southeast Alaska and in Glacier Bay National Park and Preserve in particular. Vegetation in the park is extremely dense and difficult to traverse. Consequently, mammals, especially bears and wolves, use the beaches as highways for access to various parts of the area. Marine mammals, fish and crustaceans of various types was ashore and provide excellent scavenging for these animals. They also have access to various food sources located in vegetated areas adjacent to the beach. During the winter, goats come down from the high elevations and occupy the beaches and vegetated areas immediately adjacent to them. This combination of factors makes the beach area one of the parts of the park most densely populated by wildlife.

In addition, there are several small streams cutting through outer coast beaches which, according to the State biologists, contain very small, fragile populations of steelhead, some as small as 100 fish. Biologists believe that two or three parties of limit-oriented fishermen could decimate a run.

Beaches also provide key nesting areas for eagles. The present density, due in large part to the scavenging potential, is about one nest per mile, which is very high. To avoid detrimental effects on wildlife which would result from the use of these areas by aircraft,

snowmachines and vehicles, this permanent closure is proposed.

2. All waters within one mile of all tidewater glaciers from May 1 to September 1 each year to aircraft landings.

These waters are especially rich in food due, in part, to an upwelling of water that occurs at the face of the glaciers. Consequently, the areas attract large numbers of birds for feeding and nesting. In addition, most of the seal population in the park uses the calved-off bergs as pupping areas. However, by September 1 the young seals have matured enough to leave the area and bird nesting has ended. At that time, the habitat is no longer critical, and aircraft landings would not be a problem.

3. The waters and shorelines of Vivid, Barlett, the Adams Island Lakes, and Lake Seclusion to aircraft landings.

These lakes have large populations of wildlife and provide a showplace for visitors who routinely access by means other than aircraft. Migratory and nesting bird populations frequent these lakes. Salmon runs provide a ready food source for a concentration of eagles and bears. Nowhere else in the park does the public have such a wildlife concentration as in the Adams Inlet area. Consequently, this area is being closed permanently to aircraft because it would be detrimental to these wildlife activities.

4. The shoreline of Adams Inlet, the Klotz Hills and the Casement Glacier outwash to snowmachines and aircraft landings from November 1 to May 1 each year.

These areas, together with Adams Island, are the wintering grounds for the park's largest moose population, large numbers of goats, and wolves. The entire area is an entryway through the Chilkat Range into the park for mammals and contains the first moose population known to use the park. Winter is a particularly sensitive time for wildlife in that the conservation of energy is essential to survival. Disturbance by snowmachines or aircraft could therefore disrupt wildlife migration and habitat patterns and threaten winter survival activities.

5. The National Park Service is also proposing to close all wilderness waters to commercial fishing in order to comply with the Wilderness Act (16 U.S.C. 1133(c)).

As noted above, subsection 4(c) of the Wilderness Act, as made applicable to Glacier Bay by section 707 of ANILCA, prohibits commercial enterprises in wilderness areas. Accordingly, as a matter of law, it is required that commercial fishing activities be prohibited in all wilderness water areas

of the park. Although paragraph 4(d)(6) of the Wilderness Act allows commercial services necessary for activities which are proper for realizing the recreational or other wilderness purposes of the area, commercial fishing does not qualify as such a service. 16 U.S.C. 1133(d)(6). This closure will therefore protect congressionally designated wilderness values and conform park administration to the requirements of ANILCA and the Wilderness Act.

The proposed regulation covers Adams Inlet, the Hugh Miller Inlet/Scidmore Bay/Charpentier Inlet/Weird Bay complex, the entire Beardslee Islands wilderness waterway, Rendu Inlet, and the wilderness water portions of Dundas Bay. All of these areas were reserved by the 1925 and 1939 Presidential Proclamations establishing the Glacier Bay National Park, have been retained under United States ownership, and are subject to wilderness designations and closure.

6. Finally, the Service is proposing to close Glacier Bay to trawling.

Trawling is a fishing method which disrupts feed beds and changes the contour of the bottom of the bay, thus causing serious resource damage to the park. Even in mid-level trawling, significant numbers of shrimp (*Pandalidae*), a prohibited commercial fishery within the bay, are incidentally taken and lost as a whole food source when this method of fishing is employed. Prudence dictates a conservative approach for an activity potentially harmful to the humpback whale, an endangered species, until its food needs are better understood. For this reason, trawling is proposed to be prohibited.

Katmai National Park and Preserve

1. Close the Savonoski River to motorboats and motor vessels.

This area is prime habitat for, and contains unique concentrations of, large mammals such as moose, wolf and brown/grizzly bears. This area probably contains the greatest concentration of large bears left in the world. Many species of birds such as eagles, ospreys, the threatened hawk owl, and whistling swans nest in this drainage. Motorboat travel in this river is marginally safe and requires a lot of maneuvering, varying of speed and revving of motors. This type of activity seriously disturbs nesting birds and drives the bears from their feeding grounds on the gravel bars.

2. Close all lakes in the Margot Creek/Ukak River drainage from 5/1 to 11/1 each year; that portion of the King Salmon River drainage within the park

including Angle, Contact, Takayoto Creeks, Lake 592, Lake 840, Idavain Lake, the small lakes in the Idavain Lake area, Dakavak Lake, Hammersley and Murray Lakes from 9/1 to 6/1 each year to aircraft landings.

By closing these areas seasonally, the National Park Service can protect an extremely large concentration of large moose and brown/grizzly bears. The animal populations move from one area to the next during the various seasons. Not only do aircraft landings disturb these large mammals, but since this is one of the last remaining strongholds of these trophy-sized populations, poaching is a serious problem. Bears in particular have suffered serious depredations from commercial poaching.

3. Close the Valley of Ten Thousand Smokes to aircraft landings.

This area is the result of a violent volcanic eruption which drew attention to the area and was the initial reason that Katmai National Monument was established. The Valley contains vast areas of fragile, unique and rapidly changing volcanic features. It has road access and is widely viewed by the visiting public. Aircraft landings would not only be highly disruptive to these visitors but could damage the volcanic features. For example, wheel marks in this area remain visible for years and could create entire new drainages in this fragile field.

4. Close all lakes, beaches and river bars in the Naknek River drainage including the Savanoski, to aircraft landings.

This closure along with closures 1 and 2 form a triad which protects the unusually high concentrations of large bears and moose in the park. Landings would still be permitted in water areas which generally are back away from the beaches and bars, which are the prime feeding places for bears. Landings on the beaches and bars tend to chase the bears from their feeding stations. Repeated landings keep them away. These bear populations are unique. The animals themselves are huge, sometimes reaching weights over 1,000 pounds. Because of the abundant food, they are also found in large numbers, and it is not unusual to see as many as 20 animals feeding along a 2 or 3 mile stretch of a salmon spawning stream.

Drafting Information

The following persons participated in the writing of this regulation: Robert Cunningham, Denali National Park and Preserve; John Chapman, Rocky Mountain Regional Office, Denver; and David Morris, Katmai National Park and Preserve.

Public Involvement

In addition to the publication of these permanent closures in the Federal Register with a public comment period of 60 days, the National Park Service will hold public hearings. These hearings will be held on the following dates in these locations:

Glacier Bay National Park and Preserve

- April 10, Gustavus, Alaska, Gustavus School, 2:00 p.m.
- April 14, Juneau, Alaska, Marie Drake Junior High School, 7:00 p.m.
- April 11, Pelican, Alaska, Pelican Community Bldg., 7:00 p.m.
- April 12, Elfin Cove, Alaska, Elfin Cove Community Bldg., 7:00 p.m.
- April 13, Hoonah, Alaska, Hoonah Community Bldg., 7:00 p.m.
- April 13, Yakutat, Alaska, Yakutat Town Hall, 7:00 p.m.
- April 15, Skagway, Alaska, Skagway Town Hall, 7:00 p.m.
- April 16, Haines, Alaska, Haines City Hall, 7:00 p.m.

Denali National Park and Preserve

- April 14, Anchorage, Alaska, National Park Service, Regional Office, 540 W. 5th Avenue, 7:00 p.m.
- April 13, Healy, Alaska, Tri-Valley Community Center, 7:30 p.m.
- April 11, Fairbanks, Alaska, Noel Wein Library, 1215 Cowlee Street, 7:00 p.m.

Katmai National Park and Preserve

- April 18, King Salmon, Alaska, ComServFac, 7:00 p.m.
- April 19, Levelock, Alaska, Levelock Community Bldg., 1:00 p.m.
- April 20, Naknek, Alaska, Bristol Bay Borough Assembly Room, 7:30 p.m.
- April 21, South Naknek, Alaska, School Library, 7:30 p.m.

Notice of these proposed closures shall also be published in at least one newspaper of general circulation in the State and in at least one local newspaper, if available, and posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of each park superintendent and other places convenient to the public, and designated by the posting of appropriate signs.

Paperwork Reduction Act

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" under Executive Order

12291 and certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This finding is based on the fact that the total economic effect of this rule is less than \$100,000 and will not require any significant budget or personnel changes in Federal, State or local government.

In accordance with the National Environmental Policy Act, 42 U.S.C. 4332, the Service has prepared environmental assessments on these proposed rules. Copies of these assessments are available for public review and comment in the regional and park offices listed above.

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); 16 U.S.C. 1, 1a-1, 1c, 462; and ANILCA, 94 Stat. 2371 and 1281.

List of Subjects in 36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Traffic regulations.

PART 13—[AMENDED]

In consideration of the foregoing, it is proposed to amend Part 13 of Title 36, Code of Federal Regulations, by the addition of § 13.63(d) and also the addition of §§ 13.65 and 13.66 as follows:

§ 13.63 Denali National Park and Preserve.

(d) *Closures.* (1) The Denali Park Road and road corridor is closed to all motorized transportation, including but not limited to, motor vehicles, all terrain vehicles, aircraft, motorboats, motor vessels and snowmachines from its junction with Alaska State Highway 3 to the point where the road crosses to the immediate North of Wonder Lake with the following exceptions:

(i) Aircraft are permitted to land on the Park airstrip east of the railroad station.

(ii) Trains are authorized in their right-of-way.

(iii) Motor vehicles are authorized on all park roads except:

(A) That portion of the park road West of the Savage River check station from approximately Memorial Day to Labor Day each year. During the time that this section is closed access will be provided to private properties and limited numbers of permits will be available for those who have camping reservations.

(B) When roads are posted as closed due to deep snow, road repairs, landslides, flooding or similar reasons.

The road corridor is defined as all lands and waters within five miles on each side of the road.

(2) Two areas north of the Alaska Range identified as "Closure 2" on the Denali National Park Closure Map are closed to all types of motorized transportation, including but not limited to, motor vehicles, aircraft, snowmachines, motorboats, motor vessels and all terrain vehicles. This map is available for public inspection at all offices and information centers in Denali National Park and at the National Park Service Regional Office in Anchorage, Alaska.

(3) Sable Pass is closed to foot traffic within one mile on each side of the road, except for road shoulders and designated pullouts.

(4) Critical Wildlife areas marked on Denali closure map number two are closed to entry from April 15 to September 30 each year. These areas will vary from year to year, but their size shall not increase or decrease more than 10% each year. Copies of this map shall be posted on all in-park public conveyances and posted in all offices and campgrounds in Denali National Park Preserve.

§ 13.65 Glacier Bay National Park and Preserve.

(a) *Closures.* (1) Those portions of the following waterways which are designated wilderness are closed to motorboats, motor vessels and aircraft landings from May 1 to September 1 each year: Adams Inlet; the Hugh Miller/Scidmore Bay/Carpentier Inlet/Weird Bay complex; Beardslee Islands waterway, except for the Beardslee Islands Entrance area due North of Young Island and immediately east of Strawberry Island; and Rendu Inlet.

(2) All beaches within Glacier Bay and all beaches from Cape Fairweather south to the mouth of De Langle Mountain Creek are closed to aircraft landings and snowmachines.

(3) All waters within one mile of all tidewater glaciers are closed from May 1 to September 1 each year to aircraft landings.

(4) The waters and shorelines of Vivid, Bartlett and the Adam Island Lakes are closed to aircraft landings.

(5) The shorelines of Adams Inlet, the Klotz Hills and the Casement Glacier outwash are closed to aircraft landings and snowmachines from November 1 to May 1 each year. These areas are identified on the Glacier Bay National Park and Preserve Closure Map, and it is available for public inspection at all Glacier Bay National Park offices and in the Regional Office in Anchorage.

(6) All waters designated as Wilderness are closed to commercial fishing.

(7) The waters of Glacier Bay are closed to all types of fishing commonly known as trawling.

§ 13.66 Katmai National Park and Preserve.

(a) *Closures.* (1) All lakes within the Margot Creek/Ukak River drainage are closed to aircraft landings from May 1 to November 1 each year.

(2) That portion of the King Salmon River drainage within the Park including Angle, Contact, and Takayoto Creeks, Lakes 592, 840, Dakavak Lake, Hammersley Lake, Murray Lake, Idavain Lake and the smaller lakes in the Idavain Lake area are closed to aircraft landings from September 1 to June 1 each year.

(3) The Savanoski River is closed to motorboats and motor vessels.

(4) The Valley of Ten Thousand Smokes is closed to all motorized access including aircraft landings.

(5) All lake beaches and river bars in the Naknek River drainage, including the Savanoski River, are closed to aircraft landings.

Dated: March 17, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-9080 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2514/P274; PH-FRL 2335-4]

Permethrin; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodity kiwifruit. This proposed regulation to establish a maximum permissible level for the combined residues of permethrin in or on kiwifruit was requested, pursuant to a petition, by ICI Americas, Inc.

DATE: Comments must be received on or before May 6, 1983.

ADDRESS: Written comments to: Product manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm.

207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, PM-17, (703-557-2690) at the above address.

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Corcord Pike and New Murphy Road Wilmington, DE 19897, has submitted pesticide petition 1E2514 proposing to amend 40 CFR 180.378 by establishing a tolerance for the combined residues of the insecticide permethrin ((3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolites in or on the raw agricultural commodity kiwifruit imported from New Zealand. Based upon the residue data, a tolerance of 2.0 parts per million (ppm) is adequate to cover residues of the parent compound and its metabolites, 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA).

The toxicological data considered in support of the proposed tolerance were discussed in a related final rule document [PP 9F2099, 9F2196, 9F2243, 9F2192, OF2425, OF2307, 9F2207, 1F2462, 1F2864/R422] published in the Federal Register of October 13, 1982 [47 FR 45008].

Using a no-observed-effect level (NOEL) of 5 mg/kg/day, derived from the 2-year rat chronic feeding/oncogenicity study and a 100-fold safety factor, the acceptable daily intake (ADI) was determined to be 0.0500 mg/kg/day. This tolerance would increase the percentage of the ADI used from 21.62 percent to 21.65 percent.

The theoretical maximal residue contribution (TMRC) for the insecticide from the use on kiwifruit will be increased by 0.14 percent. There are no actions currently pending against continued registration of the insecticide.

Tolerances have been previously established (40 CFR 180.378) for residues of the insecticide in or on various raw agricultural commodities at levels ranging from 0.05 ppm to 20.0 ppm. The nature of the residue is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Kiwifruit is not a feed item, and therefore there is no reasonable expectation of residues in eggs, meat, milk, or poultry from this tolerance.

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. It is

proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 1E2514/P274]. All written comments filed in response to this petition will be available in the product manager's office, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.378(b) be amended by adding and alphabetically inserting the commodity kiwifruit to read as follows:

§ 180.378 Permethrin; tolerances for residues

• • • • •

(b) • • •

Commodities	Parts per million
Kiwifruit	2.0

[FR Doc. 83-6337 Filed 4-5-83; 8:46 am]
BILLING CODE 5560-50-M

40 CFR Part 180

[PP 1E2515/P275; PH-FRL #2335-5]

Pirimiphos-Methyl; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the residues of the insecticide pirimiphos-methyl in or on the commodity kiwifruit. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested, pursuant to a petition, by ICI Americas, Inc.

DATE: Comments must be received on or before May 6, 1983.

ADDRESS: Written comments to: Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, PM-12, (703-557-2386) at the address given above.

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897, has submitted pesticide petition 1E2515 to the EPA proposing to amend 40 CFR Part 180 by establishing a tolerance for the combined residues of the insecticide pirimiphos-methyl [O-(2-[diethylamino]-6-methyl-4-pyrimidinyl) O,O-dimethylphosphorothioate] and its metabolites O-(2-[ethylamino]-6-methyl-4-pyrimidinyl) O,O-dimethylphosphorothioate, 2-(diethylamino)-6-methyl-4 (3H) pyrimidinone, 2-(ethylamino)-6-methyl-4 (3H) pyrimidinone, and 2-amino-6-methyl-4 (3H) pyrimidinone in or on kiwifruit imported from New Zealand at 5.0 parts per million (ppm). The petition was subsequently amended by deleting the metabolites from the tolerance regulation.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a 2-year rat feeding/ oncogenicity study which was negative

for oncogenic effects and has a cholinesterase-inhibition and systemic no-observed-effect level (NOEL) of 10.0 ppm and 300 ppm, respectively; a mouse oncogenicity study which was negative for oncogenic effects; a 2-year dog feeding study which had a cholinesterase-inhibition and systemic NOEL of 0.5 milligram (mg)/kilogram (kg)/day and 2.0 mg/kg/day, respectively; a rabbit teratology study which was negative at 16 mg/kg; and a rat reproduction study which had a NOEL of 100 ppm.

Based on the 2-year rat feeding/ oncogenicity study with a 10 ppm NOEL for cholinesterase-inhibition, and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.05 mg/kg of body weight (bw)/day. The theoretical maximal residue contribution (TMRC) in the human diet from this proposed use, utilized 0.08 percent of the ADI.

Desirable data that is lacking from the petition is a subchronic neurotoxicity study in hens. In a letter of November 5, 1982 the petitioner agreed to submit the study within 1 year from the establishment of this tolerance.

For purposes of the proposed use on kiwifruit the nature of the residue is adequately understood. The tolerance for kiwifruit should be established in terms of pirimiphos-methyl only and an adequate analytical method, gas chromatography, is available for enforcement purposes. No actions are currently pending against registration of pirimiphos-methyl nor are there any other relevant considerations involved in establishing the proposed tolerance.

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. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 1E2515/P275]. All written comments filed in response to this petition will be available in the product manager's office, Registration

Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

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

the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), Stat. 514 (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1983.

Douglas D. Campt.,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended by adding a new § 180.409 to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

A tolerance is hereby established for residues of the insecticide pirimiphos-methyl [0-(2-[diethylamino]-6-methyl-4-pyrimidinyl) 0, 0-dimethylphosphorothioate] in or on the following raw agricultural commodity:

Commodity	Parts per million
Kiwifruit	5.0

[FR Doc. 83-8338 Filed 4-5-83; 8:45 am]

BILLING CODE 5560-50-M

Notices

Federal Register

Vol. 48, No. 67

Wednesday, April 6, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Certification of Claims Under the Contract Disputes Act

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Judicial Review has under consideration a draft recommendation proposing that certification of claims over \$50,000 under the Contract Disputes Act should not be a jurisdictional prerequisite to the processing of claims under the Act. Interested persons are invited to comment on the draft recommendation.

DATE: Comment Deadline: April 25, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037, Telephone: 202-254-7065.

SUPPLEMENTARY INFORMATION: The draft recommendation under consideration by the Administrative Conference Committee on Judicial Review concerns the statutory requirement that government contractors submitting claims over \$50,000 under the Contract Disputes Act certify that the amount claimed is accurate. Recent court decisions have held that this certification requirement is jurisdictional, and that any decision made by a contracting officer before certification is received is, in effect, a nullity. The draft recommendation describes some practical problems this approach presents for contractors and proposes that the certification requirement be retained, but that its jurisdictional status be removed. The draft recommendation favors greater flexibility in the timing of certification so that, for example, a decision on the contractor's entitlement to relief could be made and, if necessary, appealed

before any certification or consideration of the exact amount of damages.

The draft recommendation is based on a report to the Committee by consultant Thomas Madden of the law firm Kaye, Scholer, Fierman, Hays & Handler in Washington, D.C. Copies of the draft report, which discusses the relevant case law and describes the resulting problems, may be obtained from the Administrative Conference.

Comments on the draft recommendation should be submitted to Mary Candace Fowler at the above address no later than April 25, 1983. The Committee will meet shortly thereafter to consider the proposal in light of the comments received.

Draft Recommendation—The Certification Requirement in the Contract Disputes Act

The Contract Disputes Act, 41 U.S.C. 601-613, enacted in 1978, established a comprehensive system for resolving disputes arising out of federal government contracts. Under the Act, disputes initiated by or brought against executive branch agencies relating to a contract must be first submitted in writing to the agency's contracting officer for decision. Appeals from that decision may then be taken either to an agency board of contract appeals or to the United States Claims Court.

The Act specifies in section 605(c) that claims submitted to the contracting officer by a contractor for more than \$50,000 must be certified: "the contractor shall certify that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable." It is generally recognized that this requirement was inserted to discourage the submission of frivolous or unwarranted contractor claims.

Recent decisions by the Court of Claims¹ have held this provision to be a jurisdictional one. The court has ruled that unless a contractor has presented a proper certification to the contracting officer prior to his decision, any such decision is a nullity, and the court will dismiss any appeal based on such a decision. Moreover, the court intimated

in dicta that agency boards of contract appeal should likewise dismiss appeals from decisions on uncertified claims—a position reluctantly followed in several board decisions.

This formalistic approach portends significant problems for contractors. In many disputes the issue of liability may be ripe for decision before the amount of damages is known, or even before the damages have fully accrued—for example, when a contractor seeks an extension of time for performance because of an excusable delay or seeks an equitable adjustment of the contract terms because of a change by the government. In situations like these it may be more efficient for the contracting office to decide the issue of liability prior to any certification by the contractor of the amount in dispute, so as to allow an expeditious appeal by the contractor in the event the claim is denied. Moreover, under notice requirements imposed on government contractors by the changes clause of their contracts, the contractor has an obligation to notify the government of claims and request an equitable adjustment within 30 days after the contractor learns of the change. Certification at the time of this claim will be extremely difficult when the amount of damages is not yet known. An additional problem arises when a contractor has numerous claims for less than \$50,000 and the contracting officer aggregates them and insists on certification. The treatment of certification as a jurisdictional requirement for review will force the contractor in this situation to certify without being able to obtain review of the applicability of the certification requirement.

The Conference believes that the certification requirement does serve a valid purpose—that of discouraging frivolous or unwarranted claims. However, this should not be a matter of jurisdiction. Instead, certification should be insisted upon only as a prelude to a settlement or payment of a claim. So that the requirement will achieve its purpose, the contracting officer should receive the certification before reaching a decision or agreement on the exact amount to be paid. The contracting officer should be free to require the certification whenever, following submission of the claim and before decision, the officer needs it in order to

¹ Although the Court of Claims has been replaced by the United States Claims Court and the Court of Appeals for the Federal Circuit (Pub. L. No. 97-164), its decisions will continue to be binding precedent.

have adequate information to decide the claim. To clarify these matters, the Contract Disputes Act should be so amended.

Recommendation

Section 605(c) of the Contract Disputes Act should be amended by:

(1) Adding a new paragraph (6) which provides that claims over \$50,000 shall not be settled or paid by a contracting officer unless the contractor has certified that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable;

(2) Deleting the second sentence of section 605(c)(1), which contains the current certification requirement; and

(3) Deleting word "certified" from section 605(c)(2).

Richard K. Berg,
General Counsel.

April 1, 1983.

[FR Doc. 83-9032 Filed 4-5-83; 10:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 1, 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: Marshall L. Dantzler, Acting Statistical Clearance Officer, (202) 447-6201.

New

• Food and Nutrition Service
State Retail Vendor License Numbers, FNS-1127-1A and FNS-1127-2A
Nonrecurring
Businesses or other institutions: 4,375 responses; 73 hours; not applicable under 3504(h)
Anne Sherriff (703) 756-3425.
• Food and Nutrition Service
Evaluation of Existing Food Stamp Issuance Systems—Part of Alternative Issuance, Systems Evaluation
Nonrecurring
State or local governments: 305 responses; 675 hours; not applicable under 3504(h)
Carol Klecka (703) 745-3115

Revised

• Farmers Home Administration
7 CFR 1930-B Management and Supervision of Individual Applicants and Borrowers, FmHA-431-1, 431-2, 431-4, 432-1, 432-2, 432-10, 1930-1, 1930-2, 1930-3, 1930-4
On occasion
Individuals, farms, businesses: 259,340 responses; 973,130 hours; not applicable under 3504(h)
Molly T. Baldrige (202) 447-7597
• Agricultural Marketing Service
Fresh Bartlett Pears Grown in Oregon and Washington—Marketing Order 931
Weekly, bi-monthly
Businesses: 3,428 responses; 1,043 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975
• Statistical Reporting Service
Prospective Planting Surveys
On occasion
Farms: 109,800 responses; 20,130 hours; not applicable under 3504(h)
Lee Sandberg (202) 447-6820
• Packers and Stockyards Administration
Regulations and Related Reporting and Recordkeeping Requirements, Packers and Stockyards Act
P&SA 315, 316
On occasion
Businesses: 42,030 responses; 12,607 hours; not applicable under 3504(h)
Calvin W. Watkins (202) 447-7201

Extension

• Agricultural Stabilization and Conservation Service

7 CFR—Part 1427 (Cotton Loan Program Regulations) 7 CFR—Part 1427 (Seed Cotton Loan Program Regulations)—Reporting and Recordkeeping
CCC Cotton A, A-1, A-2, A-5, CCC-813, 813-1, 813-2, 837, 877, 879, 881, 881-1, 883

Annually

Farms, businesses or other institutions: 3,768,900 responses; 57,225 hours; not applicable under 3504(h)

Carolyn Cozart (202) 447-7987

• Agricultural Stabilization and Conservation Service

Request for Long-Term Agreement, FIP-11

On occasion

Individuals or households and farms: 335 responses; 112 hours; not applicable under 3504(h)

Charles Sims (202) 447-9563

• Rural Electrification Administration
Application for Telephone Loan or Loan Guarantee, REA-490

On occasion

Businesses: 200 responses; 100 hours; not applicable under 3504(h)

John N. Rose (202) 382-8532

• Agricultural Marketing Service
Reporting Requirements Under Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, DA-125, 132, 155, 168

On occasion

Businesses: 17,779 responses; 1,468 hours; not applicable under 3504(h)

Lynn G. Boerger (202) 382-9363

• Agricultural Stabilization and Conservation Service

Regulations Relating to Eligibility of Cooperative Marketing Associations to

Obtain Price Support, CCC-846-1

On occasion

Businesses or other institutions: 284 responses; 9,508 hours; not applicable under 3504(h)

Dale Wilson (202) 447-5396

• Farmers Home Administration
7 CFR 1901-E, Civil Rights Compliance Requirements, FmHA 400-1, 400-4, 400-7, 400-8

On occasion, monthly

Individuals or households, state or local governments, farms, businesses: 214,940 responses; 84,843 hours; not applicable under 3504(h)

Walter Fredricks (202) 447-3098

Reinstatement

• Farmers Home Administration
7 CFR 1980-C, Guaranteed Emergency
Livestock Loans
On occasion

Businesses: 50 responses; 50 hours; not
applicable under 3504(h)

James E. Vollmer (202) 382-1647

Marshall L. Dantzer,

Acting Statistical Clearance Officer.

[FR Doc. 83-8937 Filed 4-5-83; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service**Federal Grain Inspection Service
Advisory Committee; Meeting**

Pursuant to the provisions of section
10(a)(2) of the Federal Advisory
Committee Act (Pub. L. 92-463), notice is
hereby given of the following committee
meeting:

Name: Federal Grain Inspection Service
Advisory Committee.

Date: April 29, 1983.

Place: U.S. Department of Agriculture, 1400
Independence Avenue, SW., Room 2096
South Building, Washington, D.C. 20250.
Time: 8:30 a.m.

Purpose: To enable the members to discuss
and provide advice to the Administrator of
the Federal Grain Inspection Service with
respect to the efficient and economical
implementation of the U.S. Grain
Standards Act of 1976, in order to assure
the normal movement of grain in an orderly
and timely manner.

The agenda includes: (1) Financial
matters, (2) report of the moisture
subcommittee, (3) Federal Grain
Inspection Service responsibility for
official weighing, (4) recording hopper
car and barge seals, (5) an update of the
quality control plan, and (6) other
matters.

The meeting will be open to the
public, but space and facilities are
limited. Public participation will be
limited to written statements submitted
before or at the meeting unless their
participation is otherwise requested by
the Committee Chairman. Persons, other
than members, who wish to address the
Committee at the meetings, should
contact Dr. Kenneth A. Gilles,
Administrator, FGIS, U.S. Department of
Agriculture, Washington, D.C. 20250,
telephone (202) 382-0219.

Dated: April 1, 1983.

Kenneth A. Gilles,

Administrator.

[FR Doc. 83-9015 Filed 4-5-83; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS**Alaska and Washington Advisory
Committees; Change in Meeting Time**

Notice is hereby given, pursuant to the
provisions of the Rules and Regulations
of the U.S. Commission on Civil Rights,
that a meeting of the Alaska and
Washington Advisory Committees to the
Commission originally scheduled for
10:00 a.m. on April 15, 1983, at Juneau,
Alaska (FR Doc. 83-7258 on page 11730),
has been changed.

The meeting will now be held on April
15, 1983, convening at 12 noon and will
end at 2:00 p.m., at the Alaska Court and
Office Building, Fourth and Main, Court
Room A, Juneau, Alaska 99811.

Dated at Washington, D.C., April 1, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-8955 Filed 4-5-83; 8:45 am]

BILLING CODE 6335-01-M

**Michigan Advisory Committee; Agenda
and Notice of Public Meeting**

Notice is hereby given, pursuant to the
provisions of the Rules and Regulations
of the U.S. Commission on Civil Rights,
that a meeting of the Michigan Advisory
Committee to the Commission will
convene at 5:30 p.m. and will end at 9:00
p.m., on April 26, 1983, in the Richard B
Room, at the Westin Hotel, Renaissance
Center, Detroit, Michigan 48243. The
purpose of this meeting is to discuss
tuition tax credits and equality in
commercial lending.

Persons desiring additional
information or planning a presentation
to the Committee, should contact the
Chairperson, M. H. Rienstra, 1225
Thomas South East, Grand Rapids,
Michigan, 49506, (616) 949-4000 or the
Midwestern Regional Office, 230 South
Dearborn Street, 32nd Floor, Chicago,
Illinois, 60604, (312) 353-7479.

The meeting will be conducted
pursuant to the provisions of the Rules
and Regulations of the Commission.

Dated at Washington, D.C., March 31, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-8956 Filed 4-5-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**International Trade Administration****Electronic Instrumentation, Technical
Advisory Committee; Closed Meeting**

AGENCY: International Trade
Administration, Commerce.

SUMMARY: The Electronic

Instrumentation Technical Advisory
Committee was initially established on
October 23, 1973, and rechartered on
September 18, 1981 in accordance with
the Export Administration Act of 1979
and the Federal Advisory Committee
Act.

The Committee advises the Office of
Export Administration with respect to
questions involving (A) technical
specifications and policy issues relating
to those specifications which are of
concern to the Department, (B)
worldwide availability of products and
systems, including quantity and quality,
and actual utilization of production
technology, (C) licensing procedures
which affect the level of export controls
applicable to electronic instrumentation,
or technology, (D) exports of the
aforementioned commodities subject to
unilateral and multilateral controls in
which the United States participates
including proposed revision of any such
controls.

TIME AND PLACE: April 25, 1983, at 9:30
a.m. The meeting will take place at the
Main Commerce Building, Room 3708,
14th Street and Constitution Avenue
NW., Washington, D.C. The meeting will
continue to its conclusion on April 26, in
Room 3708, Main Commerce Building.

The Committee will meet only in
Executive Session to discuss matter
properly classified under Executive
Order 12356, dealing with the U.S. and
COCOM control program and strategic
criteria related thereto.

SUPPLEMENTARY INFORMATION: The
Assistant Secretary for Administration,
with the concurrence of the delegate of
the General Counsel, formally
determined on September 29, 1981,
pursuant to Section 10(d) of the Federal
Advisory Committee Act, as amended
by Section 5(c) of the Government In
The Sunshine Act, Pub. L. 94-409, that
the matters to be discussed in the
Executive Session should be exempt
from the provisions of the Federal
Advisory Committee Act relating to
open meetings and public participation
therein, because the Executive Session
will be concerned with matters listed in
5 U.S.C. 552b(c)(1) and are properly
classified under Executive Order 12356.

A copy of the Notice of Determination
to close meetings or portions thereof is
available for public inspection and
copying in the Central Reference and
Records Facility, Room 6628, U.S.
Department of Commerce, telephone:
(202) 377-4217.

FOR FURTHER INFORMATION CONTACT:
Mrs. Margaret A. Cornejo, Committee
Control Officer, Office of Export

Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377-2583.

Dated: March 30, 1983.

John K. Boidock

Director, Office of Export Administration.

[FR Doc. 83-2858 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

U.S.-EC Arrangement on Certain Steel Products: Request for Comments on "Short-Supply"

AGENCY: International Trade Administration, Commerce.

ACTION: Request for technical comments.

SUMMARY: Interested members of the public are requested to submit technical comments on the economic methodology and appropriate data sources for use in connection with Article 8 of the U.S.-EC Arrangement on Certain Steel Products.

EFFECTIVE DATE: April 6, 1983.

FOR FURTHER INFORMATION CONTACT:

Michael Levine or Holly Kuga, Agreements Compliance Division, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION: On October 21, 1982, the United States and the European Communities (EC) reached Agreement on the Arrangement on Certain Steel Products (47 FR 49060). Pursuant to this arrangement, the EC is limiting exports of ten categories of basic steel mill products to specified shares of U.S. apparent consumption (shipments plus imports less exports) via and export licensing system. The export ceilings of one or more of these product categories may be increased under Article 8 of the Arrangement if, as discussed in that article, short-supply is determined to exist.

Article 8 of the Arrangement states:

On the occasion of each quarterly consultation provided for in Article 10 the U.S. and the ECSC will examine the supply and demand situation in the USA for each of the products listed in Appendix B (note: those products subject to licensing). If the U.S. in consultation with the ECSC determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products by a special issue of licenses limited to 10 percent of the ECSC's unadjusted export ceiling for that product or products. In extraordinary circumstances as determined by the U.S. in consultation with

the ECSC the U.S. will increase the allowable level of special licenses.

Each authorized special issue export license and certificate derived therefrom shall be so marked. Each such license must be used within 180 days after the start of the quarter when that special issue began.

[To the extent that the Arrangement products are subject to the Treaty establishing the European Economic Community (the EEC), the term "ECSC" should be substituted by the "EEC".]

The Department of Commerce is in the process of establishing the analytical framework and data base that will be used for determinations under Article 8 of the Arrangement. In connection with that process, we are inviting all interested members of the public to submit comments on the supply and demand factors and economic methodology they consider relevant to a short-supply determination. We further request any information that interested members of the public can provide on the public and private sources of pertinent data and, in addition, encourage the submission of any qualitative and quantitative market information which may be available, including historical data on recognized cases of short-supply of particular steel products in the U.S. steel market.

Persons wishing to comment on these matters should do so within 30 days of publication of this notice by writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 3099B, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Requests for confidential treatment of information will be considered. Any information submitted which is not designated as confidential by the person submitting it will not be treated as confidential.

Dated: March 31, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-8950 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room

1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket number 83-81. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. Instrument: Surface Analysis Spectrometer. Manufacturer: Leybold-Heraeus, Incorporated, West Germany. Intended use of instrument: See Notice on page 57982 in the Federal Register of December 29, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument operating in its x-ray photoelectron spectrometry mode provides a sensitivity of 30,000 counts per second on the 3d 5₂ guaranteed peak of pure silver at resolution 0.90 electron volts full width half maximum. The National Bureau of Standards advises in its memorandum dated February 9, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-8960 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

Cornell University Medical College; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review

between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 82-00364. Applicant: Cornell University Medical College, 1300 York Avenue, New York, NY 10021. Instrument: High Resolution Scanning Attachment, Model ASID-4D. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See Notice on page 49056 in the Federal Register of October 29, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The accessory is being furnished by the manufacturer which produced the instrument with which it is intended to be used. We are advised by the Department of Health and Human Services in its memorandum dated January 27, 1983 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic accessory.

The Department of Commerce knows of no similar accessory being manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the accessory is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-8061 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

University of California at Los Angeles; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room

1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 83-10. Applicant: University of California at Los Angeles, Tokamak Lab, 2567 Boelter Hall, 405 Hilgard Avenue, Los Angeles, California 90024. Instrument: Klystron Tube #VRT2121A16. Manufacturer: Varian, Canada. Intended use of instrument: See Notice on page 53759 in the Federal Register of November 29, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a 2 millimeter microwave tube which covers a frequency range of 110-140 gigahertz. The National Bureau of Standards advises in its memorandum dated March 2, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-8062 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and

Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 82-00154R. Applicant: University of Wisconsin, Hospital and Clinics, 600 Highland Avenue, Madison, WI 53792. Instrument: Automated Ultrasonic Body Imager. Manufacturer: Ausonics Pty. Limited, Australia. Application is a resubmission, notice of which was published in the Federal Register of May 20, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 82-00154 which was denied without prejudice to resubmission on September 7, 1982 for informational deficiencies. The foreign instrument provides abdominal scanning. The Department of Health and Human Services advises in its memorandum dated January 27, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-8063 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

University of Texas at Austin; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room

1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 83-37. Applicant: The University of Texas at Austin, Electrical Engineering Research Laboratory, 10100 Burnet Road, Austin, TX 78758.

Instrument: Reflex Klystron, Frequency 69-75 GHz. Manufacturer: Varian Associates, Canada. Intended use of instrument: See Notice on page 54998 in the *Federal Register* of December 7, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 81-00286 which was partially denied without prejudice to resubmission on March 15, 1982 for informational deficiencies. The foreign instrument provides a minimum power output of 150 milliwatts. The National Bureau of Standards advises in its memorandum dated March 2, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-0964 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Abbott Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Abbott Laboratories, having a place of business at North Chicago, Illinois, an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Ethiodized

Oil Emulsion for Intravenous Hepatography," U.S. Patent Application Serial No. 6-110,293 (filed January 8, 1980). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Dated: March 30, 1983.

George Kudravetz,

Program Manager, Office of Government Inventions and Patents, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 83-8944 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Waterman-Industries, Inc. having a place of business at Exeter, California, an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Remote Control Irrigation System," U.S. Patent Application 6-320, 750 (issued May 23, 1967). The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151.

Dated: March 28, 1983.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

[FR Doc. 83-8985 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting; Correction

The Commission of Fine Arts has rescheduled its next meeting for 9:00 a.m. April 19, 1983 instead of 10:00 a.m. on the same day as originally published in the *Federal Register* on March 23, 1983 (48 FR 12136). The meeting is open to the public. Items to be discussed will consist of design review of various projects affecting the appearance of Washington and may include proposals for the Navy Memorial and the Vietnam Veterans Memorial.

Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW. Call 566-1066 for assistance. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, D.C. 20006 or call the above number.

Dated in Washington, D.C. March 30, 1983.

Charles H. Atherton,
Secretary.

[FR Doc. 83-8982 Filed 4-5-83; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given of a meeting of the Coastal Engineering Research Board.

The meeting will be held in the conference room of the Wilmington Hilton, 301 N. Water Street, Wilmington, N.C., from 8:30 a.m. to 4:30 p.m. on May 3 and from 8:30 a.m. to 12:30 p.m. on May 5.

The May 3 session will be devoted to presentations and discussions by the Corps Engineers' Wilmington District staff on: Overview of Oregon Inlet Project, Barrier Island Studies and Shore Processes; Dredging Studies; Storm Tide

Levels—Pamlico Sound; Geotechnical Investigation and Analysis; Jetty Structural Tests/Design and Constructibility; Wave Penetration between Jetties; Sloping Float Transportable Breakwater; Overview of Environmental Studies/Considerations; Cape Hatteras Lighthouses Protection; Military Ocean Terminal, Sunny Point; and field trip itinerary.

The entire day of May 4 will be an aerial inspection along the coast from Wilmington, N.C. to Oregon Inlet, N.C., including overflight of District projects including Sunny Point, Ft. Fisher, Wrightsville Beach, Morehead City Harbor, Cape Lookout Lighthouse, Oregon Inlet and by government vehicle to the Field Research Facility at Duck, N.C.

The morning of May 5 will be devoted to discussions of the field inspection, Actual Environmental Effects of Dredging, Dredge Material Research Program Outputs and Dredging Operations Technical Support; South Atlantic Division Research Needs, and CERB Recommendations.

Participation by the public is scheduled for 9:00 a.m. on May 5. Members of the public may attend the field inspection but must provide their own transportation.

The entire meeting is open to the public subject to the following:

(1) Since seating capacity of the meeting room at the Wilmington Hilton is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

(2) Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquires and notice of intent to attend the meeting may be addressed to Colonel Ted E. Bishop, Executive Secretary, Coastal Engineering Research Board, Kingman Building, Fort Belvoir, VA 22060.

Dated: March 24, 1983.

John O. Roach, II,

DA Liaison Officer with the Federal Register.

[FR Doc. 80-8864 Filed 4-5-83; 8:45 am]

BILLING CODE 3710-06-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92-483), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Friday, 22 April 1983.

Times: 0830-1700 hours (Closed).

Place: U.S. Army Chemical School, Fort McClellan, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army Decontamination Program will meet for classified briefings and discussions on decontamination concepts, doctrine, force structure, training and materiel requirements. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Helen M. Bowen,
Administrative Officer.

[FR Doc. 83-6074 Filed 4-5-83; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM79-34 and ST83-236]

Transportation Certificates for Natural Gas Displacement of Fuel Oil; Natural Gas Pipeline Company of America; Self-Implementing Transactions

March 31, 1983.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity

receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b) (2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to § 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G" (HT) or "G" (HS) indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Kenneth F. Plumb,
Secretary.

BILLING CODE 6717-01-M

DOCKET NO. *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EXPIRATION DATE **	TRANSPORTATION RATE (\$/MBTU)
ST83-236	NATURAL GAS PIPELINE CO. OF AMERICA	MICHIGAN WISCONSIN PIPE LINE CO.	2/ 1/83	G	-	-
ST83-237	GAS CO. OF NEW MEXICO	EL PASO NATURAL GAS CO.	2/ 1/83	G	-	-
ST83-238	UNITED GAS PIPE LINE CO.	HYDROCARBON LTD	2/ 1/83	E	-	-
ST83-239	MOUNTAIN FUEL SUPPLY CO.	NORTHERN NATURAL GAS CO.	2/ 3/83	G	-	-
ST83-240	LOUISIANA GAS INTRASTATE, INC.	ARKANSAS LOUISIANA GAS CO.	2/ 2/83	C	-	-
ST83-241	LOUISIANA GAS INTRASTATE, INC.	TEXAS EASTERN TRANSMISSION CORP.	2/ 2/83	C	-	-
ST83-242	LOUISIANA INTRASTATE GAS CORP.	TEXAS EASTERN TRANSMISSION CORP.	2/ 4/83	C	7/ 4/83	20.00
ST83-243	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN INDIANA PUBLIC SERVICE CO.	2/ 7/83	R	-	-
ST83-244	TENNESSEE GAS PIPELINE CO.	EXCO GATHERING CO.	2/ 7/83	R	-	-
ST83-245	EAST TENNESSEE NATURAL GAS CO.	UNITED CITIES GAS CO.	2/ 8/83	R	-	-
ST83-246	NATURAL GAS PIPELINE CO. OF AMERICA	TENNESSEE GAS PIPELINE CO.	2/10/83	G	-	-
ST83-247	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO.	2/10/83	C	-	-
ST83-248	RIVERWAY GAS PIPELINE CO.	TRANSCONTINENTAL GAS PIPE LINE CORP.	2/14/83	C	7/14/83	25.00
ST83-249	COLUMBIA GULF TRANSMISSION CO.	TENNESSEE GAS PIPELINE CO.	2/14/83	G	-	-
ST83-250	TEXAS EASTERN TRANSMISSION CORP.	PUBLIC SERVICE ELECTRIC AND GAS CO.	2/15/83	F	-	-
ST83-251	TEXAS EASTERN TRANSMISSION CORP.	TENNESSEE GAS PIPELINE CO.	2/15/83	G	-	-
ST83-252	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTHERN NATURAL GAS CO.	2/16/83	S	-	-
ST83-253	TRANSCONTINENTAL GAS PIPE LINE CORP.	CITY OF LAWRENCEVILLE, GEORGIA	2/16/83	B	-	-
ST83-254	MOUNTAIN FUEL RESOURCES, INC.	NORTHERN NATURAL GAS CO.	2/16/83	G	-	-
ST83-255	COLUMBIA GULF TRANSMISSION CO.	LOUISIANA INTRASTATE GAS CORP.	2/17/83	B	-	-
ST83-256	TEXAS EASTERN TRANSMISSION CORP.	COLUMBIA GAS TRANSMISSION CORP.	2/18/83	G	-	-
ST83-257	DELHI GAS PIPELINE CORP.	PRIGELINE GAS DISTRIBUTION CO.	2/18/83	D	-	-
ST83-258	KANSAS POWER AND LIGHT CO.	CAJON NATURAL GAS CO.	2/17/83	D	-	-
ST83-259	CONSOLIDATED GAS SUPPLY CORP.	BAY STATE GAS CO.	2/14/83	F	-	-
ST83-260	SUGAR BOWL GAS CORP.	COLUMBIA GAS TRANSMISSION CORP.	2/22/83	C	-	-
ST83-261	COLUMBIA GULF TRANSMISSION CO.	MONTREY PIPELINE CO.	2/22/83	R	-	-
ST83-262	TENNESSEE GAS PIPELINE CO.	FITCHBURG GAS AND ELECTRIC LIGHT CO.	2/22/83	R	-	-
ST83-263	UNITED GAS PIPE LINE CO.	TENNESSEE GAS PIPELINE CO.	2/25/83	G	-	-
ST83-264	GASIS PIPE LINE CO.	UNITED GAS PIPE LINE CO.	2/28/83	C	-	-
ST83-265	PRODUCER'S GAS CO.	TRANSWESTERN PIPELINE CO.	2/28/83	C	-	-
ST83-266	COLUMBIA GULF TRANSMISSION CO.	CONSOLIDATED GAS SUPPLY CORP.	2/28/83	G	-	-
ST83-267	SEAGULL PIPELINE CORP.	FLORIDA GAS TRANSMISSION CO.	2/24/83	C	7/24/83	10.00

* THE NOTICING OF THESE FILINGS DOES NOT CONSTITUTE A DETERMINATION OF WHETHER THE FILINGS COMPLY WITH THE COMMISSION'S REGULATIONS.

** THE INTRASTATE PIPELINE HAS SOUGHT COMMISSION APPROVAL OF ITS TRANSPORTATION RATE PURSUANT TO SECTION 284.123(P)(2) OF THE COMMISSION'S REGULATIONS (18 CFR 284.123(P)(2)). SUCH RATES ARE DEEMED FAIR AND EQUITABLE IF THE COMMISSION DOES NOT TAKE ACTION BY THE DATE INDICATED.

[Docket No. QF83-168-001]

Crown Zellerbach Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 31, 1983.

On February 1, 1983, Crown Zellerbach Corp. of One Bush Street, San Francisco, California 94104, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is under construction at Wilbur Avenue (P.O. Box 10), Antioch, California, at a facility which produces linerboard from waste or recycled container board. The facility will consist of a combined cycles gas turbine and heat recovery steam generator connected to an existing combination extraction/condensing steam turbine electric generator. The primary energy source to the facility will be natural gas. The electric power production capacity of the facility will be 48.5 megawatts. Installation of the gas turbine and heat recovery steam generator began in 1981. No electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8988 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-213-000]

Energenics Systems Inc., Crosscut Diversion; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 31, 1983.

On March 11, 1983, Energenics Systems, Inc., (Applicant), of 1100 17th Street, N.W. Suite 505, Washington, D.C. 20036, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The hydroelectric facility will be located in Fremont County, Idaho, near the Town of St. Anthony. The generating capacity of the facility will be 1.75 megawatts. There are no other facilities owned by the Applicant located within one mile of the site. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8390 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-180-001]

Manville Forest Products Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 31, 1983.

On February 3, 1983, Manville Forest Products Corp., of P.O. Box 488, West Monroe, Louisiana 71291, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle facility will be located at West Monroe, Louisiana. The primary energy source will be biomass. The electric power production capacity will be 72.5 megawatts. The facility is an industrial power plant which supplies electric power and process steam to a large, integrated pulp and paper mill. The facility's last component was installed in 1977. No electric utility, electric utility's holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8393 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-171-000]

Orthopaedic Hospital; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 31, 1983.

On January 24, 1983, Orthopaedic Hospital of 2400 S. Flower Street, Los Angeles, California 90007, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will consist of two Onan 560 Turbine-Generator sets to provide the electrical power requirements of the hospital. The exhaust from the turbine is ducted to a heat recovery steam generator to supply the majority of the steam needs of the hospital. The facility will be located in Los Angeles, California. The primary energy source to the facility will be natural gas. The electric power production capacity of the facility will be 980 kilowatts. Installation of the facility will begin June

1, 1983. Applicant states no electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6895 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01

[Docket No. QF83-209-000]

Tenneco Oil Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 31, 1983.

On March 9, 1983, Tenneco Oil Company, of 4700 Stockdale Highway, P.O. Box 9909, Bakersfield, California 93389, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle facility will be located in Midway-Sunset Field, Kern County, California. The primary energy source to the facility will be natural gas. The electric power production capacity of the facility will be 550 kilowatts. The facility consists of a reciprocating gas engine and generator with heat exchangers to recover heat from the engine jacket cooling system and engine exhaust. Recovered heat will be used to preheat feed water running to steam generators which provide steam to enhance oil production. Installation of the facility is scheduled for the second quarter of 1983. Applicant states no electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying

status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6897 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF83-212-000]

Windmaster Partners 1983-1; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 31, 1983.

On March 14, 1983, Windmaster Partners 1983-1, (Applicant), of 106 K Street, Suite 200, Sacramento, California 95814, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The wind facility will be located in the Altamont Pass, Contra Costa County, California. The generating capacity of the facility will be 10,000 kilowatts. No other facility owned by the Applicant is located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-6900 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-232-000]

Columbia Gulf Transmission Co.; Application

March 31, 1983.

Take notice that on March 15, 1983, Columbia Gulf Transmission company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP83-232-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on a contract demand basis 2,000 Mcf per day of United's gas and such further volumes as Applicant agrees to accept produced from gas attributable to Cotton Petroleum's interest in the Trahan No. One Well in Vermilion Parish, Louisiana. It is stated that Applicant would transport United's gas from the point of receipt at the interconnection of United's facilities and Applicant's 4-inch Wright Field line in Vermilion Parish, Louisiana, to Applicant's Rayne compressor station near Rayne, Louisiana. Applicant would redeliver the gas to United by displacement at the outlet of Sea Robin Pipeline Company's (Sea Robin) measuring station at or near the terminus of Sea Robin's offshore pipeline near Erath, Louisiana. Applicant proposes to redeliver to United thermally equivalent quantities of gas less 2.05 percent of the volume received as fuel and unaccounted-for gas plus a *pro rata* share of volumes lost and/or unaccounted for in the Blue Water Project.

For such transportation service, Applicant proposes to charge United a contract demand monthly charge of \$4,648 for the contract-demand quantity and a commodity rate of 7.64 cents per Mcf of gas for any excess gas received for transportation at the point of receipt.

Applicant asserts that the subject transportation service would enable United to receive into its system gas supplies which are available to United.

Applicant states it would transport such gas for United pursuant to a gas transportation agreement dated December 8, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-0887 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP78-65-015 et al.]

East Tennessee Natural Gas Company, et al.; Filing of Pipeline Refund Reports and Refund Plans

March 31, 1983.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 15, 1983. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
3/4/83	East Tennessee Natural Gas Co.	RP78-65-015	Report.
3/4/83	Midwestern Gas Transmission Co.	RP80-23-014	Do.
3/7/83	Consolidated Gas Supply Corp.	RP72-157-061	Do.
3/7/83	Tennessee Gas Pipeline Co.	RP81-44-009	Do.
3/7/83	Tennessee Natural Gas Lines, Inc.	RP71-11-016	Do.

[FR Doc. 83-0889 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-1555-000]

John D. Feehan; Application

March 31, 1983.

The filing individual submits the following:

Take notice that on March 24, 1983, John D. Feehan filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

President, Director, Chairman of the Board—Atlantic City Electric Company
Director, President—Deepwater Operating Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-0892 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-479-001]

Northwest Central Pipeline Corp.; Petition To Amend

March 31, 1983.

Take notice that on March 14, 1983, Northwest Central Pipeline Corporation (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82-479-001 a petition to amend the order issued September 30, 1982, in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act so as to permit Petitioner to use the prior notice procedure under Section 157.211 of the Commission's Regulations in connection with requests for sales taps to make direct sales to customers not currently receiving gas from Petitioner at another location on Petitioner's system, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that authorization to tap its transmission lines and install measuring facilities would permit it to make direct sales to small commercial and industrial users located on or near its transmission facilities without the delay inherent in the preparation, filing for, and approval of applications for certificates of public convenience and necessity covering such sales. Petitioner further states that it is not prohibited by its tariff from adding delivery points to make such sales and that such sales would be limited to no more than 200 Mcf per day to any one customer.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8894 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01

[Docket No. CP81-276-001]

**Texas Eastern Transmission Corp.,
and Sabine Production Co.; Petition To
Amend**

March 31, 1983.

Take notice that on March 11, 1983, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and Sabine Production Company (Sabine), 1200 Mercantile Bank Building, Dallas, Texas 75201, filed in Docket No. CP81-276-001 a joint petition to amend the order issued August 31, 1981, in Docket No. CP81-276-000 pursuant to Section 7(c) of the Natural Gas Act so as to extend the term of an exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued August 31, 1981, they were authorized to exchange natural gas until April 18, 1983, so that Sabine could conduct a gas lift operation to recover oil reserves from Wells No. 1 and 2 in Breton Sound Block 53, offshore Louisiana. It is asserted that approximately 80,000 barrels of oil would be produced if the gas lift operation were extended beyond April 18, 1983. Petitioners request that the current exchange authorization be extended until the permanent cessation of oil production from these wells. It is stated that this would take approximately four years.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8895 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2041-000]

John C. Vickery; Application

March 31, 1983.

The filing individual submits the following:

Take notice that on March 24, 1983, John C. Vickery filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Cliffs Electric Service
Company
Director—Upper Peninsula Generating
Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8891 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2038-000]

Stan Zagol; Application

March 31, 1983.

The filing individual submits the following:

Take notice that on March 14, 1983, Stan Zagol filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—Orange and Rockland
Utilities, Inc.
Vice President—Rockland Electric
Company
Vice President—Pike County Light &
Power Company

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before April 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8896 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-406-000]

**Arkansas Power and Light Co.; Notice
of Filing**

April 1, 1983.

The filing Company submits the following:

Take notice that on March 24, 1983, Arkansas Power and Light Company (AP&L) tendered for filing the First Amendment to the Power Coordination, Interchange and Transmission Service Agreement between AP&L and the City of Osceola, Arkansas (City). The Amendment provides for a decrease in capacity made available at one point of delivery.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8898 Filed 4-5-83; 8:43 am]

BILLING CODE 6717-01-M

[Docket No. ER83-405-000]

**Connecticut Light and Power Co.;
Notice of Filing**

April 1, 1983.

The filing Company submits the following:

Take notice that on March 23, 1983, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated May 1, 1982 between (1) CL&P and Western Massachusetts Electric Company (WMECO), and together with CL&P, the NU Companies) and (2) Braintree Electric Light Department (BELD).

CL&P states that the Transmission Agreement provides for transmission services to BELD for the wheeling of their purchase made from the Connecticut Municipal Electric Energy Cooperative (CMEEC) of a portion of CMEEC's entitlement in the Northfield Mountain Pumped Storage Project (the Project) during the period from November 1, 1982 to May 2, 1983.

The transmission charge rate is a weekly rate equal to one-fifty second ($\frac{1}{50}$) of the estimated annual average cost of transmission service on the electric transmission system of the NU Companies and determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate (\$/kW-week), and (ii) the number of kilowatts BELD is entitled to receive during each week of such month. The monthly transmission charge is reduced by 50 percent to give due recognition for payments made by BELD to other utility systems also providing transmission service.

CL&P requests an effective date of November 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon WMECO and BELD.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8989 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-407-000]

Delmarva Power & Light Co.; Filing

April 1, 1983.

The filing Company submits the following:

Take notice that Delmarva Power & Light Company (Delmarva) tendered for filing on March 25, 1983 revised tariff leaves:

1. First Revised Leaf No. 37, superseding Original Leaf No. 37.
2. First Revised Leaf No. 38, superseding Original Leaf No. 38.

In addition, also tendered for filing were service agreements between Delmarva for partial requirements service and for transmission service for the Town of Clayton and separate, similar agreements for the Town of Middletown, Delaware. The proposed effective date for the revised leaves is March 31, 1983. It is also requested that the revised tariff be suspended for not more than one day and that waiver of the notice period be granted.

A copy of the instant filing is being served upon each of the Company's resale customers and State Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8990 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-409-000]

Duke Power Co.; Notice of Filing

April 1, 1983.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on March 28, 1983 a supplement to the Company's Electric Power Contract with Pee Dee Electric Membership Corporation. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 137.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following changes in designated demand: Delivery Point No. 1 from 1,500 KW to 800 KW, Delivery Point No. 2 from 2,000 KW to 3,000 KW and Delivery Point No. 4 from 1,800 KW to 800 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of May 18, 1983.

According to Duke Power, copies of this filing were mailed to Pee Dee Electric Membership Corporation and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-8991 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3774-001]**East Kentucky Power; Surrender of Preliminary Permit**

April 1, 1983.

Take notice that East Kentucky Power, Permittee for the proposed Taylorsville Lock and Dam Project No. 3774, has requested that its preliminary permit be terminated. The permit was issued on September 4, 1981, and would have expired on August 31, 1983. The project would have been located on the Salt River in Spencer County, Kentucky.

The Permittee filed its request on March 2, 1983, and the surrender of the preliminary permit for Project No. 3774 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8992 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4761-001]**Energenics Systems, Inc. Surrender of Preliminary Permit**

April 1, 1983.

Take notice that Energenics Systems, Inc. (Energenics), Permittee for the EL 85-Station 676+50 Hydroelectric Project No. 4761, has requested that its preliminary permit for the subject project be terminated. The permit for Project No. 5216 was issued on February 26, 1982, and would have expired on July 31, 1983. The project would have been located on the East Low Canal in Franklin County, Washington.

Energenics filed its request on March 14, 1983, and the surrender of the permit for Project No. 4761 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8993 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5940-001]**Energenics Systems, Inc.; Surrender of Preliminary permit**

April 1, 1983.

Take notice that Energenics Systems, Inc., Permittee for the Green River Lock and Dam No. 1 Project No. 5940, has requested that its preliminary permit be terminated. The permit was issued on September 2, 1982, and would have expired on April 1, 1984. The project would have been located on the Green River, in Henderson County, Kentucky.

The Permittee filed its request on March 14, 1983, and the surrender of the preliminary permit for Project No. 5940

is deemed accepted as of the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8994 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6065-001]**Energenics Systems, Inc.; Surrender of Preliminary Permit**

April 1, 1983.

Take notice that Energenics Systems, Inc., Permittee for the Thomaston Hydro Project No. 6065 located on the Naugatuck River in Litchfield County, Connecticut, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 16, 1982, and would have expired on February 29, 1984. The Permittee states that Energenics has made engineering and other investigations and acquired data sufficient to determine that the proposed project is infeasible.

Energenics Systems, Inc.'s request was filed March 11, 1983. The surrender of the permit for Project No. 6065 is in the public interest and is accepted as of the date of issuance of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8995 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6131-001]**Energenics Systems, Inc.; Surrender of Preliminary Permit**

April 1, 1983.

Take notice that Energenics Systems, Inc., Permittee for the Mansfield Hollow Project No. 6131 located on the Natchaug River in Tolland County, Connecticut, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 19, 1982, and would have expired on February 29, 1984. The Permittee states that Energenics has made engineering and other investigations and acquired data sufficient to determine that the proposed project is infeasible.

Energenics Systems, Inc.'s request was filed March 11, 1983. The surrender of the permit for Project No. 6131 is in the public interest and is accepted as of the date of issuance of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8996 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-411-000]**Maine Electric Power Company, Inc.; Filing**

April 1, 1983

The filing Company submits the following:

Take notice that on March 28, 1983, Maine Electric Power Company, Inc. (MEPCO) tendered for filing a rate for transmission service to be provided to Central Maine Power Company and Commonwealth Electric Company by MEPCO over its Transmission Facilities system.

MEPCO states that the rate applicable to the provision of transmission service is .03 cents per kilowatt per mile per year which is MEPCO's filed Rate Schedule FPC No. 1.

MEPCO requests an effective date of April 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Central Maine Power Company, Commonwealth Electric Company, the Maine Public Utilities Commission and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8997 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-408-000]**Michigan Power Co.; Notice of Filing**

April 1, 1983.

The filing Company submits the following:

Take notice that on March 28, 1983, Michigan Power Company (Michigan) tendered for filing, proposed changes in Service Schedule B (Concurrent Exchange Service) of the Agreement between Michigan and Indiana &

Michigan Electric Company (I&M), heretofore designated by the Commission as I&M Rate Schedule FPC No. 25. The proposed rate increase would increase Michigan revenue for the service by \$78,728. Michigan proposes that the rates become effective sixty days after its tendered filing date of March 28, 1983.

Copies of the filing were served upon the Indiana & Michigan Electric Company, the Michigan Public Service Commission and the Indiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8098 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-21-000]

Northern Natural Gas Co.; Complaint of Violations Under § 154.103 of the Commission's Regulations Under the Natural Gas Act and Title I of the Natural Gas Policy Act

Issued March 31, 1983.

On March 4, 1983, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) filed a complaint with the Federal Energy Regulatory Commission against actions taken by Samson Resources Company, Kaiser-Francis Oil Company, Richard A. Williford, Panhandle Royalty Company, Thomas N. Berry & Company, and Steinberg Associates Ltd-77 (Respondents), in connection with the sale of gas from the Abraham No. 1-22 gas well (Abraham Well), located in Roger Mills County, Oklahoma, pursuant to the 18 CFR 385.206 of the Commission's Rules of Practice and Procedure (Rule 206).

Northern alleges that Respondents are in violation of provisions under the

Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Supp. V 1982) (NGPA), the Natural Gas Act of 1938, 15 U.S.C. 717, *et seq.* (NGA) and well established principles of utility rate regulation. Northern requests that the Commission take jurisdiction over this complaint and set the matter asserted herein for informal conference or formal hearing as it deems appropriate under Rule 206.

Northern states that it purchased gas from the Abraham Well under gas purchase contracts executed with Respondents in December, 1979. This sale for resale is in interstate commerce and subject to the Commission's NGA jurisdiction. Northern further states that the subject gas purchase contracts each contain a take-or-pay provision, whereby Northern is obligated to take gas equal to 80 percent of the daily volume of gas the Abraham Well is capable of delivering, averaged over each "contract year." Should Northern in any contract year fail to meet its take obligation, Northern must pay for such gas not taken at the price in effect at the end of the contract year. Northern has the right to "make-up" deficiency purchases under the subject gas purchase contracts by taking gas in excess of the "contract volume" during the five year period following the year in which the deficiency occurred. The price to be paid for make-up gas is the difference, if any, between the price in effect at the time gas is taken and the price previously paid for the gas not taken. At the end of the five year make-up period the right to make-up deficient gas takes ceases, and Respondents have no obligation to refund any outstanding deficiency payment balance which remains.¹

Northern avers that the take-or-pay provisions in the gas purchase contracts between Northern and Respondents, while possibly in conformity with the literal specification of § 154.103² of the Commission's regulations, "fails to comply with the spirit and intent of such section." Northern contends that the make-up rights under the subject contracts are illusory and ineffective in that they do not permit Northern to receive gas previously paid for but not

taken. Further, it will be physically and contractually impossible to makeup any significant volumes.

Northern states that the decline in demand for natural gas has caused it to incur, for the contract year ending June 30, 1981, a deficiency take obligation in the amount of \$3,677,171. Additionally, Respondents demand a deficiency take payment for the contract year ending June 30, 1982, which totals \$3,296,682. Northern contends that because it is unable to make up the deficiency incurred during the contract year ending June 30, 1981 due to a continuing decline in demand for gas in Northern's market, and a continuing decline in deliverability of gas volumes from the Abraham Well, which further reduces gas available as make up gas, the deficiency payment demanded by Respondents is not recoverable under the terms of the subject contracts. Northern has therefore refused to make a deficiency take payment for the contract year of June 30, 1982.³

Northern further contends that the receipt by Respondents of the amounts demanded pursuant to the take-or-pay provisions will result in a violation by Respondents of the maximum lawful price ceilings for those volumes of gas actually delivered under Title I of the NGPA. Thus, "if Northern were to make such payments, . . . it would be participating in or suffering the unlawful act, in violation of section 21(a) of the [NGA]."

Any person desiring to be heard or to make any protest to this complaint should file, within 30 days after notice is published in the Federal Register, within the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-8099 Filed 4-5-83; 6:45 am]

BILLING CODE 6717-01-M

¹ There are two exceptions to this provision. A cash repayment is required in the event a well: (1) is plugged and abandoned, or (2) can not produce into the gathering line a daily volume of gas equal to twenty-five thousand cubic feet of gas prior to the termination of the five year make-up period.

² Section 154.103 provides that contracts executed after February 1, 1967 must allow a minimum of 5 years to make-up deficient takes under take or pay clauses unless the contract terminates earlier than the 5 year make-up period.

³ Northern avers that it has attempted to negotiate a settlement of the dispute without success. Respondents have brought suit to enforce their alleged rights under the terms of the subject gas purchase contracts. *Kaiser-Francis Oil Company v. Northern Natural Gas Company*, in the District Court of Tulsa County, State of Oklahoma (No. C-82-3291) and *Samson Resources Company, et al. v. Northern Natural Gas Company*, in the United States District Court for the Northern District of Oklahoma (No. 82-C-1214-E).

[Project No. 5500-001]

Phi Sig Associates; Surrender of Preliminary Permit

April 1, 1983.

Take notice that Phi Sig Associates, Permittee for the Buck Creek Hydropower Project No. 5500, has requested that its preliminary permit for the subject project be terminated. The permit for Project No. 5500 was issued on March 30, 1982, and would have expired on August 31, 1983. The project would have been located on Buck Creek in Snohomish County, Washington.

Phi Sig Associates filed its request on November 5, 1982, and the surrender of the permit for Project No. 5500 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,
Secretary.

[F.R. Doc. 83-9000 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-410-000]

Washington Water Power Co.; Notice of Filing

April 1, 1983.

The filing Company submits the following:

Take notice that on March 28, 1983, the Washington Water Power Company (Washington) tendered for filing copies of three identified service schedules applicable to what Washington refers to as "Letter Agreements" between Washington and the City of Burbank, the City of Glendale, and the City of Pasadena which apply to the sale of energy which is surplus from Washington's portion of the Centralia coal-fired steam plant and other resources or purchases.

Washington requests an effective date of December 7, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 persons wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[F.R. Doc. 83-9001 Filed 4-5-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-251-000]

The Washington Water Power Co.; Notice of Application

April 1, 1983.

Take notice that on March 25, 1983, The Washington Water Power Company (Applicant), East 1411 Madison Avenue, Spokane, Washington 99202, filed in Docket No. CP83-251-000 an application pursuant to Section 7(c) of the Natural Gas Act for a limited and restricted certificate of public convenience and necessity, if necessary, authorizing Applicant to release excess storage capacity to British Columbia Hydro and Power Authority (B.C. Hydro), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant is a one-third owner of the Jackson Prairie Storage Project (Jackson Prairie) located in Lewis County, Washington. Applicant states that, at the present time, it does not require the total daily and seasonal capacity available to it from Jackson Prairie. Applicant states that in order to reduce costs incurred in maintaining its available capacity from Jackson Prairie, Applicant has agreed to release to B.C. Hydro up to 50,572 Mcf of daily withdrawal capacity and 1,719,466 Mcf of seasonal storage capacity from Jackson Prairie. The release of storage capacity by Applicant to B.C. Hydro would be made pursuant to an agreement entitled Release of Jackson Prairie Storage Capacity (Storage Release). The term of the Storage Release is for an initial term of five years. It is asserted that Northwest Pipeline Corporation (Northwest) and Washington Natural Gas Company (Washington Natural), the other two owners of Jackson Prairie, do not require Applicant's excess storage capacity.

Northwest, on March 2, 1983, filed in Docket Nos. CP83-213-000 and CP83-214-000 applications pursuant to Sections 3 and 7 of the Natural Gas Act for the necessary transportation, abandonment, exchange, and import/export authority to effect the Storage Release.

Applicant does not believe any application by it for certificate authorization is required or necessary for the Commission to act upon Northwest's applications in Docket Nos.

CP83-213-000 and CP83-214-000. Applicant asserts that Northwest's proposals, if granted by the Commission, would fully reflect the Commission's continuing jurisdiction over Jackson Prairie.

Further, Applicant states that if the Commission finds that certificate authorization is required, then it requests that:

(1) Any certificate granted be limited and restricted to Applicant's transaction in releasing one-half of its deliverability and seasonal capacity in Jackson Prairie to B.C. Hydro.

(2) Any certificate granted by order of the Commission confirm that Applicant is not a natural gas company under the Natural Gas Act for all its other operations, and

(3) The Commission's order expressly waive any requirements that Applicant file any reports with the Commission as required by the Commission's rules applicable to natural gas companies.

Applicant states that Northwest, by reason of the proposed release of storage capacity by Applicant, would concurrently reduce its obligation to sell and deliver natural gas to Applicant under Northwest's FERC Rate Schedule SGS-1 by the quantities of project storage capacity that Applicant would release to B.C. Hydro. It is asserted that the daily service to Applicant under Rate Schedule SGS-1 would be reduced by 530,000 therms from 1,048,000 therms to 518,000 therms and that Applicant's seasonal capacity would be reduced by 18,020,000 therms from 37,728,000 therms to 19,708,000 therms.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-9002 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF81-5021-003]

Western Area Power Administration; Notice of Filing

April 1, 1983.

The filing agency submits the following:

Take notice that on March 21, 1983, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy (the Assistant Secretary), by Rate Order No. WAPA-18, submitted substitute power rates for final approval for the Colorado River Storage Project. The original rates were placed into effect on an interim basis on January 23, 1981, by Rate Order No. WAPA-4, extended on January 23, 1982, by Rate Order No. WAPA-7, and disapproved on October 12, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-9003 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-412-000]

Wisconsin Power and Light Co.; Notice of Filing

April 1, 1983.

The filing Company submits the following:

Take notice that on March 28, 1983, Wisconsin Power and Light Company (WPL) tendered for filing a new wholesale power contract dated February 15, 1983 between the City of Sheboygan Falls (Sheboygan County), Wisconsin and WPL. WPL states that this contract supersedes the most recent wholesale power contract between the parties dated December 13, 1972.

WPL requests an effective date of February 15, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been provided to the City of Sheboygan Falls and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-9004 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2454/T407; PH-FRL 2235-2]

Acetochlor Extension of Temporary Tolerances

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide acetochlor, in or on the raw agricultural commodities corn (all) grains and soybean grain.

DATE: These temporary tolerances expire March 21, 1985.

FOR FURTHER INFORMATION CONTACT:
Robert Taylor, Product Manager (PM)
25, Registration Division (TS-767C),
Office of Pesticide Programs,
Environmental Protection Agency, Rm.
245, CM#2, 1921 Jefferson Davis
Highway, Arlington, VA 22202, (703-
557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the Federal Register on March 24, 1982 (47 FR 12679), announcing the establishment of temporary tolerances for residues of the herbicide acetochlor, in or on the raw agricultural commodities corn (all) grains at 0.1 part per million (ppm) and soybean grain at 0.4 ppm. These tolerances were issued in response to pesticide petition PP 1G2454, submitted by Monsanto Company, 1101 17th St., NW., Washington, D.C. 20036.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (524-EUP-56), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 21, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked in the experimental use permit is revoked or if any experience or scientific data with this pesticide

indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1184, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a (j)))

Dated: March 22, 1983.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 83-8325 Filed 4-5-83; 8:45 am)

BILLING CODE 6560-50-M

[PF-318; PH-FRL 2334-8]

Certain Companies Pesticide Petitions; Union Oil Co. of California et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or exemption of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments to: Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number [PF-318] and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, 703-557-1800.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to the establishment and/or exemption of tolerances for residues of certain pesticide chemicals

in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filing

1. *PP 3F2826.* Union Chemicals Division, Union Oil Co., of California, 461 South Boylston St., Los Angeles, CA 90017. Proposes amending 40 CFR 180.1019 by establishing an exemption from the requirement of a tolerance for residues of sulfuric acid when used as a herbicide in or on all raw agricultural commodities. The proposed analytical method for determining residues is titration with standard base.

2. *PP 2F2713.* Biochemical Research Corp., 140 Little Falls St., Suite 28, Falls Church, VA 22046. Proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulatory 1-triacontanol in or on all raw agricultural commodities. The proposed analytical method for determining residues is electron capture gas chromatography.

3. *PP 3F2839.* Rohm & Haas Co., Independence Mall, West Philadelphia, PA 19105. Proposes amending 40 CFR 180.317 by establishing tolerance for residues of the herbicide 3,5-dichloro-N-(1,1-dimethyl-2-propynyl) benzamide in or on the commodity safflower at 0.1 part per million (ppm). The proposed analytical method for determining residues is electron capture gas liquid chromatography.

4. *PP 2F2681.* Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the cross-linked polyurea-type polymer formed by reacting polymethylene polyphenylisocyanate and hexamethylene diamine when used for encapsulating alachlor (2-chloro-N-(2,6-diethylphenyl)-N-(methoxymethyl) acetamide) in dry beans, lima beans, peas, potatoes, and soybeans.

5. *PP 3F2832.* Monsanto Co. Proposes amending 40 CFR 180.249 by establishing tolerance for residues of the herbicide alachlor (2-chloro-N-(2,6-diethylphenyl)-N-(methoxymethyl) acetamide) in or on the commodity soybean hay at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen specific detector.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: March 22, 1983.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

(FR Doc. 83-8326 Filed 4-4-83; 8:45 am)

BILLING CODE 6560-50-M

[PF-319; PH-FRL 2235-1]

Certain Companies Pesticide and Feed Additive Petitions; Rhone-Poulenc Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions, relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments to: Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number [PF-319] and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, 703-557-1900.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide and feed additive petitions relating to the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

I. Initial Filing

PP 3F2840, PP 3F2841. Rhone-Poulenc Inc., Agrochemical Division, P.O. Box 125, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its

metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the commodity lettuce at 7.0 parts per million (ppm) (PP 3F2840), and garlic at 0.1 ppm (PP 3F2841). The proposed analytical method for determining residues is gas liquid chromatography with electron capture detector.

II. Amendment

1. *FAP 2H5369*. Ciba-Geigy Corp., P.O. Box 11422, Greensboro, NC 27409. EPA issued a notice published in the *Federal Register* of November 24, 1982 (47 FR 53116) that announced that Ciba-Geigy Corp. had submitted feed additive petition 2H5369 to the Agency proposing to amend 21 CFR Part 561 by establishing a regulation permitting the combined residues of the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety each expressed as metalaxyl, in or on the commodities soybean hulls, meal, soapstock, and milling fractions of wheat at 1.0 ppm.

Ciba-Geigy Corp. has amended the petition by including the metabolite N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)alanine methylester, each expressed as metalaxyl in the tolerance expression.

2. *PP 2F2764*. Ciba-Geigy Corp. EPA issued a notice published in the *Federal Register* of November 24, 1982 (47 FR 53116) that announced that Ciba-Geigy Corp. had submitted pesticide petition 2F2764 to the Agency proposing to amend 40 CFR 180.408 by establishing tolerances for the combined residues of the fungicide metalaxyl and its metabolites in or on the commodities soybeans at 0.5 ppm, soybean fodder and forage at 7.0 ppm, wheat grain at 0.2 ppm, and wheat forage and straw at 2.0 ppm.

Ciba-Geigy has amended the petition by adding the metabolite N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl)alanine methylester, each expressed as metalaxyl in the tolerance expression. The proposed analytical method for determining residues is by gas liquid chromatography electron capture detector.

3. *PP 2F2728*. Rhone-Poulenc Inc. EPA issued a notice published in the *Federal Register* of September 22, 1982 (47 FR 41854) that announced that Rhone-Poulenc had submitted pesticide petition 2F2728 to the Agency proposing to amend 40 CFR 180.399 by establishing tolerances as follows.

(a) For residues of the fungicide iprodione 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide and its

metabolites 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, in or on the raw agricultural commodities almond nutmeat at 0.05 ppm and almond hulls at 0.25 ppm.

(b) For the combined residues of 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide and its non-hydroxylated metabolites, typically 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, by converting the nonhydroxylated phenyl ring moiety to the N-heptafluorobutyrate derivative of 3,5-dichloroaniline common moiety, as iprodione equivalents in or on the raw agricultural commodities meat, meat byproducts (meat, kidney, fat, and liver) of cattle, goats, hogs, horses, and sheep at 0.08 ppm.

(c) For the combined residues of 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and N-(3,5-dichloro-4-hydroxyphenyl)-ureido carboxamide by converting respectively, the hydroxylated and the non-hydroxylated and the nonhydroxylated moiety to the 4-methoxy-3,5-dichloroaniline and the 3,5-dichloroaniline heptafluorobutyrate, as iprodione equivalents in or on the commodity milk at 0.15 ppm.

Rhone-Poulenc Inc. has amended the petition in II.2.(b) and (c) above as follows:

II.2.(b), decrease the tolerance levels for meat and meat byproducts (meat, kidney, fat, liver) of cattle, goats, hogs, horses, and sheep from 0.80 ppm, to 0.1 ppm.

II.2.(c), decrease the tolerance level for milk from 0.15 ppm to 0.02 ppm. The proposed analytical method for determining residues is gas liquid chromatography with electron capture detector.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72

Stat. 1786, (21 U.S.C. 346))

Dated: March 22, 1983.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-8327 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59118A; TSH-FRL 2339-1]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM-83-27, and TM-83-28, two applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: March 25, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-27

Date of Receipt: February 14, 1983.

Notice of Receipt: February 28, 1983 (48 FR 8343).

Applicant: Confidential.

Chemical: Zirconium propanolate substituted (Generic).

Use: Confidential.

Production Volume: Confidential.

Number of Customers: 4.

Test Marketing Exemption Period: 8 months.

Commencing on: March 25, 1983.

Risk Assessment: During manufacture and for the use described in the test market, no significant worker or environmental exposure is expected. Some concern was identified for potential lung irritation if respirable particles are inhaled. Manufacture takes place in a closed system and the density and particle size of the powder are expected to preclude significant inhalation exposure. The test market substance may be moderately toxic to aquatic organisms but no significant release to the environment is expected for this use.

Public Comments: None.

TME 83-28

Date of Receipt: February 15, 1983.

Notice of Receipt: February 28, 1983 (48 FR 8343).

Applicant: Confidential.

Chemical: Modified rosin condensation product (Generic).

Use: Hot melt adhesives.

Production Volume: Confidential.

Number of Customers: One

Test Marketing Exemption Period: 4 months.

Commencing on: March 25, 1983.

Risk Assessment: No significant health or ecotox concerns were identified. Worker exposure and environmental release are expected to be low.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: March 25, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-8931 4-5-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Madison Agency, Inc.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at

the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **Madison Agency, Inc.,** Madison, Minnesota; to acquire 87.6 percent of the voting shares or assets of Sanborn State Bank, Sanborn, Minnesota. Comments on this application must be received not later than April 29, 1983.

B. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. **Sierra Petroleum Co., Inc.,** Wichita, Kansas; to acquire 24.9 percent of the voting and 100 percent of the nonvoting common shares or assets of Hutchinson Financial Corporation, Hutchinson, Kansas, and thereby indirectly acquire 99.76 percent of Hutchinson National Bank, Hutchinson, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than April 29, 1983.

Board of Governors of the Federal Reserve System, March 31, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-8995 Filed 4-5-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; First Carmi Bancshares, Inc.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the

address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **First Carmi Bancshares, Inc.,** Carmi, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The First National Bank of Carmi, Carmi, Illinois. Comments on this application must be received not later than April 29, 1983.

2. **Lake Valley Bancorp, Inc.,** Taylorsville, Kentucky; to become a bank holding company by acquiring 96.8 percent of the voting shares of The Peoples Bank, Taylorsville, Kentucky. Comments on this application must be received not later than April 29, 1983.

3. **Peoples Bancorp of Green County, Inc.,** Greensburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank & Trust Company, Greensburg, Kentucky. Comments on this application must be received not later than April 29, 1983.

B. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. **Hutchinson Financial Corporation,** Wichita, Kansas; to become a bank holding company by acquiring 99.76 percent of the voting shares of Hutchinson National Bank, Hutchinson, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than April 29, 1983.

Board of Governors of the Federal Reserve System, March 31, 1983.

James McAfee,

Associate Secretary of the Board

[FR Doc. 83-8904 Filed 4-5-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities; Moore Financial Group Incorporated

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*),

directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve bank not later than the date indicated.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. **Moore Financial Group** Incorporated, Boise, Idaho, (commercial lending, loans servicing and leasing activities; Washington, Northern Idaho, Montana): To engage, through its subsidiary, Moore Corporate Financial Services, Inc., from an office located in Spokane, Washington, in making or acquiring loans and other extensions of credit such as would be made by a commercial finance company, including commercial loans secured by a borrower's inventory, accounts receivable, or other assets; servicing such loans for others; and making leases of real or personal property in accordance with the Board's Regulation Y. These activities would be performed in the States of Washington, Northern Idaho and Montana. Comments on this application must be received not later than April 29, 1983.

2. **Union Bancorp.** Los Angeles, California and its parent holding companies (Standard Chartered Overseas Holdings, Ltd. and Standard Chartered Bank PLC) (commercial financing, leasing and servicing activities; United States): To engage through its subsidiary StanChart

Business Credit, in making, servicing or acquiring for its own account or for the account of others, asset based business loans and other commercial or industrial loans and other extensions of credit, such as would be made by a factoring, rediscount or commercial finance company, and leasing and servicing activities with respect to personal property and equipment and real property. These activities will be conducted from an office in Los Angeles, California serving potential customers throughout the country. Comments on this application must be received not later than April 29, 1983.

Board of Governors of the Federal Reserve System, March 31, 1983.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 83-8906 Filed 4-5-83; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of Federal Supply and Services

Commuted Rate Schedule for Transportation of Household Goods; Availability

The Office of Federal Supply and Services issued on March 14, 1983, Supplement 98 to GSA Bulletin FPMR A-2, Commuted rate schedule for transportation of household goods. The rates and allowances in this supplement are effective for shipments moved on or after January 3, 1983. Supplement 98 transmits the current reimbursable allowances for employees who move their own household goods from one official station to another. Agencies should contact their agency headquarters publications Liaison Officer regarding receipt of copies.

Dated: March 28, 1983.
R. D. Daniers,
Deputy Assistant Administrator for Federal Supply and Services.

[FR Doc. 83-8905 Filed 4-5-83; 8:45 am]
BILLING CODE 6820-AM-M

National Archives and Records Service

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Information Capture, Storage, and Retrieval Perpetuation Subcommittee of the Advisory Committee on Preservation will meet on April 25, 1983 from 10:00 a.m. to 4:00 p.m., and April 26, 1983 from 9:00 a.m. to 4:00 p.m. in Room 105, National Archives Building,

Washington, D.C. This meeting will be devoted to micrographics program coherency and standards, and media transfer alternatives as related to the mission of the National Archives.

The meeting will be open to the public. For further information call Alan Calmes, 202-523-3159.

Dated: March 25, 1983.
George N. Scaboo,
Acting Archivist of the United States.
[FR Doc. 83-8906 Filed 4-5-83; 8:45 am]
BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Correlation of Fit Factors and Workplace Protection Factors; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Date: April 28, 1983
Time: 9:00 a.m. to 4:30 p.m.
Place: Appalachian Laboratory for Occupational Safety and Health, Safety Wing, Room 120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505
Purpose: To discuss the experimental protocol developed to study the relationship between fit factors and workplace protection factors. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited. Additional information may be obtained from: Warren R. Meyers, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, WV 26505; Telephone: (304) 291-4361 or FTS 923-4361

Dated: March 30, 1983.
William C. Watson, Jr.,
Acting Director, Centers for Disease Control.
[FR Doc. 83-8940 Filed 4-5-83; 8:45 am]
BILLING CODE 4160-19-M

Mine Health Research Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee

Dates: May 9-10, 1983

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333

Time: 9:00 a.m. to 4:30 p.m.—May 9; 8:00 a.m. to 12:00 noon—May 10

Type of Meeting: Open

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, HHS North Building, Room 1060, 330 Independence Avenue, S.W., Washington, D.C. 20201. Telephone: 202/472-7134

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items will include announcements, consideration of minutes of previous meeting and future meeting dates, overview of the NIOSH mining program, research report on lung changes in newly-hired miners, peer review discussion, prevention strategies for lung diseases, and Coal Study Subcommittee report.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: March 30, 1983.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 83-8941 Filed 4-5-83; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Health Financing Research and Demonstration Grants; Availability of Funds for Grants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This document announces additional priority subject areas for research and demonstration grants for

fiscal year 1983, in addition to those included in the Federal Register on September 16, 1982 (47 FR 41090).

DATES: Closing dates for submission of grant applications are presented in Section III of this notice.

FOR FURTHER INFORMATION CONTACT: Frances Lariviere, (301) 594-7474.

If you choose, you may write for information to the following address: Health Care Financing Administration, Office of Research and Demonstrations, Program Support Office, Area 2-B-12, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: HCFA makes funds available for activities that will help to resolve major health financing policy and program issues or to develop innovative methods for the administration of Medicare and Medicaid. A general notice entitled "Health Financing Research and Demonstration Grants; Availability of Funds for Grants" that was published in the Federal Register on September 16, 1982 (47 FR 41090), announced subject areas for grants that will be given priority for fiscal year 1983 and contained information about project requirements, application procedures, amounts and duration of grants and waivers of State plan requirements for demonstration projects. We are now announcing additional priority subject areas for fiscal year 1983.

I. Background

The September 16, 1982 general notice (as amended by the notice published November 24, 1982, at 47 FR 53129) specified the basis for HCFA's authorities for making grants, the regulations governing the administration of the grants, the number and size of the grants, the duration of funding, the selection criteria, and the procedures for applications. That information remains the same for this general notice.

II. Grants Subject Matter

We described in detail eight current priorities in the September notice. They are: 1. End Stage Renal Disease (ESRD) Treatment, 2. Long Term Care, 3. Hospital Outpatient Reimbursement Systems, 4. Competition, 5. Prevention, 6. Capital, 7. Durable Medical Equipment and 8. Appropriate Utilization. We are now adding in the appropriate numerical order, the following priorities to those above:

1. ESRD

1. Demonstration Projects. We are now soliciting demonstration projects which would test the cost-effectiveness of alternative reimbursement

approaches used in the payment of ESRD. These approaches might include the design and implementation of voucher systems and competitive bidding to encourage the delivery of ESRD services at a lower cost than is not possible under existing reimbursement systems. The reimbursement system proposed should address what services are covered (i.e., all medical care, ESRD related medical care, or maintenance dialysis only), how the level of payment is established (home or center dialysis), and the quality assurance safeguards that will be established.

II. Research Projects. In addition to the two ESRD research topics already published (a. An analysis of differences in outcomes and related factors in kidney transplants, and b. Development and testing of systems that include incentives to promote availability of kidneys) HCFA is interested in generating information on the variations in dialysis costs which are attributable to case-mix, organizational characteristics and other variables.

c. Applications are being sought to study the direct and indirect costs of providing renal dialysis care. The direct costs to institutional providers would include such items as personnel, machines, supplies, overhead and any special services needed, for example, to provide dialysis care to hard to treat patients. Indirect costs which might be considered in the analysis would include patient travel time, out of pocket expenses, loss of work time, etc. The analysis should relate the cost of care to such determinants as case mix differences, type of therapy offered and type of facility as well as any other factors that could explain the variations in costs.

9. Medicaid

HCFA is interested in receiving section 1115 applications for State Medicaid agencies to analyze the effects of recent Federal laws on Medicaid recipients. These laws, the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), contain numerous provisions which permit increased flexibility to the States in operating their Medicaid programs. New options include, among other provisions, waiver of freedom of choice of provider and statewideness of benefits, the introduction of a home and community based services waiver to provide alternatives to institutionalization, and provision for a

variety of reimbursement methods. Many States have responded to these provisions by altering Medicaid program eligibility, benefits, and reimbursement. Applications should related specific changes (describing the nature and extent of implementation as well as the intent of such changes) with specific types of effects. Possible topics include the impact of case management and other innovative programs on integration of services, access to care, and patterns of care; the impact and cost-effectiveness of home and community-based services; and the results of changes in eligibility requirements or procedures on the affected population and the State program. This research is intended to give HCFA a preliminary idea of the impact of these changes. We intend to solicit proposals at a later date for contracts to do more comprehensive studies of this area. For this subject area only, grants will be limited to 6 months and not more than \$60,000, subject to the cost sharing requirement described in section VI.C. of the September notice.

10. Diagnosis Related Groups

HCFA is also soliciting research to refine further the Diagnosis Related Groups (DRGs) for Medicare hospital payment. While the Medicare prospective payment system contains several features that take severity of illness into account, we are also interested in further research in this area. Therefore, we are requesting projects that would develop, refine and test modifications in the existing DRGs with respect to severity of illness.

11. Other Areas

We are also soliciting innovative projects that explore other Medicare and Medicaid financing issues. Projects may consider generic issues such as alternative methods of payments (other than hospital payments which are governed by the notice published October 8, 1982), coverage, or delivery systems. Specific problems may be addressed, such as the cost effects of increased use of alternative health care providers such as auxiliary or specialized staff.

III. Closing Dates and Time

We process grant applications twice a year and make award announcements approximately five to six months after the closing date. The following closing dates apply for grant applications with or without requests for waivers:

FY 83

Monday, May 2, 1983.

FY 84

Monday, November 7, 1983; Monday, May 7, 1984.

We are changing the closing dates for quarterly reviews of waiver-only applications from those published in the September notice. The new closing dates are the first Monday of the second month of the quarter, i.e., February, May, August and November of each year. For all dates, the closing time is not later than 4:30 P.M., local Baltimore, Maryland time.

Mailed applications will be "on time" if they are either postmarked (first class mail) or received by the deadline. Because of the importance of the postmark, we encourage applicants to request the post office to provide a legible U.S. Postal Service postmark. If express mail or certified or registered mail is used, the applicant should obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications submitted by any means other than mailing first class through the U.S. Postal Service are considered as meeting the deadline only if they are physically received at the place specified in the notice on or before the deadline date. We will acknowledge receipt of each application, and will carry over late applications until the next closing date unless the applicant notifies HCFA's Project Grant Branch that it is being withdrawn.

(Sec. 1110, 1115, 1875, and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315, 1395, 1395r(f); sec. 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b-1 (note)); sec. 402 of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1)

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: March 29, 1983.

Carolyn K. Davis,
Administrator, Health Care Financing
Administration.

[FR Doc. 83-0021 Filed 4-5-83; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Health Professions and Nursing Student Loans; "Low Income Levels" for Loan Repayment, Health Careers Opportunity Grants and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for purposes of repayment of educational loans and for the support of training for individuals from disadvantaged backgrounds as provided

for under sections 787 and 798, Health Careers Opportunity Grants; and section 820, Nursing Special Project Grants of the Public Health Service Act.

Under sections 741(1) and 836(j) and the applicable program regulations, the Secretary of Health and Human Services may repay all or part of an individual's educational loan made after November 17, 1971, to meet the costs of attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or nursing if the Secretary determines that the individual meets all of the following:

(1) Failed, after November 17, 1971, to complete the health professions studies leading to the individual's first professional degree or to complete the specified nursing studies for which the loan(s) was made;

(2) Is in exceptionally needy circumstances;

(3) Is from a low income or disadvantaged family; and

(4) Has not resumed or cannot reasonably be expected to resume the course of study within 2 years following the date the individual ended the studies.

Sections 57.214(c) and 57.317(c) of the applicable program regulations (42 CFR Part 57, Subparts C and D) require the Secretary to publish annually in the *Federal Register* the low income levels which will be used in determining an applicant's eligibility for this repayment program. Aside from their use in determining whether an individual comes from a "low income family," these income levels, together with other relevant factors such as value of assets, unusual expenses, income available to the individual, etc., are also considered in determining whether an individual is "in exceptionally needy circumstances" or is from a "disadvantaged family."

The income figures below were taken from low income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to the Health Professions and Nursing Student Loan Programs and other designated grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1982.

Size of parent's family (includes only dependents listed on Federal income tax forms)	Income Level ¹
1	\$6,500
2	8,400

Size of parent's family (includes only dependents listed on Federal income tax forms)	Income Level ¹
3.....	10,000
4.....	12,800
5.....	15,100
6 or more.....	17,100

¹Income level (adjusted gross income for calendar year 1982).

Dated: March 30, 1983.

Robert Graham, M.D.,

Administrator.

[FR Doc. 83-6003 Filed 4-5-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Statute of Limitations Claims List

Correction

In FR Doc 83-8255 beginning on page 13698 in the issue of Thursday, March 31, 1983, make the following corrections:

1. On page 13698, first column, under "FOR FURTHER INFORMATION CONTACT", in the address for the Portland Area Director, "NW" should read "NE"; in the second column, in the entry for the Navajo Area Director, the telephone number should read "871-5151"; also in the second column, in the "SUPPLEMENTARY INFORMATION" section, second paragraph, seventh line, "where" should read "were".

2. On page 13698, in the third column, first paragraph in the first sentence the word "not" is inserted between "claims" and "included" so the sentence reads as follows: "For claims not included on either published list of claims, any right of action shall be barred 60 days after the publication of the supplemental list."

3. In the same paragraph, 17th line, "reasonable" should read "reasonably"; and in the 18th line, "briefly" should read "briefly".

4. On page 13699, second column, second full paragraph, first line, "contain" should read "contains"; and in the third line, "allottee" should read "Allottee".

5. Also on page 13699, third column, in the next to last line, "Office" should read "Office".

BILLING CODE 1505-01

Bureau of Land Management

[1-18298]

Competitive Sale of Public Lands; Idaho

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Realty Action, I-18298, Modified Competitive Sale of public lands in Lincoln County, Idaho.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of these tracts is consistent with Section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale at public auction for no less than the appraised fair market value of \$3,500.00. Both sealed and oral bids will be accepted.

T. 5S., R. 18 East, Boise Meridian, Lincoln County, Idaho

Section 4: NW¼SE¼SW¼

Section 9: N¼NW¼NW¼NW¼, SW¼NW¼NW¼NW¼.

The above aggregates 17.5 acres.

Upon publication of this Notice in the Federal Register, the land described above will be segregated from all forms of appropriations under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the Federal Register prior to the expiration of the two year period.

A patent for the land, when issued, shall be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals including Gas & Oil shall be reserved to the United States, as required by Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record.

The sale will be held at the Shoshone District Office, Bureau of Land Management, 400 West F. Street, Shoshone, Idaho at 10:00 A.M., Friday, June 3, 1983. Additional information concerning this land, terms and conditions of sale, and bidding instructions may be obtained from the Shoshone District Manager at the above address, or by calling 886-2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of

any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

For further information contact:

Charles J. Haszler,

District Manager.

Dated: March 29, 1983.

[FR Doc. 83-6033 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-64-M

State of California; Call for Application for Wind Energy Development in the Mountain Pass Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice. State of California; Call for Applications for Wind Energy Development in the Mountain Pass area.

SUMMARY: The Mountain Pass area located in Southern California approximately fifteen (15) miles west of the Nevada State Line has been identified for potential wind energy development. In response to applications filed by private interests to develop the wind resource, the Bureau of Land Management (BLM) will prepare an environmental document assessing the impacts of development within the 200 square mile area.

The objectives of the Bureau are to:

1. Ensure timely and orderly development of this important resource in a manner compatible with the use of the public lands for other purposes;
2. Assure that wind exploration, development and production is conducted with maximum protection of the environment, and;
3. Assure the public a fair return for the use of public lands and the use of its renewable resources.

To assist the Director of the BLM in carrying out these objectives and pursuant to Pub. L. 94-579, Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR Part 2800, requests for applications in addition to those already filed, are now being solicited from interested individuals for the next 60 days for possible granting of rights-of-way for wind power generating facilities on public lands.

Description of the Area

Applications will be considered within the area shown on the Mountain Pass Wind Study Map available at the BLM California Desert District Office, Riverside, California; Needles Resource Area Office, Needles; Barstow Resource Area Office, Barstow, California. Public

lands contained within the study area include:

- T. 14 N., R. 14 E.; SBBM: section 5-8 inclusive, 17, 18 (E ½)
- T. 15 N., R. 13 E.; SBBM: section 1-3 inclusive, 11-14 inclusive, 25
- T. 15 N., R. 14 E.; SBBM: section 1-11 inclusive, 14, 15, 17, 19-22 inclusive, 30, 32, 33
- T. 15 ½ N., R. 14 E.; SBBM: sections 19-35 inclusive
- T. 16 N., R. 13 E.; SBBM: sections 1-15 inclusive, 17, 18, 20-29 inclusive, 32-35 inclusive
- T. 17 N., R. 13 E.; SBBM: sections 1-5 (S ½'s only) inclusive, 8-15 inclusive, 23, 24, 25 (N ½), 26 (N ½), 35 (all but SE ¼)
- T. 16 N., R. 14 E.; SBBM: sections 17, 18, 21, 27-31 inclusive, 33, 34
- T. 18 N., R. 12 E.; SBBM: sections 5-8 inclusive, 17-19 inclusive
- T. 18 N., R. 14 E.; SBBM: sections 20 (N ½), 34 (N ½)
- T. 17 N., R. 17 E.; SBBM: sections 18 (S ½), 19-21 inclusive, 28, 29, 31-33 inclusive

Permits to enter public lands in this area may be obtained by contacting the BLM, Needles Resource Area Office, 641 Front Street, Suite B, Needles, CA 92363.

Right-of-way

Applications must be submitted no later than 60 days from the date of this notice. No other applications will be accepted after this date for inclusion in the environmental document. In accordance with 43 CFR Part 2800, Rights-of-Way Principles and Procedures, applicants will furnish BLM a project description detailing what is being proposed and the time period involved; a legal description of lands you wish to apply for with a map showing their location; a non-refundable check to cover processing fees as explained in 43 CFR 2801.1-1; and a copy of the company's charter or articles of incorporation certified by the State. The project description shall be in sufficient detail to enable the authorized officer to determine:

1. Its impact to the environment,
2. Any benefits provided to the public,
3. Safety of the proposal, and
4. The specific public lands proposed to be occupied.

The environmental document will be funded in accordance with 43 CFR 2803.1-1(a)(1).

To accomplish the above and to ensure that applications will be properly analyzed on a site-specific basis for the environmental document, the project description accompanying the application must include all of the information provided below:

Project Description

1. Applicant.
2. Contact—include phone number of

project coordinator and engineer.

3. Manufacturer.
4. Location—include a legal description, acreage compilation, and map for all public lands under application.
5. Wind Machine Model—if more than one machine is under consideration for deployment, include specifications for all types. Describe under what conditions one type of machine would be used over another.
6. Physical Specifications:
 - Total height.
 - Tower height.
 - Rotor diameter.
 - Total weight.
 - Weight of blades.
 - Foundation construction (width, depth and height).
 - Material specifications including weight of foundation.
 - Tower construction—materials and components.
 - Blade construction—materials and components.
 - Photograph of wind turbine generator model (8 x 10, Black and White).
 - Structure designs for the tower and foundation should be supplied.
7. Performance Specification:
 - Rotation speed (rotor RPM).
 - Speed of blade tips.
 - Power output.
 - Cut-in speed.
 - Noise generation.
 - Cut-out speed.
 - Rated wind speed.
 - Rotor orientation.
 - Generator RPM.
 - Generator type.
 - Gear box step-up ratio.
 - Gear box type.
8. Projected Annual Production:
 - Output based on annual average wind speed.
9. Additional Information:
 - Rotor, hardware specification (i.e., type, size).
 - Alternator, hardware specification (i.e., type, size).
 - 10. Brake system:
 - Type.
 - 11. Control Functions:
 - Automatic yaw.
 - Failsafe brake application and release.
 - Alternator voltage and phasing.
 - Circuit breakers for overcurrent control.
 - 12. Variables Monitored—describe your plans for monitoring the following items:
 - Alternator output.
 - Rotor speed.
 - Wind speed.
 - Wind direction.
 - 13. Safety Features:

Electrical systems designed to comply with the National Electrical Code. Lightning protection of all circuits. Blade throw and probability of occurrence.

14. Wind Machine Construction Activities:

Site preparation (both temporary and permanent).

Temporary use areas. Construction yards for material storage and equipment maintenance stations. Provide security arrangements. Equipment pads or leveled areas at each tower site to facilitate equipment operation should be identified. A table similar to that shown below can be used to summarize land areas occupied.

Summary of Land Areas Temporarily and Permanently Occupied

Units	Acres temporarily occupied	Acres permanently occupied
WTG.....		
Roads.....		
New main roads.....		
New spur roads.....		
Existing roads.....		
Work areas.....		
Construction yards.....		
Other.....		

Wind Turbine Installation. Describe installation procedures. Diagrams if available should be submitted.

Construction equipment. Provide specifications of equipment (i.e., pickup, 4 x 4, crane, 5-ton, etc., including fuel use requirements and length of service over construction schedule).

Cleanup. Technical and construction personnel—describe work force requirements for construction and maintenance activities.

Show work force schedule for construction period and source of labor supply (local or regional).

Construction schedule.

15. Operation and Maintenance:

Patrols.
Routine maintenance requirements.
Equipment needs.
Access roads.
Other.

16. Abandonment (plans for).

17. Transmission System and Substation:

Design.
Construction.
Operation and maintenance.
Abandonment.
Cost estimates for transmission line and substations may be supplied by servicing utility.

18. Security of Facilities and Equipment.

This information must be received no later than 60 days from the date of this notice in order to facilitate prompt initiation of site-specific analysis in the environmental document.

The authorized officer shall acknowledge in writing receipt of the application. The authorized officer may require the applicant for a right-of-way grant to submit additional information as he deems necessary for review of the application. All requests for additional information will be in writing.

Where the authorized officer determines that information supplied by an applicant is incomplete or does not conform to the FLPMA or 43 CFR Part 2800 regulations the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction. Where a deficiency notice has not been adequately complied with, the authorized officer may reject the application. All applications must be submitted to the Bureau of Land Management, Needles Resource Area Office, 641 Front Street, Suite B, Needles, California 92363.

Environmental Analysis and Decision Process

Applications will be evaluated and used along with all applicable resource data pursuant to the National Environmental Policy Act of 1969 to determine what public lands may be available for wind energy development. The environmental analysis process, through the evaluation of alternatives and their effects (environmental, social and economic), will be used as a decision tool to sort out competing uses and potential uses of the public lands. In the event two or more applications for wind power facilities are received for the same site, modified competitive bidding procedures will be utilized. Under this procedure applicants will only be able to bid for areas applied for under the call for applications. Award of rights-of-way will be granted, subject to the terms and conditions found in the Record of Decision, to the qualified responsible bidder of the highest per acre per year cash amount. A notice of any tracks selected for competitive bidding will be published in the *Federal Register* following the Record of Decision stating the conditions and terms for the grant in compliance with established Departmental procedures.

FOR FURTHER INFORMATION CONTACT: Questions regarding submittal of applications should be directed to

Beverley Condrey, Realty Specialist, at (619) 326-3896.

Gerald E. Hillier,
District Manager.

[FR Doc. 83-8932 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[CA 13254 (Lot 10); CA 13442 (Lot 11)]

California; Realty Action Proposed Sale of Public Land in Calaveras County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value (FMV).

MOUNT DIABLO MERIDIAN, CALIFORNIA

	Acres	FMV
T. 5 N., R. 13 E.		
Section 16:		
Lot 10	10.33	\$15,500
Lot 11	11.26	17,000

The above described parcels will be offered for sale by competitive bid on June 10, 1983. The sale will be held at 10:00 AM at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. This date is not less than 60 days after the publication of this notice. Particulars for these public auction sales will be made available through local newspaper release approximately 30 days before the scheduled sale date.

The lands being offered for sale are small isolated remnants with no public benefit values. Because of their size and location they are difficult and uneconomic to manage for use by the public. The sale will also enhance land use compatibility with adjoining private lands. The sales are consistent with the Bureau's planning and the lands involved have been discussed with the Calaveras County Planning Department. The parcels have potential for rural residential homesite development but are without legal access. Calaveras County General Plan recognizes the parcels as buildable lots with the only limiting factors being access, water and septic. Public interests would be well served by offering these lands for sale.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).
2. All minerals in the land will be reserved to the United States (43 U.S.C. 1719).

3. No preference right will be given to adjoining private landowners. No bids will be accepted for less than the appraised price and bids for a parcel must include all the lands in the parcel. Federal law requires that bidders be U.S. citizens or in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid.

The sale will be conducted by oral bidding. Bids must be made by the principal or his agent at the time of the sale. The highest oral bid will establish the sale price. The apparent high bidder will be required to submit a nonrefundable deposit of one-fifth of the full bid price immediately at the sale. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Bakersfield District Office at the above address. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. An adverse comment will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Robert D. Rheiner, Jr.,
District Manager.

[FR Doc. 83-8934 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[CA 13441]

California; Realty Action, Sale of Public Land in Calaveras County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value (\$15,000):

Mount Diablo Meridian, California

T. 5 S., R. 13 E.,
Sec. 18, Lot 9.
Containing 4.57 acres.

The above described parcel will be offered for sale by modified competitive bid on June 10, 1983. The sale will be

held at 10:00 AM at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630. This date is not less than 60 days after the date of this notice. Particulars for this public auction sale will be made available through local newspaper release approximately 30 days before the scheduled sale date.

The sale parcel is a small isolated remnant with no significant public benefit value. The sale will enhance land use compatibility with adjoining private lands. The sale is consistent with the Bureau's planning and has been discussed with the Calaveras County Planning Department. Calaveras County General Plan recognizes the parcel as a potentially buildable lot with the only limiting factors being access, water and septic. Public interests would be well served by offering the land for sale.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).
2. All minerals in the land will be reserved to the United States (43 U.S.C. 1719).

3. No preference right will be given to adjoining private landowners. No bids will be accepted for less than the appraised price and bids for parcel must include all the lands in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid.

The sale will be conducted by oral bidding. Bids must be made by the principal or his agent at the time of the sale. The highest oral bid will establish the sale price. The apparent high bidder will be required to submit a nonrefundable deposit of one-fifth of the full bid price immediately at the sale. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. Stark Realty, Inc. will be offered the right to meet the highest bid.

Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Bakersfield District Office at the above address. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by

the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Robert D. Rheiner, Jr.,
District Manager.

[FR Doc. 83-8935 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[CA 13251]

California; Realty Action, Non-Competitive Sale of Public Land in Nevada County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value (\$17,000):

Mount Diablo Meridian, California

T. 16 N., R. 9 E.,

Sec. 18, Lot 6.

Containing 3.86 acres.

The land was identified as proper for disposal by a land report and the decision is consistent with the land use plan and sale criteria of 43 CFR 2710.0-3(a). The sale parcel is a small isolated remnant, triangular shaped, some $\pm 1,310$ feet long by ± 275 feet at the base tapering to about 20 feet at the apex. The parcel is without access and completely surrounded by a 400 acre horse ranch making the tract impossible to manage. Because of its irregular shape, size and location the only logical purchaser is the surrounding landowner. The public interest will be well served by making the sale.

The parcel will be offered at direct sale to Loma Rica, Inc. at the appraised fair market value. No bids will be accepted. The land will not be offered for sale until 60 days after the publication of this notice. Upon notification of sale date, the purchaser will be given 30 days to pay the full appraised market value.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).
2. All minerals in the land will be reserved to the United States (43 U.S.C. 1719).

Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Bakersfield District Office at the above address. For a period of 45 days from the date of

publication of this notice, interested parties may submit comments to the State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Robert D. Rheiner, Jr.,
District Manager.

[FR Doc. 83-8936 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 18773]

Exchange of Public and Private Lands in Harney County, Oregon

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian, Oregon

Harney County

T. 36 S., R. 36 E., W.M.,

Sec. 8;

Sec. 18;

Sec. 20;

Sec. 30;

Sec. 32.

T. 37 S., R. 36 E., W.M.,

Sec. 6;

Sec. 8;

Sec. 18, Lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$;

Sec. 22, E $\frac{1}{2}$;

Sec. 24, W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 26;

Sec. 35.

T. 38 S., R. 38 E., W.M.,

Sec. 13, Lot 1, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Aggregating 6,904.17 acres in Harney County.

In exchange for these lands, the Federal Government will acquire scattered tracts of private land in Harney County from Whitehorse Ranch, Inc., described as follows:

Willamette Meridian, Oregon

Harney County

T. 32 S., R. 25 E., W.M.,

Sec. 36.

T. 35 S., R. 34 E., W.M.,

Sec. 7, Lots 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 9, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;

Sec. 11, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 13, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$;

Sec. 15, W $\frac{1}{2}$;

Sec. 21;

Sec. 23, N $\frac{1}{2}$, SW $\frac{1}{4}$;

Sec. 25;
 Sec. 27, S $\frac{1}{2}$, NW $\frac{1}{4}$;
 Sec. 31, Lots 1, 2, 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$;
 Sec. 33, W $\frac{1}{2}$, SE $\frac{1}{4}$;
 Sec. 35.
 T. 36 S., R. 34 E., W.M.,
 Sec. 3;
 Sec. 5, Lots 1, 2, 3, 4, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 S $\frac{1}{2}$;
 Sec. 9, N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 35 S., R. 35 E., W.M.,
 Sec. 17, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 19.
 T. 36 S., R. 35 E., W.M.,
 Sec. 5, SE $\frac{1}{4}$;
 Sec. 23, NE $\frac{1}{4}$.
 T. 35 S., R. 36 E., W.M.,
 Sec. 31, Lot 4.
 T. 37 S., R. 36 E., W.M.,
 Sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 28, E $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$.
 T. 38 S., R. 38 E., W.M.,
 Sec. 19, Lot 4, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 21, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 22, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
 NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 30, Lot 1;
 Sec. 34, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 35, W $\frac{1}{2}$ W $\frac{1}{2}$.
 T. 39 S., R. 38 E., W.M.,
 Sec. 2, Lot 4.
 Aggregating 9,623.58 acres in Harney
 County.

The purpose of the land exchange is to facilitate multiple use management of the public lands and acquire private lands which will benefit and support a multiple use federal program. These multiple use values include wildlife and wild horse habitat areas; fish habitat on Willow Creek for the Whitehorse Cutthroat Trout (a sensitive species), and cultural resource values.

The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange. The value of the lands to be exchanged are equal.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The terms, conditions, covenants, and reservations applicable to the land exchange are:

1. The public and private lands described above will be subject to the value equalization and adjustment for title and mineral problems, wilderness and cultural resource values and any other management reasons which may become apparent in the final stage of consummation of the land exchange.

2. The public lands will be exchanged subject to all valid existing rights,

including any rights-of-way, easements, and leases of record.

3. Where possible, the full fee estate will be exchanged. This will not be possible for all the lands involved as the mineral estate of portions of the private land is already owned by the United States or is encumbered by third party interests. The United States will convey the mineral estate to the public lands in an acreage as nearly equal to the mineral estate of the private lands acquired as practicable. As to the remaining public lands, the United States will reserve minerals to the extent they are known or reported to be valuable or prospectively valuable.

4. Roads identified as BLM owned and which are necessary for public access and/or land management will be retained by requiring the proposed grantee to convey easements concurrently with issuance of patent, rather than reserving roads in the patent documents.

Detailed information concerning the land exchange, including the Environmental Analysis, Official Land Report, and the record of public discussions, is available for review at the Vale District Office, 365 A Street West (P.O. Box 700), Vale, Oregon 97918.

For a period of 45 days interested parties may submit comments to the Chief, Branch of Lands and Minerals Operations, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 25, 1983.

Harold A. Berends,
 Chief, Branch of Lands and Minerals
 Operations.

[FR Doc. 83-2643 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[Realty Action, I-18530]

Idaho Falls District; Competitive Sale of Public Land in Caribou County, Idaho

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of these tracts are consistent with Section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale at public auction for no less than the appraised fair market value indicated below. Both sealed and oral bids will be accepted.

	Acres	Value
Tract #1: T. 8 S., R. 42 E., B.M., Sec. 10, NE $\frac{1}{4}$ NW $\frac{1}{4}$	40	\$8,000

	Acres	Value
Tract #7: T. 6 S., R. 38 E., B.M., Sec. 13, Lot 24	7.9	1,650
Tract #9: T. 8 S., R. 40 E., B.M., Sec. 13; E $\frac{1}{2}$ E $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ T. 8 S., R. 41 E., B.M., Sec. 7 W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$	62.5	12,000
Tract #10: T. 8 S., R. 40 E., B.M., Sec. 13; NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	3,000
Tract #11: T. 8 S., R. 41 E., B.M., Sec. 18; Lot 4	36.4	6,500
The above aggregates	156.8	

Upon publication of this Notice in the Federal Register, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the Federal Register prior to the expiration of the two-year period.

The lands will be subject to the following reservations when patented:

Tracts #1, #9, #10, and #11:

1. Ditches and Canals
2. Mineral Reservation
3. Subject to All Existing Rights

Tract #7:

1. Ditches and Canals
2. Mineral Reservation
3. Subject to All Existing Rights
4. A reservation to the U.S. of an easement over and across a 100 foot strip parallel and adjacent to the ordinary high water line of the Portneuf Reservoir along the southerly side of Tract 7.

DATE: The public auction will be held on June 7, 1983 at 10:00 a.m.

ADDRESSES: The public auction will be held at the Soda Springs Resource Area Office, 490 East 2nd South, Soda Springs, Idaho. Additional information concerning these lands, terms and conditions of the sale and bidding instructions may be obtained from Marvin R. Bagley, Area Manager, at the Soda Springs Resource Area Office, 490 East 2nd South, Soda Springs, Idaho or by calling (208) 547-2161 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final

determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
O'dell Frandsen, District Manager,
Bureau of Land Management, 940
Lincoln Road, Idaho Falls, Idaho 83401.

Dated: March 28, 1983.

O'dell A. Frandsen,
District Manager.

[FR Doc. 83-6939 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

Availability of Coal Core Analyses; Wyoming

Notice is hereby given that Bureau of Land Management (BLM) core analyses of 10 coal test holes located in Sheridan County, Wyoming are now available to the public. The analyses, completed in December, 1982, as a result of BLM efforts in support of the Federal coal management program, provide geologic information necessary to evaluate and classify coal resources on lands in the public domain.

The test holes, located in Townships 56, 57, and 58 North, Ranges 83, 84, and 85 West, Sixth Principal Meridian, Wyoming, were designed to investigate coal quality in the Fort Union and Wasatch Formations of Paleocene and Eocene age, respectively, in the Sheridan Coal Field of the Western Powder River Basin of north-central Wyoming. The core analyses are available for reproduction from the Bureau of Land Management, Casper District—Resource Evaluation, 111 S. Wolcott, Room 305, Casper, Wyoming 82601 (307) 261-5181.

Dwayne E. Hull,
Acting Minerals Manager, North Central
Region.

[FR Doc. 83-6980 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-MR-M

Coos Bay District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on May 3, 1983.

The meeting will begin at 10 a.m. in the Umpqua Room of the Thunderbird Motel at 1313 N. Bayshore Dr., Coos Bay, Oregon.

The agenda for the meeting is:

1. A discussion of the functions and organization of the council.
2. An orientation to district programs and current issues.
3. A presentation of the new Timber Management Plan for the district.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 333 South Fourth Street, Coos Bay, OR 97420, telephone 503-289-5880, by close of business April 29, 1983.

A report of the Council meeting will be maintained at the district office and made available for public inspection and reproduction at the cost of duplication.

Dated: March 25, 1983.

Thomas Roessler,
District Manager.

[FR Doc. 83-6979 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 83-20]

Proposed Livestock Grazing Management for the Otay Planning Unit; Escondido Project Area, California Desert District, California

Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement concerning a proposed grazing management program for the Escondido Project Area in Los Angeles, Riverside, Orange, and San Diego Counties in Southern California. The proposed action would continue present management of the 55,370 acres of public land presently grazed by cattle, permitting the consumption of 4378 AUMs of forage of 28 grazing allotments. Alternatives analyzed include increased livestock grazing (nine new allotments and 5848 AUMs), decreased livestock grazing (3972 AUMs to livestock) and no grazing. The final EIS includes all comments received during the public review of the draft, and responses to each comment.

Comments on the final Environmental Impact Statement are being solicited from public agencies and interested individuals and entities. Comments will be considered in the subsequent decision process. The Bureau of Land Management invites written comments on the statement to be submitted by ??? to the District Manager, California Desert District, Bureau of Land Management, Attn: Otay Grazing EIS, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of this document are available upon request at the California Desert District, (714) 351-6394, and the California State Office,

Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825. Telephone (916) 484-4701.

In addition to the above offices, copies of this EIS are available for public reading and review at:

Division of Rangeland Management,
Bureau of Land Management,
Premier Building, Room 909-H,
Washington, D.C. 20006.

Ed Hastey,

State Director.

[FR Doc. 83-6987 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer at 202-395-7340.

Title: Bird Banding Schedule.

Bureau Form Number: 3-860.

Frequency: monthly/annually.

Description of Respondents:
Individuals, State and Federal
Government employees who are
licensed bird banders.

Annual Responses: 33,000.

Annual Burden Hours: 6,800.

Service Clearance Officer: Arthur J.
Ferguson, 202-653-7499.

Don W. Minnich,

Acting Associate Director—Wildlife
Resources.

[FR Doc. 83-6963 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Amoco Production Co.

AGENCY: Minerals Management Service,
Interior.

ACTION: Notice of the receipt of a
proposed development and production
plan.

SUMMARY: Notice is hereby given that
Amoco Production Company (USA) has

submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0780, Block 33, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service Makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 25, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-8984 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Seagull Energy Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Seagull Energy Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3043, Block 831, Mustang Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf

of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-8986 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, Conoco Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the West Delta/Grand Isle Field Federal Unit Agreement No. 14-08-001-2454, submitted on March 22, 1983, a proposed annual plan of development describing the activities it proposes to conduct on the West Delta/Grand Isle Field Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-8938 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Transco Exploration Co.

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Transco Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on leases OCS-G 4491 and 4492, Blocks 54 and 55, Breton Sound Area offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays, 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 Title 30 of the Code of Federal Regulations.

Dated: March 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico
OCS Region.

[FR Doc. 83-6942 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-MK-M

National Park Service

Statue of Liberty-Ellis Island Centennial Commission; Meeting

Notice is hereby given that the location of the meeting of the Statue of Liberty-Ellis Island Centennial Commission previously announced for April 8, 1983, has been changed to Board Room of the Chrysler Corporation, Pan American Building, 54th Floor, 200 Park Avenue.

All information regarding this meeting remains the same as published in Volume 48, No. 55, page 11781, of the Federal Register dated March 21, 1983.

Dated: March 31, 1983.

F. Ross Holland, Jr.,

Acting Associate Director, Cultural Resources
Assistance, National Park Service.

[FR Doc. 83-6918 Filed 4-5-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-142]

Certain Electronic Chromatogram Analyzers and Components Thereof; Investigation

AGENCY: International Trade
Commission.

ACTION: Institution of investigation
pursuant to 19 U.S.C. section 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 1, 1983, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Bioscan, Inc., 4418 MacArthur Boulevard, NW., Washington, D.C. 20007. An amended complaint was filed on March 15, 1983. The amended complaint (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the importation of certain electronic chromatogram analyzers and components thereof into the United States, or in their sale, by reason of alleged: (1) Direct infringement, (2) contributory infringement, and (3) induced infringement of at least claims 5 and 9 of U.S. Letters Patent 4,019,057. The complaint further alleges that the effect

or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 31, 1983, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain electronic chromatogram analyzers and components thereof into the United States, or in their sale, by reason of alleged: (1) Direct infringement, (2) contributory infringement, or (3) induced infringement of the claims of U.S. Letters Patent 4,019,057, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Bioscan, Inc., 4418 MacArthur Boulevard, MW., Washington, D.C. 20007.

(b) The following respondents are alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Laboratorium, Prof. Dr. Berthold, Calmbacher Str. 22, Postfach 160, D-7547 Wildbad 1, Federal Republic of Germany

Berthold Instruments, Inc., 136 Bradford Avenue, Pittsburgh, Pa. 15205

(c) Ralph Elsas-Patrick, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of

Practice and Procedure (19 CFR § 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business 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:
Ralph Elsas-Patrick, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0440.

By order of the Commission.

Issued: April 1, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-6973 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-124
(Preliminary)]

Certain Fresh Potatoes From Canada Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured, by reason of imports from Canada of fresh or chilled round white potatoes, provided for in items 137.20, 137.21, 137.25, or 137.28 of the Tariff Schedules of the United States, which are alleged

¹The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

²Chairman Eckes dissenting and Commissioner Haggart not participating.

to be sold in the United States at less than fair value (LTFV).

Background

On February 9, 1983, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the Maine Potato Council alleging that imports of certain fresh potatoes from Canada are being, or are likely to be, sold in the United States LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective February 9, 1983, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the *Federal Register* on February 24, 1983 (48 FR 7822). The conference was held in Washington, D.C. on March 7, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 28, 1983. A public version of the Commission's report, *Certain Fresh Potatoes from Canada* (investigation No. 731-TA-124 (Preliminary), USITC Publication 1364, 1983), contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: March 28, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-8070 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-131]

Certain Variable Character Display Devices; Commission Request for Comments Regarding Proposed Termination of Investigation Based on Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Request for public comments on the proposed termination of the above-

captioned investigation based on a settlement agreement.

SUMMARY: On January 27, 1983, complainant Stover Manufacturing Co., Inc. (Stover) and respondent Ferranti-Packard Electronics, Ltd. (Ferranti-Packard) filed a joint motion (Motion No. 131-2) to terminate the above-captioned investigation. The motion is based on a nonexclusive patent license agreement between Stover and Ferranti-Packard. The Commission investigative attorney supported the joint motion, and the presiding officer on February 9, 1983, recommended that the joint motion to terminate be granted.

DATES: Comments will be considered if received within thirty (30) days of the date of publication of this notice. Comments should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Notice of the institution of the investigation was published in the *Federal Register* of September 29, 1982. (47 FR 4284)

Settlement Agreement: The settlement agreement provides for payment by Ferranti-Packard of a lump sum and royalties to Stover. The agreement covers both patents in issue, and applies to representatives, distributors and customers of Ferranti-Packard in the United States.

Written Comments Requested: In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effects of terminating this investigation in the basis of the settlement agreement on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than 30 days after the date of publication of this notice in the *Federal Register*. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

Additional Information: The original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Any person desiring to submit

a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's office.

FOR FURTHER INFORMATION CONTACT:

Jane K. Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-1627.

By order of the Commission.

Issued: March 30, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-8072 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-184 (Final)]

Frozen Concentrated Orange Juice From Brazil; Continuation of Final Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Continuation of final countervailing duty investigation.

EFFECTIVE DATE: March 21, 1983.

SUMMARY: On March 2, 1983, the United States Department of Commerce suspended its countervailing duty investigation concerning frozen concentrated orange juice from Brazil (48 FR 8839). The basis for the suspension was an agreement by the Government of Brazil to offset all benefits which Commerce found to constitute subsidies with an export tax on all exports of the subject product to the United States. Accordingly, pursuant to section 704(f)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1671c(f)(1)(B)), the United States International Trade Commission suspended its countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 9969, March 9, 1983). On March 21, 1983, however, a request to continue the investigation was filed with Commerce pursuant to section 704(g)(1) of the Tariff Act (19 U.S.C. 1671c(g)(1)) by counsel for the Government of Brazil. Accordingly, the Commission hereby gives notice of the continuation of investigation No. 701-TA-184 (Final), Frozen Concentrated Orange Juice from Brazil.

FOR FURTHER INFORMATION CONTACT: Mr. David Coombs (202-523-1376).

Office of Investigations, U.S.
International Trade Commission.

SUPPLEMENTARY INFORMATION:

Commission determination

The Commission will make its determination in this investigation within 45 days of the date on which Commerce publishes its final net subsidy determination.

Hearing.—The Commission intends to reschedule a hearing in connection with this investigation as soon as possible following Commerce's final net subsidy determination, if that determination is affirmative.

Written submissions.—Parties to this investigation will be afforded the opportunity to file prehearing and posthearing briefs, and any person who has not entered an appearance as a party to the investigation will be allowed to submit a written statement of information pertinent to the subject of the investigation. The deadlines for filing these submissions will be announced in a later **Federal Register** notice. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Participation in the investigation.—The deadline for persons who wish to participate in this investigation as parties to file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), was January 19, 1983. Therefore, any entries filed after that date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry. Any person who has previously filed an entry of appearance in this investigation does not need to file a new appearance pursuant to this continuation.

For further information concerning the conduct of the investigation, hearing

procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 28, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-8971 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-101 (Final)]

Greige Polyester/Cotton Printcloth From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: March 28, 1982.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from the People's Republic of China (China) of unbleached and uncolored printcloth fabric in chief value of cotton, containing polyester, and provided for in items 326.2632 through 326.4032 of the Tariff Schedules of the United States Annotated, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-101 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. The Department of Commerce has notified us that the investigation will be extended, and that it will make its final dumping determination in the case on or before July 22, 1983. The Commission will make its final injury determination by September 6, 1983 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Williams (202-523-5702), Office of Industries, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of greige polyester/cotton printcloth from China which are alleged to be sold at LTFV. The preliminary investigation was instituted in response to a petition filed on August 5, 1982, by counsel for the American Textile Manufacturers Institute and certain member companies.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on July 14, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on July 28, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 12, 1983. All persons desiring to appear at the

hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on July 14, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 25, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 4, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 4, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, subparts A through

E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 28, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-8090 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-190 (Final)]

Nitrocellulose From France

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: March 22, 1983.

SUMMARY: On March 22, 1983, the U.S. Department of Commerce made an affirmative final determination that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) are being provided by the Government of France to Societe Nationale des Poudres Explosifs, a producer and exporter of industrial nitrocellulose, provided for in item 445.25 of the Tariff Schedules of the United States. Accordingly, the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-190 (Final) under section 705(b) of the act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. The Commission will make its final injury determination by June 6, 1983 (19 CFR 207.35).

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch (202-523-0288), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly subsidized imports of nitrocellulose

from France. The preliminary investigation was instituted in response to a petition filed on September 14, 1982, by counsel for Hercules, Inc., Wilmington, Del.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on April 25, 1983, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 9, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 22, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 25, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 4, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be

limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 16, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 16, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 29, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-8908 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings 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.

The 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.

Agatha L. Mergenovich,
Secretary.

For the following, please direct status calls to Team 1 at 202-275-7992.

Vol. No. OP1-FC-110

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating.)

MC-FC-81319. By decision of March 29, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number approved the transfer to WILLIAM E. WELLS, JR., d.b.a. ECKERT TRUCK LINE,

Cedaredge, CO, of Certificate No. MC-33981, issued August 26, 1949, to ROBERT M. CAMPBELL, d.b.a. ECKERT TRUCK LINE, Cedaredge, CO, authorizing the transportation of general commodities (with exceptions), over regular routes, between Delta and Cedaredge, CO, serving all intermediate points. Representative: James D. Brown, P.O. Box 43, Delta, CO 81416.

MC-FC-81235. By decision of March 29, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 3 approved the transfer to MABCO TRANSIT, INC., Rensselaer, NY, of Certificate No. MC 2221 (Sub-1), issued September 21, 1981, to MABEY'S MOVING & STORAGE, INC., Rensselaer, NY, authorizing the transportation over irregular routes of (1) household goods, between Hudson, NY, on the one hand, and, on the other, points in CT, MA, NH, NJ, NY, PA, RI, VT, IN, and OH, (2) household goods, as defined by the Commission (a) between points in Columbia County, NY, within 20 miles of Hudson, NY, on the one hand, and, on the other, points in CT, IN, MA, NH, NJ, NY, OH, PA, RI, and VT, (b) between Hudson, NY, and points in Columbia County, NY, within 20 miles of Hudson, on the one hand, and, on the other, points in DE, MD, and DC, (3) bakery products, from Hudson, NY, to Pittsfield, MA, and (4) empty containers used in transporting bakery products, from Pittsfield, MA, to Hudson, NY. Transferee is not a carrier. Representative: Neil Breslin, 11 North Pearl St., Albany, NY 12207.

Vol. No. OP1-FC-111

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Carleton not participating.)

MC-FC 81152. By decision of March 29, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to NEUHOUSER-KRYDER, INC. Leo, IN, of Permit Nos. MC-152701 (Sub-1 and 2), issued May 27, 1981 and May 28, 1981, respectively, to KRYDER'S, INC., Leo, IN, authorizing the transportation of (1) waste or scrap materials, and (2) metal products, between points in the U.S., under continuing contract(s) with Dallas Scrap Baling, of Dallas, TX, and (3) transportation equipment, between points in the U.S., under continuing contract(s) with The Truck Engineering Company, Inc., of Fort Wayne, IN. Representative: Otto M. Bonahoom, 2100 Fort Wayne National Bank Bldg., Fort Wayne, IN 46802.

MC-FC 81297. By decision of March 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to J. Wayne Green, of Rt. 1, Lynchburg, SC, of Permit No. MC 140780 (Sub-2), issued June 8, 1976, to Alvin V. Green, of Rt. 1, Lynchburg, SC, authorizing the transportation of dry fertilizer and fertilizer materials, in bags, between the plant site of Kaiser Agricultural Chemical Company, located near Reigelwood, NC, on the one hand, and, on the other, the facilities of Kaiser in Clarendon, Florence, Lee, Sumter, Williamsburg, Darlington, Kershaw and Georgetown Counties, SC, under continuing contract(s) with Kaiser Agricultural Chemical Company, of Reigelwood, NC.

For the following, please direct status calls to Team 2 at 202-275-7030.

Vol. No. OP2-147

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC 81037. By decision of March 29, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approved the transfer to HERBERT Y. GILL d.b.a. CIMMARON TRUCKING CO., Albuquerque, NM, of authority issued to RONALD R. GANDER, Albuquerque, NM, in Permit No. MC 144863 (Sub-3), issued July 28, 1981, authorizing the transportation of wallboard, between points in the U.S., under continuing contract(s) with Western Gypsum Company, of Rosario, NM. Representative: Jack Smith, P.O. Box 1669, Albuquerque, NM, 87103. Transferee holds authority under MC 157486.

MC-FC 81194. By decision of March 29, 1983, issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approved the transfer to Data-Trans, Inc., of Indianapolis, IN, of Certificate No. MC 2963, issued August 9, 1950, to North Side Transfer Company, Inc., of Indianapolis, IN, authorizing the transportation, over irregular routes, of (1) household goods, (a) between Indianapolis, IN, on the one hand, and, on the other, points in IL, MI, KY, OH, PA, MO, NY, and NJ, and (b) between Bloomington, IN and points in Marion County, IN (except Indianapolis, IN), on the one hand, and, on the other, points in IL, MI, KY, and OH; and (2) office furniture and equipment and store fixtures, between Indianapolis, IN, on the one hand, and, on the other, points in IL, MI, KY, and OH. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317-846-0655.

Volume No. OP2-153

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC 81313. By decision of March 30, 1983, issued under 49 U.S.C. 10926, and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approved the transfer to NATIONWIDE SALES & DISTRIBUTING, INC., Longview, TX, of authority issued to NDC TRUCKING COMPANY, Longview, TX, in Certificates No. MC-153773 and Sub-1, 2, and 3, authorizing the transportation of: MC-153773, petroleum and coal tar products (except in bulk), between Los Angeles, CA, and points in Boone County, AR, Warren County, MS, Oklahoma County, OK, and Texas, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); Sub-1, foodstuffs and related products, between points in Gregg County, TX, and Shelby County, TN, on the one hand, and, on the other, those points in the United States in and east of North Dakota, South Dakota, Wyoming, Colorado, and New Mexico; Sub-2 (1) pulp, paper, and related products, and printed matter, between points in Lehigh and Montgomery Counties, PA, and Gregg County, TX, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), (2) such commodities as are dealt in by manufacturers or distributors of fabricated metal products, between Dallas, TX, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and (3) such commodities as are dealt in by manufacturers or distributors of furniture or fixtures, between points in Dallas and Gregg Counties, TX, Madison County, IN, Gordon County, GA, Montgomery County, PA, Riverside, Mendocino, and Solano Counties, CA, and Worcester County, MA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and Sub-3 (1) chemicals and related products, between points in Illinois, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and (2) food and related products, between points in Arkansas, California, Georgia, Illinois, Indiana, Kentucky, New Jersey, New York, Pennsylvania, and Tennessee, on the one hand, and, on the other, points in Texas. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX, 75062.

For the following, please direct status calls to Team 3 at 202-275-5223.

Volume No. OP3-MCFC-134

Decided: March 14, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC-FC 81123. (Partial Republication). By decision of February 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1, approved the transfer to COUNTRY LINES, INC., Salisbury, MD, of Certificates Nos. MC 138395 (Sub-2), issued February 19, 1974, MC 138395 (Sub-4), issued March 21, 1975, MC 138395 (Sub-8), issued June 14, 1977, MC 138395 (Sub-12), issued November 26, 1980, MC 138395 (Sub-13), issued November 26, 1980, MC 138395 (Sub-14), issued November 14, 1980, MC 138395 (Sub-15), issued January 14, 1981, MC 138395 (Sub-16), issued February 3, 1983, MC 138395 (Sub-17X), issued October 19, 1981, and MC 138395 (Sub-18), issued April 29, 1982, to DOUGLAS H. WEST, Philadelphia, PA. The previous publication of February 25, 1983 omitted the following authority: Lumber and wood products and forest products, (1) between points in Wicomico and Somerset Counties, MD and Sussex County, DE, on the one hand, and, on the other, points in that part of PA east of the Susquehanna River and on and south of U.S. Hwy 22, and those in that part of NJ on and south of U.S. Hwy 22, and those in the New York, NY, Commercial Zone as defined by the Commission, (except those on and south of U.S. Hwy 22), and (2) between points in Sussex County, DE, on the one hand, and, on the other, Baltimore, MD; Containers, between points in Wicomico County, MD, on the one hand, and, on the other, points in Cumberland and Atlantic Counties, NJ, New York, NY, Accomack and Northampton Counties, VA, and points in DE and MD; building materials, between Philadelphia, PA, and points in New Castle County, DE, on the one hand, and, on the other, points in Wicomico County, MD; agricultural commodities, between points in Wicomico County, MD, within 15 miles of Hebron, MD, on the one hand, and, on the other, Philadelphia, PA, and Allegheny, Lackawanna and Luzerne Counties, PA, and New York, NY; and wood pallets, between points in Kent County, DE, on the one hand, and, on the other, Baltimore, MD, Philadelphia, PA, New York, NY, points in NJ and points in Nassau County, NY. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740.

For the following, please direct status calls to Team 5 at 202-275-7289.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC-FC-81277. By decision of March 25, 1983, issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to SHAMROCK TRUCKING, INC. OF ALABAMA (An Alabama Corporation), of Fairfax, AL, of Certificate No. MC 158839 and Subs 1, 2, and 3 issued June 4, 1982, February 3, 1982, June 9, 1982, and December 16, 1982, respectively, to SHAMROCK TRUCKING, INC. (A Georgia Corporation), of Forest Park, GA, authorizing the transportation of (1)(a) *metal containers*, (b) *can ends*, (c) *tin plate*, and (d) *bottle caps*, between Atlanta, GA, Philadelphia, PA, Baltimore, MD, Chicago, IL, Houston, TX, Milwaukee, WI, and points in Essex County, MA, Hudson County, NJ, Wicomico County, MD, Frederick County, VA, Chesterfield and Spartanburg Counties, SC, Wood County, OH, Kankakee County, IL, Dakota County, MN, Tarrant and Taylor Counties, TX, Washakie County, WY, and Contra Costa and Los Angeles Counties, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) (a) *animal feed*, and (b) *metal containers*, between points in Fulton County, GA, on the one hand, and on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX; (3) *paper and paper products and plastic and plastic products* (except in bulk), between those points in the U.S. in and east of MN, IA, MO, OK, and TX; (except ME, NH, and VT); (4) *such commodities as are used or dealt in by manufacturers or distributors of paints, paint remover and thinner, gum turpentine, linseed oil, caulking compounds, spackle and drive-way coatings*, between Atlanta, GA, Chicago, IL, Charlotte, NC, Memphis, TN, Houston, TX, Indianapolis, IN, Los Angeles, CA, and points in Sumter County, SC and St. Tammany Parish, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI); (5) *such commodities as are used or dealt in by manufacturers or distributors of paint brushes, wire brushes, putty knives, scrapers, drop cloths, paint applicators and pens*, between Chicago, IL, Jersey City, NJ, and Los Angeles, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (6) *such commodities as are used or dealt in by manufacturers or distributors of traffic control products*, between points in Cobb County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Representative: Virgil H. Smith, 74 Highway N, Box 245, Tyne, GA 30290.

MC-FC-81315. By decision of March 25, 1983, issued under 49 U.S.C. 10928 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to STRONG & SON MOTOR LINES, INC., of Richmond, VA, of Permit No. MC 149518 Sub 1X issued June 19, 1981 and its underlying authority in MC 67118 issued July 31, 1958 to STRONG MOTOR LINES, INC., of Richmond, VA, authorizing the transportation generally, of *chemicals, petroleum products, and such commodities as are dealt in by food business houses*, between points in the U.S., under continuing contract(s), and Permit No. MC 67118 Subs 10, 11, 13, 17, and 20 issued December 1, 1980, October 26, 1985, September 27, 1988, February 2, 1971, and February 7, 1972, respectively, authorizing the transportation generally, of *meat and meat products*, (a) from Richmond, VA, to parts of NC, (b) between specified points in VA and NC, on the one hand, and, on the other, specified points in GA and SC, (c) between Philadelphia, PA, on the one hand, and, on the other, points in NC, SC, VA, and DC, and (d) from Philadelphia, PA to Baltimore, MD, under contract(s) with Hygrade Food Products Corporation, and *groceries and meat*, from specified points in VA to specified points in NC, under contract with the U.S. Department of Defense. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW, Washington, DC, 20006.

MC-FC-81317. By decision of March 25, 1983, issued under 49 U.S.C. 10928 and the transfer rules of CFR Part 1181, Review Board Number 1 approved the transfer to TIMOTHY J. MOORE, of Decatur, GA, of Certificate No. MC-139009 Sub 1 issued October 16, 1978 authorizing the transportation of general commodities (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Conyers, Doraville, Lithonia, Stone Mountain and Tucker, GA, on the one hand, and, on the other, points in De Kalb, Gwinnett, Newton, Rockdale and Walton Counties, GA, restricted to the transportation of traffic having a prior or subsequent movement by rail in trailer-on-flatcar service, MC-139009 Sub 3 issued October 2, 1981, 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 Covington, GA, on the one hand, and, on the other, points in Morgan County, GA, restricted to the transportation of traffic having a prior or

subsequent movement by rail, MC-139009 Sub 4 issued September 26, 1978, authorizing the transportation of general commodities (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the TOFC facilities of Southern Railroad in Fulton County, GA, on the one hand, and, on the other, points in De Kalb, Gwinnett, Newton, Rockdale, Morgan, and Walton Counties, GA, restricted to the transportation of shipments having a prior or subsequent movement by rail in trailer-on-flatcar service, MC-139009 Sub 5F issued January 2, 1981, authorizing the transportation of general commodities, between points in Hall and Fulton Counties, GA, restricted to traffic having a prior or subsequent movement by rail. Applicant intends to tack the sought rights with existing authority at points in Hall County, MC-139009 Sub 6 issued July 24, 1981, authorizing the transportation of machinery, between points in Hamilton County, TN, on the one hand, and, on the other, points in the United States, MC-139009 Sub 7 issued August 4, 1981, authorizing the transportation of ferrous and nonferrous metals, between Atlanta, GA, on the one hand, and, on the other, points in Georgia, Florida, Alabama, North Carolina, South Carolina, Arkansas, Tennessee, Texas, Mississippi, and Louisiana, and MC-139009 Sub 8 issued August 4, 1981, authorizing the transportation of clay, concrete, glass or stone products, between Atlanta, GA, on the one hand, and, on the other, points in Tennessee, Mississippi, North Carolina, Alabama, Florida, South Carolina, and Louisiana, to R & W EXPRESS, INC., of Gainesville, GA. An application for temporary authority has been filed. Representative: William D. Moore, 743 Main Street (P.O. Box 2998), Gainesville, GA 30503

[FR Doc. 83-8922 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

[Vol. No. OP3-135]

Motor Carriers; Decision-Notice; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought

below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: March 29, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 3
(202) 275-5223
RB1
T-3

MC-F-15212, filed March 22, 1983. JOHN B. TE SLAA, doing business as TE SLAA TRUCKING (TE SLAA) (503 Center St., Hull, IA 51239)—Purchase (Portion)—T.F.S., INC. (TFS) (Rural Route 2, Box 126, Highway 281, Grand Island, NE 68801). Representative: D. Douglas Titus, 340 Insurance Exchange Bldg., Sioux City, IA 51101. Te Slaa seeks to purchase a portion of TFS' certificate No. MC-141575 (Sub-No. 23) which authorizes the transportation of iron and steel pipe fittings, from the plantsite and warehouse facilities of Tubeline Manufacturing Co., located in Queens County, NY to points in Alabama, Arizona, Arkansas, California, Colorado, Idaho, Kentucky, Missouri, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, and Washington. John B. Te Slaa, who controls Te Slaa, seeks authority to acquire control of the said operating authority through the transaction. Te Slaa holds certificate No. MC-144350 and subnumbers thereunder authorizing the transportation of food and related products between certain points in Iowa, on the one hand, and, on the other, points in the coterminous United States.

[FR Doc. 83-8425 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01

[No. MC-F-15182]

Motor Carriers; M. C. Bunch, Inc.—Purchase Exemption—Shoemaker Company (Loren Wetzel, Trustee-in-Bankruptcy)

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—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), M. C. Bunch, Inc. (MC-140149) seeks an exemption from the requirement under 11343 of prior regulatory approval for its proposed acquisition of that portion of the operating authority of Shoemaker Trucking Company (MC-138875 Sub-No. 312X, part 35) which authorizes the transportation of metal products, machinery, clay, concrete, glass or stone products, and rubber and plastic products, between points in AR, on the one hand, and, on the other, points in AZ, CA, CO, ID, OR, UT, WA, WI, WY, MI, MN, MT, NC, ND, OH, PA, SC, SD, VA, and WV, together with its underlying Sub-Nos. 187F and 251F.

DATE: Comments must be received within 30 days after the date of publication in the *Federal Register*.

ADDRESSES: Send comments to: (1) Motor Section, Room 2139 Interstate Commerce Commission, Washington, D.C. 20423; and (2) Petitioners' representative David E. Wishney, P.O. Box 837, Boise, ID 83701. Comments should refer to No. MC-F-15182.

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: March 29, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8425 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers 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 jurisdiction 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. OP1-114

Decided: March 29, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating.)

MC-75281 (Sub-28), filed March 24, 1983. Applicant: BOOTHEEL TRANSPORTATION COMPANY, P.O. Box 511, Sikeston, MO 63801. Representative: Harvey E. Henry, (same address as applicant), (314) 471-7483. 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 140401 (Sub-2), filed March 24, 1983. Applicant: W. J. (WES) LE BLANC WHOLESALE PRODUCE, INC., 178 Alder Lane, Ashland, OR 97520. Representative: Weston Le Blanc, (same address as applicant), (503) 686-2309. 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 144040 (Sub-5), filed March 22, 1983. Applicant: PINETREE TRANSPORTATION COMPANY, d.b.a., CALIFORNIA CHARTER BUSES, INC., 6400 Westminster Ave., Westminster, CA 92683. Representative: Robert J. Corber, 1250 Connecticut Ave., NW., Washington, DC 20036, (202) 862-2038. 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 155381 (Sub-1), filed March 25, 1983. Applicant: CGS & SON TRANSIT, INC., 312 Roslyn St., Rochester, NY 14619. Representative: William J. Hirsch, 64 Niagara St., Buffalo, NY 14202. 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 161460 (Sub-1), filed March 22, 1983. Applicant: EMBA BUS SERVICE INC., 1411 Newbridge Rd., No. Bellmore, NY 11710. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755-9500. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166901, filed March 21, 1983. Applicant: ROGER M. WESSELS, SR., d.b.a., WESSELS REFRIGERATED TRANSPORT, 1317 M St., Aurora, NE 68818. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501-2028, (402) 475-6761. 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 owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 166930, filed March 22, 1983. Applicant: A & E MESSENGER SERVICE, INC., 15502 Trailside Drive, Lockport, IL 60441. Representative: Abraham A. Diamond, 29 South LaSalle street, Chicago, IL 60603, (312) 236-0549. 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 166961, filed March 22, 1983. Applicant: DAWSON & WILSON, INC., d.b.a., D & W FREIGHT SERVICES, INC., 305 Courtland St., P.O. Box 70, Lansdale, PA 19446. Representative: Joseph J. Dawson, (same address as applicant), (215) 368-0670. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 166970, filed March 22, 1983. Applicant: PATRICK JAMES DOYLE, d.b.a., PATRICK JAMES DOYLE TRUCKING, Box 190—RR 1, Sidney, NE 69162. Representative: Patrick James

Doyle, (same address as applicant), (308) 254-7384. 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 167011, filed March 24, 1983. Applicant: ROBERT J. SIZEMORE AND KAREN A. SIZEMORE, a Partnership, d.b.a., ARIZONA-TEXAS EXPRESS, P.O. Box 3404, Kingman, AZ 86401. Representative: Robert J. Sizemore, (same address as applicant), (602) 757-8648. 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 167041, filed March 22, 1983. Applicant: L & W CHARTER SERVICE, INC., R. D. #1, P.O. Box 362, Danville, PA 17821. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233-5731. 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.

Vol. No. OP1-108

Decided: March 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Carleton not participating.)

MC 114571 (Sub-3), filed March 17, 1983. Applicant: YODER TOURWAYS, INC., P.O. Box 8, Mattawana, PA 17054. 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 PA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 127690 (Sub-3(A)), filed March 17, 1983. Applicant: MONTANA TRANSPORT COMPANY, P.O. Box 1292, Billings, MT 59103. Representative: Oliver L. Ewen, (same address as applicant), (406) 248-3694. (1) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI), and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household

goods, hazardous or secret materials, and sensitive weapons and munition), between points in the U.S. (except AK and HI).

Note.—Applicant has also filed for authority under the non-fitness procedures docketed MC 127690 (Sub-3(B)), published in this same Federal Register issue.

MC 153981 (Sub-2(A)), filed March 2, 1983. Applicant: LEEWAY FLEET LINES, INC., 1218 Chestnut St., Suites 1008-09, Philadelphia, PA 19107. Representative: Curtis J. Lee, Jr., (same address as applicant), (215) 592-8296. 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. Applicant has also filed for authority under the nonfitness criteria, docketed MC 153981 (Sub-2(B)), published in this same Federal Register issue.

MC 157061 (Sub-4), filed March 15, 1983. Applicant: ATLAS CARRIERS, INC., P.O. Box 183, Searcy, AR 72143. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg. Suite 909, Memphis, TN 38103, (901) 526-4114. 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 166881, filed March 17, 1983. Applicant: EDWIN L. VARGO, d.b.a. E. L. VARGO TRUCKING, P.O. Box 71, Prince George, VA 23875. Representative: Frank L. Willard, Suite No. 1001, First & Merchants National Bank Bldg., Norfolk, VA 23510, (804) 627-0070. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 2 at 202-275-7030.

Vol. No. OP2-150

Decided: March 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Carleton not participating.)

MC 69623 (Sub-5), filed March 11, 1983. Applicant: NATIONAL SCHOOL BUS SERVICE, INC., 3735 Genesee St., Buffalo, NY 14225. 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 150502 (Sub-3), filed March 11, 1983. Applicant: REBANDA TRANSPORTATION, INC., 3450 Mill Creek Rd., Healdsburg, CA 95448. Representative: Ronald C. Chauvel, 100 Pine St., No. 2550, San Francisco, CA 94111, 415-988-1414. 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 166743, filed March 11, 1983. Applicant: FARLAND FREIGHT, INC., 101 Agena Dr., Georgetown, KY 40324. Representative: George M. Catlett, Suite 700-702, McClure Bldg., Frankfort, KY 40601, 502-227-7384. 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 166753, filed March 11, 1983. Applicant: HERMES TRANSPORT, INC., 251 Dundee Rd., Wheeling, IL 60090. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, 312-782-8880. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166843, filed March 11, 1983. Applicant: JOHN ROBERT REID Federal Register, d.b.a. REID'S BUS SERVICE, Hillside, Trenton, Nova Scotia, Canada, BOK IXO. Representative: John Robert Reid, (same address as applicant), 902-752-7542. Transporting *passengers*, in charter operation, beginning and ending at ports of entry on the International Boundary Line between the U.S. and Canada in ME, and extending to points in ME.

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 166852, filed March 17, 1983. Applicant: MIKE NIELSEN, d.b.a., MIKE NIELSEN TRUCKING, Four Mile Vue, Butte, MT 59701. Representative: Hugh R. H. Smith, 26 Kenwood Place., Lawrence, MA 01841, 617-657-6071. 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 vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 166853, filed March 17, 1983. Applicant: GREAT CONNECTIONS, 8085 38th Ave., North, St. Petersburg, FL 33710. Representative: Sandra Scheitinger, (same address as applicant), 813-384-0725. Transporting *passengers*, in charter and special transportation, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166903, filed March 21, 1983. Applicant: JAMES M. COPE and SANDRA J. COPE, 1361 Cherry Ave., Bethlehem, PA 18017. Representative: James M. Cope, (Same address as applicant), 215-253-7181. As a *broker of general commodities* (except household goods), between points in the U.S.

Vol. No. OP2-152

Decided: March 28, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating.)

MC 31422 (Sub-3), filed March 7, 1983. Applicant: George KU, INC., 1480 Mt. Jackson Rd., New Castle, PA 16102. Representative: Lewis S. Witherspoon, 2455 N. Star Rd., Columbus, OH 43221, (1-614-488-0448). 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 124233 (Sub-9), filed March 8, 1983. Applicant: INTERNATIONAL STAGE LINES, INC., 4171 Vanguard Rd., Richmond, B.C. Canada V6X 2P6. Representative: Robert John McMynn, (same address as applicant), (604) 270-6135. Transporting *passengers*, in charter and special operations, beginning and ending at ports of entry on the international boundary line between the U.S. and Canada, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 139602 (Sub-4), filed March 17, 1983. Applicant: WIERSEMA CHARTER SERVICE, INC., Rte. 2, Morrison, IL 61270. Representative: Allan C. Zuckerman, 221 North LaSalle St., Suite 828, Chicago, IL 60601, 312-641-5900. Transporting *passengers*, in charter and special operations, beginning and ending at points in IL, IN, IA, MI, MO, and WI, and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 152162 (Sub-2), filed March 10, 1983. Applicant: MANHATTAN COACH LINES, INC., Rte. 46, Elmwood Park, NJ 07407. Representative: Steven L. Weiman, Suite 200-444 North Frederick Ave., Gaithersburg, MD 20877, 301-840-8565. 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 166593, filed March 7, 1983. Applicant: TLTK TRUCKING, INC., 5433 W. 117th St., Inglewood, CA 90304. Representative: Terry E. Morgan, 2131 Almanor St., Oxnard, CA 93030, (805) 485-2040. Transporting, (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *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, (3) *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, and (4) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166742, filed March 11, 1983. Applicant: J. L. WATTS, d.b.a., J. L. WATTS TRUCKING, P.O. Box 42, S. Hwy 22, Frost, TX 76641. Representative: J. L. WATTS, (same address as applicant), 214-682-3091. 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 166872, filed March 18, 1983. Applicant: D.M. HILL TRUCKING, INC., 2316 West 2nd St. North Platte, NE 68101. Representative: Jack L. Shultz, 500 The Atrium, P.O. Box 82028, Lincoln, NE 68051-2028, 402-475-6781. 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 166883, filed March 17, 1983. Applicant: BRUTT'S GARAGE, INC., d.b.a. WESTMINSTER LIMOUSINE

AND CHARTER SERVICE, 71 Main St., Westminster, MA 01473. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, 703-522-0900. 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 166893, filed March 18, 1983. Applicant: WESTERN DISCOVERY COACH, INC., 4250 Kenilworth, Bladensburg, MD 20701. Representative: Morton J. Preston, (same address as applicant), 301-864-9140. 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.

For the following, please direct status calls to Team 3 at 202-275-5223.

Vol. No. OP3-128

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 129985 (Sub-1), filed March 8, 1983. Applicant: CAMPTOWN BUS LINES INC., 265 Elizabeth Ave., Newark, NJ 07108. Representative: Ronald I. Shappas, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting *passengers*, special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 151415 (Sub-3), filed March 15, 1983. Applicant: HORIZON CHARTER COACHES, INC., 10542 W. Donges Court, Milwaukee, WI 53224. Representative: Larry E. Sandburg, (same address as applicant), (414) 355-0240. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166874, filed March 7, 1983. Applicant: HOFMANN BUS COMPANY, INC., 1003 Race Rd., Baltimore County, MD 21221. Representative: Wilbur R. Delano, Sr., (same address as applicant), (301) 665-6054. Transporting *passengers*, in special and charter operations, between points in MD, VA, PA, WV, DE, NJ, NY, and DC.

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 166835, filed March 15, 1983. Applicant: LITTLETON MOTORS INC., d.b.a. DUNN LINES, 326 Great Rd., Littleton, MA 01460. Representative: Barry W. Dunn, 2 Fuller Brook Rd., Wellesley, MA 02181, (617) 235-5929. Transporting *passengers*, in special and charter operations, beginning and ending at Littleton, MA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Vol. No. OP3-131

Decided: March 28, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 7914 (Sub-8), filed March 21, 1983. Applicant: UTICA-ROME BUS CO., INC., Kirkland Avenue, P.O. Box 223, Clinton, NY 13323. Representative: Robert J. Brooks, 1828 L Street, N.W., Suite 1111, Washington, DC 20036, (202) 466-3892. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 155695 (Sub-1), filed March 18, 1983. Applicant: WEIDHAAS TOURS, INC., 4420 Westfield Ave., Pennsauken, NJ 08110. Representative: Karl W. Weidhaas, Jr., (same address as applicant), (609) 665-2877. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166815, filed March 15, 1983. Applicant: DOUG OBER, Rural Route 1, Creighton, NE 68729. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 358-5426. 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 166834, filed March 15, 1983. Applicant: B & D CUSTOMHOUSE BROKERS, INC., 1314 Texas Avenue, #1304, Houston, TX 77002. Representative: K. J. Bentsen, (same address as applicant), (713) 227-0715. As a *broker of general commodities* (except household goods) between points in the U.S.

MC 166854, filed March 17, 1983. Applicant: REVCO TRANSPORT SYSTEMS, INC., 116 Washington St., Rt.

1, Plainville, MA 02762. Representative: John F. O'Donnell, 60 Adams St. (Box 238), Milton, MA 02187, (617) 698-1800. (1) Transporting, for or on behalf of the United States Government *general commodities* (except use household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., (2) 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., (3) 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., and (4) as a *broker of general commodities* (except household goods), between points in the U.S.

MC 166864, filed March 17, 1983. Applicant: BURLWOOD INDUSTRIES, INC., 3333 S. Iron St., Chicago, IL 60608. Representative: Ronald N. Cobert, Suite 501, 1730 M St., MW, Washington, DC 20036, (202) 296-2900. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166875, filed March 14, 1983. Applicant: HARRIS MERCANTILE & MANAGEMENT CO., P.O. Box 3632, Federal Way, WA 98003. Representative: Henry L. Harris, 33021 22nd Pl. So., Federal Way, WA 98003, (206) 838-5044. (A) As a *broker of general commodities* (except household goods); and (B) Transporting (1) for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 166934, filed March 18, 1983. Applicant: DESIGNERS OF TRAVEL UNLIMITED, INC., 4025 N. 124th St., Brookfield, WI 53005. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840-8565. 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.

For the following, please direct status calls to Team 4 at 202-275-7669.

Vol. No. OP4-185

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 145956 (Sub-14), filed March 21, 1983. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rocks Rd., Belleair, FL 33516. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223-8244. (1) As a *broker of general commodities* (except household goods), (2) 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), (3) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, (4) *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, and (5) *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. (except AK and HI).

MC 166886, filed March 18, 1983. Applicant: ERVIN E. CHRISTENSEN, Route 4, Box 1203, Hillsboro, OR 97123. Representative: Ervin E. Christensen, (same address as applicant), (503) 628-1753. 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 166896, filed March 21, 1983. Applicant: NANCY J. AMABILE, d.b.a., RED ARROW BROKERAGE, 29891 Red Arrow Highway, Paw Paw, MI 49079. Representative: Nancy J. Amabile, (same address as applicant), (616) 657-3416. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

No. MC 166897, filed March 21, 1983. Applicant: FREIGHT BROKER, INC., 612A, Route 41, Schererville, IN 46375. Representative: Joel H. Steiner, 135 S. LaSalle, Suite 2106, Chicago, IL 60603, (312) 236-9375. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 166907, filed March 21, 1983. Applicant: VERONA CARRIERS, INC., 504 S. Nine Mound Rd., Verona, WI 53593. Representative: Richard D. Armstrong, 925 Hyland Dr., Stoughton, WI 53589, (608) 873-8929. Transporting, (1) for or on behalf of the United States

Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions); (2) *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; (3) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds; and (4) *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 166938, filed March 18, 1983. Applicant: WESLEY T. CHURCH, d.b.a. J-W TRUCKING, 2235 W. Bonanza, Wy., South Jordan, UT 84065. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, (801) 531-1300. 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).

Vol. No. OP4-190

Decided: March 28, 1983.

By Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 166916, filed March 21, 1983. Applicant: TEDDY'S TRANSPORTATION SYSTEM, INC., 100 Windfield St., E Norwalk, CT 06855. Representative: Arthur J. Piken, 95-25 Queens Blvd., Rego Park, NY 11374, (212) 275-1000. 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.

Vol. No. OP4-194

Decided: March 29, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 13856 (Sub-2), filed March 23, 1983. Applicant: CONTINENTAL FRONTIERS, INC., 2378 NE 28th St., Lighthouse Point, FL 33064. Representative: Mark Parets, (same address as applicant), (305) 941-3889. 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 147777 (Sub-6), filed March 15, 1983. Applicant: TRAVEL TIME BUS LINES, INC., 99 Arnold St., Springfield, MA 01119. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781-8205. Over regular routes, transporting *passengers*, (1) between Springfield, MA, and West Hartford, CT: from Springfield over Interstate Hwy 91 to junction Interstate Hwy 84, then over Interstate Hwy 84 to West Hartford, serving all intermediate points; (2) between West Hartford and New London, CT, (a) from West Hartford over Interstate Hwy 84 to junction CT Hwy 2, then over CT Hwy 2 to junction CT Hwy 11, then over CT Hwy 11 to junction CT Hwy 85, then over CT Hwy 85 to junction U.S. Hwy 1/Interstate Hwy 95, then over U.S. Hwy 1/Interstate Hwy 95 to New London, serving all intermediate points; (b) from West Hartford over Interstate Hwy 84 to junction CT Hwy 2, then over CT Hwy 2 to junction CT Hwy 52, then over CT Hwy 52 to junction CT Hwy 32, then over CT Hwy 32 to junction U.S. Hwy 1/Interstate Hwy 95, then over U.S. Hwy 1/Interstate Hwy 95 to New London, serving all intermediate points; (3) between West Hartford, and Mystic, CT: from West Hartford over Interstate Hwy 84 to junction Interstate Hwy 91, then over Interstate Hwy 91 to junction CT Hwy 9, then over CT Hwy 9 to junction Interstate Hwy 95/U.S. Hwy 1, then over Interstate Hwy 95/U.S. Hwy 1 to Mystic, serving all intermediate points; (4) between West Hartford and Mystic, CT: from West Hartford over Interstate Hwy 84 to junction CT Hwy 2, then over CT Hwy 2 to junction CT Hwy 52, then over CT Hwy 52 to junction CT Hwy 32, then over CT Hwy 32 to junction U.S. Hwy 1, then over U.S. Hwy 1 to Mystic, serving all intermediate points; (5) between Fitchburg, MA, and Mystic, CT: from Fitchburg over MA Hwy 12 to junction Interstate Hwy 190, then over Interstate Hwy 190 to junction Interstate Hwy 290, then over Interstate Hwy 290 to junction Interstate Hwy 193, then over Interstate Hwy 193 to junction CT Hwy 52, then over CT Hwy 52 to junction CT Hwy 32, then over CT Hwy 32 to junction Interstate 95, then over Interstate Hwy 95 to Mystic, serving all intermediate points; (6) between Fitchburg and Springfield, MA: (a) from Fitchburg over MA Hwy 2 to junction U.S. Hwy 202, then over U.S. Hwy 202 to junction Interstate Hwy 91, then over Interstate Hwy 91 to Springfield, serving all intermediate points; (b) from Fitchburg over MA Hwy 2 to junction U.S. Hwy 202, then over U.S. Hwy 202 to

junction Pelham Rd., then over Pelham Rd. to junction MA Hwy 116, then over MA Hwy 116 to junction MA Hwy 9, then over MA Hwy 9 to junction U.S. Hwy 5/Interstate Hwy 91, then over U.S. Hwy 5/Interstate Hwy 91, then over U.S. Hwy 5/Interstate Hwy 91 to Springfield, serving all intermediate points, and (c) from Fitchburg over MA Hwy 2, to junction U.S. Hwy 202, then over U.S. Hwy 202 to junction Pelham Rd., then over Pelham Rd. to junction MA Hwy 116 then over MA Hwy 116 to Springfield, serving all intermediate points. NOTE: Applicant intends to tack the authority herein with its present authorized operations, and seeks to provide regular route service in interstate or foreign commerce, in intrastate commerce, under 49 U.S.C. 10922(c)(2)(b) over the same routes.

MC 161156 (Sub-1), filed March 25, 1983. Applicant: AMERICAN RELOCATION SERVICES, INC., P.O. Box 4350, Hamden, CT 06514. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785-0024. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Vol. No. OP4-198

Decided: March 30, 1983

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 113567 (Sub-6), filed March 25, 1983. Applicant: LACROSSE AND WESTERN STAGES, INC., d.b.a. HIAWATHA COACHES, 2022 Oak St. LaCrosse, WI 54601. Representative: J. G. Dail, Jr., P.O. Box 11, McLean VA 22101, (703) 893-3050. 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 166937, filed March 18, 1983. Applicant: RONALD HOGENSON, 22 37th Ave. South, Moorhead, MN 56560. Representative: Ronald Hogenson, (Same address as applicant), (218) 236-6890. 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 166996, filed March 24, 1983. Applicant: EARL D. PULDA, Route 2, Box 286, Prairie Du Chien, WI 53821. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge #832,

Portage, WI 53901, (608) 742-3579. 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 167007, filed March 24, 1983. Applicant: STEVE JOYCE, Box 203 Canalou, MO 63828. Representative: Billy R. Reid, 1721 Carl St., Ft. Worth, TX 76103, (817) 332-4718. 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 167028, filed March 24, 1983. Applicant: SPECIAL T COACHES, INC., 5194 Island View Dr., Oshkosh, WI 54901. Representative: Phyllis M. Oleson, (same address as applicant), (414) 231-9867. 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 167046, filed March 24, 1983. Applicant: A & F CHARTERS, INC., 123 Dyers St., Providence, RI 02903. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004, (202) 737-1030. Transporting *passengers*, in charter and special operations, between points in CT, DE, DC, ME, MD, MA, NJ, NH, NY, PA, RI, VT and VA.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167056, filed March 25, 1983. Applicant: RITTMAYER TOURS, 21 Ellis St., Haddonfield, NJ 08033. Representative: Benjamin F. Rittmayer, (same address as applicant), (609) 429-2934. Transporting *passengers*, in charter and special operations, beginning and ending at Philadelphia, PA, and extending to points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 5 at 202-275-7289.

Vol. No. OP5-148

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 114878 (Sub-1), filed March 15, 1983. Applicant: JAMES D. WEST, d.b.a.

WEST BUS SERVICE, R.R. 7, Carbondale, IL 62901. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54958, 414-722-2848. 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 148048 (Sub-1), filed March 16, 1983. Applicant: V. & K., Route 3, Box 6281, Columbia KY 42728. Representative: William L. Willis, Suite 702, McClure Bldg., Frankfort, KY 40601, 502-227-7384. 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 160809 (Sub-1), filed March 17, 1983. Applicant: ALTON L. DOCKERY, d.b.a. ABLE CHARTER BUS COMPANY, 6677 Columbus Ave., Riverside, CA 92504. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, 714-867-8107. 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 161869 (Sub-1), filed March 15, 1983. Applicant: NIPPON EXPRESS U.S.A., INC., 645 Fifth Avenue, New York, NY 10022. Representative: Harry A. Gavalas, 127 John Street, New York, NY 10038, 212-344-2083. To operate as a *broker of general commodities* (except household goods), between points in the U.S.

MC 166658, filed March 8, 1983. Applicant: RENT AFFORDABLE, INC., d.b.a. TRI STATE EXPRESS COMPANY, 630 Market St., Mt. Carmel, IL 62863. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, 217-753-3925. 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 166798, filed March 14, 1983. Applicant: PLESS TRAFFIC SALES, INC., 10 Dean Court, Rutherford, NJ 07070. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572-5551. To operate as a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166829, filed March 15, 1983. Applicant: RICHARD CARROLL REMINGTON, 16990 Sandlake Road, Cloverdale, OR 97112. Representative:

Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205, 503-224-4840. 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 HI).

MC 166839, filed March 16, 1983. Applicant: ELVIO SPERDUTO, 8834 Halsted St., San Diego, CA 92123. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055, 206-235-1111. 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).

Agatha L. Mergenovich, Secretary.

[FR Doc. 83-8921 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Proposed Exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 L.C.C. 113 (1982), 47 F.R. 53303 (November 24, 1982).

DATE: Comments must be received within 30 days after the date of publication in the Federal Register.

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.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.
Agatha L. Mergenovich, Secretary.

Volume No. OP3-137

Decided: March 31, 1983.

MC-F 15176. Ronald L. Marquardt, Inc., Purchase Exemption; SHOEMAKER TRUCKING COMPANY.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), Ronald L. Marquardt, Inc. (MC 156283), seeks an exemption from the requirement under 49 U.S.C. 11343 of prior regulatory approval of its purchase of the operating authorities issued to Shoemaker Trucking Company in MC 138875 (Sub-276 and 263, and the portions of paragraphs (1) and (7) of Sub-312X which supercede the Sub-276 and 263).

Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's Representative, David E. Wishney, P.O. Box 837, Boise, ID 83701.

Comments should refer to MC-F 15176.

Petitioners

MC-F 15177. Presto Transportation, Inc., MC 157763, seeks an exemption from the requirement of prior regulatory approval for its purchase of authorities issued Shoemaker Transportation Company in MC 138875 Sub-266F, and 305 and paragraph 59 of Sub-312X which involves the transportation of such commodities as are dealt in by drug and discount stores between 9 counties in 7 States and points in the United States. (This purchase would necessarily entail the transfer of Sub-248F which was superceded by issuance of paragraph 59 of Sub-312X.) *Stewart Trucking Company*, MC-FC 79592, (December 1, 1982). Petitioner's application for temporary lease of the rights sought to be purchased has already been denied.

Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's Representative, David E. Wishney, P.O. Box 837, Boise, ID 83701.

Comments should refer to MC-F 15177.

MC-F 15207. MOTRUX TRANSPORTATION, LTD., Purchase Exemption, MELGAARD FREIGHT SYSTEMS, LTD.

Pursuant to 40 U.S.C. 11343(e), E.M. Brooks Transport Ltd., a wholly owned subsidiary of Motrux Transportation, Ltd. (MC 154912), seeks an exemption from the requirement under section 11343 of prior regulatory approval if its purchase of all of the operating authority of Melgaard Freight Systems, Ltd. (MC 154304), and its subsequent merger with Motrux after the purchase has been consummated.

Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's Representative, Michael

D. Duppenhaler, 211 South Washington Street, Seattle, WA 98104.

Comments should refer to MC-F 15207.

Volume No. OP1-112

Decided: March 29, 1983.

MC-F 15199. CRST, INC., Purchase Exemption, NIGHT HAWK MOTOR TRANSPORT, INC.

CRST, Inc. (MC 114273), seeks an exemption from the requirements under section 11343 of prior regulatory approval for purchase of a portion of the operating rights of Night Hawk Motor Transport, Inc. (MC 147751) authorizing the transportation of general commodities (with exceptions), between points in Chicago, IL, on the one hand, and, on the other, specified cities and points in Ohio.

Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's Representative, Stephen D. Strauss, 2510 Carew Tower, Cincinnati, OH 45202.

Comments should refer to MC-F 15199.

[FR Doc. 83-8926 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP4-195]

Motor Carriers, Republications of Grants of Operating Rights, Authority Prior to Certification; Decision Notice

The following grants of operating authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the *Federal Register*.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 25 days after the date of this *Federal Register* notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if not representative is named.

Agatha L. Mergenovich,
Secretary.

MC 135046 (Sub-27 X), filed July 30, 1982, previously noticed in the *Federal Register* issues of September 14, 1982, September 29, 1982 and March 9, 1983, respectively, and republished as follows: Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Hwy, Smyrna, DE 19977. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. In a decision decided February 3, 1983, Division 1, acting as an Appellate Division, found that with respect to the proposed expansion of its commodity descriptions contained in its former

certificates MC 135046 and Sub-2 and 11 will be modified as follows: from fibre, fibre products, and insulating materials to: food or related products; textile mill products; apparel, or other finished textile products or knit apparel; lumber or wood products, except furniture; pulp, paper or related products; chemicals or related products; clay, concrete, glass or stone products; fabricated metal products except ordnance, machinery and transportation equipment; instruments; photographic goods or optical goods; watches or clocks; waste or scrap materials not identified by producing industry, rubber or miscellaneous plastic products; petroleum or coal products, materials, equipment and supplies used in the manufacture and distribution of the above named commodities.

Note.—(1) If no comments are filed within 25 days of publication, the application will be granted. (2) The purpose of this republication is to include rubber or miscellaneous plastic products; and petroleum or coal products, which was previously omitted from the decision of February 3, 1983, as corrected by Notice to the Parties of March 22, 1983.

[FR Doc. 83-8924 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Temporary Authority Applications

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 name 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-251

The following applications were filed in Region I. Send Protests To: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 890 (Sub-1-2 TA), filed March 18, 1983. Applicant: ADKINS TRUCKING & FREIGHT LINES, INC., 750 Charles Street, P.O. Box 190, Gloucester City, NJ 08030. Applicant's Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. *Contract carrier: irregular routes: Food and related products, materials, equipment and supplies used in the manufacture and distribution of food and related products, between Camden, NJ on the one hand, and, on the other, points in NY, under continuing contract(s) with Campbell Soup Company, Camden, NJ. Supporting Shipper: Campbell Soup Co., 100 Market Street, Camden, NJ 08102.*

MC 166355 (Sub-1-1 TA), filed March 18, 1983. Applicant: MARK TOOTHAKER, d.b.a. B & T TRANSPORT COMPANY, 40 Wilkins Avenue, P.O. Box 709, Wilton, ME 04292. Applicant's Representative: John G. Feehan, 178 Middle Street, Portland, ME 04112. *Contract carrier: irregular routes: Material, supplies and equipment used in the manufacturing, production and distribution of paper and related products under continuing contract(s) with International Paper Co. of New York, NY. Supporting Shipper: International Paper Company, International Paper Plaza, 77 West 45th Street, New York, NY 10036.*

MC 160736 (Sub-1-2 TA), filed March 18, 1983. Applicant: DAVID R. BELL, d.b.a. DAVID R. BELL TRUCKING, 7718 Kendall Road, Pavilion, NY 14525. Applicant's Representative: David R. Bell, (Same as applicant). *Common carrier: irregular routes: Agricultural fertilizer and soil conditioners (1) from Port of Entry on the International Boundary Line Between U.S. and CD on the Niagara River in NY, on the one hand, and, on the other, points in the Counties of Monroe, Livingston, Wyoming, Erie, Niagara, Genesee, Orleans, and Ontario, NY; and (2) between Toledo, OH, Baltimore, MD,*

Mt. Airy, MD, Wilmington, DE, Mt. Jackson, VA, S. Deerfield, MA, on the one hand, and, on the other, points in the Counties of Monroe, Livingston, Wyoming, Erie, Niagara, Genesee, Orleans, and Ontario, NY. Supporting Shipper(s): American Cyanamid Company, One Cyanamid Plaza, Wayne, NJ 07470; Agriturf, Inc., 124 Elm Street, P.O. Box 143, South Deerfield, MA 01373; George S. Terry & Co., Inc., 165 Park Avenue, Brockport, NY 14420; Robb Custom Service, Inc., 3100 Suckerbrook Road, Perry, NY 14530; Crockers Farm Service, Inc., 7591 Seldon Road, LeRoy, NY 14482.

MC 166613 (Sub-1-1 TA), filed March 21, 1983. Applicant: THE CAMELOT COURIER, LTD., Gold Road South, Elizaville, NY 12523. Applicant's Representative: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410. *Cancelled checks, cash letters, letters of credit, and audit accounting media, EDP printouts and tab cards, Between Philadelphia, PA, on the one hand, and on the other, New York and Albany, NY, and points in their commercial zones. Supporting Shipper: Philadelphia National Bank, 4th and Market Streets, Philadelphia, PA 19107.*

MC 166203 (Sub-1-2 TA), filed March 17, 1983. Applicant: CUSTOMIZED TRANSPORTATION, INC., 54 Sheridan Avenue, Elmira Heights, NY 14903. Applicant's Representative: Dixie C. Newhouse, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier: irregular routes: (1) Wines, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Hammondsport, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with The Taylor Wine Company, Inc., Hammondsport, NY; (2) Food and related products, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Macedon, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. in and east of IN, KY, TN, GA, FL and KS, under continuing contract(s) with Richardson Foods, Macedon, NY; (3) Iron valves and fire hydrants, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Elmira, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Kennedy Valve Division ITT Grinnell Valve Co., Inc., Elmira, NY; (4) Wines, including materials, equipment and*

supplies used in the manufacture, sale and distribution thereof, between Hammondsport, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Gold Seal Vineyard, a division of Joseph E. Seagram & Sons, Inc., Hammondsport, NY; (5) Confectionary candies, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Johnson City, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Fairplay Caramels, Inc., Johnson City, NY; (6) Mobile home accessories, between Gillette, PA, including its commercial zone, on the one hand, and, on the other, points in MI, IN, WI, IL, VA, WV, KY, MD, DE, NJ, OH, NY, MA, CT, RI, VT, NH and ME, under continuing contract(s) with Dura-Bilt Products, Inc., Gillette, PA; (7) Wooden ladders, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Bath, NY, including its commercial zone, on the one hand, and on the other, points in the U.S. in and east of WI, IL, KY, TN, and MS, under continuing contract(s) with W. W. Babcock, Co., Inc., Bath, NY; (8) Office fixtures and supplies, between Sidney, NY, including its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Keith Clark, Inc., Sidney, NY; (9) Glass bottles and containers, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Lawrenceburg, IN, Tampa, FL, Streator, IL, Wharton, NJ, Elmira, NY and Saugas, CA, including their respective commercial zones, on the one hand, and, on the other points in the U.S. (except AK & HI) under continuing contract(s) with Thatcher Gless Corp., Elmira, NY; and (10) Adhesives, caulking and sealants, including materials, equipment and supplies used in the manufacture, sale and distribution thereof, between Bainbridge, NY, including its commercial zone, on the one hand, and, on the other points in the U.S. (except AK & HI), under continuing contract(s) with Borden, Inc., Consumer Products Division, Bainbridge, NY. SUPPORTING SHIPPER(S): There are 10 statements of support with this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 155370 (Sub-1-4 TA), filed March 17, 1983. Applicant: KEM CONTRACT CARRIERS, INC., Kirkwood Industrial

Park, P.O. Box 1245, Binghamton, NY 13902-1245. Applicant's Representative: Donald C. Carmien, Esq., Suite 501 Midtown Mall, 15 Chenango Street, P.O. Box 1922, Binghamton, NY 13902-1922. *Contract carrier:* irregular routes: *Medical supplies*, from Ocala, FL, Sumter, SC, Indianapolis, IN, Broken Bow, Columbus and Holdrege, NE, to Fairfield and Parsippany, NJ, and Canaan, CT, under continuing contract(s) with Becton Dickinson Co., Inc. of Rutherford, NJ. Supporting Shipper(s): Becton Dickinson Co., Inc., Box 809, Stanley Street, Rutherford, NJ, 07070.

MC 166867 (Sub-1-1 TA), filed March 18, 1983. Applicant: L'EXPRESS DU MIDI, INC., 1076 Union Street, P.O. Box 99, St. Catherine, Quebec, CD JOLIEO. Applicants's Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Contract carrier:* irregular routes: *Such commodities as are dealt in or used by retail home improvement and building materials centers*, between points of entry on the International Boundary line between the U.S. and CD, in NY, VT, NH and ME, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, VT, VA, WI, WV and DC, under continuing contract(s) with Grossman's Division of Evans Products, Braintree, MA. Supporting Shipper: Grossman's Division of Evans Products, Route 3, Union Street Ext., Braintree, MA 02184.

MC 151193 (Sub-1-45 TA), filed March 17, 1983. Applicant: PAULS TRUCKING CORPORATION, 288 Homestead Avenue, Avenel, NJ 07001. Applicants's Representative: Michael A. Beam; (Same as applicant). *Contract carrier:* irregular routes: *Freight, all kinds, (except Class A & B explosives, household goods as defined by the Commission, in bulk)*, from points in NY to points in CA and IL, under continuing contract(s) with Daylight Transport, Inc., Maspeth, NY. Supporting Shipper: Daylight Transport, Inc., 66-00 Long Island Expressway, Maspeth, NY 11378.

MC 166858 (Sub-1-1 TA), filed March 17, 1983. Applicant: PRIMA MESSENGER & TRUCKING SERVICE, INC., d.b.a. PRIMA TRUCKING SERVICE, Station Road, P.O. Box 582, Cranbury, NJ 08512. Applicant's Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Paper and plastic products, toys, metal products, chemicals and related products, machinery and food and kindred products, (except commodities in bulk and hazardous materials)*, between New York, NY Commercial Zone and Mercer County, NJ, on the one

hand, and, on the other, points in CT, DE, DC, MA, MD, NJ, NY, PA, RI, and VA. Supporting Shipper(s): There are 7 statements of support with this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 166927 (Sub-1-1 TA), filed March 22, 1983. Applicant: GARY F. SEXTON, INC., d.b.a. SEXTON TRUCKING, 56½ Front Street, Holyoke, MA 01040. Applicant's Representative: Patrick A. Doyle, Esq., 40 Sky Ridge Lane, Springfield, MA 01128. *Contract carrier:* irregular routes: *Plastic and glass materials*, from Holyoke, MA to points in CT, RI, NY, NJ, and NH, under continuing contract(s) with Halmar Distributors of Holyoke, MA. Supporting Shipper: Halmar Distributors, 49 Garfield Street, Holyoke, MA 01041.

MC 163232 (Sub-1-1 TA), filed March 17, 1983. Applicant: VERMONT WILSON LIMITED 156 Porter Place, Rutland, VT 05701. Applicant's Representative: John P. Monte, P.O. Box 686, Barre, VT 05641. *Contract carrier:* irregular routes: *Such merchandise as is dealt with by the manufacturers and distributors of overhead garage doors* between points in the U.S. under continuing contract(s) with Clopay Corporation, Ludlow, VT. Supporting Shipper: Clopay Corp., P.O. Box 235, Deane Brown Industrial Park, Ludlow, VT 05149.

The following applications were filed in Region 6. Send Protests To: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 167022 (Sub-6-1 TA), filed March 24, 1983. Applicant: GRANT C. BECKSTRAND, 558 Fifth St. Wells, NV 89835. Applicant's Representative: (Same as applicant). *General commodities* excepting hazardous materials between points in White Pine, Elko, and Eureka Counties, NV; and points in Twin Falls County, ID, and Tooele, Davis, and Salt Lake Counties, UT for 270 days. Supporting Shippers: INDEPENDENT MEAT COMPANY; Box EE Orchard Drive, Twin Falls, ID 83301; GEM EQUIPMENT, INC.; Box 149, Twin Falls, ID 83301; TWIN VALLEY EQUIPMENT, INC.; Rt. #3 Kimberly Road, East, Twin Falls, ID 83301.

MC 167023 (Sub-6-1 TA), filed March 24, 1983. Applicant: E.J. TRUCKING, 4886 Escapardo Way, Colorado Springs, CO. 80917. Applicant's Representative: Emil Jay Zadina and Bonnie J. Zadina, (same as applicant). *Contract Carrier,* irregular routes: *Insulation and related materials*, from Wyandotte County, KS to points in CO for the account of Western Insulation Inc., for 270 days. Supporting Shipper: Western Insulation

Inc., 2872 S. Shoshone St., Englewood, CO ZIP 80110.

MC 135887 (Sub-6-1 TA), filed March 24, 1983. Applicant: VOYNE E. GLEASON, P.O. Box 1051, Hayden Lake, ID 83835. Applicant's Representative: Michael D. Duppenhaler, 211 S. Washington St., Seattle, WA 98104. *Malt Beverages and Wine*, between points in CA, OR and WA, on the one hand, and, on the other, points in ID for 270 days. An underlying ETA seeks 120 days authority. Supporting Shippers: Beck Dist. Inc., Box 405, St. Maries, ID. Doug Somers Dist., 1531 N.W. Blvd., Coeur d'Alene, ID. Mokey Dist. Co., Inc., 404 E. Portland, Kellogg, ID.

MC 167002 (Sub-6-1 TA), filed March 23, 1983. Applicant: J & D TRUCKING, INC., 30567 Watts Valley Rd., Tollhouse, CA 93667. Applicant's Representative: Johnie Crouch, 5631 E. Olive Ave., Fresno, CA 93727. *Contract carrier,* irregular routes, *general commodities* (except class A&B explosives, commodities in bulk) between Fresno, CA and points in the U.S. (except AK and HI) for the accounts of Dakota Supply Co., Inc.; Redmond Lumber & Drywall; Steve L. Johnson Lumber; Olympic Cascade Corp.; Fresno Drywall and Supplies, Inc.; J&J Cedar Products, Inc.; and Gold Bond Building Products for 270 days. Supporting Shippers: There are 7 shippers. Their statements may be examined in the office listed.

MC 167020 (Sub-6-1 TA), filed March 24, 1983. Applicant: JUAN NAVA, d.b.a. NAVA TRUCKING, 930 Pualine Ave, Calexico, CA 92231. Representative: Juan Nave, (same address as applicant). *Contract Carrier,* irregular routes: *Lead acid batteries, component parts for the manufacture of batteries* between Santa Ana, CA and the US Border at Calexico, CA for the account of Elpower Corporation for 270 days. Supporting Shipper: Elpower Corporation, Ave Galaxia #70 Parque Industrial Mexicali Mexicali, B.C. MX.

MC 138624 (Sub-6-6 TA), filed March 24, 1983. Applicant: CLIFF REED, INC., 510 Willow Creek Rd., Corvallis, MT 59828. Applicant's Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701. *Fertilizer*, (1) from points in WA to points in ID and MT; (2) from points in ID to points in MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper(s): Deer Lodge Livestock Market, 524 Conley, Deer Lodge, MT 59722.

MC 167053 (Sub-6-1 TA), filed March 25, 1983. Applicant: LARRY VAN HOY, d.b.a. L. VAN HOY TRUCKING, P.O. Box 133, Rufus, OR 97050. Applicant's Representative: Lawrence V. Smart, Jr.,

419 N W 23rd Av, Portland, OR 97210.
Contract Carrier: Irregular routes: *paper and paper articles and materials and supplies* used in the manufacture and distribution of paper and paper articles, between points in OR, WA, NV, CA and AZ, for 270 days. Supporting Shipper: Superior Transportation Systems, Inc., 25200 S W Parkway, Wilsonville, OR 97070.

MC 166653 (Sub-6-1 TA), filed March 25, 1983. Applicant: RAMON MEJIA, d.b.a., MEJIA TRUCKING, 11846 Arminta St., North Hollywood, CA 91605. Representative: Ramon Mejia, (same address as applicant). **Contract Carrier:** Irregular routes: *Furniture and materials used in the manufacture of same* between Whittier, CA and points in AZ, NV, OR and WA for the account of Universal Furniture for 270 days. Supporting Shipper: Universal Furniture, 2690 Pellissier Place, Whittier, CA 90601.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8927 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30128]

Rail Carriers; Burlington Northern Railroad Co. and Denver & Rio Grande Western Railroad Co.; Trackage Rights Exemption Bragdon to Pueblo Junction, CO.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the trackage rights agreement between Burlington Northern Railroad Company and The Denver & Rio Grande Western Railroad Company to operate over 810 feet and 10 miles of track between Bragdon and Pueblo Junction, CO.

DATES: This exemption will be effective on April 6, 1983. Petitions to reopen must be filed by April 26, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30128 to: (1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423. (2) Petitioner's representatives: Peter M. Lee, 176 East Fifth Street, St. Paul, MN 55101. John S. Walker, P.O. Box 5482, Denver, CO 80217.

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, write to T. S.

InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Dated: March 30, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre was absent and did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8928 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29518 (Sub-1)]

Rail Carriers: Midwestern Rail Properties, Inc., Subsidiary of Chicago and North Western Transportation Co.; Purchase (Portion)— Chicago, Rock Island and Pacific Railroad Co., Debtor; Lines in Minnesota, Iowa, and Missouri

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration and proceedings scheduled.

SUMMARY: The Commission is accepting for consideration the application of Midwestern Rail Properties, Inc., subsidiary of Chicago and North Western Transportation Company, to purchase certain properties of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), located in MN, IA, and MO. The Commission is also setting a schedule for the proceeding, and will issue a final decision by June 20, 1983. Related petitions for exemption under 49 U.S.C. 10505 have also been filed and will be considered with the purchase application.

DATE: Sworn statements supporting or opposing the application or seeking other relief must be filed by April 26, 1983. Sworn statements in response must be filed by May 6, 1983.

ADDRESS: An original and 10 copies of all statements referring to Finance Docket No. 29518 (Sub-1) should be sent to: Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423, Attention: Midwestern Rail Properties, Inc.

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, write T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289-357 (D.C.

Metropolitan area) toll free (800) 424-5403.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 83-8929 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-1-M

Motor Carriers; Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the Federal Register on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the Federal Register December 31, 1980. For compliance procedures, see 49 CFR 1170.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the Federal Register on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions)

we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under

contract." 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 noted.

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-148

Decided: March 29, 1983.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell (Member Krock not participating).

MC 29843 (Sub-22), filed March 23, 1983. Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Ave., Massena, NY 13662. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, 212-466-0220. Transporting *metal products*, between points in St. Lawrence County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 96993 (Sub-2), filed March 8, 1983. Applicant: STANLEY TRUCKING CO., INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: Charles R. Reilly, 391 Davisville Rd. North Kingstown, RI 02852, 401-884-0969. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, MA, and RI. Condition: Issuance of a certificate in this proceeding is conditioned upon the coincidental cancellation of Certificate of Registration No. MC-96993 Sub 1, issued December 27, 1983.

MC 110683 (Sub-207), filed March 8, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Ave., NW., Washington, DC 20005, (202) 783-8131. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Emerson Electric Company, of St. Louis, MO.

MC 123263 (Sub-20), filed March 7, 1983. Applicant: FLOYD R. WANGERIN and LORRAINE C. WANGERIN, d.b.a. WANGERIN TRUCKING CO., R.R. 2, Stephenson, MI 49887. Representative: Michael S. Varda, 121 So. Pinckney St., Madison, WI 53703, (608) 255-8891. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the Upper Peninsula of MI in and west of Delta and Alger Counties, MI, and points in Brown, Eau Claire, Florence, Forest, Marinette, Oconto, Oneida and Vilas Counties, WI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 154643 (Sub-2), filed March 10, 1983. Applicant: KLINK TRUCKING, INC., Route 1, Box 345, Pleasant Lake, IN 46779. Representative: Robert B. Hebert, One Indiana Sq., Suite 1600, Indianapolis, IN 46204, (317) 632-6262. Transporting *chemicals and related products*, between points in OH, on the one hand, and, on the other, points in IN and MI.

MC 163563 (Sub-1), filed March 10, 1983. Applicant: ITOFCA CONSOLIDATORS, INC., 1001 W. 31st St., Downers Grove, IL 60515. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, (312) 263-1600. As a *broker of household goods*, between points in the U.S. (except AK and HI).

Volume No. OP2-149

Decided: March 25, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing (Member Carleton not participating).

MC 2202 (Sub-686), filed March 18, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 202-986-1410. 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 Kendavis Industries International, Inc., of Fort Worth, TX.

MC 2202 (Sub-687), filed March 18, 1983. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, 202-986-1410. 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 Chrysler Corporation, of Detroit, MI.

MC 18192 (Sub-2), filed March 15, 1983. Applicant: C. BAIN, INC., 154 Pleasant St., Lynn, MA 01901. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960, 617-535-5430. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Honeywell, Inc., of Brighton, MA.

MC 52793 (Sub-127), filed March 18, 1983. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A.

Gallagher (same address as applicant), 312-547-2184. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Union Pacific Railroad Company, of Omaha, NE.

MC 69833 (Sub-168), filed March 18, 1983. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Ave., NW, Grand Rapids, MI 49503. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226, 313-496-3534. 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 Montgomery Ward & Co., of Chicago, IL.

MC 121293 (Sub-6), filed March 9, 1983. Applicant: PHILIP E. REEDY d.b.a. VALLEY TRANSFER; Elkhorn, NE 68022. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, 402-397-9900. Transporting *such commodities* as are dealt or used by manufacturers and distributors of (a) iron and steel articles, (b) irrigation systems, (c) light poles, (d) heating and cooling systems, and (e) sewage and waste treatment systems, between points in the U.S. (except AK and HI).

MC 149283 (Sub-3), filed March 8, 1983. Applicant: HAYWARD TRUCKING, INC., 6549 Robinson Rd., Jacksonville, FL 32217. Representative: Norman J. Bolinger, 3100 University Blvd., S., Ste. 225, Jacksonville, FL 32216, 904-724-7539. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, NE, NY, NC, OH, OK, PA, SC, TN, TX, VA, and WV.

MC 162253, filed March 8, 1983. Applicant: SUPREME CARRIERS, INC., P.O. Box 918, So. Sioux City, NE 68776. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, 402-397-9900. Transporting (1) *non-metallic minerals*, between points in NE, on the one hand, and, on the other, points in IL, WI, MN, IA, MO, KS, SD, and CO; (2) *such commodities* as are dealt in or used by manufacturers and distributors of building materials, between points in Woodbury County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI); (3) *such commodities* as are dealt in or used by manufacturers and distributors of railroad products, between points in Dodge County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI); (4) *petroleum, natural gas, and their products, chemicals and related products, and*

electrical machinery, equipment, and supplies, between points in Woodbury County, IA, on the one hand, and, on the other, Chicago, IL, St. Paul, MN, Omaha, NE, and points in Lancaster County, NE and Saline County, KS; (5) *plastic products, machinery, and metal products*, between points in NE and IA, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (6) *wood products*, between points in CO, MN, NE, SD, WI, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164513 (Sub-1), filed March 11, 1983. Applicant: LOGISTICAL TRANSPORTATION COMPANY, INC., P.O. Box 40001, Jacksonville, FL 32203-0001. Representative: Marion Graham, Jr., 1824 Lindsey Rd., Jacksonville, FL 32205, 904-781-1787. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, FL, GA, LA, MS, NC, and SC.

MC 165102, filed March 11, 1983. Applicant: PORT VINCENT TRUCK LEASING, INC., Route 3, Box 387, Denham Springs, LA 70728. Representative: Mary Thigpen Gourdon (same address as applicant), 504-698-3425. Transporting *carpet, tile, grout, and cement products*, between points in the U.S., under continuing contract(s) with Bolick Distributors, Inc., of Baton Rouge, LA.

MC 166752, filed March 11, 1983. Applicant: LORAN J. CRITCHETT & SONS, (& SUZYI), INC., 4140 West 127th St., Alsip, IL 60658. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, 312-782-8880. Transporting *motor vehicles*, between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166763, filed March 14, 1983. Applicant: FAR NORTH DELIVERY, INC., 8290 Country Woods Dr., Anchorage, AK 99502. Representative: Jack R. Davis, 1200 IBM Bldg., Seattle, WA 98101, 206-624-7373. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AK.

MC 166902, filed March 21, 1983. Applicant: TONY GONZALES TRUCKING, INC., P.O. Box 206, Escalon, CA 95320. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207, 209-957-6128. Transporting (1) *ores and minerals*, (2) *chemicals and related products*, (3) *clay, concrete, glass or stone products*, and (4) *waste or scrap materials not identified by industry*

producing, between points in AZ, CA, ID, MT, NV, OR, UT, WA, and WY.

MC 166773, filed March 14, 1983. Applicant: TRANS BUS, INC., Rural Route 2, Liberty, IN 47353. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204, 317-638-1301. Transporting *transportation equipment*, between points in the U.S. (except HI).

Volume No. OP 2-151

Decided: March 28, 1983.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell. (Member Krock not participating.)

MC 61403 (Sub-300), filed March 9, 1983. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, TN 37662. Representative: W. C. Mitchell, 370 Lexington Avenue, New York, NY 10017, 212-532-5100. 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 Union Carbide Corporation, of Danbury, CT.

MC 107012 (Sub-809), filed March 23, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, (same address as applicant), 219-429-2110. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with General Electric Company, of Bridgeport, CT.

MC 116503 (Sub-10), filed March 21, 1983. Applicant: B. R. SCHOLL & SONS, INC., 2301 Fifth Street, Perksie, PA 18944. Representative: Francis W. Doyle, 323 Maple Avenue, Southampton, PA 18966, 215-357-7220. Transporting *chemicals and related products, and (2) ores minerals*, between points in DE, MD, NJ, NY, OH, PA, VA and WV.

MC 120302 (Sub-5), filed March 22, 1983. Applicant: KNOX TRUCK LINES, INC., P.O. Box 2427, Grand Prairie, TX 75051. Representative: Fred Knox, (same address as applicant), 214-263-1343. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, FL, GA, IL, IN, IA, KY, TN, and NE.

MC 136713 (Sub-30), filed March 21, 1983. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Rd., N.E., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., (same address as applicant), 616-364-6131. Transporting *petroleum and*

petroleum products between points in the U.S. (except AK and HI), under continuing contract(s) with Amoco Oil Company, of Chicago, IL.

MC 160492, filed March 17, 1983. Applicant: CLEATUS P. JONES, 411 North Beverly Drive, Wichita Falls, TX 76305. Representative: Cleatus P. Jones (same address as applicant), 817-723-5888. Transporting *clay, concrete, glass or stone products*, between points in Wichita County, TX, and Comanche, Caddo, and Cotton Counties, OK.

MC 161833 (Sub-2), filed March 14, 1983. Applicant: MARSON TRUCKING CO., 317 A Leroy Avenue Molalla, OR 97038. Representative: Frank J. Marson, Jr. (same address as applicant), 503-829-2700. Transporting (1) *metal products* and (2) *machinery*, between points in OR, WA, CA, and NV.

MC 162913, filed March 8, 1983. Applicant: MARCUS TRUCKING, INC., 6909 W. 64th Place, Chicago, IL 60638. Representative: John T. O'Connell, 521 S. LaGrange Rd., LaGrange, IL 60525, 312-352-7220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in OH, IN, MI, WI, IA, MO, KY, PA, MN, and WV.

MC 166072, filed March 7, 1983. Applicant: TRAFFIC WEST FREIGHT SYSTEMS, INC., 1225 Sixth Street, San Francisco, CA 94107. Representative: Michael Leiden, P.O. Box 421636, San Francisco, CA 94142, (415) 431-0642. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in CA.

MC 166353, filed March 17, 1983. Applicant: KEN-GO SERVICES, INC., Rte. 2, Parish Rd. 3-5, P.O. Box 1018, Abbeville, LA 70510. Representative: Janet Boles Chambers, 8211, Goodwood Boulevard, Suite C-1, Baton Rouge, LA 70806, 504-924-2686. Transporting *Mercer Commodities*, between points in the U.S. (except AK and HI).

MC 166623, filed March 7, 1983. Applicant: LEE BASSFORD TRUCKING, INC., 5121 S.W. 90th Ave., Cooper City, FL 33328. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166, (305) 592-0036. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AD and HI), under continuing contract(s) with F.T.S., Inc., of Ft. Lauderdale, FL.

MC 166673, filed March 7, 1983. Applicant: KINDLE'S PICK-UP AND

DELIVERY SERVICE, INC., 4975 Seward R., Pfafftown, NC 27040. Representative: Marion G. Follin III, 700 Southeastern Bldg., Greensboro, NC 27401, 919-274-2992. Transporting (1) *tobacco and tobacco products*, between Winston-Salem, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with R. J. Reynolds Tobacco Company, of Winston-Salem, NC; and (2) *aluminum foil, packaging materials, and aluminum sheet materials*, between Winston-Salem, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with RJR Archer, Inc., of Winston-Salem, NC.

MC 166692, filed March 9, 1983. Applicant: ALASKA VEHICLE TRANSPORT, 9540 Arlene Dr., Anchorage, AK 99502. Representative: Philip C. Blackstone (same address as applicant), (907) 243-8787. Transporting *motor vehicles*, between points in AK, on the one hand, and, on the other, points in the U.S. (except HI).

MC 166882, filed March 17, 1983. Applicant: KEENAN COTTON GIN & GRAIN ELEVATOR, INC., 401 Front St., Dardanelle, AR 72834. Representative: James M. Duckett, Suite 411-221 W. 2d St., Little Rock, AR 72201, 501-375-3022. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, on the one hand, and, on the other, points in AL, TN, MS, LA, TX, OK, MO, KS, NE, IA, IL, FL, ND, SD, MN, and MI.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-109

Decided: March 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing (Member Carleton not participating).

MC 127690 (Sub-3(B)), filed March 17, 1983. Applicant: MONTANA TRANSPORT COMPANY, P.O. Box 1292, Billings, MT 59103. Representative: Oliver L. Ewen (same address as applicant), (406) 248-3694. Transporting (1) *salt*, between points in UT, on the one hand, and, on the other, points in MT, ND, ID, and WA, (2) *clay, concrete, glass or stone products*, between points in MT, WY, ND, SD, MN, IL, WI, TX, OK, ID, WA, CA, NE, KS, OR, CO, IN and MI, and (3) *such commodities* as are dealt in or used by manufacturers and distributors of building materials, between points in the U.S. (except AK and HI).

Note.—Applicant has also filed for authority under the fitness procedures docketed MC 127690 (Sub 3(A)), published in this same Federal Register issue.

MC 148581 (Sub-4), filed March 7, 1983. Applicant: BUDD TRANSPORTATION SERVICES, INC., 5350 Paschall Ave., Philadelphia, PA 19143. Representative: Brian S. Stern, 5411-D Backlick Rd., Springfield, VA 22151, (703) 941-8200. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of hardware, electrical appliances, tools, radios, sound equipment, sporting goods, house furnishings, and automobile accessories, (2) *metal products*, and (3) *clay, concrete, glass, or stone products*, between points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is conditioned upon prior or coincidental cancellation at applicant's written request of permit Nos. MC 30561 issued April 9, 1973, MC 30561 (Sub-No. 3) issued February 1, 1977, and MC 148581 (Sub-No. P3)X, issued April 7, 1982. Note. This application seeks conversion of existing contract authority under 49 U.S.C. 10925(e).

MC 153981 (Sub-2(B)), filed March 2, 1983. Applicant: LEeway FLEET LINES, INC., 1218 Chestnut St., Suites 1008-09, Philadelphia, PA 19107. Representative: Curtis J. Lee, Jr. (same address as applicant), (215) 592-8296. Over regular routes, transporting *passengers*, (1) between Fort Dix, NJ, and Philadelphia International Airport, at or near Philadelphia, PA, from Fort Dix, over NJ Hwy 68 via Maguire Air Force Base, at or near Wrightstown, NJ, to junction U.S. Hwy 206, at Mansfield Square, NJ, then over U.S. Hwy 206 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction Interstate Hwy 76, then over Interstate Hwy 76 via the Walt Whitman Bridge to junction Interstate Hwy 95, then over Interstate Hwy 95 to Philadelphia International Airport, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route. Applicant has also filed for authority under the fitness criteria, docketed MC 153981 (Sub 2(A)), published in this same Federal Register issue.

MC 161990 (Sub-2) filed March 18, 1983. Applicant: C & G TRUCKING CORPORATION, P.O. Box 39142, Chicago, IL 60639. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782-8880. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points on the U.S. (except AK and HI).

MC 165400, filed March 18, 1983.
Applicant: MCDARIES TRUCKING COMPANY, INC., Route 3, Box 69C, Big Stone Gap, VA 24219. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526, (304) 562-3460. 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 Plum Creek, Inc., Hardwoods Division, of Kenova, WV.

MC 166580, filed March 1, 1983.
Applicant: ROBERT L. CAMPBELL, d.b.a. BILL'S MOVERS, 9225 Idlewild Dr., Highland, IN 46322. Representative: Robert L. Campbell (same address as applicant), (219) 838-0731. Transporting *household goods*, between points in the U.S. (except AK and HI).

MC 166601, filed March 4, 1983.
Applicant: FRANCIS PRASHAW d.b.a. DKB TRANSPORTATION CO., Route 1, Richville, NY 13681. Representative: Robert J. Leader, 107 East Main St., Gouverneur, NY 13642-0013, (315) 287-2000. Transporting *metal products*, between Winchester, VA, and points in Broome and St. Lawrence Counties, NY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Cives Steel Company, of Atlanta, GA.

MC 166830, filed March 15, 1983.
Applicant: DENVER MOVING & STORAGE, INC., 2030 South Dahlia St., Denver, CO 80222. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036, (202) 785-0024. Transporting *household goods, and furniture and fixtures*, between points in AZ, AR, CA, CO, ID, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY.

MC 166840, filed March 17, 1983.
Applicant: ARIZONA'S FINEST TRANSPORTATION CO., INC. d.b.a. A-ONE MOBILE HOME MOVERS, 3037 W. Clarendon, Phoenix, AZ 85017. Representative: Lewis P. Ames, United Bank Tower, Suite 1302, 3300 N. Central Ave., Phoenix, AZ 85012, (602) 277-3288. Transporting (1) *mobile homes*, (2) *trailers*, and (3) *buildings in sections, mounted on wheeled undercarriages*, between points in AK, CO, IA, ID, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, AZ, CA, UT, WA, and WY.

Volume No. OP1-113

Decided: March 29, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating.)

FF 681, filed March 22, 1983.
Applicant: ALOHA WORLDWIDE FORWARDERS, INC., 2722 Kilihaui St., Honolulu, HI 96819. Representative: Alan F. Wohlsteiter, 1700 K St., N.W., Washington, DC 20006 (202) 833-8884. 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 47171 (Sub-230), filed March 22, 1983. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant) (803) 879-2101. 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 Rexnord, Inc., of Milwaukee, WI.

MC 93711 (Sub-3), filed March 22, 1983. Applicant: WALLINGTON MOTOR LINES, INC., P.O. Box 423, Clifton, NJ 07105. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904 (201) 572-5551. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between New York, NY, on the one hand, and, on the other, points in CT, MA, NJ, NY, PA, and RI.

MC 111710 (Sub-10), filed March 22, 1983. Applicant: ARKANSAS TRANSIT CO., INC., 1400 South Crutcher, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902 (501) 782-1001. Transporting *containers and packaging materials*, between points in AR, IA, IL, IN, KS, KY, LA, MS, MO, NE, OH, OK, TN and TX.

MC 129480 (Sub-57), filed March 21, 1983. Applicant: TRI-LINE EXPRESSWAYS, LTD., 9559-40 Street, S.E., P.O. Box 1212, Station "T", Calgary, Alberta, Canada T2H 2J1. Representative: James W. Cooper (same address as applicant) (403) 279-7070. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

MC 152180 (Sub-3), filed March 21, 1983. Applicant: CONTAINER EXPRESS, INC., 2700 Palmyra Rd., P.O. Box 1974, Albany, GA 31702. Representative: Norman L. Underwood, 1400 Candler Bldg., 127 Peachtree St., N.E., Atlanta, GA 30043 (404) 858-8101. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in GA and AL.

MC 162900 (Sub-2), filed March 21, 1983. Applicant: BEN R. COX, d.b.a. COX TRUCKING COMPANY, 414 South Road, P.O. Box 5105, High Point, NC 27262. Representative: Jean H. Cox (same address as applicant) (919) 889-4311. Transporting *fibreboard boxes*, between points in the U.S. (except AK and HI), under continuing contract(s) with Container Corporation of America, of Stone Mountain, GA.

MC 165290 (Sub-2), filed February 25, 1983. Applicant: GRIFFIN TRUCKING, INC., Route 3, Box 424, Greencastle, IN 46135. Representative: Michael D. McCormick, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204 (317) 638-1301. Transporting (1) *such commodities* as are dealt in or used by wholesale and retail grocery and food business houses, between points in AR, IA, IL, IN, KY, MI, MN, MO, OH, TN and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *machinery*, between points in AR, IA, IL, IN, MI, MN, MO, MS, OH, PA, TX and WI.

MC 165431, filed March 22, 1983.
Applicant: RAPID TRANSPORT, INC., P.O. Box 23, U.S. Highway 285, Orla, TX 79770. Representative: Fred J. Raymond, P.O. Box 22, Robinson's Camp, Orla, TX 79770 (915) 273-4421. Transporting *water and chemicals*, between points in Loving County, TX, on the one hand, and, on the other, points in Eddy and Lea Counties, NM.

MC 165871, filed March 17, 1983.
Applicant: HUGO NEU STEEL TRANSPORTATION, INC., 4221 W. 700 So., Salt Lake City, UT 84104. Representative: Bill Milner (same address as applicant) (801) 973-8665. Transporting *metal products*, between points in AZ, CA, NV, UT and WY.

MC 166900, filed March 21, 1983.
Applicant: POOL DISTRIBUTION, INC., 11502 S. Main Street, Suite 230, Houston, TX 77025. Representative: Ronald E. Messner (same address as applicant) (713) 666-7307. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in TX.

MC 166940, filed March 22, 1983.
Applicant: HILLER FREIGHT, INC., 29870 Middlebelt, Farmington Hills, MI 48018. Representative: Sherman Hirschman, (same address as applicant) (313) 851-2140. Transporting *coal and coal products*, between points in Letcher County, KY, on the one hand, and, on the other, points in Brown County, WI.

For the following, please direct status calls to Team 3, (202) 275-5223.

Volume No. OP3-129

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 67234 (Sub-81), filed February 8, 1983, previously noticed in the *Federal Register* issue on March 1, 1983. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 So. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with ANG Coal Gasification Company of Detroit, MI.

Note.—The purpose of this republication is to correct the name of the supporting shipper.

MC 120875 (Sub-3), filed March 10, 1983. Applicant: OVERPECK TRUCKING COMPANY, a Corporation, 2520 Summit Ave., P.O. Box 141, Overpeck, OH 45055. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus OH 43215, (614) 228-1541. Transporting *commodities in bulk*, between points in OH. On the one hand, and, on the other, points in IN, KY, MI, OH, PA, and WV.

MC 146965 (Sub-7), filed March 15, 1983. Applicant: REDDING LUMBER TRANSPORT, INC., 4161 Eastside Rd., Redding, CA 96001. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228-3807. Transporting *food and related products*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY, and TX.

MC 159784 (Sub-2), filed March 10, 1983. Applicant: ROCHESTER ARMORED CAR CO., INC., 1441 North 11th St., Omaha, NE 68101. Representative: Robert M. Cimino, 3035 South 72nd St., Suite 200, Omaha, NE 68124, (402) 393-5005. Transporting *coin, currency, securities, bank related items, and other valuables*, between points in the U.S. (except AK and HI).

Vol. No. OP3-130

Decided: March 26, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier (Member Parker not participating.)

W-104 (Sub-31), filed March 9, 1983. Applicant: DRAVO MECHLING CORPORATION, One Oliver Plaza, Pittsburgh, PA 15222. Representative: William F. King, Suite 304, Overlook Bldg., Alexandria, VA 22312 (703) 750-1112. Transporting by water by non-self-propelled vessels with the use of separate towing vessels, in the

transportation of *general commodities*, and by towing vessels in the performance of towage: (1) between ports and points on the Arkansas, Cumberland, Illinois, Mississippi, Missouri, Ohio, Ouachita, Red, Tennessee, Tombigbee, Black Warrior Rivers, and (2) Lake Michigan; between Milwaukee, WI and Burns Harbor, IN; and (3) the Gulf of Mexico, between Key West, FL and Brownsville, TX and all tributary and connecting waterways to the aforementioned waterways and channels; (4) between ports and points on the Atlantic, Gulf and Pacific coasts and all tributary and connecting waterways and channels; and (5) between ports and points in (1), (2) and (3) above, on the one hand, and, on the other, ports and points in (4) above.

MC 1745 (Sub-18), filed March 11, 1983. Applicant: INTERSTATE VAN LINES, INC., 5801 Rolling Rd., West Springfield, VA 21152. Representative: Marshall Kragen, 1919 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20006, (202) 466-3778. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Loral Microwave, Inc., of San Diego, CA.

MC 113855 (Sub-544), filed March 17, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, MN 55903. Representative: Leonard L. Bennett, (same address as applicant), (507) 288-3331. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Oerlikon Motch Corporation and its affiliates and subsidiaries of Cleveland, OH.

MC 121385 (Sub-4), filed March 15, 1983. Applicant: LITTLE DIXIE XPRESS, INC., P.O. Box 169, Thomas, OK 73669. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424-3301. Transporting (1) *metal products, machinery, Mercer commodities, and chemicals and related products*, between points in AR, CO, KS, LA, MT, ND, NE, NM, NV, OK, SD, TX, UT, and WY, and (2) *such commodities* as are dealt in by retail and discount stores, between points in OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128205 (Sub-112), filed March 8, 1983. Applicant: BULK MATIC TRANSPORT COMPANY, a Corporation, 12000 South Doty Ave., Chicago, IL 60628. Representative: E. Stephen Heasley, 1919 Pennsylvania

Ave., N.W., Washington, DC 20006, (202) 828-5015. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contracts with (a) Cereal Food Processors, Inc., of Shawnee Mission, KS, (b) Chicago Sweeteners, of Hillside, IL, (c) International Multifoods, of Minneapolis, MN, and (d) Morton Salt Division, of Morton Thiokol, Inc., of Chicago, IL.

MC 141285 (Sub-3), filed March 16, 1983. Applicant: NORFOLK BEVERAGE COMPANY, INC., 206 E. Northwestern Ave., Norfolk, NE 68701. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd, Omaha, NE 68106, (402) 392-1220. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI).

MC 141654 (Sub-7), filed March 8, 1983. Applicant: J. A. DADY TRUCKING, INC., Box 40, Sisseton, SD 57262. Representative: J. Michael Dady, 4200 IDS Center, 80 South Eighth St., Minneapolis, MN 55402, (612) 371-3211. Transporting *food and related products*, between points in Roberts County, SD, on the one hand, and, on the other, points in Brown County, MN.

MC 142254 (Sub-9), filed March 9, 1983. Applicant: FRIEDL FUEL & CARTAGE, INC., 440 West Ann St., Whitewater, WI 53190. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *general commodities* (except classes A and B explosives and household goods), between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150794 (Sub-3), filed March 17, 1983. Applicant: ADVANCE TRANSPORTATION SYSTEMS, INC., 2174 Seymour Ave., Cincinnati, OH 45212. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, (614) 464-4103. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 151655 (Sub-15), filed March 8, 1983. Applicant: FRANK BROS. TRUCKING CO., 349 Abbott Avenue, Hillsboro, TX 76645. Representative: Charles E. Munson, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767, (512) 478-9808. 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). Condition: Applicant's permits under MC-140601

Sub 2, issued December 15, 1981, MC-140601 Sub 4, issued November 10, 1981, MC-140601 Sub 16, issued July 28, 1980, MC-140601 Sub 21, issued February 10, 1981, MC-151655 Sub 1, issued April 19, 1982, MC-151655 Sub 2, issued July 24, 1981, MC-151655 Sub 8, MC-151655 Sub 9, issued October 6, 1981, respectively, MC-151655 Sub 6X, issued June 15, 1981, and its underlying MC-140601 Sub 12F, MC-151655 Sub 7X, 1981, and its underlying MC-140601 (Sub-Nos. 1, 7F, 8F, 9F, 10F, and 17F), MC-151655 Sub 10X, issued August 28, 1981, and its underlying MC-140601 (Sub-Nos. 11F, 13F, 15F and 20F), are revoked upon issuance of a certificate in this proceeding.

MC 152014 (Sub-3), filed March 16, 1983. Applicant: MARSHALL DILLON TRANSPORT, INC., 7357 E. Fayette St., Tucson, AZ 85730. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332-4718. Transporting *Electrical machinery, equipment and supplies*, between points in AL, AZ, CA, FL, GA, LA, MS, NM and TX.

MC 158755 (Sub-1), filed March 17, 1983. Applicant: IRELAND FARM EQUIPMENT, LTD., 4814-49 Street, P.O. Box 757, Vermilion, Alberta, Canada T0B 4M0. Representative: Daniel O. Hands, 104 S. Michigan Ave., Chicago, IL 60603, (312) 641-1944. Transporting *machinery*, between points in Floyd County, IA, St. Joseph County, IN and Harvey County, KS, on the one hand, and, on the other, ports of entry on the United States-Canada Boundary line at points in MN, ND, MT and ID.

MC 161124 (Sub-2), filed March 17, 1983. Applicant: C. TILE TRANSPORTATION, INC., 515 Houston St., P.O. Box 2475, Ft. Worth, TX 76113. Representative: Dean O'Leary (same address as applicant), (817) 870-9632. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 164545, filed March 10, 1983. Applicant: MAUSTON FARMERS TRANSPORT COOPERATIVE, 310 Prairie St., Mauston, WI 53948. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273-1003. Transporting *petroleum and petroleum products, chemicals and related products, and fertilizers and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Mauston Farmers Cooperative Association, of Mauston, WI, and Dane County Farmers Union Coop, of Cottage Grove, WI.

MC 165215, filed March 16, 1983. Applicant: K & W TRANSPORTS, INC., Route 5, Box 350, Kemp, TX 75143.

Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255-6279. Transporting *food and related products*, between points in AZ, CA, CO, GA, NY, MD, MS, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166795, filed March, 1983. Applicant: THOMAS R. CLINTON, d.b.a. CLINTON TRUCKING, Rt. 1, Bear Creek, WI 54922. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *food and related products*, between points in Outagamie and Waupaca Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168805, filed March 15, 1983. Applicant: WOOD TRANSPORTATION SERVICES, INC., 206 Shady Grove Rd., P.O. Box 140381, Nashville, TN 37214. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., NW., Washington, D.C. 20004, (202) 347-8862. Transporting *general commodities* (except classes A and B explosives, household good, and commodities in bulk), between points in the U.S. in and east of TX, OK, KS, NE, ND, SD, on the one hand, and, on the other, 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. OP4-189

Decided: March 28, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 2066 (Sub-8), filed March 22, 1983. Applicant: R. M. SULLIVAN TRANSPORTATION, INC., 649 Cottage St., P.O. Box 1555, Highland Station, Springfield, MA 01104. Representative: David M. Marshall, Sixth Floor, 95 State St., Springfield, MA 01103, (413) 732-1136. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT.

MC 29886 (Sub-389), filed March 22, 1983. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 39th Ave., Kenosha, WI 53142. Representative: Paul F. Sullivan, 3408 Wisconsin Ave., NW., Suite 202, Washington, D.C. 20016, (202) 363-1848. Transporting *motor vehicles*, between points in the U.S., under continuing contract(s) with persons as defines in Section 10923 of the Motor Carrier Act of 1980, who are engaged in business as manufacturers, distributors, or dealers of motor vehicles.

MC 139526 (Sub-9), filed March 22, 1983. Applicant: HARRY LINDBERY CO., INC., 6901 Maloney Ave., Hopkins, MN 55343. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting *food and related products*, between Minneapolis, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152366 (Sub-7), filed March 22, 1983. Applicant: AMERICAN COLLOID CARRIER CORP., P.O. Box 951, Scottsbluff, NE 69361. Representative: Robert N. Garrity, (same address as applicant), (308) 635-3157. 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 Continental Timber Company, Inc., of Valley Center, KS.

MC 155266 (Sub-6), filed March 21, 1983. Applicant: JOHN J. VETERI LEASING CORP., P.O. Box 624, W. Paterson, NJ 07425. Representative: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410, (201) 791-2270. Transporting *such commodities as are dealt in or used by department stores*, between points in NY, NJ, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163576 (Sub-1), filed March 21, 1983. Applicant: CBP MOTOR EXPRESS, INC., 67 No. Hilltop Dr., Churchville, PA 18966. Representative: Rick A. Rude, 1730 Rhode Island Ave., NW, Suite 611, Washington, DC 20036, (202) 223-5900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between points in Clarke County, AL, Grant County, IN, Kalamazoo County, MI, Crawford County, MO, Camden County, NJ, Mahoning County, OH, Bucks and Mifflin Counties and Philadelphia, PA, New York, NY, Dayton, OH, and Florence County, SC, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA, and (b) between points in Los Angeles, CA, Philadelphia, PA, and Mercer County, NJ, on the one hand, and, on the other, points in AZ, CO, ID, IL, KS, LA, MO, MT, NE, NV, TX, NM, NY, SD, UT and WY.

Volume No. OP4-191

Decided: March 28, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 148896 (Sub-4), filed March 22, 1983. Applicant: PAR DELIVERY SERVICE, INC., 4250 So. Santa Fe,

Englewood, CO 80110. Representative: William K. Parchen, (same address as applicant) (303) 781-4411. 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 Shacklee Corporation of Oakland, CA.

Volume No. OP4-192

Decided: March 28, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 162457 (Sub-3), filed March 22, 1983. Applicant: KEMP FURNITURE INDUSTRIES, INC., 109 W. Cola Dr., Goldsboro, NC 27530. Representative: Earl Buchan, 118 Spring Dr., Dudley, NC 28333, (919) 736-1782. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Foamtech Corporation, of Fitchburg, MA; Metropolitan Furniture Leasing, Inc., d/b/a Metrolease, of Raleigh, NC, and Southern Office Furniture Distributors, Inc., of Greensboro, NC.

MC 166867, filed March 21, 1983. Applicant: L'EXPRESS DU MIDI, INC., 1076 Union St., P.O. Box 99, St. Catherine, Quebec, Canada J0L1E0. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235-5571. 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 Grossman's Division of Evans Products, of Braintree, MA.

Volume No. OP4-193

Decided: March 29, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 102616 (Sub-1039), filed March 23, 1983. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Rd., Akron, OH 44319. Representative: Fred H. Daly, 2555 M St., NW, Suite 100, Washington, DC 20037, (202) 293-3204. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Union Chemicals Division, Union Oil of California, Schaumburg, IL, Amoco Oil Co., Chicago, IL, and Mobil Oil Corporation of Fairfax, VA.

MC 102906 (Sub-14), filed March 24, 1983. Applicant: McCONNELL HEAVY HAULING, INC., P.O. Box 463, Little Rock, AR 72203. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375-3022.

Transporting *those commodities which because of their size or weight require the use of special handling or equipment, and related contractors' materials and supplies*, between points in the U.S. (except HI).

MC 152107 (Sub-2), filed March 24, 1983. Applicant: INTERPORT TRUCKING, INC., 1100 McLester St., Elizabeth, NJ 07201. Representative: Ronald L. Shapps, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting *general commodities* (except classes A and B explosives and household goods), between points in NY, NJ, CT, PA, DE, MD, MA, RI, VA and DC.

MC 152146 (Sub-5), filed March 21, 1983. Applicant: FAR WEST TRANSPORTERS, INC. 14901 Chandler Rd. Omaha, NE 68138. Representative: Arlyn L. Westergren, 9202 W. Dodge Rd., Suite 201, Omaha, NE 68114, (402) 397-7033. Transporting *lumber and wood products, building materials and accessories*, between points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation, at applicant's written request, of Permit Nos. MC-152146 Sub 3X, issued December 11, 1981, and MC-143120 Sub 2, issued April 6, 1978. This is a conversion application filed under 49 U.S.C. 10925(e).

MC 154106 (Sub-5), filed March 23, 1983. Applicant: MT. HOPE TRUCKING, INC., P.O. Box 247, Mt. Hope, KS 67108. Representative: Clyde N. Christey, Ks. Credit Union Bldg., 1010 Tyler, Suite 110-L, Topeka, KS 66612, (913) 233-9629. Transporting *food and related products*, between points in Cowley County, KS, on the one hand, and, on the other, points in the U.S. (except AK, HI, WV, WY, MT, NV, UT, and VT).

MC 166017, filed March 23, 1983. Applicant: O & A TRANSPORTATION, INC., 3801 Trailmobile, Houston, TX 77229. Representative: Paul S. Broussard, 501 Crawford, Suite 401, Houston, TX 77002, (713) 227-9735. Transporting *general commodities* (except classes A and B explosives and household goods), between points in LA and TX. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or 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 the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 166717, filed March 25, 1983. Applicant: THUNDER ROAD LIQUOR DELIVERY, INC., 7979 N. Williams Rd., St. Johns, MI 48879. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482-2400. Transporting *metal and metal products*, between points in the U.S., under continuing contract(s) with Efficiency Production, Inc., of Okemos, MI.

MC 166986, filed March 22, 1983. Applicant: ORLEANS TRUCKING, INC., 13016 Ridge Rd., Albion, NY 14411. Representative: Mark W. Leunig, 700 Midtown Tower, Rochester, NY 14604, (716) 232-6500. Transporting *food and related products*, between points in CT, MA, ME, NH, NY, OH, PA, RI, and VT.

Volume No. OP4-196

Decided: March 30, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 42487 (Sub-1070), filed March 17, 1983. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V.R. Oldenburg, P.O. Box 3082, Portland, OR 97208, (503) 226-4992. 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 General Electric Company, of Bridgeport, CT and its wholly-owned subsidiary, Canadian General Electric Ltd., of Petersboro, ON.

MC 164896, filed March 22, 1983. Applicant: MARK CARRIERS CO. OF NEW JERSEY, INC., 63 Pollock Ave, Jersey City, NJ 07305. Representative: Paul W. Assenza, 22 Savin Court, Staten Island, NY 10304, (212) 351-0624. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between New York, NY, New Haven, CT, points in Bristol County, MA, and points in PA.

Volume No. OP4-197

Decided: March 30, 1983

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

W 406 (Sub-17) filed March 21, 1983. Applicant: OHIO BARGE LINE, INC. 600 Grant St., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr., 1610 Two Chatham Center, Pittsburgh, PA 15219, (412) 785-1800. To operate as a *contract carrier*, by water, by non-self propelled vessels with the use of separate towing vessels in the transportation of *general commodities*, and by towing vessels in the

performance of *general towage*, (1) between ports and points along the Allegheny River, and (2) between ports and points along the Allegheny River, on the one hand, and, on the other, ports and points on the Arkansas and Cumberland Rivers, the Gulf Intracoastal Waterways, the Illinois Waterway, including points in northern IN by way of Lake Michigan, the Kanawha, Kentucky, Mississippi, Monogahela, Ohio, Red, Tennessee and Verdigris Rivers and their tributary waterways.

Note.—This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 116077 (Sub-443), filed March 25, 1983. Applicant: DSI TRANSPORTS, INC., P.O. Box 1505, Houston, TX 77001. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., N.W., Suite 500, Washington, DC 20006, (202) 828-5015. Transporting *chemicals and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with the class of persons, as defined in Section 10923(d)(2) of the Interstate Commerce Act, that are engaged in business as manufacturers, distributors, or dealers of chemicals.

MC 129427 (Sub-8), filed March 25, 1983. Applicant: JOSEPH GEORGIANA, INC., 26 Lafayette Ave., Somerset, NJ 08873. Representative: James F. Flint, Suite 406, 918 16th St., NW, Washington, DC 20006, (202) 833-1170. 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 145648 (Sub-1), filed March 23, 1983. Applicant: NATHAN R. BEHNE, d.b.a. BEHNE TRUCK LINE, P.O. Box 307, Sherburn, MN 56171. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101, (612) 291-1215. Transporting *lumber, wood and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Associated Pipe and Supply Company Inc., of Golden, CO, and Intermountain-Orient, Inc. and Idaho Pacific Lumber Co., Inc., both of Boise, ID.

MC 146807 (Sub-42), filed March 22, 1983. Applicant: S-n-W ENTERPRISES, INC., 2405 San Souci Hwy., Wilkes Barre, PA 18702. Representative: James

M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781-8205. Transporting *food and related products*, between points in PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146837 (Sub-4), filed March 22, 1983. Applicant: SOUTHERN MINNESOTA GROCERY TRANSPORT, INC., P.O. Box 201, Waseca, MN 56096. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. Transporting (1) *food and related products*, (2) *chemicals or allied products*, and (3) *such commodities* as are dealt in by farm supply stores, between points in AR, CO, IL, IN, IA, KS, KY, LA, MN, MT, MO, NE, ND, OK, SD, TX, TN, UT, WI and WY.

MC 155377 (Sub-6), filed March 24, 1983. Applicant: PGT TRUCKING, INC., P.O. Box 197, Rt. 68, Industry, PA 15052. Representative: Jon F. Hollengreen, 1020 Pennsylvania Bldg., Pennsylvania & 13th St., NW, Washington, DC 20004, (202) 628-4600. Transporting *metal products*, between points in AL, CT, DE, FL, IL, IN, KY, MD, MI, MO, NC, NJ, NY, OH, PA, SC, TX, VA, WI, and WV.

MC 166297 (Sub-1), filed March 24, 1983. Applicant: WAGONS WEST, INC., 3 W. Main, P.O. Box 790159, Vernal, UT 84079. Representative: James Waymire (same address as applicant), (801) 789-4891. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 166987, filed March 22, 1983. Applicant: R & R TRANSPORTATION, INC., 1125 9th St., Wenatchee, WA 98801. Representative: Jack R. Davis, 1200 IBM Bldg., Seattle, WA 98101, (206) 624-7373. Transporting (1) *farm machinery and equipment*, between points in CA, OR, MT, ID, and WA, (2) *iron or steel articles, sand, and machinery*, between points in WA, OR, ID, UT, MT, and CA, and (3) *building materials, concrete blocks, concrete add mixes, cement, lime, pumice and steel*, between points in ID, NV, and OR, on the one hand, and, on the other, points in WA.

MC 166997, filed March 21, 1983. Applicant: NATIONAL BUS CARRIERS, LTD., 4225 W. 26th St., Chicago, IL 60623. Representative: Paul J. Maton, 27 E. Monroe St., Suite 1000, Chicago, IL 60603, (312) 332-0905. Transporting *transportation equipment*, between points in the U.S. (except HI), under continuing contract(s) with The Blitz Corporation, of Chicago, IL.

MC 167006, filed March 24, 1983. Applicant: WILLIAM M. AND PAMELA P. BUGG, d.b.a. P. M. TRUCKING

COMPANY, Route 1, Box 119-1, Lakeside Dr., Appling, GA 30802. Representative: William M. Bugg (same address applicant), (404) 541-0050. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 167036, filed March 25, 1983. Applicant: EAGLE TRANSFER, INC., 6905 NW 25th St., Miami, FL 33122. Representative: Gerald J. Donovan, 4791 SW 82nd St., Davie, FL 33328, (305) 434-7621. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL.

MC 167017, filed March 24, 1983. Applicant: RICHARD H. McMONAGLE d.b.a. NORTH COUNTRY LEASING, P.O. Box 224, Garden City MN 56034. Representative: Richard H. McMonagle (same address as applicant), (507) 546-3579. Transporting *such commodities* as are dealt in or used by banking and savings institutions, between points in the U.S. (except HI), under continuing contract(s) with Chubb Systems Midwest, Inc., of Oklahoma City, OK.

Volume No. OP4-199

Decided: March 30, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 139006 (Sub-41), filed January 10, 1983, previously noticed in the *Federal Register* issue of January 27, 1983, and republished this issue. Applicant: RAPIER SMITH, Rural Rt. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223-8244. 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 Brown-Forman Distillers Corp., and its subsidiaries, of Louisville, KY. Condition: Issuance of a certificate in this proceeding is subject coincidental cancellation of Certificate No. MC 139006 (Sub-41), issued March 25, 1983.

Note.—The purpose of this republication is to correctly state the commodity description.

MC 166906, filed March 21, 1983. Applicant: CLARENCE BROOKS, 4617A 6th St. SE., Washington, DC 20032. Representative: Clarence Brooks (same address as applicant), (202) 563-4410. Transporting *lumber and wood products and forest products*, between points in VA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN and MS.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-147

Decided: March 25, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 5428 (Sub-15), filed March 15, 1983. Applicant: LYON VAN LINES, INC., P.O. Box 5011, Carrollton, TX 75006. Representative: J. B. Stuart (same address as applicant), 214-446-1500. Transporting *household goods* between points in the U.S., under continuing contract(s) with EADS Moving Brokers, a division of EADS Transfer & Storage Company, of Santa Ana, CA.

MC 31389 (Sub-344), filed March 18, 1983. Applicant: McLEAN TRUCKING COMPANY, 1920 West First St., Winston-Salem, NC 27104. Representative: Daniel R. Simmons (same address as applicant), (919) 721-2433. 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 Magid Glove & Safety Mfg. Co., Inc., of Chicago, IL.

MC 35628 (Sub-451), filed March 21, 1983. Applicant: IMFS, INC., d.b.a. INTERSTATE SYSTEM, 110 Ionia Ave., N.W. Suite 7000, Grand Rapids, MI 49503. Representative: Michael P. Zell, (same address as applicant) (616) 774-0400. 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 Alcan Aluminum Corporation, of Cleveland, OH, B & E Sales Co., Inc., of Detroit, MI, Emerson Electric Co., of St. Louis, MO, and Montgomery Ward & Co., of Chicago, IL.

MC 108859 (Sub-89), filed March 17, 1983. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Avenue, North, Escanaba, MI 49829. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701, 608-259-9521. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, IA, KY, MI, MN, MO, OH and WI.

MC 152839 (Sub-4), filed March 18, 1983. Applicant: ROCKET MOTOR FREIGHT LINES, INC., 2715 Rockwood Dr., P.O. Box 823, Peoria, IL 61601. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, 217-753-3925. Transporting *petroleum products*, between points in IL, KY, MI, OH and IN.

MC 156408 (Sub-1), filed March 18, 1983. Applicant: SOUTHWEST CANNERS, INC., P.O. Box 862, Portales, NM 88130. Representative: James W. Hightower, Suite 301, Allied Bank-Oak Cliff Bldg., 5801 Marvin D. Love Freeway, Dallas, TX 75237-2385 (214) 339-4108. Transporting (1) *alcoholic beverages*, between CA, on the one hand, and, on the other, points in CO and NM; (2) *plastic articles*, between Fullerton, CA, on the one hand, and, on the other, points in AZ, CO, NM, OK, TX, and UT; and (3) *metal products*, between St. Louis, MO, on the one hand, and, on the other, points in NM and TX.

MC 146649 (Sub-5), filed March 15, 1983. Applicant: JOHNNY'S TRANSFER CO., INC., Rt. 1, Box 105G, Mt. Holly, NC 28120. Representative: Terrell Price, 800 Briar Creek Rd., Suite DD504, Charlotte, NC 28205, 704-372-8212. Transporting *chemicals* between points in the U.S. (except AK and HI) under continuing contract(s) with Sandoz Colors and Chemicals, a Division of Sandoz, Inc., of Martin, SC.

MC 156069 (Sub-6), filed March 15, 1983. Applicant: TRANSITALL SERVICES, INC., Two North Riverside Plaza, Suite 1402, Chicago, IL 60606. Representative: Anthony E. Young, Ltd., 29 South LaSalle Street, Suite 350, Chicago, IL 60603, 312-782-8880. 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 American Container Express, Inc., and Washington-Oregon Shippers Cooperative Association both of Chicago, IL, Pacific Northwest Perishable Shippers Association and Trailer Express Inc., both of Seattle, WA, and Whittaker Carpenter Paper Company, of Elk Grove, IL.

MC 157819 (Sub-2), filed March 17, 1983. Applicant: TRUK-TRAK TRANSPORTATION, INC., P.O. Box 28655, Dallas, TX 75288. 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 AL, AR, FL, GA, LA, MS, NC, OK, SC, TN and TX on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166788 (Sub-4), filed March 14, 1983. Applicant: QUICK DELIVERY, INC., 4391 Bristolwood Road, Pleasanton, CA 94566. Representative: James H. Gulseth, 100 Bush Street, 21st Floor, San Francisco, CA 94104, 415-986-5778. Transporting *general commodities*, (except classes A and B

explosives, household goods and commodities in bulk), between points in CA, OR, WA, AZ, NV, MT, ID and TX.

MC 166799, filed March 14, 1983. Applicant: FORREST TRUCKING COMPANY, 7 E. First St., London, OH 43140. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, 614-228-1541. Transporting *commodities in bulk*, between points in Monroe County, MI, on the one hand, and, on the other, points in OH.

[FR Doc. 83-8067 Filed 4-5-83; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Change

April 1, 1983.

Changes have been made to the meeting agenda of the National Advisory Committee on Oceans and Atmosphere (NACOA) scheduled to meet on Wednesday and Thursday, April 13-14, 1983 and published in the *Federal Register* of March 29, 1982 (Page 48 FR 13116-13117).

The revised, tentative agenda is as follows:

Wednesday, April 13, 1983

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, D.C.

9:00 a.m.-12:30 p.m.—Plenary.

9:00 a.m.-9:30 p.m.—Announcements.

9:30 a.m.-12:30 p.m.—Weather Satellites.

Topic: Commercialization.

Speakers: Anthony J. Calio, National Oceanic and Atmospheric Administration.

John W. Townsend, Jr., Fairchild Space Company.

David S. Johnson, University Corporation for Atmospheric Research.

Vern Malahy, United States Air Forces.

Radford Byerly, Jr., House Committee on Science and Technology.

12:30 p.m.-1:30 p.m.—Lunch.

1:30 p.m.-5:30 p.m.—Panel meetings.

Coastal Zone, Co-Chairman: Sharron

Stewart, Jack R. Van Lopik, Room B-100,

Topic: Wetlands.

Speakers: Representative of Department of Interior.

1:30 p.m.-4:00 p.m.—Steven Shimberg, Senate Subcommittee on Environmental Pollution.

Jeff Curtis, House Subcommittee on Fisheries, Wildlife Conservation and Environment.

Lori Von Minden, Staff of Congressman Lagomarsino.

Steve Parcels, Wildlife Refuge Project.

4:00 p.m.-5:30 p.m.—Topic: OCS Revenue Sharing.

Speaker: William McCluskey, Senate Committee on Commerce, Science and Transportation.

3:30 p.m.-5:30 p.m.—Radioactive Waste.
Chairman: John A. Kanuass, Room 416.
Topic: Panel Work Session.
Speakers: Jeanette Eng, New Jersey
Department of Environmental Protection.
Mary White, U.S. Department of Energy.
5:30 p.m.—Recess

Thursday, April 14, 1983

2001 Wisconsin Avenue, NW., Page Building
#1, Room 416, Washington, D.C.
8:30 a.m.-10:00 a.m.—Panel meeting.
Marine Minerals, Chairman: Burt Keenan.
Topic: Panel Work Session.
10:00 a.m.-12:30 p.m.—Plenary.
Exclusive Economic Zone.
Topic: Legislation.
Speakers: Otho Eskin, Brian Hoyle,
Department of State.
James Lawless, National Oceanic and
Atmospheric Administration.
Robert Rioux, Department of Interior.
James Brennan, National Oceanic and
Atmospheric Administration.
12:30 a.m.-1:30 p.m.—Lunch.
1:30 a.m.-3:30 p.m.—Plenary.
Review of Marine Minerals, Report.
Chairman: Burt Keenan.
Action Items.
Panel Reports.
3:30 a.m.—Adjourn

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion. The mailing address is: NACOA, 300 Whitehaven Street, NW. (Suite 438, Page Building #1), Washington, DC 20235. The telephone number for NACOA is 202/653-7818.

Dated: April 1, 1983.

Steven N. Anastasion,
Executive Director.

[FR Doc. 83-8957 Filed 4-5-83; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview) to the National Council on the Arts will be held on April 21, 1983, from 9:30 a.m.-5:00 p.m. and on April 22, 1983, from 9:30 a.m.-4:30 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on April 21, from 9:30 a.m.-10:15 a.m. and on April 22, from 9:30 a.m.-4:30 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on April 21, from 10:15 a.m.-5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National

Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

For further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: March 29, 1983.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83-8979 Filed 4-5-83; 8:45 am]

BILLING CODE 7357-01-M

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50-369]

Duke Power Company; Issuance of Amendment; Facility Operating License No. NPF-9

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 19 to Facility Operating License No. NPF-9, issued to Duke Power Company (licensee) for the McGuire Nuclear Station, Unit 1 (the facility) located in Mecklenburg County, North Carolina.

This amendment replaces the Appendix A Technical Specifications with a revised version which applies to both Units 1 and 2. Because the McGuire Unit 1 Technical Specifications were upgraded, some systems and components have new Surveillance Requirements which cannot be performed during operation of McGuire Unit 1. We have evaluated these new requirements and conclude that they need not be implemented immediately, but should be performed no later than after the first refueling. The amendment is effective as of its date of issuance except for these Surveillance Requirements.

Issuance of this 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) Duke Power Company letter dated February 18, 1983, (2) Amendment No. 19 to Facility Operating License No. NPF-9 and (3) the Commission's related Safety Evaluation.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of these items 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 29th day of March 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing, NRR.

[FR Doc. 83-9035 Filed 4-5-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 67 to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation and Jersey Central Power & Light Company (the licensees), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

This amendment authorizes changes to the Technical Specifications to require an Audit of Emergency Preparedness Programs and the Safeguards Contingency Plans (Security Plan) at a frequency of at least once per twelve (12) months.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 18, 1983, (2) Amendment No. 67 to License No. DPR-16, and (3) the Commission's letter of transmittal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and the Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753. A single 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 31st day of March, 1983.

For the Nuclear Regulatory Commission,
Dennis M. Crutchfield,
Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-9028 Filed 4-5-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-278]

Philadelphia Electric Company, et al.; 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-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications (TSs) for operation of the Peach Bottom Atomic Power Station, Unit No. 3 (the facility) located in York County, Pennsylvania.

The amendment was authorized by telephone on November 19, 1982. It revised TS 3.5.A.5 to allow a one-time extension of the seven-day Limiting Condition for Operation to 10 days regarding the operation of a Residual Heat Removal heat exchanger. The amendment was issued on an expedited basis to avoid an unscheduled plant shutdown.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) that an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 23, 1982, (2) the Commission's letter to Philadelphia Electric Company dated November 23, 1982, (3) Amendment No. 91 to License No. DPR-56, and (4) 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 Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2), (3) and (4) 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 28th day of March 1983.

For the Nuclear Regulatory Commission,

John F. Stolz,

Chief, Operating Reactors Branch No. 4,
Division of Licensing.

[FR Doc. 83-9027 Filed 4-5-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. Stn 50-546 and Stn 50-547]

Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc.; Receipt of Antitrust Information

Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc., co-owners of the Marble Hill Nuclear Generating Station, Units 1 and 2 have submitted antitrust information in conjunction with the application for operating licenses for this facility. The facility consists of two pressurized water reactors known as the Marble Hill Generating Station, Units 1 and 2 and are located in Saluda Township, Jefferson County, Indiana, approximately six miles northeast of the unincorporated area of New Washington, Indiana. The data submitted contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under Section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the *Federal Register* and will be sent to the Washington, D.C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 30 days after the date of the *Federal Register* notice. The results of any reevaluations that are requested will be published in the *Federal Register* and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and in the local public document room at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana 47250.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensees' activities since the construction permit antitrust review

should submit such information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Siting Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation on or before May 6, 1983.

Dated at Bethesda, Maryland, this 25th day of March 1983.

For the Nuclear Regulatory Commission,
B. J. Youngblood,
Chief, Licensing Branch No. 1, Division of
Licensing.

[FR Doc. 83-9028 Filed 4-5-83; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-321 and 50-366]

Georgia Power Company, et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2); Revised Order Confirming Licensee Commitments on Post-TMI Related Issues

I

The Georgia Power Company (GPC or the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-57 and NPF-5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch or the facilities) at steady state reactor power levels not in excess of 2436 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for

those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III

Georgia Power Company responded to Generic Letter 82-05 by letters dated April 20, June 7 and 11, 1982, December 20, 1982, February 11, 1983 and March 11, 1983. The licensee responded to Generic Letter 82-10 by letter dated June 4, 1982. The licensee had previously informed the staff, in a letter dated October 1, 1981 that it had completed the requirement of Item II.D.1.2. concerning submittal of safety relief valve test reports. In the submittals responding to Generic Letters 82-05 and 82-10, the licensee confirmed which of the other items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's scheduler commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the remaining items is provided herein: Common to Units 1 and 2 is Item II.E.4.2(7) Containment Isolation Dependability, Position 7.

This item is still under review by NRC. As a consequence, this item, scheduled for completion by July 1, 1981, will be the subject of a future NRC action and is therefore not included in this Order.

For Hatch 1, regarding Generic Letter 82-05, there are seven incomplete items: II.B.3, Post Accident Sampling, II.F.1(1), (2), (3) and (4), Post Accident Monitors, and II.K.3.22, RCIC Suction Modification and II.E.4.2, Part 7. The licensee's implementation schedule for Item II.B.3 is given as July 1, 1983. The implementation schedule for Items II.F.1(3) and (4) is given as the end of the outage following Cycle 5b (also referred to as Cycle 6). This outage is scheduled for completion in mid-February 1983. Items II.F.1(1) and (2) can be completed with the reactor in operation and are scheduled for completion by March 15, 1983. Item II.K.3.22, for which equipment delivery is expected in June 1983, can also be completed with the reactor in operation and the proposed schedule is September 30, 1983. The reasons given for delaying II.B.3 are that the NRC issuance of Regulatory Guide 1.97 imposed additional requirements which resulted in a significant delay in the system design, a supplier experienced a work stoppage and was unable to meet a scheduled delivery date, and recently identified concerns related to the chloride analysis portion of the sampling system. The remaining five items for Hatch 1 are being impacted by procurement and documentation delays that have resulted in the completion schedule being delayed that have resulted in the completion schedule being delayed as described above. In our judgment, these delays were beyond the control of GPC. For Hatch 2, there are four incomplete items: II.B.3, II.F.1(1) and (2) and II.K.3.22; these items are included in the seven, discussed above for Hatch 1. The licensee's implementation schedule for Hatch 2 is given as July 1, 1983 for item II.B.3, the end of the outage following Cycle 3 for Items II.F.1(1) and (2), and September 30, 1983, for Item II.K.3.22. The Hatch 2 Cycle 4 reload is scheduled for Spring 1983. The reasons given for delaying the Hatch 2 items are the same as for the congruent Hatch 1 items. Therefore, we conclude the delays are justified.

The licensee has provided for interim compensatory measures for all of the items that require a plant hardware modification. In regard to each such hardware item, the compensatory measures are as follow:

II.B.3—Two existing systems in place which can provide for adequate post-accident sampling of both reactor coolant and drywell atmosphere.

II.F.1(1)—Interim systems to quantify high level releases and in-plant iodine are in place.

II.F.1(2)—Same as for II.F.1(1).

ILF.1(3)—Post accident gamma radiation monitors installed in the original plant design are available as interim monitoring devices.

ILF.1(4)—Drywell pressure is currently indicated on a recorder which serves as an interim monitoring device.

ILK.3.22—Manual transfer procedures in place, as interim measure, until automatic switchover hardware in operation.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore,

the licensee's commitment should be confirmed by Order.

IV

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. A request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal

Director at the same address. A request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of March 1983.

For the Nuclear Regulatory Commission,

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Attachments:

1. Licensee's Commitments on Applicable NUREG-0737 Requirements from Generic Letter 82-05
2. Licensee's Commitments on Applicable NUREG-0737 Requirements from Generic Letter 82-10

ATTACHMENT 1—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)	
				Unit 1	Unit 2
IA.3.1	Simulator Exams	Oct. 1, 1981	Include simulator exams in licensing examinations	Complete	Complete
IB.2	Plant Shielding	Jan. 1, 1982	Modify facility to provide access to vital areas under accident conditions	do	do
IB.3	Post-Accident Sampling	do	Install upgrade post-accident sampling capability	July 1, 1983	July 1, 1983
IB.4	Training for Mitigating Core Damage	Oct. 1, 1981	Complete training program	Complete	Complete
IE.4.2	Containment Isolation Dependability	July 1, 1981	Part 5—lower containment pressure setpoint to level compatible w/normal operation	do	Do
		do	Part 7—Isolate purge & vent valves on radiation signal	Technical exception	Technical exception
IF.1	Accident Monitoring	Jan. 1, 1980	(1) Install noble gas effluent monitors	March 15, 1983	(1)
		do	(2) Provide capability for effluent monitoring of iodine	do	(2)
		do	(3) Install in-containment radiation level monitors	(3)	Complete
		do	(4) Provide continuous indication of containment pressure	(4)	Do
		do	(5) Provide continuous indication of containment water level	Complete	Do
		do	(6) Provide continuous indication of hydrogen concentration in containment	do	Do
IK.3.15	Isolation of HPCI & RCIC Modification	July 1, 1981	Modify pipe break detection logic to prevent inadvertent isolation	do	do
IK.3.22	RCIC Suction	Jan. 1, 1982	Modify design of RCIC suction to provide automatic transfer to torus	Sept. 30, 1983	Sept. 30, 1983
IK.3.24	Space Cooling for HPCI/RCIC	do	Confirm adequacy of space cooling for HPCI/RCIC	Complete	Complete
IK.3.27	Common Reference Level	July 1, 1981	Provide common Reference Level for Vessel Level Instrumentation	do	Do

¹ Not part of confirmatory order.

² End of outage following Cycle 3, currently scheduled for Spring 1983.

³ End of outage followed by Cycle 5b, currently scheduled for completion in Mid-February 1983.

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's Completion Schedule (or status) for Units 1 and 2
IA.1.3.1	Limit Overtime	Oct. 1, 1982 per Gen. Ltr. 82-12 dtd. June 15, 1982	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd. June 15, 1982	Complete
IA.1.3.2	Minimum Shift Crew	To be superseded by Proposed Rule	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units	To be addressed when Final Rule is issued
IC.1	Revise Emergency Procedures	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability	To be determined
ID.1	2RV and SV Test Programs	July 1, 1982	Submit plant specific reports on relief & safety valve program	Complete
IK.3.18	ADS Actuation	Sept. 30, 1982	Submit revised position on need for modifications	do
IK.3.30 & 31	SBO/LOCA Analysis	1 year after staff approval of model	Submit plant specific analyses	To be determined following staff approval of model

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 8B2-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's Completion Schedule (or status) for Units 1 and 2
II.A.1.2	Staffing Levels for Emergency Situations.	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
II.A.1.2	Upgrade Emergency Support Facilities.	do	do	do
II.A.2.2	Metecological Data	do	do	do
II.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study.	Complete.

¹ Not Part of Confirmatory Order.

[FR Doc. 83-8867-Filed 4-5-83; 8:45 am]
BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency for Request for Approval of Special Withdrawal Liability Rules; ILGWU National Retirement Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Extension of comment period.

SUMMARY: On February 22, 1983, the Pension Benefit Guaranty Corporation published a notice in the *Federal Register*, 48 FR 7526, soliciting public comment on a request PBGC had received from the ILGWU National Retirement Fund for approval of a plan amendment providing for special withdrawal liability rules. Under that notice, comments to PBGC were due by April 8, 1983. The effect of this notice is to advise interested persons that the deadline for submitting comments has been extended to April 28, 1983.

DATE: Comments must be submitted on or before April 28, 1983.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4862. [This is not a toll-free number.]

Issued at Washington, D.C. on this 31st day of March, 1983.

Edwin M. Jones,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 83-9121 Filed 4-5-83; 8:45 am]
BILLING CODE 7706-01-M

SECURITIES AND EXCHANGE COMMISSION

[812-5244; Rel. No. 13125]

Auric Metals Corp.; Notice of Application

March 30, 1983.

Notice is hereby given that Auric Metals Corporation ("Applicant") 3804 South Highland Drive, No. 10, Salt Lake

City, Utah 84106, a Utah corporation, filed an application on July 12, 1982, and an amendment thereto on February 7, 1983, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act, other than: (1) Sections 9, 17(a)-(e), 23, 36(a) and 37; (2) all sections of the Act necessary to implement the above sections of the Act; and (3) all administrative, procedural and jurisdictional sections of the Act, subject to certain conditions and exceptions. 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 from which exemption is being sought.

The application states that Applicant was formed in 1969 as a minerals exploration and development company. Applicant represents that it has been and is now primarily engaged in the exploration, acquisition and development of mining and natural resource properties.

According to the application, Applicant made a Regulation A offering in February 1970, at the conclusion of which it had outstanding 20,000,000 shares of stock with a capitalization of \$350,427. Applicant states that no additional stock has been issued or capital raised since that time. Applicant states that it had no income from its exploration and development activities until its fiscal year ended March 31, 1982. Applicant states that all income prior to the last fiscal year was derived from interest and dividends. Applicant further states that dividends and operating income have been used to fund its activities or to repay debt incurred in these activities.

Applicant states that it does preliminary assessment and evaluation of prospective properties; if the properties appear to have potential, Applicant will generally seek to form a joint venture or lease the property to a third party with a retained interest. Applicant states that it does this because it does not have sufficient

assets to develop any significant properties.

Applicant states that, in its 1976 fiscal year, it acquired 18,000 shares of High Plains Natural Gas Company ("High Plains"), a privately owned Texas corporation operating an intrastate pipeline in the Texas panhandle. Applicant states that it acquired the shares pursuant to a plan to effect an eventual merger with High Plains. The application states that, in its 1978 fiscal year, Applicant acquired an additional 11,800 shares of High Plains, bringing its holding to the current level of 29,800 shares, or approximately 10 percent of High Plains. Applicant states that the merger has not been effected and there are no indications that it will be at any time in the foreseeable future. Applicant states that the book value of these shares is \$100,944.

The application states that, in its 1977 fiscal year, Applicant invested \$45,000 in Corporacion de La Fonda ("La Fonda"), a privately owned New Mexico corporation operating the historic La Fonda Hotel in Santa Fe, New Mexico. Applicant states that this investment resulted from the exercise of an option to convert a \$45,000 loan to La Fonda into stock at a conversion price of \$2.00 per share. Applicant states that it received 22,500 shares, or approximately 28 percent of La Fonda. Applicant states that, because it owns 28 percent of La Fonda, the investment is recorded on the equity method. Applicant further states that this accounting method has resulted in an increase in Applicant's book value for the La Fonda stock from \$45,000 in 1977 to \$219,845 at the end of Applicant's last fiscal year, March 31, 1982, a 37 percent annual increase.

Applicant states that, in its balance sheet dated March 31, 1978, Applicant's investment in securities of High Plains and La Fonda equalled approximately 28 percent of its total assets (exclusive of government securities and cash items). Applicant represents that, since that date, there has been no increase or decrease in its holdings of High Plains or La Fonda shares, and the change in percentage of investment securities to total assets is due entirely to the

application of the equity method of accounting to La Fonda and various reductions in Applicant's total assets. Applicant states that, in its fiscal year ended March 31, 1978, Applicant received payment of a substantial note receivable from High Plains, the proceeds of which were used to retire outstanding debt. The application states that the result of this transaction was a decrease in Applicant's total assets, and, consequently, investment securities comprised 62 percent of total assets. The application further states that, in its 1981 fiscal year, Applicant recorded write-offs of interests in mineral properties which had a cost to Applicant of \$152,500. As a result, total assets were again reduced and investment securities increased to approximately 84 percent of total assets.

Applicant states that it presently owns securities having a value exceeding 40 percent of the value of its total non-cash assets. These securities, which were acquired from 1976 to 1978, are the shares of High Plains and La Fonda. Applicant further states that in excess of 64 percent of its gross income during the fiscal year ending March 31, 1982 was comprised of dividends declared on these securities owned by Applicant.

Applicant asserts that any question regarding its status under the Act is the result of circumstances arising inadvertently on the part of Applicant, which circumstances Applicant is actively attempting to change. Applicant asserts that only as a result of the significant reduction in total assets and increases in book value of its holdings in La Fonda due to the equity method of accounting and the absence of any market for the stock of High Plains and La Fonda has any question arisen as to the Applicant's status under the Act. Moreover, Applicant states that it believes that it is not the type of organization that Congress intended be subject to regulation under the Act and the regulation of Applicant under the Act would not provide significant benefits to the shareholders of Applicant. In this regard, Applicant argues that as a mineral exploration and development company, it does not have the objectives, structure, or functions of a traditional investment company.

According to the application, both High Plains and La Fonda are privately held companies for whose stock no market exists. Applicant represents that it has been and is actively seeking potential buyers for either stock, but no terms have been offered which would be advantageous to Applicant. Applicant represents that it is Applicant's

intention to dispose of either or both investments in order to reduce debt and further fund its business activities. Applicant states that efforts to dispose of either stock have included contacting shareholders in La Fonda or High Plains and various third parties for any indications of interest. Applicant states that this approach has met with limited success, as only one shareholder has indicated a possible interest. Applicant asserts that, although its efforts to sell the securities of High Plains or La Fonda have been unsuccessful, it is the expectation of Applicant that continued efforts in these areas will eventually bring results. Applicant further states that, at the time Applicant invested in High Plains and La Fonda, it was anticipated that both companies would register shares for public sale and that an active market for the respective shares would develop. This has not been the case, and according to Applicant, recent discussions by the board of directors of both companies have resulted in the conclusion that public financing will not be pursued in the near future or thereafter so long as uncertain general market conditions prevail.

Applicant represents that it holds itself out and is known as an exploration and development company that is primarily engaged in activities other than investing, reinvesting, owning, holding or trading in securities. Applicant believes that the market value of its shares has been continually determined on the basis of its primary activities in mining and natural resources and not on the basis of its investment securities or any expectation of income therefrom. Applicant represents that all dividend income from both High Plains and La Fonda is currently used to finance the operations of Applicant and to further its primary purpose of mineral exploration and development. Applicant further represents that, in its operation, no officer, director or employee spends any significant amount of time on investment matters nor acts in any way as an investment adviser. Applicant further represents that it does not employ an investment adviser or manager. Applicant states that it has no plans to register under the Act, and management does not consider registration under the Act an option to Applicant because it is contended that it would not be in the best interests of the shareholders.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or classes of persons, securities, or transactions, from

any provision or provisions of the Act or 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. Section 6(e) of the Act provides, in part, that if, in connection with any order under Section 6 exempting any investment company from Section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company and to other persons in their transactions and relations with such company as though such company were registered investment company.

For the purpose of resolving any questions concerning its status as an investment company under Section 3(a) of the Act, Applicant requests that an order of the Commission be issued pursuant to Section 6(c) of the Act exempting it from all provisions of the Act for a period of two years, except Sections 9, 17(a)-(e), 23, 36(a), 37, all sections necessary to implement and enforce the provisions to which Applicant will remain subject and all administrative, procedural and jurisdictional sections of the Act. Applicant requests a two year exemption period to provide adequate time to develop a market and dispose of the stock on terms favorable to its shareholders.

Applicant states that any order granted by the Commission may be further subject to the following conditions:

1. That Applicant will not issue any additional shares of its common stock, par value \$.01 per share, without first obtaining with respect to any such issue an amended exemptive order from the Commission, or first registering with the Commission as an investment company.

2. That, unless Applicant shall have first obtained an amended exemptive order from the Commission in respect of its ceasing to do so, Applicant will continue to:

- (a) Hold regular meetings of its shareholders on an annual basis for the purpose of electing directors and transacting such other business as may properly come before such meeting;

- (b) Submit for shareholder notification or approval at each annual meeting of shareholders the appointment of the independent certified public accountants engaged by Applicant;

(c) Furnish annually to the shareholders of Applicant audited financial statements of Applicant and a written report of Applicant's operations by the president of Applicant substantially in the form that Applicant has submitted to shareholders in the past.

3. That, unless Applicant shall have first obtained an amended exemptive order from the Commission, or first registered with the Commission as an investment company, Applicant will not acquire and investment securities of a type referred to in Section 3(a)(3) of the Act.

Notice is Further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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. 83-8008 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[812-8440; Rel. No. 13127]

**Franklin Life Insurance Co. et al.;
Notice of Application for an Order of
Exemption Pursuant to Section 6(c) of
the Act From the Provisions of Section
17(f)(3) of the Act and Rule 17f-2
Thereunder**

March 30, 1983.

In the matter of the Franklin Life Insurance Company, Franklin Life Money Market Variable Annuity Fund C, and Franklin Financial Services Corporation, Franklin Square Springfield, Illinois 62713

NOTICE IS HEREBY GIVEN that the Franklin Life Insurance Company ("Franklin"), Franklin Life Money Market Variable Annuity Fund C ("Fund C"), and Franklin Financial Services

Corporation (Franklin Financial") (collectively, the "Applicants"), filed an application on February 1, 1983, and an amendment thereto on March 24, 1983, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from the provisions of Section 17(f)(3) of the Act and Rule 17f-2 thereunder to the extent necessary to permit the transactions described in the application. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and Rules thereunder for a statement of the relevant provisions.

Franklin established Fund C as a separate account, which is registered under the Act as an open-end diversified management investment company, and serves as Fund C's investment advisor. Fund C's investment policy is to invest in money market securities. Franklin Financial is the principal underwriter of the variable annuity contracts offered by Fund C.

**1. Appointment of One or More
Additional Safekeeper Banks**

Section 17(f)(3) of the Act provides, in pertinent part, that a registered management investment company may maintain its securities and investments in its own custody in accordance with rules adopted by the Commission. Rule 17f-2 promulgated under this provision requires, among other things, that such assets be placed in a bank subject to certain other requirements of the rule. In accordance with Section 17(f)(3) and Rule 17f-2 thereunder, securities of Fund C are currently held by The First National Bank of Springfield, Springfield, Illinois (the "Springfield Bank") pursuant to a Safekeeping Agreement among Franklin, Fund C, and the Springfield Bank (the "Safekeeping Agreement") which provides that the Springfield Bank may make arrangements with and be responsible for other banks to act as "sub-safekeepers". Franklin has determined, however, that in some cases it would be more economical to appoint additional independent safekeeper banks in regional markets where short-term securities may be purchased in the future to hold Fund C's short term securities rather than to follow the present arrangement. Applicants therefore request an exemption from the provisions of Section 17(f)(3) of the Act and Rule 17f-2 thereunder to the extent necessary to permit one or more additional safekeeper banks to hold Fund C's securities in circumstances

where their deposit with the Springfield Bank would be impracticable and where use of a sub-safekeeper would be uneconomical.

2. Access to Securities

Rule 17f-2 requires, in part, that only certain specified individuals shall have access to the assets placed in a safekeeper bank. In Investment Company Act Release No. 12150, January 8, 1982 (the "Order"), Applicants were granted an exemption from the provisions of Section 17(f)(3) and Rule 17f-2 to the extent necessary to permit not more than five officers or responsible employees of Franklin, designated by the Board of Managers of Fund C, to have access to the assets of Fund C (subject to the provisions of Rules 17f-2 and 17g-1, applicable to such designated officers and responsible employees of Franklin to the same extent as if they were officers or responsible employees of Fund C designated as having access to the securities and similar investments of Fund C), and to permit duly authorized representatives of the Illinois Department of Insurance and of the zonal examination committee of the National Association of Insurance Commissioners to have access to the securities and similar investments of Fund C held by the Springfield Bank in accordance with the otherwise applicable provisions of Rule 17f-2. Applicants request an identical exemption to the extent necessary to permit the same access arrangements to the securities and similar investments of Fund C held by one or more additional safekeepers.

3. Conditions

Applicants represent that: (1) Any safekeeping agreement among Franklin, Fund C and an additional safekeeper bank will be substantially identical to the current Safekeeping Agreement, but with such changes as are described in the Application; (2) in connection with any such safekeeping agreement with an additional safekeeper, the Board of Managers of Fund C will make a determination that the appointment of such safekeeper will be beneficial to Fund C, taking into account the separate location of Fund C's investments and the additional recordkeeping procedures necessitated thereby; and (3) the Board of Managers of Fund C will adopt a system of recordkeeping that will indicate at all times where each instrument held by Fund C is located.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction from the

provisions of the Act and Rules promulgated 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.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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. 83-8907 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5138; Rel. No. 13134]

Franklin Money Fund et al.; Notice of Filing of Application for Order Amending Pilon Order

In the matter of Franklin Money Fund, Research Capital Fund, Inc., Research Equity Funds, Inc., Franklin Custodian Fund, Inc., Franklin Option Fund, Inc., Franklin California Tax-Free Income Fund, Inc., Franklin New York Tax-Free Income Fund, Inc., Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Cash Management Fund, Age High Income Fund, Inc., and Franklin Distributors, Inc., 155 Bovet Road, San Mateo, California 94402.

Notice is hereby given that Franklin Money Fund ("FMF"), Research Capital Fund, Inc. ("Capital"), Research Equity Fund, Inc. ("Equity"), Franklin Custodian Fund, Inc. ("Custodian"), Franklin Option Fund, Inc. ("Option"), Franklin California Tax-Free Income Fund, Inc. ("California Tax-Free"), Franklin New York Tax-Free Income Fund, Inc. ("N.Y. Tax-Free"), Franklin

Federal Money Fund ("Federal"), Franklin Tax-Exempt Money Fund ("Tax-Exempt"), Franklin Cash Management Fund ("Cash"), AGE High Income Fund, Inc. ("AGE") (collectively, the "Funds"), all registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies and their principal underwriter and distributor, Franklin Distributors, Inc. ("Distributors"), a registered broker-dealer under the Securities Exchange Act of 1934, (together with the Funds, "Applicants"), filed an application on February 16, 1983, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated February 28, 1976 (Investment Company Act Release No. 9177). The previous order of the Commission (1) pursuant to Section 11(a) of the Act, permitted the shareholders of FMF to exchange their shares for those of Capital, Equity and Custodian on a basis other than their relative net asset values; and (2) pursuant to Section 6(c) of the Act, exempted the offer of exchange from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. 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 and to the Act for the complete text of the provisions of the Act cited in the application.

According to the application, Capital, Equity, Custodian, Option, California Tax-Free, N.Y. Tax-Free and AGE, are all engaged in a continuous public offering of their shares at their respective net asset values plus a sales charge. The application further indicates that FMF, Federal, Tax-Exempt and Cash are money market funds whose shares are offered on a continuous basis at net asset value without any sales charge.

Applicants represent that, at present, the shareholders of Capital, Equity, Option, and any of the series of Custodian (except for the U.S. Government Series), may exchange their shares for shares of any of the other of such Funds on the basis of the relative net asset value per share at the time of the exchange, without any sales charge; and the same exchange privilege applies among the shareholders of California Tax-Free, N.Y. Tax-Free, AGE and the U.S. Government Series of Custodian. Applicants state that Capital, Equity, Option, Custodian, AGE and California Tax-Free also, pursuant to the orders of the Commission dated February 28, 1976 (Investment Company Act Release No. 9177) and June 8, 1982 (Investment

Company Act Release No. 12472), offer to shareholders of FMF, Federal, Tax-Exempt and Cash, the right to exchange their shares for shares of Capital, Equity, Option, Custodian, AGE and California Tax-Free, on the basis of the relative net asset value at the time of exchange plus, in the case of shares of FMF, Federal, Tax-Exempt and Cash acquired other than pursuant to a previous exchange from shares of Capital, Equity, Option, Custodian, AGE and California Tax-Free, the applicable sales charge described in the current prospectus of the fund being acquired.

Applicants propose that Capital, Equity, Option and each series of Custodian other than U.S. Government Series offer to the shareholders of California Tax-Free, N.Y. Tax-Free, AGE and the U.S. Government Series of Custodian, the right to exchange their shares for shares of Capital, Equity, Option and the other Series of Custodian on the basis of relative net asset value at the time of exchange, plus (other than for shares, including shares accumulated by reinvestment of dividends and distributions, acquired in a previous exchange from such Funds) the difference in the applicable sales charges as described in the current prospectuses of the exchanging Funds. Applicants state that, once the difference in the applicable sales charge is paid, all future exchanges would be at their relative net asset values without any sales charge. Applicants state further that a service charge of up to \$10.00 may be charged per transaction to cover the costs thereof. Applicants state that, in addition, it is proposed that the exchange offer approved by the Commission's prior orders be extended to N.Y. Tax-Free on the same basis.

Applicants state that, since the Funds have different investment objectives, the proposed exchange offer will allow a shareholder of any of the Funds who subsequently changes his investment objective to change his investment to a different Fund. Applicant state that shareholders will be informed of their right to exchange shares of one Fund for shares of any other Funds, on the basis set forth in the application.

Applicants submit that the exchange offer to the shareholders of California Tax-Free, N.Y. Tax-Free, AGE and the U.S. Government Series of Custodian (except for shares acquired by exchange from the other Funds) cannot be made at the relative net asset values of the Fund to be acquired because the shareholder of such exchanging Fund may have paid a lower sales charge while a shareholder in the Fund to be acquired

would likely have incurred a higher sales charge.

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 or of any rule or regulation under 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.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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/her 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.

[PR Doc. 83-6914 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[812-5397; Rel. No. 13133]

Lexington Money Market Trust; Notice of Filing of Application for an Order

Notice is hereby given that Lexington Money Market Trust ("Applicant") 580 Sylvan Avenue, Box 1575, Englewood Cliffs, New Jersey 07632, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act") filed an application 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 valuation. 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 the provisions thereof from which an exemption is being sought.

Applicant represents that it invests exclusively in the following types of money market instruments: (1) obligations issued, or guaranteed as to interest and principal, by the government of the United States or any agency or instrumentality thereof; (2) obligations (including certificates of deposit, bankers' acceptances and documented discount notes) of banks having total assets in excess of one billion dollars being subject to regulation by the U.S. government, including U.S. branches of foreign banks, and certificates of deposit issued by London branches of U.S. banks (Eurodollar C.D.'s); (3) commercial paper of U.S. corporations, rated A1, or A2 by Standard & Poor's Corporation or P1, or P2 by Moody's Investors Service, Inc.; (4) repurchase agreements under which Applicant may acquire an underlying debt instrument for a relatively short period subject to the obligation of the seller to repurchase, and of Applicant to resell, at a fixed price; (5) other money market instruments.

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 or of any rule or regulation under 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. In view of this, Applicant requests an exemption from 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 portfolio by means of the amortized cost method of valuation.

Applicant states that experience indicates that two features are helpful in attracting investment in an investment company such as Applicant: (1) stability

of principal and (2) steady flow of investment income. Applicant asserts that by maintaining a portfolio of high quality money market instruments it can provide these features to investors. According to Lexington Management Corporation, Applicant's investment advisor, experience in the management of other investment companies has shown that, given the nature of Applicant's policies and operations, there will normally be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Applicant represents that its board of directors has determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuing portfolio securities is appropriate and preferable for Applicant and reflects fair value of such money market instruments.

Applicant agrees that the following conditions may be imposed in any order granting the exemptions requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors 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 shall be the following:

(a) Review by 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 net asset value per share as determined by using available market quotations from Applicant's \$1.00 amortized cost price per share, and maintenance of records of such review;²

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1 percent, Applicant's board of directors will promptly

²To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

¹Applicant also states that it will enter into repurchase agreements only with commercial banks and dealers in U.S. government securities. Applicant will not enter into repurchase agreements maturing in more than seven days if the aggregate of such repurchase agreements would exceed 10% of the total assets of Applicant.

consider what action, if any, should be initiated; and

(c) If Applicant's board of directors believes 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 may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. 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 at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio in excess of 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 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 Applicant's 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 if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit the portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's 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 Applicant's board of directors.

6. Applicant will include in each quarterly report, in an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(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 is hereby given that any interested person wishing to request a hearing on the application may, not later than April 25, 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/her 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. 83-8913 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

(812-5392; Rel. No. 13129)

The Mutual Life Insurance Co. of New York, et al.; Notice of Filing of Application for an Order Amending Two Prior Orders Pursuant to Section 6(c) of the Investment Company Act of 1940 Granting an Exemption From Provisions of Sections 17(f) and 27(c)(2) of the Act and Rule 17f-2 Promulgated Thereunder

March 30, 1983.

In the matter of the Mutual Life Insurance Company of New York and the Mony Variable Account-A and the Mony Variable Account-B, 1740 Broadway, New York, New York 10019.

Notice is hereby given that the Mutual Life Insurance Company of New York ("MONY") and the MONY Variable Account-A ("VA-A") and the MONY Variable Account-B ("VA-B"), separate accounts of MONY registered under the Investment Company Act of 1940 ("Act") as open-end investment

companies ("Applicants"), filed an application on December 10, 1982 and amendments thereto on March 10, 1983 and March 30, 1983 pursuant to Section 6(c) of the Act for an order amending two prior orders granting exemptions from provisions of Sections 17(f) and 27(c)(2) of the Act and Rule 17f-2 thereunder to the extent necessary to permit the custody arrangements described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

In Investment Company Act Release No. 5629 (March 11, 1969), the Commission issued an order (the "1969 Order") granting MONY and VA-A an exemption from Sections 17(f) and 27(c)(2) of the Act and Rule 17f-2 promulgated thereunder to permit MONY to hold securities and other investments of VA-A pursuant to procedures which vary in certain respects from those authorized in said sections and rule. In Investment Company Act Release No. 12276 (March 5, 1982), the Commission issued an order (the "1982 Order") granting MONY and VA-B similar exemptions and permitting MONY to hold VA-B's securities and other investments in book-entry form under Section 27(c)(2) of the Act.

Applicants propose to change the arrangements under which they hold certain securities and other investments of VA-A and VA-B ("Securities"). Applicants will enter into a Custodial Services Agreement ("Agreement") with a bank (or banks) qualified under Section 26(a)(1) of the Act (the "Custodian"), whereby Applicants will deposit certain Securities of VA-A and VA-B in separate custodial accounts established by the Custodian ("Custodial Accounts"). The Custodian, in turn, will deposit certain Securities of VA-A (in whole or in part) in the central depository facilities of The Depository Trust Company ("DTC"), a registered clearing agency, or in the Federal Reserve's Book-Entry System (the "Book-Entry System"), but may retain certain Securities in the VA-A Custodial Account. The Securities of VA-B will, under current procedures, be retained in the VA-B Custodial Account, but in the future such procedures may be revised to provide for the deposit of some or all of such Securities in DTC or the Book-Entry System. Other of VA-A's and VA-B's Securities will continue to be held directly by MONY in its vaults as permitted under the prior orders.

³In 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 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.

Applicants have requested that an order be issued amending the prior orders to the extent necessary to permit Applicants to hold, now or in the future, securities and other investments of VA-A and VA-B in accordance with (a) procedures authorized in the prior orders, or (b) procedures which permit securities and similar investments to be held by one or more qualified custodians (or sub-custodians) in accordance with the terms of the Agreement and the requirements of Rule 17f-4, or (c) procedures which permit securities and similar investments to be held in book-entry form, either directly through a registered clearing agency or indirectly through one or more qualified custodians (or sub-custodians) in accordance with (i) the terms of the Agreement or (ii) such other terms (which are reasonably designed to prevent unauthorized officers' instructions) as may be authorized by resolution of and reviewed annually by the Board of trustees of MONY or the VA-A and VA-B Committees, or (d) such other procedures or combination of procedures generally applicable to the custody of securities as have been or may from time to time be authorized by the Commission under Sections 17(f) and 26(a) of the 1940 Act.

Applicants state that the requested relief is necessary because (a) in the case of VA-A, the 1969 Order does not grant an exemption under Section 27(c)(2) to permit MONY and VA-A to hold Securities directly or indirectly in book-entry form pursuant to the Agreement or otherwise, and does not state whether MONY and VA-A may deposit such Securities with a qualified custodian pursuant to an agreement which does not create a trust; (b) in the case of VA-B, the 1982 Order is not clear regarding whether MONY and VA-B may hold Securities under Section 27(c)(2) in book-entry form indirectly through a qualified bank custodian pursuant to an agreement which does not create a trust; (c) in the case of both VA-A and VA-B, the proposed arrangements for holding Securities in book-entry form vary from those established in Rule 17f-2 and the prior orders in that only one authorized officer (rather than two acting jointly) may have access to certain of such Securities and that notations will be maintained in the form of computer records in the office of MONY's treasurer; and (d) in the case of both VA-A and VA-B, there are minor modifications in the list of persons authorized in the prior orders to have access to the Securities and such persons continue to number more than

five. Applicants submit that the arrangements proposed in the Agreement are reasonably designed to prevent unauthorized officers' instructions, while at the same time permitting Applicants to take full advantage of the benefits of book-entry systems.

Section 6(c) of the Act generally authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated 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.

Notice is further given that any interested person wishing to request a hearing of the application may, not later than April 25, 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. 83-2911 Filed 4-5-83; 9:45 am]

BILLING CODE 8010-01-M

[812-5451; Rel. No. 13124]

NEL Tax Exempt Money Market Trust; Notice of Filing of Application

Notice is hereby given that NEL Tax Exempt Money Market Trust ("Applicant") 501 Boylston St., Boston, Mass. 02117, an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on February 9, 1983, and an amendment thereto on March 25, 1983, pursuant to Section 6(c) of the Act, for an order of the Commission exempting Applicant from the provisions of Section 12(d)(3) of the Act

to the extent necessary to permit the Applicant to acquire on behalf of its Tax Exempt Money Market Series (the "Series"), rights to sell portfolio securities of the Series to brokers or dealers and from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the Series' assets to be valued at amortized cost and to permit the aforementioned rights belonging to the Series to be valued in the manner set forth in the application. 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 from which an exemption is being sought.

Applicant states it is a "money market" fund organized as a Massachusetts business trust, and that the investment objective of the Series is to seek current income exempt from Federal income taxes consistent with preservation of capital and liquidity. The Applicant states that the Series will pursue this objective by investing primarily in securities the income from which is exempt from Federal income tax. The application states that although Applicant presently plans to offer only shares of the Series, additional series may be offered from time to time in the future. The Series' adviser is New England Mutual Life Insurance Company.

The Series seeks to achieve its investment objective by investing in a diversified portfolio of municipal securities issued by or on behalf of states, cities, municipalities or municipal agencies. Applicant also states that the Series may invest in floating or variable rate notes which provide that their rate of interest is set as a specific percentage of a designated base rate and that Applicant can demand payment of the obligation on short notice (not to exceed 5 days) at par plus accrued interest. The Applicant states further that the variable rate demand notes will satisfy the requirements of and the maturities thereof will be determined in accordance with the procedures set forth in the Commission's proposed Rule 2a-7 (Investment Company Act Release No. 12206, February 1, 1982) or, if proposed Rule 2a-7 is ultimately adopted, the Rule as so adopted.

The applicant has reserved to the Series the right, under certain circumstances and conditions, to purchase securities together with the right to resell them to the seller at an

agreed-upon price or yield within a specified period prior to the maturity date of such securities. Such a right to resell is commonly known as a "put". Applicant states it will enter into transactions involving puts solely in order to facilitate portfolio liquidity (including flexibility in disposing of portfolio securities acquired with a view to their disposition prior to their stated maturity in order to invest in other, more attractive securities if it should become necessary or advisable to do so in order to meet redemption requirements or to invest in other, more attractive securities). Applicant states that the managers of the Series believe that puts will enable the Series more readily to dispose of portfolio securities if it should become necessary or advisable to do so in order to meet redemption requirements or to invest in other, more attractive securities that are not available for purchase at the time the Series acquires the put. Applicant represents that the Series will not acquire puts with a view to exercising them at time when the exercise price may exceed the current value of the underlying securities.

Applicant states that all puts which it may acquire for the Series will have the following features: (1) They will be in writing and will be physically held by the Series' custodian; (2) they may be exercisable by the Series at any time prior to the underlying security's maturity; (3) the Series' right to exercise them will be unconditional and unqualified; (4) they will be entered into only with dealers, banks and brokers who, in the opinion of the Series' investment adviser, present minimal risk of default; (5) although they will not be transferable, municipal securities purchased subject to such puts could be sold to a third party at any time, even though the put was outstanding; and (6) their exercise price will be (i) the Series' acquisition cost of the municipal securities which are subject to the put (excluding any accrued interest which the Series paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period such securities belonged to the Series, plus (ii) all interest accrued on the securities since the last interest payment date during the period the securities belonged to the Series. Applicant further states that, if its request for an order permitting it to value the Series' securities on an amortized cost basis is granted, the amount payable under a put will be substantially the same as the value of the underlying securities. Moreover, the Applicant submits that there is little risk

of an event occurring which would make the amortized cost valuation of the Series' portfolio securities inappropriate; however, the applicant represents that in the unlikely event that the market or fair value of securities in the Series' portfolio were not substantially equivalent to their amortized cost value, the securities would be valued on the basis of available market information and held to maturity.

According to the application, the Applicant expects that puts generally will be available without the payment of any specified direct or indirect consideration. However, if necessary or advisable, the Applicant states that the series will pay for the puts, either separately in cash or by paying a higher price for portfolio securities which are acquired subject to the commitment. As a matter of policy, the total amount specifically paid in either manner for outstanding puts held by the Series will not exceed $\frac{1}{2}$ of 1% of the value of the Series' total assets calculated immediately after any put is acquired.

Applicant states that it is difficult to evaluate the likelihood of use or the potential benefit of a put. Therefore, Applicant's Board of Trustees will determine that puts have a "fair value" of zero, regardless of whether any direct or indirect consideration was paid. Where the Series has paid for a put, its cost will be reflected as unrealized depreciation for the period during which the commitment is held, and the maturity of a portfolio security shall not be considered shortened or otherwise affected by any put to which such security is subject.

The application states that, in Investment Company Act Release No. 9786, the Commission issued an interpretation of Rule 2a-4 expressing its view that money market funds should "value debt securities with greater than 60 days remaining to maturity based upon current market quotations if readily available or, if such quotations are not readily available, in such a manner as to take into account any unrealized appreciation or depreciation due to changes in interest rates and other factors which would influence the current fair values of such securities." The application represents that Applicant's Trustees have determined in good faith, in light of the proposed characteristics of the Series and the needs of investors, that, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable and will reflect the fair value of the Series' securities. Accordingly, 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 the Series to use the amortized cost method to value its portfolio securities and to permit puts belonging to the Series to be valued in the manner set forth in the application.

Applicant also requests an exemption from Section 12(d)(3) of the Act to the extent necessary to permit Applicant, on behalf of the Series, to acquire puts from brokers or dealers. The Applicant asserts that the acquisition of puts will not affect the Series' net asset value per share for purposes of sales and redemptions and will not pose new investment risks, but rather will improve liquidity and the Series' ability to meet redemptions. The Applicant also represents that the credit risks associated with put transactions are not extraordinary and the evaluation of those risks is substantially similar to the evaluations undertaken by the Series with respect to repurchase agreements and reverse repurchase agreements. Additionally, it is represented that the Series will not acquire puts to promote reciprocal practices, to encourage the sale of its shares or to obtain research services.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules 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 submits that the granting of the requested exemptions is necessary and 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.

The Applicant consents to the following conditions to any order granting the exemption from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder requested in the application, such conditions to be applicable to the portfolio of the Series:

1. In supervising the operations of the Series and delegating special responsibilities involving portfolio management by its investment adviser, the Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Series' investment objectives, to

stabilize the Series' net asset value per share, as computed for the purposes of distribution, redemption and repurchase, at \$1.00 per share.

2. Included within the procedures to be adopted by the Board of Trustees 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 of the Series as determined by using available market quotations from the Series' \$1.00 amortized cost price per share and the maintenance of records of such review.¹

(b) In the event such deviation from the Series' \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees determines that the extent of any deviation from the Series' \$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; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Series' average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Series will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Series will not (a) purchase any instrument with a remaining maturity of greater than one year (although obligations subject to repurchase agreements may have a maturity in excess thereof), or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.²

¹To fulfill this condition, the Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

²In fulfilling this condition, the Applicant agrees that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity for the Series in excess of 120 days, the Series will invest its available cash in such a manner as to reduce its dollar-weighted average

4. The 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; the 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 Trustees' 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 though such documents were required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The investments of the Series, including repurchase agreements, will be limited to those United States dollar denominated instruments which the 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, of comparable quality as determined by the Board of Trustees.

6. If any action pursuant to condition 2(c) is taken, the Applicant will file, as an attachment to Form N-1Q relating to the period during which such action took place, a statement as to 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 April 25, 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.

portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-8908 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 812-5400; Rel. No. 13128]

The Prudential Insurance Co. of America et al.; Notice of Filing of Application for an Order Granting Exemptions

In the matter of The Prudential Insurance Company of America, The Prudential Individual Variable Contract Account, The Prudential Qualified Individual Variable Contract Account, The Prudential Series Fund, Inc., and Pruco Securities Corporation, Prudential Plaza, Newark, New Jersey 07101.

Notice is hereby given that The Prudential Insurance Company of America ("Prudential"), The Prudential Individual Variable Contract Account ("Account"), The Prudential Qualified Individual Variable Contract Account ("Qualified Account") (collectively, "Accounts"), The Prudential Series Fund, Inc. ("Series Fund"), and Pruco Securities Corporation ("Pruco") (collectively, "Applicants") filed an application on December 16, 1982, and an amendment thereto on March 22, 1983 for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 12(d)(1), 15(b), 22(c), 22(d), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the transactions described in the application, and for an order pursuant to Section 11 of the Act approving the terms of certain offers of exchange. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the Rules thereunder for a statement of the relevant provisions.

The Accounts are separate accounts of Prudential, established to fund certain individual variable annuity contracts (the "Contracts") to be issued by Prudential. Each of the Accounts is registered as a unit investment trust under the Act and has a number of subaccounts, each of which will invest its assets exclusively in a corresponding portfolio of the Series Fund. A contractholder may designate the subaccount(s) of the Accounts to which

his purchase payments will be allocated, and may make transfers among the subaccounts, at net asset value and without any charge, subject to certain conditions. Purchase payments will be invested in shares of the appropriate class of capital stock of the Series Fund no later than one day after their receipt by Prudential.

The Series fund is registered under the Act as an open-end diversified management investment company. Prudential is the investment manager of the Series Fund. The Series Fund has five portfolios, interests in each of which are represented by a separate class of capital stock. The Series Fund presently intends to offer its capital stock exclusively to the Accounts at net asset value, without any underwriting spread or sales charge. Applicants do not intend to issue stock certificates to represent shares of Series Fund stock, which will be held under an open account system. Although Prudential may be deemed an underwriter of the Series Fund capital stock, Applicants propose to forego entering into a written underwriting contract regarding such stock, and they assert that, in view of the described arrangements between the Series Fund and the Accounts, no function would be served by such a written contract. The application also states that Prusec, an indirect, wholly-owned subsidiary of Prudential, may be deemed to be the principal underwriter of the Contracts, which will be sold by registered representatives of Prusec.

Applicants state that no sales charge will be deducted from purchase payments as made. Rather, a deferred sales charge will in some circumstances be assessed in the event of a full or partial withdrawal. In each contract year, a contractholder may withdraw up to 10 percent of the value of his account (as calculated on the date of the first withdrawal during the contract year) without incurring any sales charge. A sales charge will be imposed upon additional withdrawals at the rate of 8% for a payment on deposit one year or less, declining by 1% for each additional year the payment has been on deposit, so that payments on deposit eight years or more may be withdrawn without imposition of the sales charge. Withdrawals will be handled on a first-in, first-out basis, and the sales charge will not be imposed on withdrawn amounts in excess of aggregate purchase payments. The sales charge also will be imposed upon annuitization, unless three or more years have elapsed since the first deposit of purchase payments under the Contract. The sales charge will not be imposed on withdrawals by

the beneficiary of a deceased contractholder.

Prudential will impose at the end of each contract year, upon a full withdrawal on a date other than a "contract date," or upon annuitization, an annual account charge of \$30, which may not be increased. Applicants assert that this charge is intended to reimburse Prudential for incurred administrative expenses and does not include any element of profit.

Prudential will also deduct daily from each of the Accounts an amount equal to an annual rate of 1.20% of the value of the Account's assets, of which .8% is for assumption of mortality risks, and .4% is for assumption of the risks that the fixed annual account charge will not cover administrative expenses. Applicants assert that this charge is reasonable and within the range of those made by insurance companies with respect to similar contracts, and the basis for this assertion is reflected in documents on file with the Applicants.

Any premium or other taxes imposed by a state or other government entity on a Contract will be deducted upon annuitization.

Applicants also propose that Prudential maintain custody of the assets of the Accounts. In this regard, Applicants state that Prudential is subject to regulation and periodic examination by the New Jersey Department of Insurance, and that such supervision and regulation protect contractholders sufficiently to satisfy the purposes of relevant statutory provisions.

Relief Requested

Applicants request the following exemptions, to the extent necessary: from Sections 2(a)(32), 22(c), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder, to impose the annual account charge (including its imposition upon full withdrawal); from the foregoing provisions, as well as Section 2(a)(35), to impose the deferred sales charge; from section 22(d) to permit certain withdrawals to be made without imposition of the deferred sales charge; from sections 26(a) and 27(c)(2) to permit Prudential to hold the assets of the Accounts and deduct the mortality and expense risk charge and premium taxes; and from Section 15(b) to permit Prudential to serve as principal underwriter for the Series Fund under the circumstances described above.

Applicants also request an exemption from Section 12(d)(1), to the extent necessary, to permit the Accounts to acquire the shares of the Series Fund. Section 12(d)(1) of the Act, as here relevant, generally restricts the ability of

a registered investment company to acquire the securities of any other investment company, and of a registered open-end investment company to sell its securities to any other investment company. However, Section 12(d)(1)(E) removes such restrictions if *inter alia*, the acquired securities are the only securities held by a registered unit investment trust that issues two or more classes of securities, each of which provides for accumulation of shares of a different investment company.

Applicants assert that the Accounts' acquisition of the securities of the various portfolios of the Series Fund is within this exception, but because each subaccount holds a different class of stock issued by the Series Fund (rather than securities issued by different investment companies) they are requesting an exemption in order to remove any doubt about this matter.

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated 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.

Applicants also request an order pursuant to Section 11 of the Act, to the extent necessary, approving the terms of the offers of exchange described above. Section 11(a) generally makes it unlawful for any registered open-end investment company to make an exchange offer to the holders of its securities on any basis other than relative net asset values unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) apply to any type of exchange offer involving the securities of a registered unit investment trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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. 83-8910 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[811-3108; Rel. No. 13132]

The Texas Money Fund, Inc.; Notice of Filing of Application Pursuant to Section 8(f) of the Act for Order Declaring That Company Has Ceased To Be an Investment Company.

Notice is hereby given that the Texas Money Fund, Inc. 4550 Montgomery Avenue, Ste. 1000N, Bethesda, Md. 20814, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified management investment company, filed an application on February 3, 1983, for an order of the Commission, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant represents that it registered under the Act on November 4, 1980, and filed a registration statement pursuant to Section 8(b) of the Act on the same day. It is further stated that on November 4, 1980, Applicant also filed a registration statement pursuant to the Securities Act of 1933 ("Securities Act") on Form N-1, and that such registration statement, which covered an indefinite number of shares of common stock, was declared effective May 5, 1981. Applicant's initial public offering, it is stated, commenced immediately thereafter. Applicant also states that its investment adviser has been Calvert Asset Management Company, Inc. ("CAM"), a Delaware corporation wholly-owned by Calvert Group, Ltd.

Applicant states, in addition, that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas. At a special meeting held December 17, 1982, Applicant states, the shareholders of Applicant approved and adopted by a vote in excess of the two-thirds vote

required by Texas law, an Agreement and Plan of Reorganization ("Agreement"), which provided for the transfer of all the assets and liabilities of Applicant to Calvert Cash Reserves ("CCR"), also registered under the Act as an open-end, diversified, management investment company, in exchange for shares of beneficial interest in the Prime Portfolio of CCR. The Agreement, Applicant states, further provided for the distribution of CCR shares given in exchange for Applicant's assets to the shareholders of Applicant, the liquidation and dissolution of Applicant and Applicant's deregistration as an investment company under the Act.

Pursuant to the terms of the Agreement, it is stated, Applicant transferred to CCR, effective as of the close of business on December 17, 1982, all of Applicant's assets, subject to liabilities, with a total net asset value of \$8,638,801, in exchange for 8,638,801 shares of the Prime Portfolio of CCR having an aggregate net asset value of \$8,638,801. Immediately following the closing, Applicant states, it caused shares of CCR to be distributed to Applicant's shareholders in proportion to the number of shares held by each shareholder of record on December 17, 1982, in exchange for Applicant's shares.

Applicant further states that the total expenses incurred in connection with the Agreement are estimated to be approximately \$40,000, all of which are to be borne by CAM, which is investment adviser to CCR as well as to Applicant. It is represented that Applicant has retained no assets, that CAM has assumed all of Applicant's debts and liabilities, and that Applicant has no shareholder to whom distribution in complete liquidation of his interest in Applicant has not been made. Applicant states that it is not party to any litigation. Lastly, it is stated that Applicant no longer has any security-holders or assets, is no longer offering its shares, and does not engage, or propose to engage, in any business activities other than those necessary to the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company under the Act shall terminate.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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/her 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. 83-8912 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-19630; File No. SR-PSE-83-07]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc.; Relating to Rights Distribution to Members

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 March 4, 1983 the Pacific Stock Exchange Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will authorize a distribution of rights to current members of the Pacific Stock Exchange Incorporated. Each right entitles the holder to purchase one-fifteenth of a membership, with fifteen rights and payment of \$30,000 being required to make the purchase. The rights are transferable.

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 correct an imbalance in the supply of and demand for memberships in the Pacific Stock Exchange Incorporated. The use of the rights distribution to correct the imbalance is based upon the desire to have current members share in the benefits resulting from the additional memberships.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it will promote just and equitable principles of trade and remove impediments to a free and open market in securities by correcting an imbalance in the supply of and demand for memberships in the Exchange. The proposed rule change will also help avoid unfair discrimination between brokers or dealers and to foster competition in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition but will, in fact, have a favorable impact on competition by correcting an imbalance of supply of and demand for memberships, and increasing the number of members participating in the auction market of the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1983.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-6915 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13135; 812-5408]

Related Forest City Elderly Limited Partnership I et al.; Application

March 31, 1983.

In the matter of: Related Forest City Elderly Limited Partnership I and the Related Companies, Inc., 645 Fifth Avenue, New York, New York 10022 (812-5408) Notice of filing of application for an order pursuant to section 6(c) of the act granting an exemption from all provisions of the act.

Notice is hereby given that Related Forest City Elderly Housing Limited Partnership I (the "Partnership"), a Massachusetts limited partnership, and its managing general partner, The Related Companies, Inc., a Delaware corporation ("Related Companies" or the "Managing General Partner" and, together with the Partnership, referred to

hereinafter as "Applicants"), filed an application on December 21, 1982, and an amendment thereto on March 15, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), for an order exempting the Partnership from all provisions of the Act and rules thereunder. 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.

Applicants state that the Partnership was formed on September 1, 1982, and became a limited partnership under the Massachusetts Uniform Limited Partnership Act on September 30, 1982, as a vehicle for equity investment in government-assisted rental housing consistent with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants further state that the Partnership is operating as a "two-tier" entity, i.e., the Partnership, as the sole limited partner, has invested in four other limited partnerships ("Local Limited Partnerships"), that in turn, engage in the ownership and operation of government-assisted apartment complexes (the "Projects"). According to the application, each Local Limited Partnership owns and operates a fully constructed apartment complex for occupancy by elderly and/or handicapped persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974).

The general partners of the Partnership are the Managing General Partner, Related Elderly I Associates, a New York partnership and Forest City Dillon, Inc. ("Forest City"), an Ohio corporation (collectively, the "General Partners"). In each Local Limited Partnership, Forest City will serve as the Project Managing General Partner. Related Project Partnership Corporation, an affiliate of the Managing General Partner, will serve as Associate General Partner of each of the Local Limited Partnerships, with only limited responsibility to the Local Limited Partnerships. Shearson/American Express Real Estate Corporation is the Special Limited Partner of the Partnership.

Applicants state that the Partnership has sold 100 Units of Limited Partner Interests ("Units") at \$58,500 per Unit in transactions exempted from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the "Securities Act") and in compliance with Rule 506 of Regulation D under Section 4(2) of the Securities Act.

Purchasers of Units became Limited Partners ("Limited Partners") of the Partnership. The Partnership had \$5,205,000 available for investment after deduction for sales commissions (7 percent of the gross proceeds) and offering expenses (4.1 percent of the gross proceeds). The offering of the Units ended on December 27, 1982, with Units being held by not more than 100 persons.

Applicants state that Shearson/American Express Inc., a member of the National Association of Securities Dealers, Inc., offered and sold the Units as offering broker and received placement fees of \$409,500 (\$4,095 per Unit). As set forth in the Amended and Restated Agreement and Certificate of Limited Partnership of the Partnership (the "Partnership Agreement") and as described in the Private Placement Memorandum (the "Memorandum"), the General Partners and their affiliates are receiving substantial reimbursements, fees and other compensation from the proceeds of the sale of the Units and from the operations of the Local Limited Partnerships of which affiliates of the General Partners are the general partners. The application states that, from the amount available for investment, the Partnership paid expenses and fees to its General Partners (in such capacity) in the amount of \$100,000 (1.7 percent of the gross proceeds), paid to Forest City Rental Properties Corporation ("Properties"), an affiliate of Forest City, \$2,750,000 (47.0 percent of the gross proceeds) as part of the consideration for the Partnership's acquisition from Properties of a 99 percent interest on each Local Limited Partnership in consideration of cash and short-term and long-term purchase money notes and invested \$850,000 (14.5 percent of the gross proceeds) in the Local Limited Partnerships, which was paid directly to Forest City as the Project Managing General Partner for services relating to the Projects. It is represented in the application that of the \$850,000 to be invested in the Local Limited Partnerships from the gross proceeds of the offering, \$410,000 will be paid to Forest City as an "operating deficit guarantee fee" as consideration for agreeing to lend funds to the Local Limited Partnerships to meet certain operating deficits and the remaining \$440,000 will be paid to Forest City as Partnership Management Fees in consideration of its management services to the four Local Limited Partnerships. It is represented further that Forest City has, in connection with the transactions contemplated for the

Partnership and the Local Limited Partnerships, agreed to pay to Related Companies \$440,000 in consideration of its performance of certain tax, financial and consulting services. Applicants contend that, as Forest City and Related Companies are independent and unrelated entities, the fees negotiated between the two of them were negotiated at arm's length. Related Companies believes the fee structure to be fair, normal and not excessive for transactions structured with the tax characteristics of an offering of this type and sold to investors meeting suitability standards such as those included with the offering.

Applicants state that an aggregate purchase price of \$5,155,152 has been paid by the Partnership for the interest in each Local Limited Partnership. It is represented that the purchase price for the 99 percent interest in each Local Limited Partnership was based on an independent appraisal by Joseph J. Blake and Associates, Inc. of New York, New York, a member of the American Institute of Real Estate Appraisers.

Section 6(c) of the Act provides, as herein pertinent, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from the provisions of the Act and the rules promulgated 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.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all the provisions of the Act pursuant to Section 6(c) of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act.

Applicants assert that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. They assert that the limited partnership structure provides the only means of bringing private equity capital into government-assisted housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than

real estate investment generally. Applicants state that the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual income tax return his proportionate share of the income and losses from the investment.

Applicants assert the despite the advantages it affords investors in government-assisted housing, the limited partnership form of organization is incompatible with the operational framework of the Act. By way of example, it is claimed that the Act requires annual approval by investors of a management contract, but a limited partner may incur general liability if given such voting rights and that the same problem exists with respect to the election of directors and the termination of the investment company management contract. In addition, it is further claimed that the asset coverage limitations imposed by Section 18 of the Act were designed to protect investors in securities from wide fluctuations in market prices and that such concerns are inapposite to the mortgage financing and other federal, state and local government assisted programs developed for low and moderate income housing.

Applicants further state that interests in the Partnership were sold only to investors who met specified suitability standards which the Partnership believes are consistent with the securities laws of all states where the Units were sold. Subscriptions for Units were approved by the Managing General Partner, and such approval was required to be made conditional upon representations as to suitability of the investment for each subscriber. It is represented that investors will receive extensive reports concerning the Partnership's business and operations. Applicants represent, in addition, that under the Partnership Agreement, each Limited Partner is entitled to review the books of account of the Partnership during normal business hours. Applicants further state that, although the interests of the General Partners and their affiliates may conflict in various ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure in the Memorandum. Further protection for the interests of Limited Partners is provided. Applicants assert, by the numerous provisions of the Partnership Agreement designed to prevent overreaching by the General Partner and

to assure fair dealing by the General Partners with the Limited Partners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 25, 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. 83-9030 Filed 4-6-83; 9:45 am]

BILLING CODE 8010-01-M

[Release No. 13130; 812-5329]

Travelers Insurance Co. et al.; Application

March 31, 1983.

In the matter of Travelers Insurance Company, Travelers Fund A for variable annuities, Travelers Fund A-1 for variable annuities, Travelers Fund MM for variable annuities, Travelers Fund U for variable annuities, One Tower Square, Hartford, Connecticut 06115 (812-5329). Notice of application pursuant to section 6(c) of the act for an order of exemption from the provisions of sections 2(a) (32), 2(a)(35), 12(b), 22(c), 22(e), 26(a), 26(a)(2)(D), 27(c)(1), 27(c)(2), and 27(d) of the act and rules 12b-1 and 22c-1 thereunder and for approval of the terms of certain offers of exchange pursuant to section 11 of the act.

Notice is hereby given that The Travelers Insurance Company ("The Travelers"), The Travelers Fund A for Variable Annuities ("Account A"), The Travelers Fund A-1 for Variable Annuities ("Account A-1"), The Travelers Fund MM for Variable Annuities ("Account MM"), and The Travelers Fund U for Variable Annuities ("Account U") (hereinafter collectively referred to as "Applicants"), filed an application on September 27, 1982, and amendments thereto on January 26, 1983,

February 4, 1983, and March 18, 1983, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 22(e), 26(a), 26(a)(2)(D), 27(c)(1), 27(c)(2) and 27(d) of the Act, and Rules 12b-1 and 22c-1 promulgated thereunder, all to the extent necessary to permit certain transactions described below, and for Commission approval of the terms of certain exchange offers, pursuant to Sections 11(a) and 11(c) of the Act, both in connection with Applicants' proposed offering of certain variable annuity contracts (the "Contracts"). All interested persons are referred to the application and amendments on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act the Rules thereunder for a statement of the relevant statutory provisions.

The Travelers established Accounts A, A-1, MM and U pursuant to Connecticut law as segregated investment accounts through which to set aside and invest assets attributable to variable annuity contracts. Accounts A, A-1, and MM are registered as diversified, open-end management investment companies (a "managed account") (Accounts A, A-1, and MM collectively, the "Managed Accounts").

Account U is registered as a unit investment trust. Each of these separate accounts proposes to offer the Contracts, which are intended to be offered to individuals or groups solely in retirement plans which qualify for special federal income tax treatment under various sections of the Internal Revenue Code.

Under the Contracts, purchase payments, which may be made on a single or flexible basis, will be allocated according to a Contract owner's instructions to one or more of several investment alternatives. The list of investment alternatives currently consists of: (1) Account A, which invests in common stock; (2) Account A-1, which invests in short-to-intermediate term debt securities; (3) Account MM, which invests primarily in short-term money market securities; and (4) Account U, which is divided into investment subdivisions, each of which invests solely in the shares of a specified open-end diversified management investment company registered under the Act (collectively, the "Funds"). There are currently three investment subdivisions, investing in the following: (1) Managed Assets Trust; (2) Aggressive Stock Trust; and (3) Investment Bond Trust. Shares of the

Funds will be sold to Account U at net asset value and will be issued under an open account arrangement without use of stock certificates. Prior to annuitization, a Contract owner may transfer, without charge, all or a portion of his investment from one investment alternative to another at relative accumulation unit values next determined following the request. There are currently no restrictions on the frequency or amount of transfers, although The Travelers reserves the right to limit transfers to no more than one in any six-month period.

The Travelers is responsible for administration of the Contracts and the separate accounts. During the period prior to annuitization, The Travelers will deduct a semi-annual maintenance charge of \$15 from the value of each Contract to reimburse it for administrative expenses (the "administrative charge"). This charge, which cannot be increased for the duration of individual Contracts and for the first five years of group Contracts, will reimburse The Travelers only for its actual expenses associated with administering the Contracts. The charge will be deducted from the value of each Contract on June 30 and December 31 each year by cancelling accumulation units under each investment alternative on a *pro rata* basis. The administrative charge will be prorated for the first contract year. If the Contract is surrendered for its cash value, the annuitant dies, or annuity payments begin, the charge will be prorated.

In addition, The Travelers will deduct from each separate account an asset charge equal on an annual basis to 1.25% of the net asset value of the separate account to compensate The Travelers for its assumption of certain mortality and expense risks. This 1.25% is allocable approximately 0.50% to The Travelers' assumption of mortality risks, .15% to The Travelers' assumption of administrative expense risks, and .60% to The Travelers' assumption of distribution expense risks. The distribution expense risk component of this charge is intended to compensate The Travelers for assuming the risk of the sales charge shortfall, as discussed in detail below. The level of the asset charge is guaranteed and will not change.

The Travelers represents that it expects to make a profit from this charge. The Travelers also states that the asset charge, when added to its general account, will not be earmarked for any specific purpose but will be utilized to meet expenses relating to the Contracts, including distribution

expenses, as well as to other contracts it issues.

The Travelers Investment Management Company ("TIMCO") furnishes investment management and advisory services to the Managed Accounts in return for a fee, deducted on each valuation date, equivalent to .3233% on an annual basis of the net asset value of each account. TIMCO is a wholly-owned subsidiary of the Travelers Corporation, parent of The Travelers. Keystone Custodian Funds, Inc. serves as investment adviser for the Funds underlying Account U, and receives as compensation for its services an amount, deducted on each valuation date, equivalent on an annual basis to 0.5% of the net asset value of each Fund.

Any premium taxes levied by a state or local governmental entity as a result of the existence of the Contracts or the separate accounts will be paid by The Travelers, and will be assessed against contract value upon annuitization.

Contract owners may withdraw all or part of the contract value prior to annuitization. Subject to certain exceptions set forth below, a contingent deferred sales charge ("sales charge") of 5% will be assessed against amounts withdrawn attributable, on a FIFO basis, to purchase payments made within five years of the withdrawal date. The sales charge will be paid to The Travelers to compensate it in part for the cost of distributing the Contracts. The Travelers asserts that its projections indicate that this sales charge will be insufficient to cover distribution expenses and that it intends to make up the shortfall through use of general account funds, which are attributable in part to the asset charge assessed under the Contracts. The sales charge will be waived under certain circumstances described in the application and under the terms of certain exchange offers.

As fully described in the prospectus, The Travelers proposes to permit indefinitely a participant under a group Contract to transfer his accumulated cash value to an individual Contract without imposition of any sales or transfer charge at the time of the transfer. For persons transferring from a group Contract for which The Travelers does not maintain records regarding individual participant contributions, the amount transferred will be subject to the sales charge normally applicable under the individual Contract (except that the charge will not be imposed upon annuitization at any time after the transfer), and the entire amount transferred will be deemed to constitute a purchase payment as of the date of

transfer for purposes of determining the applicability of the sales charge. The Travelers represents that: (1) It will not participate in or precipitate the dissolution of the plan in connection with which the group Contract was purchased, or participate in or precipitate an individual participant's decision to leave such plan; and (2) if The Travelers should participate in or precipitate such dissolution or decision, it will waive the sales charge normally applicable under the individual Contract in addition to waiving the sales charge normally applicable under the group Contract. For persons transferring from a group Contract for which The Travelers does maintain records regarding individual participant contributions, the amount transferred will be subject to the sales charge applicable under the individual Contract, but amounts transferred will be deemed to constitute purchase payments as of the dates such amounts were paid in, pursuant to the group Contract for purposes of computing the applicable sales charge.

In addition, the owner of a group or individual variable annuity contract funded in the Managed Accounts and issued prior to the effective date of the registration statement for the Contracts (an "Old Contract") may transfer cash value accumulated under an Old Contract to a Contract described in this application, provided the owner is otherwise eligible. The exchange will be executed at net asset value, and the applicable sales charge will not be imposed on the amount transferred or appreciation thereon.

Travelers also proposes to offer the Contracts to participants in the Texas Optional Retirement Program ("Program"). Title 110B of the Texas Revised Civil Statutes ("ORP statute") allows as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. Section 36.105 of the ORP statute provides that the benefits of an annuity purchased under the Program are available only if the participant terminates participation in the Program by death, retirement or termination of employment in all institutions of higher education. Applicants propose to limit the redemption privileges otherwise available under the Contracts to the extent required by the ORP statute.

Relief Requested

Section 6(c) of the Act provides, in pertinent part, that the Commission may exempt any person from any provision of the Act or its Rules and Regulations if and to the extent 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. In support of their requested relief, Applicants submit that the exemptions requested below are appropriate in the public interest and fully consistent with the protection of investors and the policy and purposes of the Act.

1. Custodianship Relief

Applicants request an exemption from Sections 26(a) and 27(c)(2) of the Act to the extent necessary to permit The Travelers to hold the assets of Account U for safekeeping rather than to enter into a custodial or safekeeping agreement with a bank. Furthermore, Applicants request an exemption from Section 26(a)(2)(D) of the Act to permit shares of the Funds underlying Account U to be held under an open account arrangement without the use of stock certificates. Applicants state that The Travelers is subject to extensive supervision and control by the Connecticut Director of Insurance and the insurance commissioners of each state in which the Contracts will be sold. In addition, Applicants state that under Connecticut law and the terms of the Contracts, the assets of Account U are not chargeable with liabilities arising out of any other business conducted by The Travelers, and that the Contracts impose on The Travelers continuing obligations that cannot be abrogated without violating Connecticut law. Therefore, Applicants assert, such regulation affords substantially the same protection contemplated by these provisions of the Act and to require the use of either a bank custodian or stock certificates would be an unnecessary burden.

2. Fees and Charges Relief

Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary or appropriate to permit The Travelers to deduct (a) the administrative charge, (b) premium taxes, (c) the contingent deferred sales charge, (d) the advisory fees, in the case of the Managed Accounts, and (e) the asset charge. Applicants represent that the administrative charge will reimburse The Travelers only for its actual expenses associated with administering the Contracts and that any increases in the charges after the first five years of group Contracts will correspond to increases in the costs of administering those Contracts. Applicants represent that the deduction for premium taxes will be in the amount obligated or

incurred. Applicants represent that the sales charge imposed on any Contract will in no event exceed 9% of purchase payments made. Applicants also represent that the deduction of a sales charge and the advisory fees are appropriate in the public interest and consistent with the protection of investors.

Finally, Applicants represent that the asset charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based upon The Travelers analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. Applicants further represent that The Travelers will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, The Travelers' comparative survey. In the case of Account U, The Travelers represents that it has determined that the use of the asset charge for distribution has a reasonable likelihood of benefiting Account U and its shareholders and that a memorandum setting forth the basis for this representation will be maintained at The Travelers' home office and will be available to the Commission. Account U further represents that as a condition of this relief it will invest only in funds which undertake to have a board of trustees with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Applicants also request relief from Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to impose the sales charge.

3. Texas ORP Relief

Applicants request relief from the provisions of Sections 2(a)(32), 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the ORP statute. The exemptive relief sought is solely for the purpose of, and solely limited to, purchasers who are Program participants. Applicants assert that absent the limited exemptions requested, they will not be able to offer Contracts to Program participants. Applicants assert that granting the requested exemptions is appropriate because: (1) the restrictions on redemption would be voluntarily assumed by purchasers, i.e., eligible employees are not required to

participate in the Program; (2) the restrictions were not formulated or suggested by Applicants; and (3) relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the contributions of the State of Texas. Applicants represent that sales representatives will be instructed to inform prospective purchasers that redemption rights under the Program are restricted, and that Applicants will review any sales literature used to ensure that the restrictions on redemption are disclosed. Furthermore, purchasers will be required to sign a statement acknowledging that they are aware of the restrictions, which will be described in the prospectuses used in the Program market.

4. Section 12(b) and Rule 12b-1 Relief

As noted above, Applicants anticipate that the sales charge will be insufficient to cover the expenses of distributing the Contracts and expect to make up the shortfall through use of general account funds which are attributable in part to the asset charge. The Managed Accounts request an exemption from Section 12(b) of the Act and Rule 12b-1 thereunder, insofar as this proposed distribution financing arrangement might be deemed to involve the direct or indirect use of account assets for distribution.

In support of this request, Applicants contend that Rule 12b-1 was not intended to apply to managed accounts (although Applicants are requesting relief to recover distribution expenses only through the asset charge). Applicants assert that although the rule speaks broadly of "open-end management investment companies," the language and content of the adopting release indicate clearly that the rule's provisions are directed only at traditional mutual funds and thus the rule should not be applied to managed accounts without explicit Commission consideration of the appropriateness of such action.

Applicants also assert that the protections of Rule 12b-1 are not necessary in the case of managed accounts. Applicants state that Commission review under Sections 28 and 27 of the Act of the reasonableness of asset charges of managed accounts and explicit prospectus disclosure that the asset charge may be used for distribution expenses provides sufficient protection for owners of variable annuity contracts and obviates the necessity for a managed account to comply with the requirements of Rule 12b-1.

Applicants further assert that the application of Rule 12b-1 to managed accounts would produce a burdensome and inequitable treatment of this type of account in contrast to separate accounts registered as unit investment trusts ("trust accounts"), which are not subject to Section 12(b) of the Act and Rule 12b-1 thereunder. Applicants assert that managed accounts offering variable annuity contracts are in many respects more analogous to trust accounts than to mutual funds. Applicants submit that application of the rule to managed accounts would place them at an unfair competitive disadvantage with respect to trust accounts offering similar annuity contracts and would create an artificial distinction between managed and trust accounts not justified by policy considerations, since the Commission has not deemed it necessary to adopt a rule for trust accounts comparable to Rule 12b-1. Moreover, Applicants point out that the Commission's review of the reasonableness of asset charges for both managed and trust accounts provides sufficient protection for contract owners on a uniform basis.

Finally, Applicants assert that to the extent that an insurance company pays variable annuity contract distribution expenses from general account assets which are attributable in part to legitimate profits derived from a reasonable asset charge, such payments should not be considered an indirect use of the account's assets for distribution. Rather, Applicants state such payments should be viewed as analogous to an investment adviser paying distribution expenses from his "legitimate" and "not excessive" advisory profits, a situation which the Commission acknowledged in Investment Company Act Rel. No. 11414 (October 28, 1980) does not constitute an indirect use of assets for distribution requiring compliance with Rule 12b-1.

In support of the requested relief, Applicants represent that The Travelers has determined that the proposed distribution financing arrangement has a reasonable likelihood of benefiting the Managed Accounts and owners of Contracts funded thereby. The Travelers represents that it will maintain at its home office, and make available to the Commission, a memorandum setting forth the basis for this representation. Applicants further represent that the Managed Accounts, each of which is presently governed by a board of managers with a majority of disinterested members, will have a board with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses. Applicants also state that

each of the Funds underlying Account U is governed by a Board of Trustees a majority of whom are disinterested, and Account U represents that as a condition of its asset charge relief under Sections 26 and 27, it will invest only in funds which undertake to have a board with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

5. Approval of the Terms of Offers or Exchange

As set forth in their application, Applicants propose: (1) to permit Contract owners to transfer their investment between separate account investment alternatives prior to annuitization; (2) to make offers of exchange to certain owners of existing variable annuity contracts (Old Contracts) issued by The Travelers; and (3) to permit the exchange of a group Contract for an individual Contract. Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act to permit these offers of exchange, where permitted by applicable law and applicable plan limitations, and subject to the conditions described above.

Notice is further given That any interested person wishing to request a hearing on the application may, not later than April 25, 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.

By the Commission,
George A. Fitzsimmons,
Secretary.

[FR Doc. 83-0031 Filed 4-5-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 19643; File No. SR-PSE-83-6]

Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

March 31, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1983, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

According to the PSE, the proposed revision is intended to address an anomaly which currently exists in the PSE's policies governing transactions in options which are traded on the PSE by market makers on a leave of absence. Options Floor Procedure Advice B-5, in discussing market maker leaves of absence, provides that a market maker is not permitted to make opening transactions in PSE listed options through the use of a floor broker while he is on a leave of absence. Options Floor Procedure Advice B-11 provides that only transactions initiated while a market maker is on the floor shall be counted as market maker transactions and receive exempt credit treatment. Advice B-11 provides an exception for certain "good-til-canceled" ("GTC") orders entered with a floor broker while a market maker is on the floor. These orders may open new positions in the market maker's account which can properly be granted exempt credit treatment.

Both of these Floor Procedure Advices are based on Rule 15c-3-1, promulgated by the Commission, and Regulation T, promulgated by the Federal Reserve Board, which provide that market makers may receive special credit treatment in return for meeting their obligations as market makers. The rationale behind the Advices is that only those transactions that market makers initiate while on the floor of the Exchange enable them to perform their obligations as market makers and, therefore, only these transactions should receive exempt credit treatment.

In late 1979, much of the present language of Advices B-5 and B-11 was adopted. (See SR-PSE-80-7 and SR-PSE-80-3). Although an exception was provided for certain GTC orders in Advice B-11, Advice B-5 did not provide the same exemption for a market maker on a leave of absence. Thus, the language of Advice B-5 would appear to prohibit any opening transaction while a market maker is on a leave of absence. This language, according to the PSE, creates an anomaly in the rules. A market maker who simply leaves the floor for a period of longer than two weeks without applying for a leave of absence may leave GTC orders which will open new positions in his account

and receive exempt credit treatment. However, a market maker who does apply for a leave of absence would not be accorded the privilege of leaving GTC orders with a floor broker prior to the effective date of the leave of absence which open positions while he is gone.

The purpose of the proposed rule change, according to the Exchange, is to correct this inadvertent anomaly. In adopting Advices B-5 and B-11, the PSE did not intend to create this distinction between a market maker who is on a leave of absence and a market maker who is simply off the floor. The proposed rule change will provide the same exemption for all GTC orders left with a floor broker by a market maker during the market maker's absence, provided the requirements of Advice B-11 are met.

The PSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, facilitate transactions in securities traded on the PSE, protect investors and the public interest, and prevent unfair discrimination.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-36-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be

available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-1029 Filed 4-5-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0242]

California Partners; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that California Partners, 3000 Sand Hill Road, Menlo Park, California 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004) for approval of a conflict of interest transaction.

California Partners proposes to make an investment in Weitek Corporation ("Weitek"), 3255 Scott Boulevard, Building 2B, Santa Clara, California 95054. The proposed financing will be used to purchase 6,667 shares of Apollo's Preferred Stock at a price of \$4.50 per share, for a total purchase price of \$30,001.50.

California Partners is a California limited partnership. Its corporate general partner is Draper Associates, Inc., of which Mr. William H. Draper III is sole shareholder. Paul M. Wythes is President and Alan R. Brudos Treasurer. The limited partners of California Partners are members of Mr. Draper's immediate family. Mr. Wythes is also one of the general partners of Sutter Hill Ventures (Sutter Hill), a California partnership. SBA deems Sutter Hill and its other general partners as Associates of California Partners. Sutter Hill, its general partners and associates of general partners currently own approximately 20 percent of the voting power in Weitek and, following a proposed March 1983 financing, will own approximately 20 percent of the voting power in Weitek. California Partners currently owns approximately 0.5 percent of the voting power of Weitek, and will own approximately 0.7 percent following its proposed investment. Because Sutter Hill, its partners and their associates own more than 10 percent of the voting power of Weitek, Weitek is defined as an

Associate of California Partners in Weitek falls within the purview of § 107.1004(b)(1) of SBA Rules and Regulations and requires SBA prior approval.

Notice is hereby given that any person may not later than 15 days from the date of publication of this Notice submit written comment to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Palo Alto and Santa Clara area of California.

Dated: March 29, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-1024 Filed 4-5-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0263]

Capital Equity Corp.; Issuance of a Small Business Investment Company License

On October 29, 1982, a notice was published in the Federal Register (47 FR 49136) stating that an application has been filed by Capital Equity Corporation, 1855 Wooddale Boulevard, Baton Rouge, Louisiana 70806, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)) for a license as a small business investment company.

Interested parties were given until close of business November 15, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-0263 on March 11, 1983, to Capital Equity Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 50.011, Small Business Investment Companies)

Dated: March 31, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-6022 Filed 4-5-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0150]

Capital Marketing Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Capital Marketing Corporation (CMC), 9004 Ambassador Row, Dallas, Texas 75265, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration (SBA) pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1983)) for approval of a conflict of interest transaction.

CMC proposes to loan \$305,900 to Mr. Mike Ellison of Combine, Texas 75159, for construction of a store and purchase of land, equipment and inventory.

The conflict of interest arises because Mr. Ellison is an employee of Affiliated Food Stores, Inc., (Affiliated). Affiliated is an associate of CMC. As a result, CMC's financing of Mr. Ellison falls within the purview of § 107.1004(b)(1) of the SBA Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Combine, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 29, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-1023 Filed 4-5-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period March 25 through March 31, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections

should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0304
Form Number: Letter 257C and 257SC
Title: Request Taxpayer Complete Form SS-5 for Clarification of Number
OMB Number: 1545-0636
Form Number: Form SWR E-2489
Title: Letter for Perfecting Exemption Certificate on Windfall Profit Tax
OMB Number: 1545-0625
Form Number: Form SWR E-2486
Title: Certification/Election Letter-WPT
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of the Public Debt

OMB Number: N/A (new submission)
Form Number: PD 2514
Title: Request for Reissue of U.S. Savings Bonds in Names of Persons Entitled as Distributees Upon Dissolution of Partnership
OMB Number: N/A (new submission)
Form Number: PD 1934
Title: Application for Relief on Account of the Mutilation or Partial Destruction of U.S. Savings and Retirement Securities
OMB Number: N/A (new submission)
Form Number: PD 385
Title: Certificate of Identity
OMB Number: N/A (new submission)
Form Number: PD 1071
Title: Certificate of Ownership of U.S. Bearer Securities
OMB Number: N/A (new submission)
Form Number: PD 1010
Title: Title: Resolution by Corporate Body Authorizing Assignment and Disposition of Specified Securities owned by it or in care
OMB Number: N/A (new submission)
Form Number: PD 1008
Title: Specific Power of Substitution under Power of Attorney Granted to Corporation to Dispose of Registered Securities
OMB Number: N/A (new submission)
Form Number: PD 1006
Title: Specific Power of Substitution under Power of Attorney Granted to an Individual to Dispose of Registered Securities
OMB Number: N/A (new submission)
Form Number: PD 1003
Title: Power of Attorney by Corporation or Unincorporated Association Authorizing Disposition of Registered Transferable Securities

OMB Number: N/A (new submission)
Form Number: PD 1001
Title: Power of Attorney by Individual Authorizing Disposition of Registered Securities
OMB Number: N/A (new submission)
Form Number: PD 1011
Title: Corporate Resolution Authorizing Disposition of Securities held by Organization and Execution of Bonds of Indemnity for it
OMB Number: N/A (new submission)
Form Number: PD 1014
Title: Certification of Incumbency of Corporate or Organization Officers
OMB Number: N/A (new submission)
Form Number: PD 1048-1
Title: Supplemental Statement of an Application for Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities
OMB Number: N/A (new submission)
Form Number: PD 1050
Title: Creditor's Consent to Disposition of U.S. Securities and Related Checks without Administration of Deceased Owner's Estate
OMB (new submission) number: (new submission)/A (new submission)
OMB Number N/A: (new submission)
Title: Application for Recognition as a Voluntary Guardian of Incompetent Owner of Securities and Checks Issued as Interest thereon
OMB Number N/A: (new submission)
Form Number: PD 1540
Title: Request for Reissue of U.S. Savings Bonds Upon Change of Name of, or Upon Succession To, Corporation, Unincorporated Association, or Partnership
OMB Number N/A: (new submission)
Form Number: PD 1646
Title: Application for Disposition of Registered Securities and Related Checks without Administration of Deceased Owner's Estate
OMB Number N/A: (new submission)
Form Number: PD 1832
Title: Detached Assignment for Registered Securities
OMB Number N/A: (new submission)
Form Number: PD 1993
Title: Request for Payment of Matured U.S. Savings Bonds and Purchase of U.S. Savings Bonds with Proceeds of Payment of Matured Savings Bonds
OMB Number N/A: (new submission)
Form Number: PD 2066
Title: Application by Survivors for Payment of Bond or Check issued under Armed Forces Leave Act of 1946, as amended
OMB Number N/A: (new submission)
Form Number: PD 2216
Title: Application for Preferred Creditor for Disposition without Administration where Deceased

Owner's Estate includes Registered Securities
OMB Number N/A: (new submission)
Form Number: PD 2446
Title: Certificate of Incumbency for Fiduciaries
OMB Number N/A: (new submission)
Form Number: PD 2458-1
Title: Certificate of Entitlement to U.S. Registered Securities and Checks not exceeding \$500 after Administration of Deceased Owner's Estate
OMB Number N/A: (new submission)
Form Number: PD 2481
Title: Application for Recognition as Natural Guardian of Minor and for Disposition of Minor's Interest in Registered Securities
OMB Number N/A: (new submission)
Form Number: PD 2488
Title: Disposition of Securities or Checks by Personal Representative of Decedent's Estate for \$500 or Less
OMB Number N/A: (new submission)
Form Number: PD 2495
Title: Resolution by Fiduciaries Empowered to Act as a Unit Authorizing Disposition of Specific Registered Securities
OMB Number N/A: (new submission)
Form Number: PD 2513
Title: Application by Voluntary Guardian of Incompetent Owner of U.S. Savings Bonds/Notes
OMB Number N/A: (new submission)
Form Number: PD 4881
Title: Application for Payment of U.S. Savings Bonds/Notes and/or Related Checks in the Amount not exceeding \$1,000 by the Survivor of a Deceased Owner Whose Estate is being administered
OMB Number N/A: (new submission)
Form Number: PD 3475
Title: Special Form for Assignment of Federal Housing Insurance Fund Debentures (Detached Assignment)
OMB Number N/A: (new submission)
Form Number: PD 3564
Title: Request for Reissue of U.S. Retirement Plan or Individual Retirement Bonds to Change Beneficiary or Reflect Change of Name
OMB Number N/A: (new submission)
Form Number: PD 3565
Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds without Administration of Deceased Owner's Estate
OMB Number N/A: (new submission)
Form Number: PD 3570
Title: Request for Reissue of U.S. Retirement Plan Bonds to Correct an Error in Registration
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: April 1, 1983.

Floyd Sandlin,

Chief, Information Resources Management Division.

[FR Doc. 83-9006 Filed 4-5-83; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 464; Ref: ATF O 1100.61A]

Authority to Maintain the National Firearms Registration and Transfer Record; Delegation Order

1. **Purpose:** This order delegates the authority to maintain custody and control of the National Firearms Registration and Transfer Record, and the authority to execute certifications relative thereto.

2. **Cancellation:** ATF O 1100.61, Delegation Order—Authority to Maintain the National Firearms Registration and Transfer Record, dated March 31, 1976, is cancelled.

3. **Background:** The authority vested in the Director, Bureau of Alcohol Tobacco and Firearms, to maintain a central registry of all firearms in the United States which are not in the possession of or under the control of the United States is contained in 27 CFR 179.101.

4. **Delegation:** Pursuant to the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by 27 CFR 179.101, there is hereby delegated to the Chief, Firearms and Explosives Division, to the Chief, National Firearms Act Branch, and to Coordinators, Specialists, and Application Examiners within the National Firearms Act Branch, the custody and control of the National Firearms Registration and Transfer Record, and the authority to execute certifications relative thereto.

5. **Redelegation:** The authority delegated above may not be redelegated.

6. **For Information Contact:** Robert G. Hardt, Procedures Branch, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226. Phone (202) 566-7602.

7. **Effective Date:** This delegation order becomes effective on April 3, 1983.

8. **Approved:** April 1, 1983.

Stephen E. Higgins,

Director.

[FR Doc. 83-9009 Filed 4-4-83; 11:28 am]

BILLING CODE 4810-31-M

Office of the Secretary

Treasury Department Announces Upcoming Income Tax Treaty Negotiations With the People's Republic of China

The Treasury Department announced that negotiation of a treaty between the

United States and the People's Republic of China to avoid double taxation of income will take place in Beijing during the week of May 3, 1983. The negotiations will continue discussions initiated in Washington in September 1982.

The negotiations will be based on the U.S. model draft income tax treaty and will also take into account the model draft income tax treaties published by the Organization for Economic Cooperation and Development (OECD) in 1977 and by the United Nations Ad Hoc Group of Experts on Tax Treaties Between Developed and Developing Countries.

It is intended that the proposed treaty cover the taxation of income from business activities, personal services, and investments derived from one country by residents of the other; that it provide for administrative cooperation to avoid double taxation and fiscal evasion; and that it specify the method to be used by each country to avoid double taxation.

Interested persons are invited to submit comments in writing to Leslie J. Schreyer, Deputy International Tax Counsel, Room 4013, U.S. Treasury, Washington, D.C. 20220.

Dated: March 31, 1983.

John E. Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 83-9007 Filed 4-5-83; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 67

Wednesday, April 6, 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).

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1

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 48, Page No. None at this time. Date Published—None at this time.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGE IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Wednesday, April 6, 1983 at 10:00 a.m.:

Proposed move of the FHLBank of Little Rock to Dallas.

No. 30, April 4, 1983.

[S-47483 Filed 4-4-83; 3:33 pm]

BILLING CODE 6720-01-M

2

FEDERAL MARITIME COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: April 1, 1983, 48 FR 14117.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: April 6, 1983, 9:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Petition of Trans Freight Lines for investigation of military cargo rates of Sea-Land Service and United States Lines and responses to Section 21 orders.

[S-473-83 Filed 4-4-83; 3:27 pm]

BILLING CODE 6730-01-M

3

SECURITIES AND EXCHANGE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (48 FR 12198 3/23/83).

STATUS: Closed meeting.

PLACE: 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 18, 1983.

CHANGES IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting scheduled on Wednesday, March 30, 1983, at 10:00 a.m.

Personnel matter.

Regulatory matters regarding enforcement implications.

Chairman Shad and Commissioners Longstreth and Treadway determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Steve Boehm at (202) 272-2467.

April 1, 1983.

[S-472-83 Filed 4-4-83; 3:26 pm]

BILLING CODE 8010-01-M

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TENNESSEE VALLEY AUTHORITY

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: — FR 1153 (March —, 1983).

CHANGE IN PREVIOUSLY ANNOUNCED TIME OF MEETING: The previously announced time of the April 6, 1983 TVA Board meeting is changed to: 8:30 a.m., April 6, 1983.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

Dated: April 4, 1983.

[S-471-83 Filed 4-4-83; 10:04 am]

BILLING CODE 8120-01-M

Federal Register

**Wednesday
April 6, 1983**

Part II

Environmental Protection Agency

**National Emission Standards for
Hazardous Air Pollutants; Standards for
Radionuclides**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AH-FRL 2324-3]

National Emission Standards for Hazardous Air Pollutants; Standards for Radionuclides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Announcement of Public Hearing.

SUMMARY: On November 8, 1979, EPA listed radionuclides as a hazardous air pollutant under the provisions of Section 112 of the Clean Air Act. Pursuant to Section 112, EPA is proposing standards (including appropriate reporting requirements) for sources of emissions of radionuclides in four categories: (1) Department of Energy (DOE) Facilities, (2) Nuclear Regulatory Commission licensed facilities and non-DOE Federal facilities, (3) underground uranium mines, and (4) elemental phosphorous plants.

The Environmental Protection Agency (EPA) has identified several additional source categories that emit radionuclides and has determined there are good reasons for not proposing standards at this time for these categories. They are the following: (1) coal-fired boilers, (2) the phosphate industry, (3) other extraction industries, (4) uranium fuel cycle facilities, uranium mill tailings, management of high level waste, and (5) low energy accelerators.

DATES: Comments may be received on or before May 30, 1983.

Public Hearings. An informal public hearing will be held on April 28, 29, and 30, 1983 in Washington, D.C. The exact time and location of the hearing can be obtained by calling the Office of Radiation Programs at (703) 557-0704. Requests to participate in the informal hearing should be made by April 20, 1983. Written statements may be entered into the record before, during, or within 30 days after the hearing.

ADDRESSES: All written comments should be submitted to the Central Docket Section (A-130), U.S. Environmental Protection Agency, Washington, D.C. 20460, Attention: Docket No. A-79-11. This docket, containing information used by EPA in developing the proposed standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Separate sections of the docket have been established for each category of radionuclide emissions to air. Comments specific to a proposed action should be addressed to the following docket sections:

Section III A—Department of Energy Facilities

Section III B—Nuclear Regulatory Commission Licensed Facilities and non-DOE Federal Facilities

Section III C—Underground Uranium Mines

Section III D—Elemental Phosphorous Plants

Section III E—Coal-fired Boilers

Section III F—Phosphate Industry

Section III G—Other Extraction Industries

Section III H—Uranium Fuel Cycle Facilities, Uranium Mill Tailings, and Management of High Level Waste

Section III I—Low Energy Accelerators

Requests to participate in the informal hearing should be made in writing to Richard J. Guimond, Director, Criteria and Standards Division (ANR-460), U.S. Environmental Protection Agency, Washington, D.C. 20460. All requests for participation should include, at least, an outline of the topics to be addressed in the opening statements and the names of the participants. Presentations should be limited to 15 minutes each.

A Background Information Document has been prepared that contains, for each source category, projected doses and risks to nearby individuals and to populations, descriptions of current control technology, and descriptions and costs of emission control technologies. Single copies of the Background Information Document for the proposed standards may be requested in writing from the Program Management Office (ANR-458), U.S. Environmental Protection Agency, Washington, D.C. 20460, or by calling (703) 557-9351.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, Chief, Environmental Standards Branch (ANR-460), U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557-8977.

SUPPLEMENTARY INFORMATION:

I. Overview of the Proposed Standards

A. Basic Terms Used in This Notice

All matter is made up of atoms; their nuclei contain protons and neutrons. The number of protons in an atom determines the identity of the element. For example, the element with 6 protons is called carbon. Atoms can contain different numbers of neutrons. The total number of protons and neutrons in an atom is called the atomic weight.

The nuclei of atoms of chemical elements with certain atomic weights are unstable by nature. Such nuclei can disintegrate spontaneously in

predictable ways and are said to be radioactive. Atoms with nuclei that disintegrate are called radionuclides. For example, carbon atoms with 8 neutrons disintegrate, whereas carbon atoms with 6 neutrons are stable. The number of disintegrations which will occur in a given amount of time is termed activity; the unit of activity is the curie. One curie equals 37,000,000,000 disintegrations per second.

Some radionuclides are found in nature; others are made in reactors and accelerators. This notice concerns facilities which handle or produce all types of naturally occurring and manmade radionuclides in a manner that results in their being released into the air.

B. Background

In 1977, Congress amended the Clean Air Act (the Act) to address airborne emissions of radioactive materials. Before 1977, these emissions had been either regulated under the Atomic Energy Act or unregulated. Section 122 of the Act required the Administrator of EPA, after providing public notice and opportunity for public hearings (provided by 44 FR 21704, April 11, 1979), to determine whether emissions of radioactive pollutants cause or contribute to air pollution that may reasonably be anticipated to endanger public health. On December 27, 1979, EPA published a *Federal Register* Notice listing radionuclides as hazardous air pollutants under Section 112 of the Act (44 FR 76738, December 27, 1979). To support this determination, EPA published the report titled *Radiological Impact Caused By Emissions of Radionuclides into Air in the United States—Preliminary Report* [EPA 520/7-79-006], Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. (August 1979).

Section 122(c)(2) of the Act directed that, once EPA listed radionuclides to be regulated under the Act, EPA and the Nuclear Regulatory Commission (NRC) were to enter into an interagency agreement with respect to those facilities under NRC jurisdiction. Such a memorandum of understanding was effected on October 24, 1980, and was subsequently published in the *Federal Register* (45 FR 72980, November 3, 1980). When EPA began developing standards for Department of Energy (DOE) facilities, a similar memorandum of understanding was negotiated with DOE. This memorandum of understanding was signed in October 1982, and a copy has been placed in the Docket for public review.

On June 16, 1981, the Sierra Club filed suit in the U.S. District Court for the Northern District of California pursuant to the citizens' suit provision of the Act (Sierra Club v. Gorsuch, No. 81-2436 WTS). The suit alleged that EPA had a nondiscretionary duty to propose standards for radionuclides under Section 112 of the Act within 180 days after listing them. In March 1982, the Court granted the Sierra Club motion for partial summary judgment on the liability issue, and, on September 30, 1982, the Court ordered EPA to publish proposed regulations establishing emission standards for radionuclides, with a notice of hearing, within 180 days of the date of that order.

EPA is proposing standards for certain sources of radionuclide emissions to air and is proposing not to regulate other sources. To EPA's knowledge, these comprise all source categories that release potentially regulatable amounts of radionuclides to air. The deadline established by the Court for this rulemaking has required EPA to proceed with less information than it would like. As always, EPA invites comments and will consider them carefully to ensure that the Agency's decisions are the best possible ones.

C. Estimates of Health Risk

Agencies can never obtain perfect data but have to make regulatory decisions on the basis of the best information available. Although additional study may be suggested to clarify the health implications from exposure to radiation at relatively low levels, EPA is concerned about the potential detrimental effects to human health caused by radiation based on the best scientific information currently available. EPA believes its estimates of doses to humans and the potential human health risks constitute an adequate basis for decisionmaking.

The information used by the Agency in estimating the hazards to health due to exposure to radiation is summarized in the following reports: *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation* (1972) and *Health Effects of Alpha Emitting Particles in the Respiratory Tract* (1976) by the BEIR Committee, the report of the United Nations Scientific Committee on the Effects of Atomic Radiation entitled *Sources and Effects of Ionizing Radiation* (1977), and *Publication 28* (1977) by the International Commission on Radiological Protection. These bodies agree that high levels of radiation cause cancer and mutations and that, when formulating radiation protection standards and guidance, it is reasonable to assume that the risks of cancer and

mutations are proportional to radiation dose. Background information on the risk associated with radon emissions can be found in an EPA report titled *Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands*, [EPA 520/4-78-013] (1978).

In concert with the recommendations of these reports, even for relatively low doses, EPA has assumed a linear, nonthreshold, dose-effect relationship as a reasonable basis for estimating the public health hazards due to exposure to radiation. This means that any radiation dose is assumed to pose some risk of damage to health and that the risk associated with low doses is directly proportional to the risk that has been demonstrated at higher doses. EPA believes this assumption is reasonable for public health protection in light of presently available information. However, EPA recognizes that the data available preclude neither a threshold for some types of damage below which there are no harmful effects nor the possibility that low doses of gamma radiation may be less harmful to people than the linear model implies.

As used in this notice, the term "dose to an individual" means an estimate of the dose rate in units of dose equivalent per year (rem/y) to the whole body or to a specified body organ due to exposure to radiation at a given level for the person's lifetime (70 years). These dose rates are a measure of, although not directly proportional to, the individual's risk of fatal cancer. The term "lifetime risk to an individual" means an estimate of the potential probability of premature death due to cancer caused by radiation exposure at a given level for the person's lifetime. There are also risks of nonfatal cancer and serious genetic effects, depending on which organs receive the exposure to radiation. The risks of nonfatal cancer and genetic effects cannot be accurately estimated, but neither risk is larger than the fatal cancer risk. EPA considers all these risks when it makes regulatory decisions on limiting emissions by restricting dose rates or exposures to radionuclide concentrations.

As used in this notice, the term "dose to population" means an estimate of the summed dose received by all persons in a population living within a given distance of the source, typically within 80 kilometers, due to a one year release of radionuclides (person-rem per year of operations). A person-rem is a total amount of exposure received by a large group equivalent to one person receiving an exposure of one rem. The term "risk to population" means an estimate of the number of potential fatal cancers that

might occur in the population living within a given distance of the emission source, typically within 80 kilometers. The risk is related to the amount of radionuclides that are emitted during a year of operation. Part of the population risk is likely to occur some time after the radionuclides are emitted because: (1) There is a delay between release and exposure as the radionuclides move through environmental pathways and (2) there is a latent period between exposure and the onset of the disease. The dose to populations for a specific organ is related to, although not directly proportional to, the risks of fatal cancer, nonfatal cancer, and serious genetic effects. EPA considers all fatal and nonfatal risks in making regulatory decisions on whether standards are needed to protect the general public. As used in this notice, the term "health effect" means potential fatal cancers. Additional information on risk can be found in the Draft Background Information Document.

EPA must make numerous assumptions when estimating the radiation dose to individuals and population groups and the likely risk this might present to health. The assumptions introduce uncertainties in the estimates of radiation doses and health risks. All individual risk calculations assume that individuals reside at a single location for a 70 year life and are exposed to a constant source of radionuclide emissions for the entire time. Factors such as radionuclide uptake by vegetation, consumption of locally produced crops and milk, and meteorology are quite site specific and can influence the actual risk to any given individual. Individual characteristics such as age, physiology, physical activity level, amount of time spent indoors, and eating habits can influence the rate and amount of radionuclides affecting the individual and, thus, the risk of that person.

EPA's risk estimates are "best estimates" considering the above factors. EPA believes that the estimates are within a factor of ten of the actual health risks to individuals if the assumptions are valid for the particular situation under consideration.

D. Summary of the Proposed Standards

EPA is proposing specific standards for sources in four categories: (1) DOE facilities, (2) NRC-licensed facilities and non-DOE Federal facilities, (3) underground uranium mines and (4) elemental phosphorous plants.

An indirect emission standard is proposed for all DOE facilities that will restrict emissions from each site to the

amount that would cause an annual dose equivalent to 10 millirem (mrem) to the whole body and 30 mrem to any organ of any individual. This emission standard will keep the radiation doses relatively low both to nearby individuals and to populations living around the sites. In addition, EPA expects these facilities to continue to comply with the current Federal Guidance requirement that emissions be limited to as low as practicable levels and has proposed a reporting requirement to describe emission control technology.

An indirect emission standard is proposed for NRC licensees and non-DOE Federal facilities that will restrict emissions from each site to the amount that would cause an annual dose equivalent of 10 mrem to any organ of any individual. This emission standard will keep radiation doses relatively low to nearby individuals and populations in the vicinity of the site. The term "NRC licensees" includes those facilities licensed by the NRC and by States under agreement with the NRC.

An indirect emission standard is proposed for underground uranium mines that will restrict the increase in annual average concentration of radon-222 at places people can live to 0.2 picocurie per liter (pCi/l). A person living in a house for a long time in an area exposed to this concentration might still be subject to a significant estimated level of risk. However, neither control technology nor other methods to reduce radon emissions from these mines are available at reasonable cost; thus, more restrictive controls are not reasonable. The proposed standard will reduce risk to people living closest to the mines; protection of the health of regional and more distant populations is of less concern because most mines are located in remote areas.

An emission standard is proposed for elemental phosphorous plants that will limit annual emissions of polonium-210 from each site to 1 curie. While other radionuclides are emitted from these plants, polonium-210 is the major contributor to the maximum individual risk. Limiting polonium-210 will control the others. Such a standard will keep radiation doses relatively low to both individuals and populations.

While one of the above standards limits stack emissions directly, the other three limit stack emissions indirectly by specifying dose or concentration limits to be achieved. EPA believes this is a reasonable approach, given the extreme diversity of DOE facilities and NRC licensees and the fact that radon-222 emissions from uranium mines are not amenable to controls. The form of the

proposed standards follows well developed and widely accepted practices in radiation protection. The use of procedures developed primarily to control chemicals would, in this context, be unworkable.

E. Basis for the Proposed Standards

In the Federal Register of May 18, 1960, President Eisenhower directed Federal agencies to follow the Radiation Protection Guidance of the Federal Radiation Council (FRC). When EPA was established, the Federal Radiation Council was abolished, and its responsibilities were transferred to EPA. EPA has considered this Guidance in establishing emission standards under Section 112 of the Clean Air Act, and the Agency's approach is compatible with it. For the purposes of this rulemaking, key elements of the Guidance are:

1. There should not be any man-made radiation exposure without the expectation of benefit resulting from such exposure.

2. The term "Radiation Protection Guide" should be adopted for Federal use. This term is defined as the radiation dose which should not be exceeded without careful consideration of the reasons for doing so; every effort should be made to encourage the maintenance of radiation doses as far below this guide as practicable.

3. For the individual in the population, the basic Radiation Protection Guide for annual whole body dose is 0.5 rem. This Guide applies when the individual whole body doses are known. As an operational technique, where the individual whole body doses are not known, a suitable sample of the exposed population should be developed whose Protection Guide for annual whole body dose will be 0.17 rem per capita per year.

4. There can be no single permissible or acceptable level of exposure without regard to the reason for permitting the exposure. It should be general practice to reduce exposure to radiation, and positive efforts should be carried out to fulfill the sense of these recommendations. It is basic that exposure to radiation should result from a real determination of its necessity.

5. There can be different Radiation Protection Guides with different numerical values, depending upon the circumstances.

6. The Federal agencies shall apply these Radiation Protection Guides with judgment and discretion to assure that reasonable probability is achieved in the attainment of the desired goal of protecting man from the undesirable effects of radiation. The Radiation Protection Guides provide a general

framework for the radiation protection requirements. It is expected that each Federal agency, by virtue of its immediate knowledge of its operating problems, will use these Guides as a basis upon which to develop detailed standards tailored to meet its particular requirements.

EPA believes that the following points in these guides are of particular importance: (1) There should be benefits from exposure to radiation; (2) Exposures should be kept as low as practicable; and (3) It is appropriate to have different standards with different values, depending on the circumstances.

These Guides apply to Federal agencies to the extent that they are not incompatible with more specific legislative directives. The Clean Air Act directs EPA to establish emission standards for hazardous pollutants and directs EPA to propose these standards at a level which, in the Administrator's judgment, will protect the public health with an ample margin of safety. Congress did not describe the degree of protection that provides an ample margin of safety, nor did it describe what factors the Administrator should consider in making these judgments. Therefore, EPA considers those factors it believes are necessary to make reasonable judgments on whether standards are needed and, if so, at what level they should be established.

If a hazardous pollutant under review has been shown to possess a threshold level below which no detrimental health effects are likely, it might be relatively easy to establish an emission standard. For example, the Agency might select an appropriate safety factor, divide the threshold level by this factor, and establish an emission standard that corresponds to the reduced level. This regulatory strategy would provide reasonable assurance that no detrimental effects would result from exposure to the hazardous pollutant.

This approach is not feasible or reasonable for radionuclides. This is because the risk of cancer from exposure to radiation has not been shown to have a threshold level. Consequently, if EPA applied the approach previously described, the Agency would likely conclude that the standard should be established at zero emissions. They only way to meet such a standard would be to close all facilities emitting radionuclides because it is impossible to reduce radionuclide emissions to zero through control technology. If this approach were adopted, society would be harmed greatly since it would have to forgo the

benefits of industries that emit radionuclides. Therefore, to allow society to continue to benefit from these activities, EPA must establish emission standards for radionuclides at a level that may present some human health risk. The Agency is not aware of any single level of risk that would be generally acceptable or constitute an ample margin of health protection. Some argue that an increase in cancer risk not exceeding one in 1000 due to a specific cause is acceptable, whereas others argue that an increase in risk of one in one million is unacceptable. EPA believes it should adopt an approach that will allow those various factors that influence society's health and well being to be weighed in assessing each source category. To accomplish this, EPA has decided to consider the following factors in making its judgments:

1. The radiation dose and risk to nearby individuals;
2. The cumulative radiation dose and risk to populations in the vicinity of the source;
3. The potential for radiation emissions and risk to increase in the future;
4. The availability, practicality, and cost of control technology to reduce emissions; and
5. The effect of current standards under the Act or other applicable legislative authorities.

By considering these factors, EPA will be able to provide public health protection that is consistent with the intent of the Federal Radiation Protection Guides and Clean Air Act.

The first three factors are used to assess the likely impact of emissions on the health of individuals and large populations and to estimate the potential for significant emissions in the future. The fourth factor enables EPA to assess whether state-of-the-art control technologies are currently in use and whether there are any practical means of reducing emissions through control technology or other control strategies. The last factor allows EPA to assess whether regulations or standards that have been established to control particulates or other pollutants are also minimizing releases of radionuclides.

The dose and risk to the individuals nearest a site are often the primary considerations when evaluating the need to control emissions of radionuclides. Controlling maximum individual dose assures that people living nearest a source are not subjected to unreasonably high risk. Further, protecting individuals usually provides an adequate level of protection to populations living further away from the source. Estimating the maximum

individual dose and risk allows a comparison of the potential impact of one source to other sources.

EPA believes that cumulative population dose and risk also need to be examined. The cumulative radiation dose and risk to surrounding populations are determined by adding together all of the individual doses and risks that everyone within a certain radius (usually 80 km) of an emission source receives. This factor can sometimes be more important than the maximum individual risk in deciding whether controls are needed, particularly if an extremely large population may be exposed. The aggregate dose and population risk can be of such magnitude that it would be reasonable to require a reduction in the total risk even though, if the maximum individual dose were considered alone, one might conclude that no further controls are needed.

In addition, EPA believes that the potential for emissions and risk to increase in the future needs to be considered even though the current projected maximum individual and population risks are very low. An emission standard might be appropriate because the facilities now, or may in the future, handle large quantities of radionuclides that could escape into the air if improperly controlled. Alternatively, when the amount handled by a facility is small or is decreasing, and there is no potential for large releases now or in the future, standards may not be needed.

The availability and practicality of control technology are important in judging how much control of emissions is warranted. For this rulemaking, EPA believes that the standard should be established at a level that will require best available technology with allowance for variation in emissions, once a determination is made that additional controls are necessary. Additional actions, such as requiring development of new technology, closure of a facility, or other extreme measures may be considered if significant emissions remain after best available technology is in place or if there are significant emissions and there is no applicable control technology. EPA is defining best available technology as that which, in the judgment of the Administrator, is the most advanced level of controls adequately demonstrated, considering economic, energy, and environmental impacts. The technological and economic impacts associated with retrofits are considered when determining best available technology for existing sources.

Finally, EPA believes it is reasonable to consider whether other EPA standards are achieving approximately the same goal as the Act, i.e., protecting public health with an ample margin of safety. In cases where other standards are providing comparable control for radionuclides, EPA believes it is appropriate not to propose redundant standards under the Act. There would be no benefits because the public health would already be protected with an ample margin of safety, but there could be unnecessary costs associated with implementing an additional standard.

EPA considered each of the relevant factors in making determinations for each source category that was reviewed. These factors were not quantitatively balanced through the use of formulas to derive emission limits. Rather, they were qualitatively weighed before deciding whether a standard was needed and, if so, what level of control was suitable. The consideration of these factors as they apply to each source category is detailed in the portion of this preamble devoted to that source category.

EPA requests comments on the appropriateness of the factors it has selected for consideration. Should some factors be added or deleted? Should more emphasis be placed on some factors than others? How should the cost-effectiveness, cost-benefits, or affordability of controls be considered when establishing appropriate emission standards to provide an ample margin of safety? EPA also requests comments on whether the factors were appropriately applied to the nine source categories that were reviewed.

It is the intent of the Act that control technology or operational practices be used to control emissions. Buying land to expand the size of the site or building higher stacks to reduce exposure to nearby individuals may not be used where other emission control devices or operational procedures are reasonably available. However, there are radionuclides, principally radon, which present significant risks and for which emission controls may not always be reasonably available. As a last resort in such cases, EPA has decided to propose standards achievable through dispersion techniques.

II. Department of Energy Facilities (DOE)

A. General Description

DOE administers many facilities that emit radionuclides to air. These facilities are Government owned but are managed and operated for DOE by private contractors. Operations at these

facilities include research and development, production and testing of nuclear weapons, enrichment of uranium and production of plutonium and other fissile materials for nuclear weapons, reactors, and other purposes, and processing, storing, and disposing of radioactive wastes. These facilities are on large sites, some of which cover hundreds of square miles in mostly remote locations, and are located in about 20 different states. Some of the smaller facilities resemble typical industrial sites and are located in suburban areas.

Each facility differs in emission rates, site size, nearby population densities, and other parameters that directly affect the dose from radionuclide emissions. Many different kinds of radionuclides are emitted to air. Six sites have multipurpose operations spread over very large areas. About a dozen sites are primarily research and development facilities, located in more populated areas. Reactor and accelerator operations at these sites may release radioactive noble gases and tritium; other operations may release small amounts of other radionuclides. Several facilities are primarily engaged in weapons development and production and may release small amounts of tritium and certain long-lived radionuclides. Finally, two sites are dedicated entirely to gaseous diffusion plants that enrich uranium for use in utility electric power reactors and for defense purposes. They primarily emit uranium.

B. Estimates of Dose and Risk

At 15 of the 25 DOE facilities, which are considered as a group in the Background Information Document because of their relatively small health impact, the doses to the nearby individuals are estimated to be considerably less than 1 millirem per year (mrem/y). The collective dose to the populations living around the sites is also low, no higher than about 10 person-rem as the result of 1 year of site operation. The health risk associated with this group is correspondingly low. The maximum lifetime risk to the most exposed individual is estimated to be less than 10 in 1,000,000 and the impact on the population is estimated to be less than 1 potential health effect per 100 years of operation. These estimates were developed using methods and assumptions discussed in Unit I.C. of this notice.

A second group of 13 facilities, those with the largest emissions of radionuclides, were studied in more detail. They included the following major sites: Argonne National

Laboratory, Brookhaven National Laboratory, Feed Materials Production Center, Fermi National Accelerator Laboratory, Hanford Reservation, Idaho National Engineering Laboratory, Lawrence Livermore Laboratory, Los Alamos National Laboratory, Oak Ridge Reservation, Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, Rocky Flats Plant, and the Savannah River Plant.

The highest doses to individuals are projected for Los Alamos national Laboratory (about 9 mrem/y to all organs), Oak Ridge Reservation (about 50 mrem/y to lung and 8 mrem/y to the bone) the Paducah Gaseous Diffusion Plant (about 7 mrem/y to bone and 5 mrem/y to the lung), the Portsmouth Gaseous Diffusion Plant (about 11 mrem/y to bone, 7 mrem/y to lung and 2 mrem/y to thyroid), Feed Materials Production Center (about 88 mrem/y to lung and 26 mrem/y to bone), and Savannah River Plant (about 2 mrem/y to most organs and 5 mrem/y to the thyroid). The corresponding doses to large populations ranged up to about 200 person-rem to the lung per year of site operations. The corresponding maximum lifetime risk to the most exposed individual is estimated to be less than about 2 in 10,000, while the total risk to populations surrounding all 13 sites is estimated to be less than 1 potential health effect per 15 years of operation.

All risk estimates for DOE facilities were developed using methods and assumption discussed in Unit I.C. of this notice. It is important to recognize that the actual risk to specific individuals may differ greatly from these estimates because the circumstances involving the actual exposure may differ significantly from the assumptions used to make the estimates.

C. Emission Control Technology

Emissions from DOE facilities are, in general well controlled as part of a long-standing DOE program of systematically upgrading emission controls when practical. High-efficiency filters, usually in series when large amounts of radionuclides are processed, are used to control particulate emissions. At some facilities, there are processes that discharge radioactive noble gases and tritium mixed with large volumes of air. For these cases, control technologies to remove the noble gases and tritium are usually not feasible.

At the Oak Ridge site, the highest doses to nearby individuals are mostly caused by uranium-234 and uranium-238 emissions from the Y-12 plant, a facility that has fabrication operations using enriched uranium. Particulate emissions

from this facility are controlled by scrubbers, prefilters, cloth bag filters, or high-efficiency particulate filters. At the Feed Materials Production Center, the highest projected doses to nearby individuals are due to emissions of uranium-234 and uranium-238 from fabrication operations using uranium. There is also high exposure to radon decay products due to wastes containing radium-226 that are stored on this site. Particulate emissions are controlled by cloth bag filters or scrubbers but can be reduced further by additional high-efficiency filters or improved scrubbers. Waste tanks can be sealed to prevent the escape of radon.

D. The Proposed Standard

EPA is proposing that emissions of radionuclides from DOE facilities be restricted to the amount that would cause a dose equivalent rate of 10 mrem/y to the whole body and 30 mrem/y to any organ of any individual living nearby. For most practical purposes, compliance with this standard would be determined by calculating the dose to persons assumed to be living at the site boundary.

Consistent with the principles embodied in Federal Radiation Guidance to keep exposure to radiation as low as practical, it is EPA's intent that facilities subject to the DOE standard shall use best available technology even if compliance is possible with a lesser degree of control. This means that operators should periodically evaluate radionuclide emissions to air and reduce them to as low a level below the standard as is reasonably possible. This also means that the facilities now well controlled to levels considerably below the proposed standard should not relax their emission controls and that new facilities should use best available emission controls.

To determine if the standard is being implemented in a manner that keeps exposure as low as practicable, EPA is proposing a reporting requirement. DOE shall submit to EPA a concise annual report which includes the results of monitoring emissions, dose calculations, and discussions of DOE's programs for maintaining airborne releases of radionuclides as low as practicable. Much of this information is currently being collected; for example, emission data are reported by DOE's effluent information systems and annual site reports describe recent and planned improvements in emission controls. Therefore, EPA believes the burden of this reporting is reasonable. This information will be reviewed by EPA in

carrying out its compliance responsibilities.

The proposed emission standards of 10 mrem/y whole body and 30 mrem/y to any organ were selected by considering highest existing emissions from those major DOE facilities where best available technology is used and considering the level to which emissions would be reduced by applying additional controls to other facilities. Uniform standards for DOE facilities could not be set lower than these values because emissions from some major DOE facilities cannot, as a practical matter, be reduced further without closing major operations at the facilities. These DOE facilities provide substantial benefits in the areas of electrical power generation and national defense. The consequence of a more restrictive standard would be to eliminate some of these beneficial activities.

Consequently, the risks associated with the proposed standard are not unreasonable. Those few DOE facilities, tending to have emissions greater than this proposed limit can, in EPA's judgment, reduce their emissions using available technology or work practices. EPA believes that the proposed standard would be met if the following plants upgraded their control technology: (1) Oak Ridge Y-12 plant (\$10 million capital costs) (2) Feed Materials Production Center (\$15 million capital costs).

The dose allowed by the proposed standard is a factor of 50 lower than the current upper limits now used by DOE. These current upper limits are based on the 1960 recommendations of the Federal Radiation Council, although the Federal Radiation Council admonished Federal agencies to establish standards that would reduce emissions to as low as practical below the upper limits. Actual public exposure to radiation due to releases from DOE facilities has been far below the 1960 Federal Guidance levels because of the DOE practice of limiting emissions to as low as practicable levels. Since the proposed standard is much more restrictive than the 1960 guidance, it will limit radiation doses to low levels. In practice, EPA expects that most DOE facilities will operate well below the proposed standard.

EPA estimates the actual lifetime individual risk associated with the proposed standard to be at the most about 2 in 50,000 when facilities are complying with the standard. EPA believes that the proposed standard and the reporting requirement will protect the public living around DOE facilities with an ample margin of safety. The

uncertainty associated with estimates of radiation dose and risk is discussed in Unit I.C. and II.B of this notice.

EPA requests comments on the proposed values and the methodology used in arriving at them.

E. Alternatives to the Proposed Standard

EPA considered proposing emission limits in units of curies per year (Ci/y) for each radionuclide, with secondary corrections for particle size, lung clearance class, and other such factors. This approach was rejected because it would require very detailed and complex emission limits for each DOE facility to be as protective of public health as the proposed standard. In EPA's judgment, this would be so complex and difficult as to be infeasible.

The Agency considered proposing higher values than the proposed dose limit. We believe that many of these facilities are achieving the proposed standard at current operating levels. For the few cases where additional controls are needed to meet the standard, the technology appears available and effective and is not unreasonably expensive to purchase or operate. The protection offered by the proposed standard appears achievable, and we have not identified any good reason for accepting a lesser degree of protection.

Lower values were considered. Such limits, would be extremely costly or could force the closure of major operations of benefit to the country, possibly at several sites. The possible small additional reduction of dose and risk to a few individuals is not sufficient to justify such severe action.

Emission limits that would control dose to the general population rather than individuals were considered. In particular, EPA considered emission limits for long-half-life radionuclides such as tritium, carbon-14, krypton-85, and iodine-129. These kinds of radionuclides may cause population doses that are more significant than the doses these radionuclides cause to nearby individuals. EPA decided not to propose this kind of standard. For DOE facilities, population doses from these radionuclides are small; the highest of these small doses are caused by emissions of tritium for which control technologies are not effective. Consequently, proposing emission standards for long-half-life radionuclides at existing DOE facilities would not serve a useful purpose.

Different emission limits were considered for existing and new DOE facilities and for specific groups of DOE facilities, rather than setting uniform standards for all DOE facilities. Such a

strategy would permit more restrictive standards for certain DOE facilities, although not for all of them, at the cost of having to develop a much more complex standard. Rather than do this, EPA will rely on existing Federal Guidance to all Federal agencies to ensure that exposures are kept as far below the proposed standard as practicable and has added a reporting requirement to this end. This should provide, in practice, the same measure of emission control. EPA requests comments on the desirability of setting separate standards for different categories of DOE facilities.

EPA considered the alternative of proposing the standard in the form of a risk-equivalent, whole-body dose, using methodology similar to that recently recommended by the International Commission on Radiation Protection. The principal advantage is one of equity; that is, the emissions from each facility are limited on the basis of causing equivalent levels of risk. A disadvantage of this alternative is that the proposed standard would have to be reduced from 10 mrem/y to about 5 mrem/y to maintain a comparable degree of protection with the 30 mrem/y limit to any organ. Some sources could not meet such a standard using currently available technology. The Agency particularly requests comment on the use of the whole-body, risk-equivalent dose method as an approach to selecting emission standards.

EPA considered requiring the proposed standard to be met at a site boundary in all cases, even if there are good reasons why people are not likely to be at that location, but decided not to because this would be unrealistic. EPA requests comments on where the standard should apply.

F. Implementation of the Proposed Standards

The standards will be implemented by DOE pursuant to the Memorandum of Understanding between EPA and DOE. EPA will provide oversight to ensure that implementation procedures are appropriate. The standard should be implemented using pathway and dose calculations based on EPA's codes or, alternatively, on modeling techniques which, in EPA's judgment, are as suitable for particular applications as the EPA codes.

II. NRC Licensed Facilities and Non-DOE Federal Facilities

A. General Description

This category of facilities encompasses a wide range of activities

including research and test reactors, shipyards, the radiopharmaceutical industry, and other industrial facilities. For purposes of this proposed rule, EPA excludes facilities that are part of the uranium fuel cycle. The category includes both facilities licensed by NRC and facilities licensed by a State under an agreement with NRC. These facilities number in the tens of thousands and are located in all 50 states. The principal differences among these various types of activities are their emission characteristics and rates, their sizes, and the population densities of the surrounding areas. The following discussion provides illustrative examples.

There are a wide variety of designs of research and test reactors, and they operate over a range of power levels from near zero to approximately 10 megawatts. They emit primarily argon-41 and tritium at rates ranging from less than 1 Ci/y of each radionuclide up to several thousand Ci/y of argon-41 and several hundred Ci/y of tritium. They are most often located at or near universities.

The radiopharmaceutical industry currently produces about 65 different radionuclides for a variety of uses in hospitals and clinics. In most cases, emissions of iodine-125 and iodine-131 cause the highest organ (thyroid) doses to nearby individuals because: (1) They are emitted in the largest quantities, (2) environmental pathways bring them into contact with man, and (3) the thyroid concentrates iodine. Emissions occur at radiopharmaceutical manufacturing sites, hospitals, and sewage treatment plants receiving hospital wastewater.

There are many other industrial uses of a number of different radionuclides that result in emissions to air, including the manufacture of industrial gauges, static eliminators, radiographic devices, and certain commercial products (e.g., self-illuminating watches and smoke detectors). Most of the industrial uses of radionuclides involve production of sealed (encapsulated) sources. Once their manufacture is completed, these sealed sources do not emit radionuclides.

B. Estimates of Dose and Risk

The vast majority of NRC licensed facilities and non-DOE Federal facilities emit relatively small quantities of radionuclides, which cause correspondingly low doses to people living nearby. Most such facilities cause maximum radiation doses of less than 1 mrem/y; the total dose to the population living around a site rarely exceeds 1 or 2 person-rem per year of operations. The maximum corresponding lifetime risks

of such exposures are estimated to be less than 1 in 50,000 for the individuals receiving the highest doses, and the total risk to the population surrounding a typical facility should be less than about 1 health effect per 500 years of operation.

These estimates were developed by using methods and assumptions discussed in Unit I.C. of this notice. It is important to recognize that the actual risk to specific individuals may differ greatly from these estimates because the circumstances involving the actual exposure may differ significantly from the assumptions used to make the estimates.

C. Control Technology

Some NRC-licensed facilities emit argon-41 and tritium mixed with large volumes of air. For this type of facility, virtually all of the dose is caused by argon-41. Demonstrated treatment technology to reduce argon-41 emissions is not available because argon is a noble gas and cannot be filtered or easily trapped. However, design features, operating procedures, and equipment maintenance can be used to minimize formation of argon-41 in these reactors. For example, since air contains a small percentage of argon-40, areas in which air is exposed to neutrons generated by the reactor are sources of argon-41 when argon-40 absorbs a neutron during reactor operation. In some situations, these areas can be purged with an inert gas to reduce the amount of argon-40 available before starting up the reactor. In other cases, sealing air leaks will reduce the amount of argon-41 that would be produced.

Most facilities emitting dust to which radionuclides are attached use conventional particulate removal technology, such as fabric filters, electrostatic precipitators, scrubbers, or high-efficiency particulate air filters.

D. The Proposed Standards

EPA is proposing that emissions of radionuclides from NRC-licensed facilities and non-DOE Federal facilities be limited to that amount that would cause a dose equivalent of 10 mrem/y to any organ of any individual living nearby. Uranium fuel cycle facilities and all particle accelerators are specifically not covered by this standard for reasons discussed Unit VII of this notice.

In proposing this standard, EPA examined emission levels from facilities in this category and estimated the dose these emissions cause for people living nearby. The highest doses are caused by research and test reactors emitting principally argon-41. The dose associated with the operation of these

facilities is low and cannot be significantly reduced without major redesign and reengineering of these facilities. Therefore, EPA has decided to propose a standard at a level that can be met by existing facilities if they continue to use good management and operational controls to limit their emissions.

EPA believes that the proposed standard protects public health with an ample margin of safety. EPA estimates the risk associated with the proposed standard to be the same as for current practice for the individual receiving the highest dose. The uncertainty associated with estimates of risk is discussed in Units I.C. and III. B. of this notice.

EPA requests comments on the proposed standards and the methodology used in deriving it.

E. Alternatives to the Proposed Standard

The Agency considered higher and lower dose limits than the one being proposed. Higher values were rejected because the proposed standard is currently being met by all facilities in this group. A lower limit was rejected because the dose associated with these emissions is very low and EPA does not believe it is reasonable to set a lower standard and force these facilities to close or reduce their hours of operations.

EPA considered not proposing a standard for this category of facility because the dose from the operations is generally very low. The Agency rejected this alternative because of the potential impact of new facilities or modifications to existing facilities; a standard will ensure that no facilities will emit radionuclides at unreasonably high levels.

EPA also considered requiring that these facilities submit reports documenting that their emissions are as low as practicable, as is being proposed for DOE facilities. Such a requirement would impose a very large paperwork burden on government and industry. Facilities in this category number in the tens of thousands. For EPA to implement such a requirement for this category would require monitoring and reporting by thousands of facilities and a substantial effort on the part of NRC or EPA to review the reports. This considerable effort would help ensure that emissions remain very low. However, because the risk associated with the proposed standard is already low, EPA does not believe the paperwork burden on government and industry is justified. Furthermore, EPA expects that facilities in this category

will, in practice, keep emission levels as low as practicable, both to ensure compliance with the proposed standard and as a matter of good radiation protection principles when dealing with hazardous materials.

F. Implementation of the Proposed Standards

For NRC licensed facilities, NRC will implement the standards subject to EPA oversight to ensure there is compliance with the standard, as is specified in a Memorandum of Understanding between EPA and NRC (45 FR 72980). Implementation will follow the established NRC practice, which is based on a review of control measures used by licensees and their effectiveness as determined by generic assessments.

For non-DOE Federal facilities, EPA will ensure compliance with the standards. EPA's implementation will use the models AIRDOS-EPA and RADRISK to perform pathway analysis and to calculate dose equivalents.

IV. Underground Uranium Mines

A. General Description

Uranium mining involves the handling of large quantities of ore containing uranium-238 and its decay products. The concentrations of these radionuclides in ore may be up to 1,000 times their concentration in other rocks and soils. After mining, the ore is shipped to a uranium mill where the uranium is separated for subsequent use in nuclear power reactors.

Uranium mining is generally carried out by either surface (open pit) or underground mining methods, depending on the depth of the ore deposit. In 1981, there were 167 underground mines and 50 open pit mines in operation in the United States. These mines accounted for about 80 percent of the uranium produced in this country.

All uranium mining in the United States now takes place in western States. In general, the mines are located in relatively remote, low population areas. In 1981, about 70 percent of domestic uranium ore production took place in New Mexico, Wyoming, and Texas.

EPA has evaluated radionuclide emissions from uranium mining activities. These evaluations show that radon-222 is the most significant radionuclide emitted to air. Radon-222 is released to air from underground mines in relatively high concentration through a series of ventilation shafts installed at appropriate locations along the mine haulage ways. These ventilation shafts provide sufficient air exchange in the working areas of the mine to keep the

miners' exposures to radon decay products below the permissible limits. A recent study of 27 underground mines showed that radon-222 emissions to air from individual vents ranged from 2 to 9,000 Ci/y with an average of 900 Ci/y. The number of vents per mine ranged from 2 to 15 with an average of 6 vents per mine. The radon-222 released through these ventilation shafts can cause significant increases in the radon-222 concentration in ambient air in the vicinity of the mine vents.

EPA's evaluation of releases of radon-222 from uranium mines shows that radon-222 is released from surface mines in considerably smaller quantities and in more dilute concentrations than from underground mines. Therefore, radon-222 emissions from surface mines causes only small increases in the radon-222 concentrations in ambient air near the mines and concerns for the health of people near uranium mines is greatest for people living near underground mines.

B. Estimates of Exposure and Risk

Individuals living near underground uranium mines can be exposed to high levels of radon-222. This exposure generally occurs in structures built around the mines. Radon-222 enters the building and decays into other radionuclides which become attached to dust particles in the air. The concentration of these radionuclides build up in the air within the structures. EPA estimated the potential detriment to human health because of radon-222 emissions from uranium mines using the general assumptions discussed in Unit I.C. of this notice. It is important to recognize that the actual risk to individuals may differ greatly from these estimates because the circumstances involving the exposure may differ significantly from the assumptions used to make the estimates. Further, people need to be occupying a structure and not just standing outdoors for these estimates to be applicable.

It is estimated that an individual living 500 meters in the predominant wind direction from a large underground uranium mine will be exposed to a radon-222 concentration of 1 to 2 picocuries per liter (pCi/l) above background. Continuous exposure to indoor radon decay product concentrations (0.007-0.014 working level (WL)) produced by this radon-222 level might result in an increased lifetime risk of 1 to 2 in 100, although in areas where there are many mine vents clustered relatively close together, the risks could be as high as an order of magnitude greater. (A working level is a

unit used to measure exposure to radon decay products).

Collective exposures for populations living near uranium mines are relatively low because these mines generally are located in low population areas. For example, the population risk due to radon-222 emissions from a large underground mine is estimated to be extremely small (about 1 health effect per 30 years of operation of the mine). Consequently, for underground uranium mines, the exposure to the general population is of considerably less public health concern than the exposure for the people that live very close to the mine vents.

C. Control Technology

There are no radon-222 emission control systems now in use in underground uranium mines. However, several methods for reducing the radon-222 concentration in mine air are available and have been used or tested for controlling radon-222 decay product concentrations in the mine itself. These methods, which primarily involve preventing radon-222 from entering the mine air through the use of sealants on the mine walls, bulkheading or backfilling the mined-out stopes, and mine pressurization can also reduce the radon-222 emissions to the outside air. EPA has carried out engineering evaluations of the cost and effectiveness of some of these methods in a hypothetical mine. These evaluations showed that such control methods would be relatively costly and not very effective. The study predicted radon-222 emission reductions from 14 to 49 percent at costs from \$0.30 to \$4.70 dollars per ton of ore mined.

Based on available information, EPA has concluded that no practical technology now exists for achieving satisfactory reductions in radon-222 emissions to air from underground uranium mines. The most effective procedure for limiting exposure to individuals is to provide for greater dispersion of the released radon-222. The Act indicates a preference for avoiding this type of control action to reduce health risks. However, in this situation, traditional emission control methods do not appear to be sufficiently effective in reducing the human health risks posed by release of radon-222 from underground uranium mine vents.

D. The Proposed Standard

EPA is proposing a standard that will limit the annual average radon-222 concentration in air due to emissions from an underground mine to 0.2 pCi/l above background in any unrestricted

area. An unrestricted area is defined to be any area not under the control of the mine owner or a government agency. Under this proposed standard, for a typical, large underground mine using the modeling assumptions previously described, we estimate the lifetime risk to an individual will be on the order of about 1 in 500. For a case in which many mines are located close together, studies which estimate the hazard based on a lifetime exposure show that the potential risks would be higher. However, uranium mines have a limited useful lifetime, usually 5 to 15 years, which limits the period when radon-222 would be released. Further, several other assumptions used in these studies, such as the period of occupancy of the structure, are likely to be less severe in real cases. These factors are expected to make the actual remaining risk to individuals less than 1 in 500, possibly by one or two orders of magnitude, depending on the specific circumstances.

EPA chose a standard of 0.2 pCi/l because higher values did not provide sufficient protection of public health, particularly when many mines are located close together. Values lower than the proposed standard were judged to be impractical because of the cost and difficulty in controlling additional land and the expense associated with other control measures compared to their effectiveness. EPA believes that the risks associated with the proposed standard are not unreasonable in comparison to the cost of additional control.

The standard can be met by one of the following procedures: (1) Reducing the percentage of time the mine operates, (2) increasing the effective height of the release, and (3) controlling additional land. EPA expects that the least expensive way to meet the standard is for the mine operator to control the land around the mine so that people do not live in houses on the land. EPA believes that, on the average, compliance with the proposed standard can be achieved by controlling land within 2 kilometers of the mine vents. The cost to meet the standard by purchasing surrounding land and structures is estimated to be about 4 million dollars per year. This estimate was determined from an evaluation of the cost to control land within 2 kilometers of 29 large mines representing about 90% of the underground uranium mine or production.

Based on 1981 production values, this cost represents a \$0.30 per pound increase in the cost of producing

uranium. This represents a 1% increase in production costs. Although the costs for the smaller mines accounting for the remaining ore production are not included in the estimate, these costs will be relatively small because the radon-222 emissions from these mines are expected to be small.

Owners and operators of underground uranium mines will be required to keep records of radon-222 emissions and radon-222 concentration projections consistent with other actions under the Act.

EPA requests comments on the proposed concentration limit of 0.2 pCi/l. EPA believes that the proposed standard is the most practical and effective way to limit the potential risk to individuals due to radon-222 emissions from underground uranium mines.

E. Alternative Standards

The development of standards for uranium mines is more difficult and complicated than for other sources emitting radionuclides into air. Therefore, the Agency requests public comment on other possible options for standards. In particular, comments are requested on appropriate limits, cost, feasibility, and significance for public health for the following options:

Option 1: Land Control Standard. This type of standard would establish an exclusion area of fixed distance from a mine vent. This area would be under the control of the mine owner or a government agency to prevent excessive exposure to individuals.

Option 2: Work Practice Standard. This standard would include requirements for use of one or more of the following techniques to reduce radon emissions: bulkheading worked-out stopes (including the use of charcoal absorbers on bleeder pipes), backfilling worked-out stopes, and using sealants on mine walls.

Option 3: Emission Standard. This type of standard would establish an emission limit in curies per year of radon-222 from a mine vent as a function of the distance from the vent to the nearest unrestricted area. The emission limit would be set at a value that would keep the radon-222 concentration in ambient air in unrestricted areas below some predetermined value above background.

V. Elemental Phosphorus Plants

A. General Description

About 10 percent of the phosphate rock mined in the United States is used to produce elemental phosphorus. Elemental phosphorus is used primarily

for the production of high-grade phosphoric acid, phosphate based detergents, and organic chemicals. In 1977, approximately 285,000 metric tons of elemental phosphorus were produced from 4 million metric tons of phosphate rock.

Phosphate rock contains appreciable quantities of uranium and its decay products. The uranium concentration of phosphate rock ranges from about 20 to 200 parts per million (ppm), which is 10 to 100 times higher than the uranium concentration in most natural rocks and soil (2 ppm). The significant radionuclides present in phosphate rock are uranium-238, uranium-235, thorium-232, radium-226, radon-222, lead-210, and polonium-210. Because phosphate rock contains elevated concentrations of these radionuclides, handling and processing this material can, via dust particles, release radionuclides into the air. More importantly for elemental phosphorus plants, heating the phosphate rock to high temperatures in calciners and electric furnaces can volatilize lead-210 and polonium-210, resulting in the release of large quantities of these radionuclides into the air.

There are eight elemental phosphorus plants in the United States; these plants are located in Florida, Idaho, Montana, and Tennessee. EPA measurements at three of these plants show that polonium-210 and lead-210 are the radionuclides released from these plants in largest quantities. Most of these emissions occur in calciner stack exhausts. Based on these measurements, it is estimated that a large plant processing phosphate rock containing 25 picocuries per gram of uranium-238 and its decay products and using low energy scrubbers on its calciner exhausts would release about 4 curies of polonium-210 and 2 curies of lead-210 per year into the air. Several of the presently operating elemental phosphorus plants may be releasing comparable quantities of polonium-210 and lead-210, and these emissions would represent the largest quantity of alpha-emitting radionuclides released as particulates into the air by any type of facility in the United States.

B. Estimates of Dose and Risk

The most significant hazard associated with radionuclide emissions to air from elemental phosphorus plants is the radiation dose received by individuals living near those plants. EPA estimates that the radionuclide emissions, primarily polonium-210 and lead-210, from a large elemental phosphorus plant will cause radiation doses of 45 mrem/y to the kidney and 36

mrem/y to the lung of the most exposed individual living near the plant. The lifetime risk to the maximally exposed individual associated with these doses is estimated to be about 1 in 10,000.

The risks to the populations living near elemental phosphorus plants are relatively low. EPA estimates that the potential health risk to the population living around a large plant is about 1 health effect per 100 years of plant operation and that the total risk from radionuclide emissions from all elemental phosphorus plants is about 1 health effect per 20 years of operation.

These estimates were developed using methods and assumptions discussed in Unit I.C. of this notice. It is important to recognize that the actual risk to specific individuals may differ greatly from these estimates because the circumstances involving the exposure may differ significantly from the assumptions used to make the estimates.

C. Control Technology

Particulate emissions from calciner exhausts at elemental phosphorus plants are controlled through the use of wet scrubbers. Most plants use either spray towers or low-energy venturi scrubbers. Such systems are estimated to control particulate emissions to about 0.5 to 1.0 pound per ton of rock processed and are about 80 to 90 percent efficient for removal of polonium-210. One plant operates with two venturi-like scrubbers in series. Such a system should control particulate emissions to about 0.1 pound per ton of rock processed and is about 98 percent efficient for removal of polonium-210.

EPA has estimated the cost of installing high-energy venturi scrubbers on calciner stacks at large elemental phosphorus plants now operating with spray towers or low-energy scrubbers. The capital cost per plant for installing these scrubbers is about \$3 million, and the annual operating cost is \$1.5 million. A high-energy venturi scrubber is expected to be at least 98 percent efficient for polonium-210 removal and to reduce the emissions of this radionuclide for a large plant to less than 1 Ci/y. Lead-210 will be controlled at least as well because the scrubbers will remove lead with at least equal efficiency.

D. The Proposed Standard

EPA is proposing that the emissions of polonium-210 in the calciner off-gases at elemental phosphorus plants be limited to 1 Ci/y. EPA believes the use of best available technology at these facilities can achieve this standard. Limiting the polonium-210 emissions also effectively limits the lead-210 and other

radionuclide emissions in the calciner off-gases. This standard will keep the radiation doses to individuals living near these plants to less than 10 mrem/y to the lung and to less than 15 mrem/y to the kidney. The lifetime risk associated with these doses is less than 3 in 100,000. EPA believes this will protect the individuals living nearby with an ample margin of safety. The assumptions and uncertainties associated with estimates of risk are discussed in Units I.C. and V.B. of this notice.

Complete information is not available on the polonium-210 emissions from all elemental phosphorus plants. Therefore, some uncertainty exists regarding the number of plants that would need to retrofit emission control systems. However, based on presently available information, EPA estimates that no more than two plants would need to install additional control systems to meet the proposed standard. These would be the large-capacity plants processing high-radionuclide-content phosphate rock. Installation of high-energy venturi scrubbers on the calciner exhausts of two plants would result in a capital expenditure of about \$6 million and annual operating costs of \$3 million per year.

Under the proposed standard, owners or operators of elemental phosphorus plants will be required to (a) measure the polonium-210 emissions from their calciner stacks and to report the results of these tests to EPA and (b) continuously monitor the pressure drop across their calciner scrubbers and to maintain records of these measurements for a minimum of two years.

EPA requests comments on the proposed values and the methodology used in arriving at them.

E. Alternatives to the Proposed Standard

The Agency considered proposing higher or lower values than 1 Ci/y. Higher values did not seem justified because they would either not significantly reduce the radiation doses to individuals living near these plants or would cost just as much to implement as the proposed standard. Lower values were also considered, but available information indicates that additional control technology is not feasible to meet lower levels.

The Agency also considered a standard expressed as curies/metric ton of phosphate rock processed. However, this type of standard may require emission control retrofit by one or more additional plants even though their emissions of polonium-210 would be significantly less than 1 Ci/y. Since the

primary purpose of the standard is to limit the annual radiation doses to the most exposed individual living near these plants, the Agency concluded that an annual emission limit, rather than an emission limit per unit of rock processed, is the more appropriate form of the standard.

VI. Sources for Which Standards Are Not Proposed

EPA has identified several source categories that emit radionuclides to air for which standards are not being proposed. These emissions comprise radionuclides that occur naturally in the environment but are released to air due to industrial processes. In addition to these sources, EPA is not proposing emission standards for uranium fuel cycle facilities, uranium mill tailings, management of high level radioactive wastes, and low energy accelerators. The reasons for these decisions are discussed in the following paragraphs. Additional supporting information may be found in the Docket and in the Background Information Document.

Estimates of risk used in this analysis were developed using methods and assumptions discussed in Unit I.C. of this notice. It is important to recognize that the actual risk to specific individuals may differ greatly from the estimates because the circumstances involving the actual exposure may differ greatly from the assumptions used to make the estimates.

A. Coal-Fired Boilers

Large, coal-fired boilers are used by utilities and industry to generate electricity and by industry to make process steam and to heat water for space heaters and industrial processes. When these boilers are operating, trace amounts of uranium, radium, thorium, and decay products of these radionuclides that are present in coal become incorporated into the fly ash and are emitted along with the particulates into the air. Technology that removes particulates will, therefore, also limit radionuclide emissions.

Particulate emissions from new utility boilers are controlled under Section III of the Act (43 FR 42154, September 19, 1978, revised by 44 FR 33613, June 11, 1979). These New Source Performance Standards (NSPS) require utility boilers constructed after September 19, 1978, to have best available technology that limits particulate emissions to 13 nanograms per joule (ng/J) (0.03 pound/million Btu). To meet this emission standard, electrostatic precipitators (ESPs) or fabric filter systems are usually installed. Doses from utility

boiler radionuclide emissions under NSPS are low, less than 1 mrem/y to any organ, and there is no practical way to reduce them further since best available technology is already being used. Further reduction in emissions would require a second fabric filter or ESP in series with the first; this would be unreasonably expensive for the emission reduction achieved. Thus, radionuclide emission standards for new utility boilers would be either redundant or, if more restrictive, prohibitively expensive.

Particulate emissions from new large industrial boilers are controlled by NSPS that limit particulate matter to 43 ng/J (0.1 pound/million Btu). EPA plans to propose NSPS for smaller industrial boilers also; draft proposed limits have been circulated for comment. These standards should reduce particulate emissions to low levels and should correspondingly reduce doses to nearby individuals from radionuclide emissions to less than 1 mrem/y to any organ. With NSPS in place, radionuclide standards for industrial boilers would be redundant.

Existing utility and industrial boilers are regulated for particulate emissions by State Implementation Plans (SIPs) required by the Act. Limits vary for specific plants, but, in general, SIPs require large boilers located in populated areas to be well controlled with ESPs. Preliminary information indicates that retrofitting existing utility boilers to further reduce radionuclide emissions would cost approximately \$15 billion for capital improvements and \$3 billion a year to operate them. Total retrofitting of the industry with best available technology would reduce the estimated potential health effects by about 1 to 2 per year. For industrial boilers, the costs are about \$3 billion for capital improvements and \$0.7 billion to operate them. Total retrofitting of the industry with best available technology would reduce the estimated potential health effects by about 1 every three years. For both utility and industrial boilers, the costs are judged to be unreasonable in comparison to the reduction in dose and risk that would result.

The amount of radionuclides that could potentially be emitted by coal-fired boilers is strictly limited by the amount of uranium and thorium in the incoming coal. EPA has no reasons, therefore, to expect that massive releases of radionuclides will occur or that current emission rates will increase significantly. Under the current Federal and State regulatory programs,

emissions should slowly decrease as old boilers are replaced.

In summary, EPA is not proposing standards for coal-fired boilers because existing emission controls that limit particulate releases also limit radionuclide releases. The risks to nearby individuals and the total risks to populations after application of controls already required are not large when compared to the cost of additional control technology. There is no potential for emissions to increase due to the limited amounts of radionuclides within the coal; rather, overall emissions will decrease with time as old plants are replaced with new ones with improved emission controls as required by the NSPS for particulate emissions.

EPA did consider the possibility that boilers may be using coal with radionuclide content that is significantly above average or that existing boilers may be operating in a manner that causes elevated emissions of radionuclides. If this is the case, there could be a subcategory of coal-fired boilers for which it would be appropriate to issue an emission standard. EPA requests comments and information on whether these situations do exist, their causes, their significance to public health, whether emission standards are needed, and what emission levels would be appropriate.

B. Phosphate Industry

The phosphate industry processes phosphate rock to produce fertilizers, detergents, animal feeds and other products. The production of fertilizer uses approximately 80 percent of the phosphate rock mined in the United States. Diammonium phosphate and triple superphosphate are the phosphate fertilizers produced in the largest quantities. Phosphate deposits contain large quantities of natural radioactivity, principally uranium-238 and members of its decay series. Uranium concentrations in phosphate deposits range from 10 to 100 times the concentration of uranium in other natural rocks and soils.

The processing of phosphate rock in dryers, grinders, and fertilizer plants results in the release of radionuclides into the air. As with coal-fired boilers, control techniques that remove particulates will also control radionuclide emissions and risks. Particulate emissions from the process exhausts of these plants are already well controlled, and the doses to individuals and populations from the radionuclides contained in the particulates are less than 15 mrem/y to any organ.

Particulate emissions from new or modified phosphate rock dryer and

grinder facilities are already regulated by NSPS under Section 111 of the Act (47 FR 16582, April 16, 1982). To meet these standards, high-energy scrubbers of high-energy ESPs are usually installed on dryers, and fabric filters are installed on grinders. Particulate emissions from existing dryers and grinders are regulated under SIPs. About 20 percent of the existing dryers already have controls equivalent to NSPS; the remaining dryers either employ low-energy or medium-energy scrubbers. About 75 percent of the existing grinders already have controls equivalent to NSPS; the remaining grinders use the equivalent of medium-energy scrubbers.

To retrofit all existing phosphate rock dryers with best available technology would require a capital expenditure of \$44 million and an increase of \$3 million in annual operating costs. This would reduce the maximum individual bone dose from 15 mrem/y to 3 mrem/y and avoid 1 health effect in 50 years of operations. To retrofit all existing phosphate grinders with best available technology would require a capital expenditure of \$4 million but would not increase the annual operating cost. This would reduce the maximum individual bone dose from 1 mrem/y to 0.2 mrem/y and avoid 1 health effect in 500 years of operations.

Phosphate fertilizer plants use wet-scrubber systems on their process exhausts. These controls are needed to comply with NSPS (40 CFR Part 60, Subparts T through X) or SIPs for fluoride emissions. About 75 percent of the existing industry production capacity is controlled by both primary and secondary scrubbers. Scrubbers used to control fluoride emissions are also effective controls for particulate emissions.

To retrofit all existing fertilizer plants with secondary scrubbers on their diammonium phosphate and triple superphosphate process stacks would require capital costs of \$14 million and would result in an increase of \$1.5 million in annual operating costs. This would reduce the maximum individual bone dose from 2 mrem/y to 1 mrem/y and would avoid 1 health effect in 500 years of operations.

In summary, EPA is not proposing standards for phosphate rock dryers and grinders or phosphate fertilizer plants, because (1) the bone dose to individuals represent a small hazard to health compared to a similar dose to most other organs, (2) the potential for increased emissions is not present due to the limited amount of radionuclides in the phosphate rock, (3) other Clean Air Act standards require controls that also

reduce radionuclide emissions, and (4) the cost to further reduce radionuclide emissions is unreasonably large compared to the additional protection achieved.

About 25 percent of the phosphate rock used for fertilizer production is treated in calciners rather than dryers to remove organic matter prior to processing. Since calciners operate at significantly higher temperatures than dryers, this may result in the volatilization and release to air of significant quantities of polonium-210, similar to the emissions from elemental phosphorus plants. Radionuclide emission studies are being planned for phosphate rock calciner plants. However, no radionuclide emission data are available for calciners, and, therefore, EPA is unable to determine at this time that standards are needed for these facilities. EPA requests comments and information on these emissions, their significance to public health, whether emission standards are needed, and what limits would be appropriate.

C. Other Extraction Industries

Almost all industrial operations involving removal and processing of soils and rocks to recover valuable commodities release some radionuclides into the air. EPA has carried out studies of airborne radioactive emissions from such mining, milling, and smelting operations.

The industries studied include iron, copper, zinc, clay, limestone, fluorspar, and bauxite. These are relatively large industries and are, therefore, considered to have the greatest potential for emitting radioactive materials into the air.

Although the analysis of data from these studies is not complete, the information available to the Agency at the present time shows that the radiation doses to individuals and populations from radionuclide emissions from these types of facilities are small and would not be reduced at reasonable cost. Therefore, EPA is not proposing standards for these parts of the extraction industry.

D. Uranium Fuel Cycle Facilities, Uranium Mill Tailings, and Management of High Level Waste

The Uranium Fuel Cycle (UFC) consists of operations associated with production of electric power for public use by light-water-cooled reactors using uranium fuel. It includes light-water-cooled nuclear power plants and facilities that mill the uranium ore, enrich uranium, and fabricate and reprocess uranium fuel. EPA has promulgated emission standards for

normal operations of the UFC under the Atomic Energy Act (40 CFR Part 190). These standards limit the annual dose equivalent to body organs of nearby individuals to 25 mrem/y (75 mrem/y for the thyroid) and limit the emissions of krypton-85, iodine-129, and other long-half-life, alpha-emitting, transuranium radionuclides. As a practical matter, the EPA standards and their implementation by the NRC require the use of best available technology, which keeps doses to individuals and populations to low levels. The estimated individual risk associated with 25 mrem/y to all organs for a lifetime is about 1 in 2000.

Uranium mill tailings remain after uranium ore is processed to remove the uranium. Altogether, there are many thousands of acres of these tailings at both inactive and active uranium mill sites, mostly in the Southwest. Large amounts of radon-222 are emitted to air from the piles due to the radium-226 remaining in the tailings after the uranium is removed. Congress addressed this problem through the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604). Under this authority, EPA has active programs to promulgate standards requiring remedial actions that will, among other objectives, prevent these tailings from being moved and prevent radon from escaping after the piles become inactive. Standards have been promulgated for inactive mill sites and will soon be proposed for active mill sites.

The highly radioactive liquid or solid wastes from reprocessing spent nuclear fuel, or the spent fuel elements themselves if they are disposed of without reprocessing, are called "high level wastes". Over the last several years, the Federal government has intensified its program to develop and demonstrate a permanent disposal method for high level waste. As part of this effort, EPA has proposed standards to limit radiation exposure of members of the public from management of this waste prior to disposal (47 FR 58196, December 29, 1982). These proposed standards would limit the annual dose equivalent to any member of the public to 25 mrem/y to the whole body, 75 mrem/y to the thyroid, or 25 mrem/y to any other organ. Waste management operations are also to be conducted so as to reduce exposures below these levels to the extent that this is reasonably achievable.

EPA is not proposing additional radionuclide standards for UFC facilities, uranium mill tailings, and high level wastes because the Agency believes that EPA standards established (or to be established) under other applicable authorities will protect public

health with an ample margin of safety in the same way as an emission standard established under Section 112 of the Act.

E. Low Energy Accelerators

Accelerators, which impart energy to charged particles such as electrons, alpha particles, and protons, are used for a wide variety of applications, including radiography, activation analysis, food sterilization and preservation, radiation therapy, and research. There are over 1,200 accelerators in use in the United States, not including accelerators owned by DOE. This number has been growing at a rate of approximately 65 machines per year.

Accelerators other than those owned by the DOE operate at low energy levels (i.e., less energy is imparted to the particles). These machines emit very small quantities of radionuclides (specifically, carbon-11, carbon-14, nitrogen-13, oxygen-15, and argon-41) because they operate at relatively low energies. In addition, those accelerators using tritium targets may emit a small quantity of tritium, typically less than 1 Ci/y. The quantity of radionuclides produced is so small that the doses and health risks associated with those emissions are extremely low, generally several orders of magnitude less than other sources discussed in the proposed rule. Further, there is no practical way to reduce them. EPA is not proposing standards for accelerators because of the low doses, less than 1 microrem/y to nearby individuals, and because there is no potential for the doses from existing or new facilities to exceed this level significantly.

F. Request for Comments

EPA requests comments on its proposed decisions not to issue standards for radionuclide emissions from the categories of sources just described. These decisions will be reconsidered if additional information becomes available indicating that doses and risks are significantly greater, costs are significantly lower, or controls are more available than those on which EPA based its decisions.

If the Administrator decides not to issue standards for particular source categories, such decisions are likely to be accompanied by determinations that these decisions are of nationwide scope and effect under the terms of section 307(b) of the Act.

VIII. Miscellaneous

A. Docket

The Docket is an organized and complete file of all information

considered by EPA in the development of these proposed standards. The Docket allows interested persons to identify and locate documents so that they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

A transcript of the hearing and all written statements will be placed in the Docket and will be available for inspection and copying during normal working hours.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as that term is defined in Section 1(b) of the Executive Order.

EPA concluded that the rule is not major under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than \$100 million. It will not cause a major increase in costs or prices for any sector of the economy or for any geographic region. Also, it will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This proposed rule was submitted to the Office of Management and Budget (OMB) prior to publication, as required by the Executive Order.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride, Radionuclides.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) (PRA) requires that the Office of Management and Budget review reporting and recordkeeping requirements that constitute "information collection" as defined. Assuming, without deciding, that some or all of the proposed reporting and recordkeeping requirements constitute information collection within the meaning of the PRA, the PRA requires the Office of Management and Budget to review information collection activities to determine whether they are "necessary for the proper performance of the functions of the Agency" (section 3508).

This proposal, if promulgated, would impose reporting and recordkeeping requirements for one Federal agency and on owners and operators of

elemental phosphorus plants and underground uranium mines.

EPA requests comments on the reasonableness of the information collection requirements and on the costs involved as compared to other means of compliance determinations.

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory analysis" describes the effect of the proposed rule on small business entities.

However, Section 604(b) of the Regulatory Flexibility Act provides that Section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that virtually all small businesses covered by this proposed rule are already meeting the proposed standards. Therefore, this rule will have little or no impact on small businesses.

For the preceding reasons, I certify that this rule, if promulgated, will not have significant economic impact on a substantial number of small entities.

Dated: March 29, 1983.

Lee Thomas,
Acting Administrator.

It is proposed to amend Part 61 of chapter I of title 40 of the Code of Federal Regulations as follows:

1. By adding to the table of sections the following items:

Subpart K—National Emission Standards for Radionuclide Emissions from Department of Energy Facilities

- Sec.
61.120 Designation of facilities.
61.121 Definitions.
61.122 Standard.
61.123 Emission monitoring and test procedures.
61.124 Compliance and reporting.

Subpart L—National Emission Standard for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart K

- 61.130 Applicability.
61.131 Definitions.
61.132 Standard.

Subpart M—National Emission Standard for Radionuclide Emissions From Underground Uranium Mines

- 61.140 Applicability.
61.141 Definitions.

- Sec.
61.142 Standard.
61.143 Emission tests.
61.144 Reporting.

Subpart N—National Emission Standard for Radionuclide Emissions From Elemental Phosphorous Plants

- 61.150 Applicability.
61.151 Definitions.
61.152 Standard.
61.153 Emission tests.
61.154 Test methods and procedures.
61.155 Monitoring of Operations.
* * *

Appendix B—Test Methods

Method 111—Determination of polonium-210 emissions from stationary sources.

Authority: Sec. 112 and 301(a), Clean Air Act, as amended [42 U.S.C. 7412, 7601(a)].

2. By adding the following Subpart K:

Subpart K—National Emission Standards for Radionuclide Emissions From Department of Energy Facilities

§ 61.120 Designation of facilities.

The provisions of this subpart apply to radiation dose equivalent values received by members of the public as the result of operations at facilities that are owned or operated by the Department of Energy and that emit radionuclides to air.

§ 61.121 Definitions.

(a) "Whole body" means all human organs, organ systems, and tissues exclusive of the integumentary system (skin) and cornea.

(b) "Organ" means any human organ or tissue exclusive of the integumentary system (skin) and the cornea.

(c) "Radionuclide" means any nuclide that emits radiation.

(d) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body. The unit of the dose equivalent is the rem.

§ 61.122 Standard.

Emissions of radionuclides to air from operations of Department of Energy facilities shall not exceed those amounts that cause a dose equivalent rate of 10 mrem/y to whole body or 30 mrem/y to any organ of any member of the public.

§ 61.123 Emission monitoring and test procedures.

To determine compliance with the standard, radionuclide emissions shall be determined and dose equivalent values to members of the public calculated using EPA approved sampling procedures, codes AIRDOSE-EPA and RADRISK, or other procedures

which EPA has determined to be suitable.

§ 61.124 Compliance and reporting.

DOE shall submit to EPA an annual report which includes the results of monitoring emissions from points subject to this standard and dose calculations for each site. The report shall also describe the DOE program for maintaining airborne radionuclide releases as low as practicable below the standard, including a discussion of current controls, new control equipment installed during the year, and a discussion of new controls that are under consideration.

3. By adding the following Subpart L:

Subpart L—National Emission Standards for Radionuclide Emissions From facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart K

§ 61.130 Applicability.

The provisions of this subpart apply to NRC-licensed facilities and to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to facilities regulated under 40 CFR Part 190 or to any accelerator.

§ 61.131 Definitions.

(a) "Agreement State" means and State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended.

(b) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body. The unit of the dose equivalent is the rem.

(c) "NRC/licensed facility" means any facility licensed by the Nuclear Regulatory Commission or any Agreement State to receive title to, receive, possess, use, transfer, or deliver any source, by-product, or special nuclear material.

(d) "Organ" means any human organ or tissue exclusive of the integumentary system (skin) and the cornea.

(e) "Radionuclide" means any nuclide that emits radiation.

§ 61.132 Standard.

(a) Emissions of radionuclides to air from facilities subject to this subpart shall not exceed those amounts that cause a dose equivalent rate of 10 mrem/y to any organ of any member of the public.

(b) This standard shall be implemented using pathway and dose equivalent calculations based on EPA's codes AIRDOSE-EPA and RADRISK or modeling techniques which, in EPA's judgment, are as suitable for particular applications as the EPA codes.

4. By adding the following Subpart M:

Subpart M—National Emission Standard for Radionuclide Emission From Underground Uranium Mines

§ 61.140 Applicability.

The provisions of this subpart are applicable to owners or operators of underground uranium mines.

§ 61.141 Definitions.

(a) "Unrestricted area," as used in this subpart, means an area not under the control of the mine owner or operator or a governmental agency for the purpose of restricting the use or establishment of structures for residential purposes.

(b) "Mine vent" means a shaft extending from the working areas of an underground uranium mine to the earth's surface for the purpose of discharging ventilation air from the mine to the earth's atmosphere.

(c) "Curie" is a unit of radioactivity equal to 37 billion nuclear transformations (decays) per second.

§ 61.142 Standard.

The radon-222 emissions to air from the mine vents of an underground uranium mine shall not result in an increase in the annual average radon-222 concentration in air in an unrestricted area in excess of 0.2 pCi/l.

§ 61.143 Emission tests.

(a) Unless a waiver of emission testing is obtained under 61.13, each mine owner or operator subject to 61.142 shall measure the radon-222 emissions from each of his mine vents:

(1) Within 90 days of the effective date of this rule, and annually thereafter, in the case of an existing source or a new source which has an initial startup date preceding the effective date of this rule; or

(2) Within 90 days of startup, and annually thereafter, in the case of a new source that did not have an initial startup date preceding the effective date.

(b) The Administrator shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test.

(c) Each emission test shall consist of three runs. The tests shall be conducted during normal operating and ventilation conditions. The average of all three runs shall apply in computing the emission rate.

(d) For use in calculating radon-222 concentrations in unrestricted areas under § 61.144, the annual emissions from each mine vent shall be determined by multiplying the radon-222 concentration measured in the air emitted from the mine vent by the total volume of air discharged through the vent over a one year period based on continuous operation of the ventilation system.

(e) Records of emission test results and other data needed to determine total emissions shall be retained at the source and made available for inspection by the Administrator for a minimum of 2 years.

§ 61.144 Reporting.

(a) Each owner or operator of a source subject to the requirements of § 61.142 shall calculate the average annual radon-222 concentration in air at the nearest unrestricted area to each of the mine vents from his mine using the following equation:

$$C_j = 0.1 \sum_i Q_i (X_{ij})^{-1.72}$$

Where

C_j = radon-222 concentration in picocuries per liter (pCi/l) at location j due to all vents from the mine.

Q_i = radon emission rate in kilocuries per year from vent i.

X_{ij} = distance in kilometers from mine vent i to location j.

(b) Rather than use the method prescribed in paragraph (a), an owner or operator of a mine may, subject to the approval of the Administrator, use dispersion factors based on site specific meteorology.

(c) The calculations performed under paragraph (a) or (b) shall be reported to the Administrator within 30 days of completion of the emission tests required under § 61.143.

5. By adding the following Subpart N:

Subpart N—National Emission Standard for Radionuclide Emission From Elemental Phosphorus Plants

§ 61.150 Applicability.

The provisions of this subpart are applicable to owners and operators of nodulizing kilns and electric furnaces at elemental phosphorus plants.

§ 61.151 Definitions.

(a) "Elemental phosphorus plant" means any facility that processes phosphate rock to produce elemental phosphorus using pyrometallurgical techniques.

(b) "Nodulizing kiln" means a unit in which phosphate rock is heated to convert it to a nodular form.

(c) "Electric furnace" means a unit in which the phosphate rock is heated with silica and coke to reduce the phosphate to elemental phosphorus.

(d) "Curie" is a unit of radioactivity equal to 37 billion nuclear transformations (decays) per second.

§ 61.152 Standard.

Emissions of polonium-210 to air from sources subject to this subpart shall not exceed 1 curie in a calendar year.

§ 61.153 Emission tests.

(a) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator required to comply with § 61.152 shall test emissions from his source within the following time limits:

(1) Within 90 days of the effective date of this rule in the case of an existing source or a new source that has an initial startup date preceding the effective date of this rule; or

(2) Within 90 days of startup in the case of a new source that did not have an initial startup date preceding the effective date of this rule.

(b) The Administrator shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test.

(c) Each emission test shall consist of three runs. The phosphate rock processing rate during each test shall be recorded. The average of all three runs shall apply in computing the emission rate. For determining compliance with the emission standard of § 61.152, the annual polonium-210 emissions shall be determined by multiplying the polonium-210 emission rate in curies per metric ton of phosphate rock processed by the annual phosphate rock processing rate in metric tons. In determining the annual phosphate rock processing rate, the values used for operating hours and operating capacity shall be values that will maximize the expected production rate. If the owner or operator of a source subject to this subpart changes his operation in a way that could change his emissions of polonium-210, he may determine his compliance with the requirements of this subpart on the basis of calculations using data from previous emission tests.

(d) All samples shall be analyzed, and polonium-210 emissions shall be determined within 30 days after the source test. All determinations shall be reported to the Administrator by a registered letter dispatched before the close of the next business day following such determination.

(e) Records of emission test results and other data needed to determine total emissions shall be retained at the

source and made available for inspection by the Administrator for a minimum of 2 years.

§ 61.154 Test methods and procedures.

(a) Each owner or operator of a source required to test emissions under § 61.153, unless an equivalent or alternate method has been approved by the Administrator, shall use the following test methods:

1. Test Method 1 of Appendix A to Part 60 shall be used to determine sample and velocity traverses;

2. Test Method 2 of Appendix A to Part 60 shall be used to determine velocity and volumetric flow rate;

3. Test Method 5 of Appendix A to Part 60 shall be used to collect particulate matter containing the polonium-210;

4. Test Method 111 of Appendix B to this part shall be used to determine the polonium-210 emissions.

§ 61.155 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ± 250 pascals (± 1 inch of water). Records of these measurements shall be maintained at the source and made available for inspection by the Administrator for a minimum of two years.

(b) For the purpose of conducting an emission test under § 61.153, the owner or operator of any source subject to the provisions of this subpart shall install, calibrate, maintain, and operate a device for measuring the phosphate rock feed to any affected nodulizing kiln. The measuring device used must be accurate to within ± 5 percent of the mass rate over its operating range.

Appendix B—[Amended]

6. By adding the following test method of Appendix B:

Method 111—Determination of Polonium-210 Emissions From Stationary Sources

Performance of this method should not be attempted by persons unfamiliar with the use of equipment for measuring radioactive disintegration rates.

1.0 Applicability and Principle

1.1 *Applicability.* This method is applicable to the determination of polonium-210 emissions in particulate samples collected in stack gases.

1.2 *Principle.* A particulate sample is collected from stack gases as described in Method 5 of Appendix A to 40 CFR

Part 60. The polonium-210 in the sample is put in solution, deposited on a metal disc and the radioactive disintegration rate measured. Polonium in acid solution spontaneously deposits on surfaces of metals which are more electropositive than polonium. This principle is routinely used in the radiochemical analyses of polonium-210 (reference 1).

2.0 Apparatus

2.1 Alpha-counter photomultiplier tube, (5 cm), with associated electronics to record pulses.

2.2 Constant temperature bath at 85°C.

2.3 Polished nickel discs, 3.8 cm diameter, 0.6 mm thick.

2.4 Silver activated zinc sulfide screen.

2.5 Beakers, 400 ml, 150 ml.

2.6 Hot plate, electric.

2.7 Fume hood.

2.8 Teflon beakers, 150 ml.

Teflon is a registered trademark of DuPont Co.

3.0 Reagents

3.1 Analysis.

3.1.1 Ascorbic acid, reagent grade.

3.1.2 Distilled water.

3.1.3 Hydrochloric acid 12M, concentrated reagent grade.

3.1.4 Hydrofluoric acid 28M, reagent grade.

3.1.5 Nitric acid 16M, concentrated reagent grade.

3.1.6 Perchloric acid 12M, 72 percent reagent grade.

3.1.7 Sodium hydroxide 18M.

Dissolve 720 g of sodium hydroxide pellets in distilled water and dilute to 1 liter.

3.1.8 Trichloroethylene.

3.2 *Standard solution.* Prepare calibrated solution of polonium-210 from supplier of this radionuclide. Known aliquots are to be used to establish efficiency of deposition.

4.0 Procedure

4.1 Sample Preparation.

4.1.1 Place filter collected by EPA Method 5 Part 60 in Teflon beaker, add 30 ml hydrofluoric acid and evaporate to dryness on hot plate in hood.

4.1.2 Repeat step 4.1.1 until glass fiber filter has been digested.

4.1.3 Add 100 ml 16M nitric acid to residue in Teflon beaker and evaporate to dryness. Do not overheat.

4.1.4 Add 50 ml 16M nitric acid to residue from step 4.1.3 and heat to 80°C.

4.1.5 Decant acid solution into glass beaker and add 10 ml 12M perchloric acid.

4.1.6 Heat acid mixture to perchloric acid fumes.

4.1.7 Adjust volume to 60 ml with distilled water and neutralize with 18M sodium hydroxide.

4.1.8 Dilute to 100 ml with distilled water and adjust solution to 0.5M in HCl by adding 4 ml 12M hydrochloric acid.

4.2 *Sample Analysis.* Analyze the solution for polonium-210 using any published method which involves the spontaneous electrodeposition of polonium-210, including the method described below:

4.2.1 Add 200 ml of ascorbic acid and heat solution to 85°C in constant temperature bath.

4.2.2 Melt a thin coating of polyethylene on the unpolished side of disc to prevent deposition. Adhesion of the polyethylene to the disc is enhanced by sanding the nickel surface with garnet paper.

4.2.3 Clean polished side with trichloroethylene, hydrochloric acid, and distilled water.

4.2.4 Suspended nickel disc in the solution using glass or plastic hook.

4.2.5 Maintain disc in solution for 3 hours while stirring the solution.

4.2.6 Remove nickel disc, rinse with distilled water and dry at room temperature.

4.3 *Measurement of Polonium-210.*

4.3.1 Position deposition side of nickel disc adjacent to zinc sulfide screen on photomultiplier tube and count pulses.

4.3.2 Establish background count rate by measuring counts over clean nickel discs.

4.3.3 Determine procedure efficiency by adding calibrated aliquots of polonium-210 to acid solution with clean filter and following procedure through radioassay step.

4.3.4 Determine counter efficiency by carefully evaporating known aliquots of polonium-210 on nickel disc and measuring count rate, comparing count rate to known disintegration rate as fraction.

5.0 *Calculations*

5.1 Calculate the curies of polonium-210 in the sample using the following equation:

$$A = \frac{C_r C_e}{2.22 \times 10^{12} (E_p)(E_c)(T)(D)}$$

A = Curies of polonium-210 in sample.

C_r = total sample counts for counting period.

C_b = background counts for counting period.

E_p = procedure efficiency.

E_c = counting efficiency.

T = counting time in minutes.

D = decay correction.

5.1.1 *Decay Correction*

$$\text{Decay correction (D)} = e^{-\frac{0.693(T)}{t_{1/2}}}$$

T = time in days from midpoint of collection time to the counting time.
 $t_{1/2}$ = radiological half life of polonium-210, 138.4 days.

5.2 *Procedure for Calculating Emissions.*

Calculate the polonium-210 emission per metric ton of rock processed using the following equation:

$$E = \frac{AQ_s}{V_s M}$$

E = Curies of polonium-210 per metric ton of rock processed.

A = Curies of polonium-210 in sample from 5.1.

Q_s = Volumetric flow rate of effluent stream in m³/h.

V_s = Total volume of air sampled in m³.

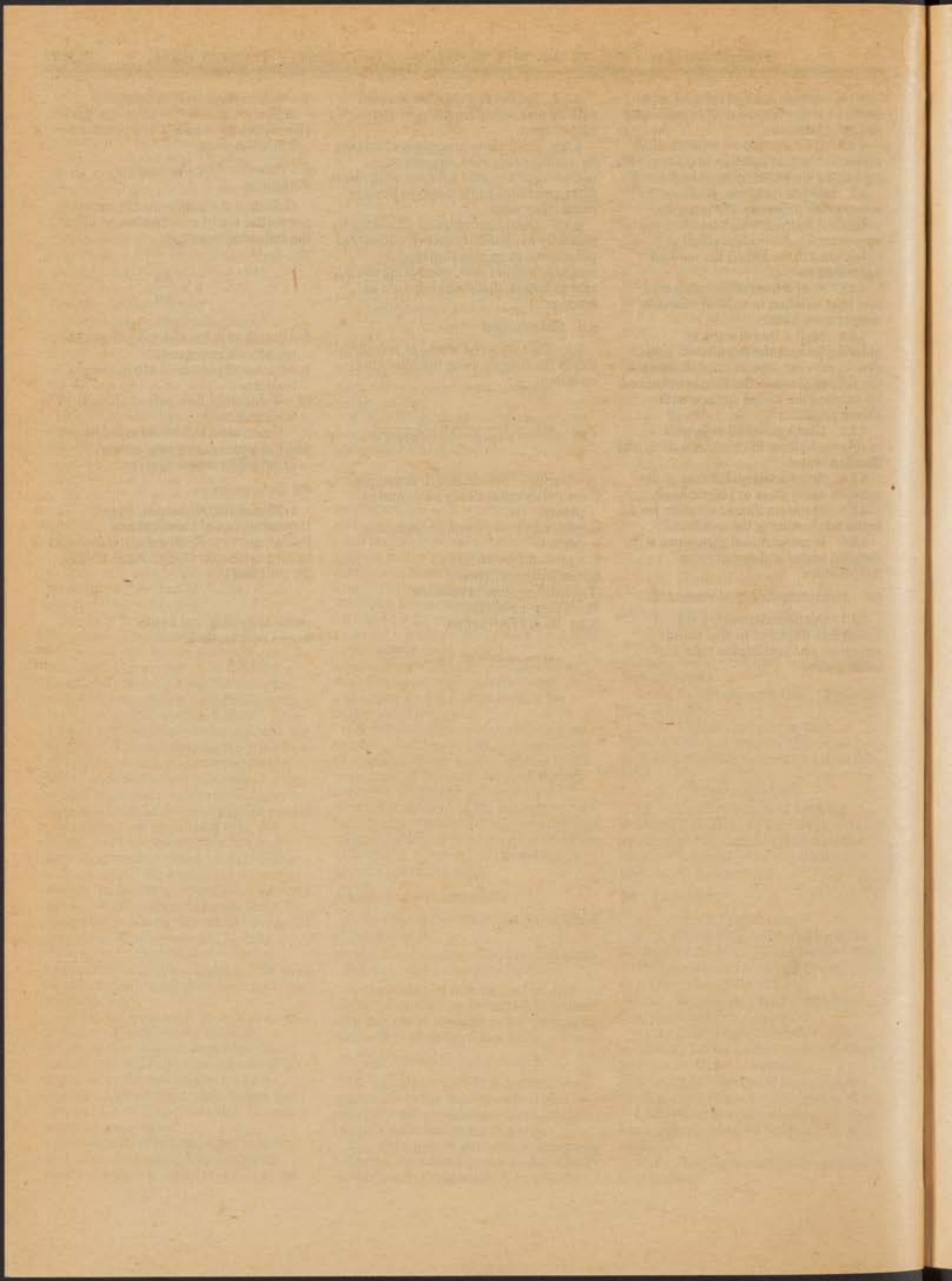
M = Rock processing rate during sampling in metric tons/hr.

6.0 *References*

1. Blanchard, Richard L., Rapid Determination of Lead-210 and Polonium-210 in Environmental Samples by Deposition on Nickel, *Anal. Chem.*, 38, 189 (1966).

[FR Doc. 83-6726 Filed 4-5-83; 8:45 am]

BILLING CODE 6560-50-M



Federal Register

Wednesday
April 6, 1983

Part III

Department of the Interior

Minerals Management Service

**Outer Continental Shelf; Western Gulf of
Mexico; Proposed Oil and Gas Lease
Offering (August 1983)**

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Proposed Oil and Gas Lease Offering (August 1983)

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed notice of lease offering. The following is a proposed notice of offering scheduled for August 1983 in the offshore waters of the Western Gulf of Mexico. This notice is hereby published as a matter of information to the public.

Robert L. Plout
Robert L. Plout
"Acting" Director, Minerals Management Service

Date: 3/31/83

Approved: ✓

Samuel N. Miller, Jr.
Assistant Secretary--Energy & Minerals
Daniel N. Miller, Jr.

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf, Western Gulf of Mexico
Oil and Gas Lease Offering (August 1983)

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256, formerly 43 CFR Part 3300; see the Federal Register at 47 FR 47006, October 22, 1982). A revision of those regulations appeared in the Federal Register of June 16, 1982, at 47 FR 25967 and 26031.
2. Filing of Bids. Sealed bids will be received by the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address until the Bid Submission Deadline at 10:00 a.m., c.s.t., August 23, 1983. Bids will not be accepted on August 24, 1983, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010, and must be received by the Bid Submission Deadline. Bids received by the Regional Manager later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the Regional Manager prior to 10:00 a.m., c.s.t., August 23, 1983. Bids may not be withdrawn unless written withdrawal is received by the Regional Manager prior to 8:30 a.m., c.s.t., August 24, 1983. Bid Opening Time will be 9:00 a.m., c.s.t., August 24, 1983, at the . All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this offering will appear in the Federal Register in April 1983.
3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert offering name; date of offering; map number(s); map name(s), if applicable, and block number(s)), not to be opened until 9:00 a.m., c.s.t., August 24, 1983," must be submitted for each block or prescribed bidding unit bid upon. For example, a block would be identified as follows: "Western Gulf of Mexico (August 1983), NH 15-1, (East Breaks) Block 701." For those blocks which must be bid on together as a bidding unit (see paragraph 12), all block numbers of blocks comprising the bidding unit must appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Minerals Management Service. No bid for less than all of the unleased

When the adjusted quarterly value of production is equal to or greater than \$37,740,050,000 million, a royalty of 65.00000 percent in amount or value of production will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production.

In determining the quarterly percent royalty due, R_j , the calculation will be carried to five decimal places (for example, 18.56224 percent). This calculation will incorporate the adjusted quarterly value of production, V_j , in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar; for example, \$49,625834 million.

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula previously described under two different values for the quarterly price index.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks or bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(c) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks or bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

(d) Bonus Bidding with a Fixed Net Profit Share. Bids on blocks or bidding units offered under this system must be submitted on a cash bonus basis with the fixed net profit share rate and the capital recovery factor indicated on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems," as applicable to the block(s) bid upon. The net profit share payment shall be calculated according to regulations codified in 30 CFR 261, formerly 10 CFR 390 (originally promulgated by the Department of Energy, 45 FR 36784) see the Federal Register of January 11, 1983, at 48 FR 1181.

portions of a block or bidding unit will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing. Partnerships also need to submit a list of signatories authorized to bind the partnership. All documents must be executed in conformance with signatory authorizations on file. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this offering must provide for a cash bonus in the amount of \$150 or more per acre or fraction thereof. All leases awarded for this offering will provide for a yearly rental payment of \$3 per acre or fraction thereof. Leases awarded under 4(a), (b), and (c) will provide for a minimum royalty of \$3 per acre or fraction thereof. The bidding systems to be utilized for this offering apply to blocks or bidding units as shown on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems," available from the Gulf of Mexico OCS Regional Office at the address stated in paragraph 2. The following bidding systems will be used:

(a) Bonus Bidding With a Fixed Sliding Scale Royalty. Bids on blocks or bidding units offered under this system must be submitted on a cash bonus basis with the percent royalty due in amount or value of production fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64. The fixed sliding scale formula operates as follows:

When the quarterly value of production, adjusted for inflation, is less than or equal to \$20,873435 million, a royalty of 12.50000 percent in amount or value of production will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than \$20,873435 million, but less than or equal to \$37,740,050,000 million, the royalty percent due on the unadjusted value or amount of production is given by:

$$R_j = b[\ln(V_j/S)]$$

where R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production in quarter j

$$b = 7.0$$

$\ln$ = natural logarithm

V_j = the value of production in quarter j , adjusted for inflation, in millions of dollars

$$S = 3.5$$

Figure 1
Form of the Sliding Royalty Schedule

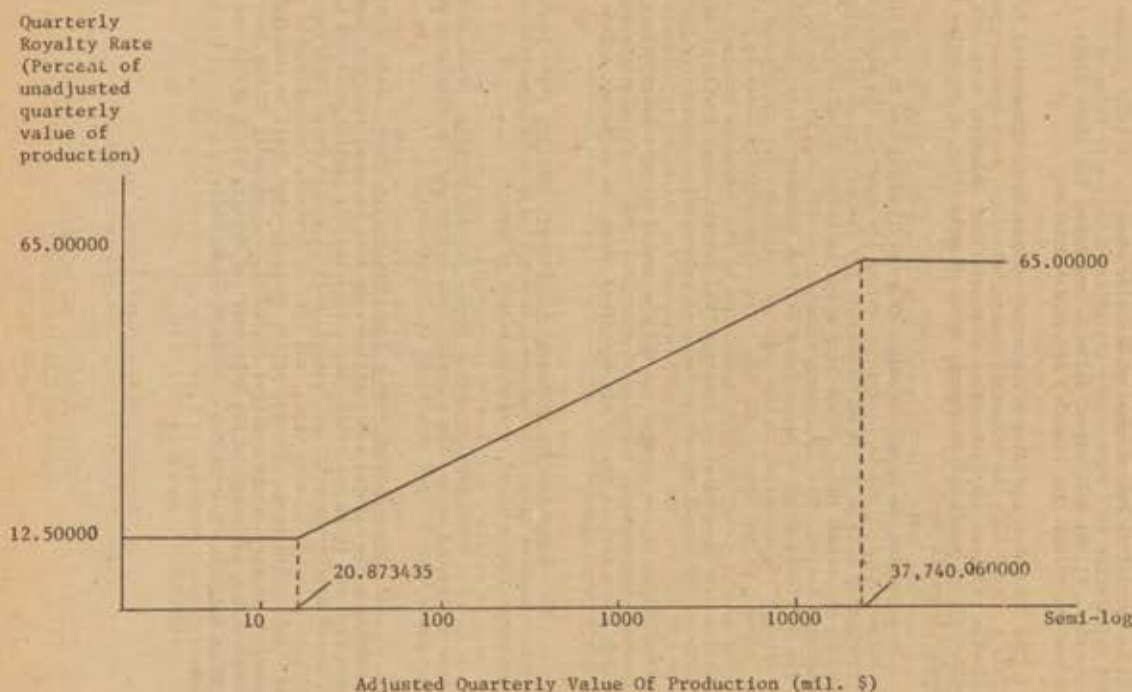


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) CNP Fixed Weighted Price Index	(C) Inflation Factor ¹	(D) Adjusted Value of Quarterly Production ² (Vj, Millions of \$)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment ³ (Millions of Dollars)
10.000000	200.0	4/3	7.500000	12.50000	1.25000
30.000000	200.0	4/3	22.500000	13.02527	3.90758
90.000000	200.0	4/3	67.500000	20.71555	18.64400
270.000000	200.0	4/3	202.500000	28.40584	76.69577
810.000000	200.0	4/3	607.500000	36.09612	292.37857
10.000000	250.0	5/3	6.000000	12.50000	1.25000
30.000000	250.0	5/3	18.000000	12.50000	3.75000
90.000000	250.0	5/3	54.000000	19.15355	17.23820
270.000000	250.0	5/3	162.000000	26.84383	72.47834
810.000000	250.0	5/3	486.000000	34.53412	279.72637

¹ Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

² Column (A) divided by Inflation Factor.

³ Column (A) times Column (E) divided by 100. All values are rounded for display purposes only.

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Gulf of Mexico OCS Regional Office at the address stated in paragraph 2 of this notice:

(a) Outer Continental Shelf Leasing Maps - South Texas Set.
This set of maps sells for \$5.00.

Map 1 South Padre Island Area
Map 1A South Padre Island Area East Addition
Map 2 North Padre Island Area
Map 2A North Padre Island Area East Addition
Map 3 Mustang Island Area
Map 3A Mustang Island Area East Addition
Map 4 Matagorda Island Area

(b) Outer Continental Shelf Leasing Maps - East Texas Set.
The following set of maps sells for \$7.00.

Map 5 Brazos Area
Map 5B Brazos Area South Addition
Map 6 Galveston Area
Map 6A Galveston Area South Addition
Map 7 High Island Area
Map 7A High Island Area East Addition
Map 7B High Island Area South Addition
Map 7C High Island Area East Addition South Extension
Map 8 Sabine Pass Area

(c) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for \$2.00 each.

NG 14-3 Corpus Christi
NG 14-6 Fort Isabel
NG 15-1 East Breaks
NG 15-2 Garden Banks
NG 15-4 Alaminos Canyon
NG 15-5 Keathley Canyon

12. Description of the Areas Offered for Bids.

(a) Acresages of the following types of blocks offered for bid appear on the documents indicated. Acresages of full blocks and partial blocks occurring at the meeting of map borders appear on Leasing Maps and Official Protraction Diagrams (see paragraph 11). Acresages of split blocks on the Federal/State boundary appear on the set of drawings entitled "Split Blocks - Western Gulf of Mexico," available from the Gulf of Mexico OCS Regional Office (see paragraph 14(a)). Where part of any of the above full, partial, or split blocks is under lease (as indicated in subparagraph (c) of this section), the acreage available for leasing at this offering is listed in the document entitled "Western Gulf of Mexico Lease Offering, August 1983. Open Acresages for Blocks with Aliquots Under Lease," available from the Gulf of Mexico OCS Regional Office.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bids will be opened at the Bid Opening Time, stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on August 24, 1983, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's check, certified check, or bank draft submitted with a bid may be deposited by the Government in a suspense account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this offering prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder unless:

- the bidder has complied with all requirements of this notice and applicable regulations;
- the bid is the highest valid bid; and
- the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$150 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this notice, the OCS Lands Act, as amended, or applicable regulations, may be returned to the person submitting that bid by the Regional Manager, and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease specified below, pay the balance of the cash bonus together with the first year's annual rental, and satisfy the bonding requirements of 30 CFR 256 Subpart I within the time provided in 30 CFR 256.47, as amended. A modification of payments procedures for successful bidders appears in the revision of the regulations discussed in paragraph 1. The changes do not apply to the submission of the one-fifth bonus with bids, described in paragraph 3.

13. Lease Terms and Stipulations.

(a) Leases resulting from this offering will have initial terms as shown on the map entitled "Western Gulf of Mexico Lease Offering, August 1983. Stipulations, Lease Terms, and Bidding Systems," and will be on Form MMS-2005 (August 1982) (formerly Form 3500-1). Copies of the map and forms are available from the Gulf of Mexico OCS Regional Office at the address stated in paragraph 2.

(b) For leases resulting for blocks offered on a cash bonus basis with a fixed net profit share, Form MMS-2005 will be amended as follows:

Sec. 4 Rentals. The phrase "which commences prior to a discovery in paying quantities of oil or gas on the leased area" is hereby deleted and replaced by "which commences prior to the date the first net profit share payment becomes due."

Sec. 5 Minimum Royalty. Hereby deleted.

Sec. 6 Royalty on Production. Hereby replaced by Net Profit Share. The lessee agrees to pay a net profit share rate of _____ percent with a capital recovery factor, calculated pursuant to 30 CFR 261.

(c) For leases resulting from this offering for blocks offered on a cash bonus basis with a fixed sliding scale royalty, Form MMS-2005 will be amended as follows:

Sec. 6 Royalty on Production. The lessee agrees to pay the lessor a royalty of that percent in amount or value of production from the leased area as determined by the sliding scale royalty formula as follows: When the quarterly value of production, adjusted for inflation, is less than or equal to \$20,873,434 million, a royalty of 12.50000 percent in amount or value of production will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than \$20,873,435 million, but less than or equal to \$37,740,050,000 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b \ln (V_j/S)$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of production in quarter j

$$b = 7.0$$

$\ln$ = natural logarithm

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

$$S = 3.5$$

East Breaks
(continued)High Island,
East Addition,
South Extension
(continued)High Island,
South Addition
(continued)High Island,
South Addition
(continued)High Island
(continued)

Garden Banks

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Alamogordo Canyon

(Open)

Kamille Canyon

(Open)

Sahara Pass

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Corpus Christi

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East Breaks

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and geophysicist using such survey equipment and techniques as deemed necessary by the RM, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

(3) A report of the latter investigation prepared by the archaeologist and geophysicist shall be submitted to the RM for review. Should the RM determine that the existence of a cultural resource which may be adversely affected by such operations is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the RM has given directions as to its protection.

In addition, the lessee agrees that if any cultural resource should be discovered during the conduct of any operations on the lease area, he shall report immediately such findings to the RM and make every reasonable effort to protect the cultural resource until the RM gives directions as to its protection.

Stipulation No. 2

In the Western Gulf of Mexico, this stipulation will be included in leases located in the areas so indicated on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems." The high relief banks with their appropriate "no activity" isobath are as follows:

Bank Name	Isobath (meters)
Mysterious Bank ¹	74, 76, 78, 80, 84
Blackfish Ridge ¹	70
Dream Bank ²	78, 82
Southern Bank ²	80
Hospital Bank ²	70
North Hospital Bank ²	68
Aransas Bank ²	70
South Baker Bank ²	70
Baker Bank ²	70
Big Bush Bar ¹	63
Small Bush Bar ¹	65
37 Fathom Bank ¹	52
Statson Bank ¹	62
Clayville Bank ¹	50
Applebaum Bank ¹	85
Coffee Lumpy	Various - see map

¹ Low Relief Banks - only subparagraph (a) of the stipulation applies.

² Other South Texas Banks - subparagraph (c) of the stipulation shall not apply for exploration operations; for production and development operations, subparagraph (c) of shall not apply, but subparagraph (b) shall apply in both the "1 Mile Zone" and the "3 Mile Zone."

When the adjusted quarterly value of production is equal to or greater than \$37,740,060,000 million, a royalty of \$5,000,000 percent in amount or value of production will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed \$5,000,000 percent in amount or value of quarterly production.

In determining the quarterly percent royalty due, \$1. the calculation will be carried to five decimal places (for example, 18.56224 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, \$9.625834 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

(d) The applicability of stipulations 1 through 3 that will be included in leases resulting from this offering is as shown on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems," available from the Gulf of Mexico OCS Regional Office. In all stipulations, the term RM refers to the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service. The following stipulations will be included in leases resulting from this offering:

Stipulation No. 1

If the RM has reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource," may exist in the leased area and gives the lessee written notice that the lessor is entering the provisions of this stipulation, the lessee shall, upon receipt of such notice, comply with the following requirements:

(1) Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling, and pipeline and platform placement, hereinafter in this stipulation referred to as "operations," the lessee shall conduct remote sensing surveys and/or prepare a report, as specified by the RM, to determine the potential existence of any cultural resource that may be affected by such operation. All data produced, as well as other pertinent natural and cultural environmental data, shall be examined by an archaeologist and geophysicist to determine if indicators are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of such surveys and assessments prepared by an archaeologist and geophysicist shall be submitted by the lessee to the RM.

(2) If such cultural resource indicators are present, the lessee shall: (a) locate the site of the lease operation so as not to adversely affect the identified location; or (b) establish to the satisfaction of the RM, on the basis of further archaeological investigations conducted by an archaeologist

West Flower Garden Bank³
East Flower Garden Bank³

MacNeil Bank
29 Fathom Bank
28 Fathom Bank
Ceyer Bank
Elvers Bank
Bright Bank
18 Fathom Bank
Zezak Bank
Sidner Bank
Parker Bank

100 (defined by WXX system)
100 (defined by WXX system)
(85 m on west side of Block A-375)

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- 3 Flower Garden Banks - has a "4 Mile Zone" vice "3 Mile Zone"; in the "1 Mile Zone", subparagraph (c)(2) of the stipulation shall apply in addition to subparagraph (b); in the "4 Mile Zone", only subparagraph (b) shall apply.
- 4 The 85 m isobath will be the boundary of the "No Activity Zone" on the west side of High Island, East Addition, South Extension, Block A-375. Leases granted for this block will have an additional subparagraph (d) added to the Biological Stipulation indicated.
- 5 Central Gulf of Mexico banks with "1 Mile Zone" and/or "3 Mile Zone" in Western Gulf of Mexico.
- (a) No structures, drilling rigs, or pipelines will be allowed within the listed isobath of the Banks listed above.
- (b) Operations within the area shown as "1 Mile Zone" shall be restricted by shutting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.
- (c) Operations within the area shown as "3 Mile Zone" shall be restricted as specified in either (1) or (2) below at the option of the lessee.

- (1) All drill cuttings and drilling fluids must be disposed of by shutting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2)

The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified, independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Manager (RM) on a schedule established by the RM, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RM shall require shuttling as specified in (1) above or other appropriate operational restrictions.

(d) (For High Island, East Addition, South Extension, Block A-375, in addition to subparagraphs (a), (b), and (c)). Prior to undertaking any onsite post-lease activities, including the placing of structures, drilling rigs, or pipelines, the lessee shall consult with the RM to ensure that the proposed activity would, to the extent possible, avoid direct contact with any identified coral and algal sponge communities in the vicinity.

Stipulation No. 3

The following stipulation is required of the lessee for operations within each warning area:

Warning Areas Command Headquarters Western Planning Area

Warning Areas

W-228

W-602

Command Headquarters

Naval Air Training Command
Naval Air Station
Corpus Christi, Texas

Director of Training
Deputy Chief of Staff,
Operations
Headquarters Strategic
Air Command
Offutt AFB, Nebraska

(a) Hold Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the United States government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with the programs and activities of the command headquarters listed in the table above.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors, or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the above table to the degree necessary to prevent damage to, or unacceptable interference with, DOD flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emission shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the above table, prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

Stipulation No. 4.

(To be included only in the leases resulting from this offering with the sliding scale royalty bidding system, as indicated on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems.")

(a) The royalty rate on production from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, Minerals Management Service, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for 1 year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16-2/3 percent of the production from the lease area may be taken as royalty in amount, except as provided in section 15(d) of this lease; the royalty on any portion of the production from the lease in excess of 16-2/3 percent may only be taken in value of the production from the lease.

Stipulation No. 5.

(To be included only in the leases resulting from this offering under the net profit share bidding system, as indicated on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms and Bidding Systems.")

The net profit share payment specified in section 6 of this lease may be satisfied in whole or in part by the lessor taking production in amount rather than in value. However, not more than 16-2/3 percent of the production from the lease area may be taken as a net profit share payment in amount, except as provided in section 15(d) of this lease; additional net profit share payments shall be calculated to include the value of such production in excess of 16-2/3 percent.

14. Information to Lessees.

(a) There is available from the Gulf of Mexico OCS Regional Office a set of drawings entitled "Split Blocks - Western Gulf of Mexico," depicting the State-Federal boundary, including the acreage on the Federal side of the line. For complete information on any of the subjects mentioned in this notice, including copies of the various documents identified as available from the Gulf of Mexico OCS Regional Office, prospective bidders should contact the Regional Supervisor for Leasing and Environment at the address stated in paragraph 2, either in writing or by phone (304) 837-4720 extension 136.

(b) Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.), as amended. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Bidders are advised that in accordance with section 15 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate, a royalty rate based on a sliding scale, or a net profit share payment.

(e) For those blocks identified as having lease terms with an initial period of more than 5 years, bidders are advised that pursuant to 30 CFR 250.31-1(a)(3), the lessee shall submit to MMS either an exploration plan, where required, or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Revisions of Department of Labor regulations on affirmative action requirements for government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42966). Should those changes become effective at any time before the issuance of leases resulting from this offering, section 18 of the lease form, Form MMS-2005 (August 1982), would be deleted from leases resulting from this offering. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(g) Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks area, shown on the map entitled "Western Gulf of Mexico Lease Offering, August 1983, Stipulations, Lease Terms, and Bidding Systems." These areas were used to dispose of ordnance of unknown composition and quantity. The westernmost area has not been used for over 15 years. Water depths in this area range from 185 to 675 meters. The easternmost area was last used for ordnance disposal in 1970.

Water depths in this area range from 750 to 1,525 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an EPA dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

15. OCS Orders.

Operations on all leases resulting from this offering will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

16. OCS Bid Adequacy Procedures.

The following system of OCS bid adequacy procedures will be used for this offering. The system is composed of two phases. Phase 1 includes market-oriented evaluation criteria for accepting some bids on blocks or bidding units and determining what other bids will receive further evaluation in Phase 2 according to the traditional bid adequacy procedures. Phase 2 utilizes an independent Government evaluation and the traditional bid adequacy rules based upon the Mean Range of Values (MRV), Discounted Mean Range of Values (DMRV), and Geometric Average Evaluation of the Tract (GAET) (a tract being a block or bidding unit).

Phase 1

Phase 1 is composed of criteria designed to partition blocks or bidding units receiving bids into three general categories:

- * Those receiving bids which MMS has identified as being non-prospective blocks;
- * Those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices might most likely occur and where the Government has the most detailed and reliable data; and
- * Those where the competitive market forces can be relied upon to assure fair market values.

Since the inception of the OCS leasing program, the Department has continually sought to improve upon techniques which determine bid adequacy. Much of the best information regarding the fair market value of a block or bidding unit is that which is available through observing the market for leases. The above procedures are designed to make better use of that information.

It has been determined that the following four Phase 1 criteria will be applied:

1. High bids on all blocks or bidding units classified by MMS as being either development or drainage will be referred directly for further evaluation using the traditional criteria.
2. All legal high bids for blocks or bidding units judged by MMS to be not located on a viable prospect will be accepted.
3. After screening for anomalously low bids through application of the "one-eighth rule,"¹ all legal high bids will be accepted for prospective wildcat and proven blocks or bidding units receiving three or more bids and more than the average number of bids for prospective blocks or bidding units bid upon in the offering, i.e., whichever is more.
4. After adjusting for anomalously low bids through application of the "one-eighth rule," all legal high bids will be accepted for prospective wildcat and proven blocks or bidding units where the geometric average bonus bid for the block or bidding unit is in the upper 50th percentile for prospective wildcat and proven blocks or bidding units receiving bids.

Phase 1 will be conducted block-by-block or bidding unit-by-bidding unit, and it is expected that Phase 1 should be completed within 3 days of the Bid Opening.

Phase 2

All prospective wildcat and proven blocks or bidding units which are not accepted as a result of the application of the Phase 1 criteria and all drainage and development blocks or bidding units will receive further evaluation via the traditional bid adequacy procedures currently in effect, i.e., high bids will be compared to the MBOV, DMBOV, and GABOV. While it is expected that most analyses would be undertaken based upon data available at the time of the offering, additional geological and geophysical analyses, including additional mapping, can be undertaken post-offering at the discretion of the Regional Manager.

The bid adequacy recommendations developed in Phase 2 should be completed within 3 weeks of the offering.

¹ Anomalously low bids will not be included in the bid number; e.g., if the lowest bid on a block or bidding unit is less than 1/8 of the next lowest bid, the lowest bid will not be included in the number of bids. This rule can exclude no more than one bid for a given block or bidding unit.

Federal Register

**Wednesday
April 6, 1983**

Part IV

Department of Energy

Federal Energy Regulatory Commission

**Determinations by Jurisdictional Agencies
Under the Natural Gas Policy Act of
1978**

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Volume 863]

Determinations by Jurisdictional
Agencies Under the Natural Gas Policy
Act of 1978

Issued: April 1, 1983.

The following 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).

The applications for determination are available for inspection except to the extent such materials 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**.

Source data from the Form 121 for this and all previous notices 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.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1000 foot rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet of deeper
107-GB: Geopressured 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.

NOTICE OF DETERMINATIONS
ISSUED APRIL 1, 1983

VOLUME 863

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS								
8326441	3082527745	103	RECEIVED:	03/04/83	JA: NM	MOORE PERMO PENN	200.0	WARREN PETROLEUM
8326442	3082527851	103	RAE #1			JALMAT YATES-SEVEN RI	19.2	EL PASO NATURAL G
8326443	3082527859	103	STATE 731 #5			JALMAT YATES 7 RIVERS	2.1	PHILLIPS PETROLEU
8326444	3082526854	103	RECEIVED:	03/04/83	JA: NM	NORTH SHOE BAR WOLFCA	33.6	TIPPERARY CORP
8326445	3001500000	103	LEAVELLE #1			RED LAKE Q-Q-5A	25.6	PHILLIPS PETROLEU
8326446	3001523890	103	RECEIVED:	03/04/83	JA: NM		59.0	NATURAL GAS PIPEL
8326447	3004525433	103	SPURCK #8 88318			ARMENTA GALLUP	19.0	EL PASO NATURAL G
8326448	3001523941	103	RECEIVED:	03/04/83	JA: NM	WEST ATOKA MORROW	0.0	TRANSWESTERN PIPE
8326449	3001524167	103	PIERCE "A" #3			UND CROW FLATS MORROW	0.0	
8326450	3002527993	103	DOG CANYON DRAW "UP" 5T #1			LAXY J PENN	0.0	TRANSWESTERN PIPE
8326451	3112115955	102-2	RECEIVED:	03/04/83	JA: NY	UNNAMED	94.9	COLUMBIA GAS TRAN
8326452	3112115948	102-2	BLANCHE M BRICK #1 31-121-15955			UNNAMED	36.5	COLUMBIA GAS TRAN
8326453	3105115833	102-2	LESLIE WRIGHT #1 31-121-15948			UNNAMED	0.0	COLUMBIA GAS TRAN
8326454	3105115961	102-2	MARG C CURRY 31-051-15833			UNNAMED	0.0	COLUMBIA GAS TRAN
8326455	3105115961	102-2	MILO PATRICK #3-31-051-15961					
8326456	3101317288	102-2	RECEIVED:	03/04/83	JA: NY	WILDCAT	25.0	COLUMBIA GAS TRAN
8326457	3101316879	102-2	C PIAZZA #1			STEBBINS CORNERS	10.0	COLUMBIA GAS TRAN
8326458	3101316819	102-2	ENGSTROM #1			WILDCAT	0.0	COLUMBIA GAS TRAN
8326459	3101317058	102-2	F LIPARI #1			STEBBINS CORNERS	11.0	COLUMBIA GAS TRAN
8326460	3101316909	102-2	J BYLER UNIT #1			GERRY	0.0	COLUMBIA GAS TRAN
8326461	3101317011	102-2	L FORBES UNIT #3			WILDCAT	12.0	COLUMBIA GAS TRAN
8326462	3101317011	102-2	R S MILLER #6					
8326463	3181317024	102-2	RECEIVED:	03/04/83	JA: NY	BUSTI	0.0	COLUMBIA GAS TRAN
8326464	3101317064	102-2	PFELEGER #1					
8326465	3101316210	102-2	RECEIVED:	03/04/83	JA: NY	CARROLL	30.0	COLUMBIA GAS TRAN
8326466	3101316033	102-2	A BUTTON UNIT #1 KV-16			CARROLL	30.0	COLUMBIA GAS TRAN
8326467	3101317645	102-2	D FRITTON #1 KV-35			CARROLL	30.0	COLUMBIA GAS TRAN
8326468	3101317663	102-2	D LUNDMARK #1-A KA-93			CARROLL	30.0	COLUMBIA GAS TRAN
8326469	3101316398	102-2	D SISSON UNIT #1 KV-34			CARROLL	30.0	COLUMBIA GAS TRAN
8326470	3101316252	102-2	E DERRY #1 KV-18			CARROLL	30.0	COLUMBIA GAS TRAN
8326471	3101315944	102-2	E FEATHERSTONE #1 KA-98			CARROLL	30.0	COLUMBIA GAS TRAN
8326472	3101316230	102-2	ECKSTROM UNIT #1 KA-95			CARROLL	30.0	COLUMBIA GAS TRAN
8326473	3101317063	102-2	G JOHNSON UNIT #1 KA-89			CARROLL	30.0	COLUMBIA GAS TRAN
8326474	3101315981	102-2	H TODD ADAMS #1 KV-28			CARROLL	30.0	COLUMBIA GAS TRAN
			M ANDERSON #1 KV-15			CARROLL	30.0	COLUMBIA GAS TRAN
			M PERCY #1 KV-36			CARROLL	30.0	COLUMBIA GAS TRAN

WELL NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8326524	3698	3101315966	102-2		R JOHNSON #1 KA-91	CARROLL	30.0	COLUMBIA GAS TRAN
8326496	3533	3101315977	102-2		V NELSON #1 KA-90	CARROLL	30.0	COLUMBIA GAS TRAN
-ENVIROGAS INC								
8326479	3574	3101317123	107-TF		RECEIVED: 03/04/83 JA: NY			
8326473	3722	3101317124	107-TF		A BLISS #1	CLYMER	18.0	COLUMBIA GAS TRAN
8326480	3836	3101317256	107-TF		A BLISS #2	CLYMER	18.0	TENNESSEE GAS PIP
8326457	3985	3101317621	107-TF		C VOLE #1	CLYMER	18.0	TENNESSEE GAS PIP
8326455	3890	3101316622	107-TF		C VOLLENTINE #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326462	3889	3101316623	107-TF		D AND C #1	WILDCAT	18.0	NATIONAL FUEL GAS
8326471	3709	3100917184	107-TF		D AND C #2	GERRY	18.0	NATIONAL FUEL GAS
8326469	3708	3100917186	107-TF		D BEAVER #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326448	3707	3100917201	107-TF		D BEAVER #3	WILDCAT	18.0	COLUMBIA GAS TRAN
8326483	3834	3101317667	107-TF		D BEAVER #4	WILDCAT	18.0	COLUMBIA GAS TRAN
8326467	3703	3100917160	107-TF		D WHITE #1-A	CLYMER	18.0	TENNESSEE GAS PIP
8326452	3987	3100917161	107-TF		G BROWN #2	WILDCAT	18.0	COLUMBIA GAS TRAN
8326488	3981	3100917161	107-TF		G BROWN #3	WILDCAT	18.0	COLUMBIA GAS TRAN
8326451	3701	3100917215	107-TF		G BROWN #4	WILDCAT	18.0	COLUMBIA GAS TRAN
8326477	3573	3101317132	107-TF		G MCCRAY #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326466	3720	3100917259	107-TF		G STERLING #1	CLYMER	18.0	COLUMBIA GAS TRAN
8326478	3571	3100917250	107-TF		H SHELTER #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326468	3705	3100917213	107-TF		H WALTERS #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326450	3706	3101317285	107-TF		J AIKEN #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326476	3572	3100917072	107-TF		J CHAPMAN #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326464	3719	3101317293	107-TF		J COOPER #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326460	3991	3101317217	107-TF		J COOPER #2	WILDCAT	18.0	COLUMBIA GAS TRAN
8326459	3988	3101317664	107-TF		J COOPER #3	WILDCAT	18.0	COLUMBIA GAS TRAN
8326458	3983	3101317218	107-TF		J COOPER #4	WILDCAT	18.0	COLUMBIA GAS TRAN
8326472	3723	3101317127	107-TF		K CROSSCUTT #1	CLYMER	18.0	TENNESSEE GAS PIP
8326510	3989	3101317631	107-TF		L BOE #1	WILDCAT	18.0	COLUMBIA GAS TRAN
8326456	3986	3101317630	107-TF		L BOE #2	WILDCAT	18.0	COLUMBIA GAS TRAN
8326461	2343	3101315777	102-2		NYS REFORESTATION AREA 3/ #3	STEBBINS CORNERS	15.0	COLUMBIA GAS TRAN
8326474	3721	3101317697	107-TF		P GABRIEL #1	CLYMER	18.0	TENNESSEE GAS PIP
8326454	3984	3101317684	107-TF		P MESLINK #1-A	CLYMER	18.0	COLUMBIA GAS TRAN
8326470	3724	3101317133	107-TF		R FLETCHER #1	CLYMER	18.0	TENNESSEE GAS PIP
8326465	3725	3101317600	107-TF		R FLETCHER #2	CLYMER	18.0	TENNESSEE GAS PIP
8326481	3837	3101317151	107-TF		R FLEGGER #1	CLYMER	18.0	TENNESSEE GAS PIP
8326449	3704	3101317202	107-TF		R SHIELDS #2	WILDCAT	18.0	COLUMBIA GAS TRAN
8326511	3990	3101317219	107-TF		R SHIELDS #3	WILDCAT	18.0	COLUMBIA GAS TRAN
8326463	3835	3101317122	107-TF		R WHITE #2	CLYMER	18.0	TENNESSEE GAS PIP
8326482	3838	3101317130	107-TF		R WHITE #4	CLYMER	18.0	TENNESSEE GAS PIP
8326475	3570	3100917255	107-TF		W WHITE #1	WILDCAT	18.0	COLUMBIA GAS TRAN
-HUGOTON PETROLEUM INC								
8326487	3914	3101316951	102-2		RECEIVED: 03/04/83 JA: NY			
-NRM PETROLEUM CORPORATION								
8326513	3864	3100916786	102-2		COUNTY PARCEL 14 WELL #1	STEBBINS CORNERS	15.0	COLUMBIA GAS TRAN
8326484	3870	3100916874	102-2		RECEIVED: 03/04/83 JA: NY			
8326490	3860	3100916786	102-2		ANDREWS #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326515	3863	3100916941	102-2		ARCHER "A" #2	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326491	3859	3100916908	102-2		BROWN A1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326486	3868	3100916722	102-2		ECCLES #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326527	3856	3100916725	102-2		FOY #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326492	3858	3100916336	102-2		MEADE #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326516	3864	3100916764	102-2		ORMOND #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326489	3861	3100916810	102-2		SANDBERG #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326514	3865	3100916842	102-2		SENN #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326497	3241	3100916247	102-2		SENN #2	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326485	3869	3100916390	102-2		SMITH "B" #2	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326493	3857	3100916785	102-2		SMITH-WAITE UNIT "A" #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326512	3867	3100916987	102-2		STONE #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
-SEIS-EX GEOPHYSICAL LTD								
8326498	3165	3101317126	102-2		VAN CUREN #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
-TRAHAM PETROLEUM INC								
8326508	3510	3100917197	102-2		WAGNER #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
***** OKLAHOMA CORPORATION COMMISSION *****								
***** ARAPAHO PETROLEUM INCORPORATED *****								
8326540	20314	3507323081	103		RECEIVED: 03/03/83 JA: OK			
8326530	20361	3509321008	103		PEDIGO 1-9	SOONER TREND	7.3	PHILLIPS PETROLEU
8326553	19136	3503920550	102-4		GEORGE #1-25	SOONER TREND	90.0	PIIONEER GAS PROD
8326542	20324	3507322711	103		RECEIVED: 03/03/83 JA: OK			
8326564	20318	3508121769	103		LOVD SMITH #1-6	WEST STAFFORD	292.0	
8326573	19047	3512120851	102-2		RECEIVED: 03/03/83 JA: OK			
8326552	20357	3512120924	103		HODGENS #1-24	NORTH LOYAL	0.0	CITIES SERVICE GA
8326560	20241	3505929613	108		RECEIVED: 03/03/83 JA: OK			
8326544	20351	3511123642	103		ETHRIDGE #2-22	SOUTH STROUD PRUE	20.0	SWAB CORP
8326568	20328	3510721376	103		RECEIVED: 03/03/83 JA: OK			
8326565	20325	3510721430	103		HODGENS #1	WILDCAT	0.0	ARKANSAS LOUISIAN
8326569	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		03/03/83 JA: OK			
8326570	20330	3510721378	103		03/03/83 JA: OK			
8326566	20326	3506321563	103		03/03/83 JA: OK			
8326571	20331	3510721347	103		03/03/83 JA: OK			
-FLOTT OIL & GAS INC								
8326562	20317	3515321299	103		RECEIVED: 03/03/83 JA: OK			
8326538	20307	3512322073	103		HENSLEY 1-9	WEST ALABAMA	275.0	PUBLIC SERVICE CO
8326563	20303	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20312	3501121729	103		RECEIVED: 03/03/83 JA: OK			
8326543	20348	3507323337	103		RECEIVED: 03/03/83 JA: OK			
8326531	20364	3503724404	103		RECEIVED: 03/03/83 JA: OK			
-KAISER-FRANCIS OIL COMPANY								
8326532	20307	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		RECEIVED: 03/03/83 JA: OK			
8326570	20330	3510721378	103		RECEIVED: 03/03/83 JA: OK			
8326566	20326	3506321563	103		RECEIVED: 03/03/83 JA: OK			
8326571	20331	3510721347	103		RECEIVED: 03/03/83 JA: OK			
8326562	20317	3515321299	103		RECEIVED: 03/03/83 JA: OK			
8326538	20307	3512322073	103		RECEIVED: 03/03/83 JA: OK			
8326563	20303	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20312	3501121729	103		RECEIVED: 03/03/83 JA: OK			
8326543	20348	3507323337	103		RECEIVED: 03/03/83 JA: OK			
8326531	20364	3503724404	103		RECEIVED: 03/03/83 JA: OK			
-KAISER-FRANCIS OIL COMPANY								
8326532	20307	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		RECEIVED: 03/03/83 JA: OK			
8326570	20330	3510721378	103		RECEIVED: 03/03/83 JA: OK			
8326566	20326	3506321563	103		RECEIVED: 03/03/83 JA: OK			
8326571	20331	3510721347	103		RECEIVED: 03/03/83 JA: OK			
8326562	20317	3515321299	103		RECEIVED: 03/03/83 JA: OK			
8326538	20307	3512322073	103		RECEIVED: 03/03/83 JA: OK			
8326563	20303	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20312	3501121729	103		RECEIVED: 03/03/83 JA: OK			
8326543	20348	3507323337	103		RECEIVED: 03/03/83 JA: OK			
8326531	20364	3503724404	103		RECEIVED: 03/03/83 JA: OK			
-KAISER-FRANCIS OIL COMPANY								
8326532	20307	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		RECEIVED: 03/03/83 JA: OK			
8326570	20330	3510721378	103		RECEIVED: 03/03/83 JA: OK			
8326566	20326	3506321563	103		RECEIVED: 03/03/83 JA: OK			
8326571	20331	3510721347	103		RECEIVED: 03/03/83 JA: OK			
8326562	20317	3515321299	103		RECEIVED: 03/03/83 JA: OK			
8326538	20307	3512322073	103		RECEIVED: 03/03/83 JA: OK			
8326563	20303	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20312	3501121729	103		RECEIVED: 03/03/83 JA: OK			
8326543	20348	3507323337	103		RECEIVED: 03/03/83 JA: OK			
8326531	20364	3503724404	103		RECEIVED: 03/03/83 JA: OK			
-KAISER-FRANCIS OIL COMPANY								
8326532	20307	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		RECEIVED: 03/03/83 JA: OK			
8326570	20330	3510721378	103		RECEIVED: 03/03/83 JA: OK			
8326566	20326	3506321563	103		RECEIVED: 03/03/83 JA: OK			
8326571	20331	3510721347	103		RECEIVED: 03/03/83 JA: OK			
8326562	20317	3515321299	103		RECEIVED: 03/03/83 JA: OK			
8326538	20307	3512322073	103		RECEIVED: 03/03/83 JA: OK			
8326563	20303	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20312	3501121729	103		RECEIVED: 03/03/83 JA: OK			
8326543	20348	3507323337	103		RECEIVED: 03/03/83 JA: OK			
8326531	20364	3503724404	103		RECEIVED: 03/03/83 JA: OK			
-KAISER-FRANCIS OIL COMPANY								
8326532	20307	3502720647	103		RECEIVED: 03/03/83 JA: OK			
8326539	20329	3510721011	103		RECEIVED: 03/03/83 JA: OK			
8326567	20327	3510721234	103		RECEIVED: 03/03/83 JA: OK			
8326570	20330	3510721378	103		RECEIVED: 03/03/83 JA: OK			
8326566	20326	3506321563	103		RECEIVED: 03/03/83 JA: OK			
8326571	20331	3510721347	103		RECEIVED: 03/03/83 JA: OK			
8326562	2031							

JO NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PRDD	PURCHASER
8326547	20356	3509330083	108		DOANE #1-23	CHANEY DELL	6.0	UNION TEXAS PETRO
-KARDIA OIL & GAS CO			RECEIVED:	03/03/83	JA: OK			
8326572	20356	3509120509	103		COLE #1 API A09120509	TIGER MOUNTAIN	55.0	CARR GAS CO
-MULTISTATE OIL PROPERTY			RECEIVED:	03/03/83	JA: OK			
8326554	19158	3501922434	103		S GRAHAM DEESE SAND UNIT 4-19	SHD-VEL-TUM	8.0	MOBIL OIL CORP
8326557	19197	3501922446	103		S GRAHAM DEESE SAND UNIT 64-3A	SHD-VEL-TUM	9.0	MOBIL OIL CORP
8326559	20112	3501922555	103		SOUTH GRAHAM DEESE SAND UNIT #65-4A	SHD-VEL-TUM	5.0	MOBIL OIL CORP
8326558	19594	3501922553	103		SOUTH GRAHAM DEESE SAND UNIT 19-1A	SHD-VEL-TUM	8.0	MOBIL OIL CORP
8326534	21042	3501922554	103		SOUTH GRAHAM DEESE SAND UNIT 64-2A	SHD-VEL-TUM	3.0	MOBIL OIL CORP
-PANEX			RECEIVED:	03/03/83	JA: OK			
8326528	22964	3514721495	102-2		PANEX LITTLE #2	WILDCAT	36.0	DIAMOND S GAS SYS
8326536	22963	3514721494	102-2		PANEX LITTLE #3	WILDCAT	36.0	DIAMOND 'S' GAS S
-PAUL WALKER			RECEIVED:	03/03/83	JA: OK			
8326549	17850	3503320342	102-2		SCHOOL LAND #1	N WALTERS	17.0	NATURAL GAS OPERA
-PORTS OF CALL OIL CO			RECEIVED:	03/03/83	JA: OK			
8326548	17792	3510920565	102-2		WALSH #7-1	S E YUKON	365.0	MOBIL OIL CORP
-QUINCY O STEVENS			RECEIVED:	03/03/83	JA: OK			
8326561	20269	3508320706	108		MANNING 1-A #83 53369 OTC	CRESCENT-LOVELL	6.0	EASON OIL CO
-SAMSON RESOURCES COMPANY			RECEIVED:	03/03/83	JA: OK			
8326551	19871	3506120217	103		ALLIANCE TRUST #1	KINTA	12.4	ARKANSAS LOUISIAN
-SOUTHEAST EXPLORATION			RECEIVED:	03/03/83	JA: OK			
8326530	17928	3508321957	102-2	103	SWEENEY #1		54.8	EASON OIL CO
-SOUTHLAND ROYALTY CO			RECEIVED:	03/03/83	JA: OK			
8326532	20469	3513921310	108		YODER #1-1	CHESTER	0.0	INTERNORTH INC
-TENNECO OIL COMPANY			RECEIVED:	03/03/83	JA: OK			
8326534	23030	3501922670	103		SOUTH GRAHAM DEESE SAND UNIT #21A-3	SHD-VEL-TUM	1.0	MOBIL OIL CORP
8326555	23012	3501922671	103		SOUTH GRAHAM DEESE SAND UNIT #44-3A	SHD-VEL-TUM	1.0	MOBIL OIL CORP
8326535	22795	3501922665	103		SOUTH GRAHAM DEESE SAND UNIT #65-2A	SHD-VEL-TUM	1.0	MOBIL OIL CORP
8326533	20853	3501922436	103		SOUTH GRAHAM DEESE SAND UNIT 23-1A	SHD-VEL-TUM	6.0	MOBIL OIL CORP
-TEXACO INC			RECEIVED:	03/03/83	JA: OK			
8326546	20355	3513900000	108		B SHRAUNER "B" #2	CARTHAGE N E	0.0	COLORADO INTERSTA
-THE WIL-MC OIL CORP			RECEIVED:	03/03/83	JA: OK			
8326529	20358	3510321644	103		JOHNSON #1	NOT APPLICABLE	167.4	TRANSOK PIPE LINE
-TREPET PETROL EXPLOR & DEV CORP			RECEIVED:	03/03/83	JA: OK			
8326541	20321	3507323514	103		WILSON #1	SOONER TREND	131.0	PHILLIPS PETROLEU
-VULCAN ENERGY CORP			RECEIVED:	03/03/83	JA: OK			
8326545	20353	3504300000	103		FEIGEL #1	PUTHAM	1476.7	PHILLIPS PETROLEU
-101 ENERGY CORP			RECEIVED:	03/03/83	JA: OK			
8326537	20282	3504722756	103		FUKSA-STUTZ 25-2	SOONER TREND	0.0	WELLHEAD ENTERPRI

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES								

-ANGERMAN ASSOCIATES INC			RECEIVED:	03/03/83	JA: PA			
8326402	19157	3712900000	103		LEROY A ALLEMEIER #1 - MES-22074	W PA - UPPER DEVONIAN	35.0	PEOPLES NATURAL G
-ANGERMAN GAS VENTURE #6			RECEIVED:	03/03/83	JA: PA			
8326404	19163	3706323252	108		WILLIAM G LAZOR #2 - IND-23255	W PENNA - UPPER DEVON	13.2	INDUSTRIAL ENERGY
8326405	19164	3706322808	108		WM G LAZOR #1 - IND-22808	W PENNA - UPPER DEVON	13.2	INDUSTRIAL ENERGY
-ANGERMAN GAS VENTURE 7			RECEIVED:	03/03/83	JA: PA			
8326403	19162	3712920854	103		ROBERT L SHELZT #1 - MES-20854	W PENNA - UPPER DEVON	18.2	INDUSTRIAL ENERGY
-ATLAS RESOURCES INC			RECEIVED:	03/03/83	JA: PA			
8326380	18877	3706327099	102-4		OVERMAN #1	CHERRYHILL	711.0	COLUMBIA GAS TRAN
8326412	19177	3703321470	102-2		SWANK REFRACATORIES #1	IRVONA BOROUGH	0.0	
-B & J EXPLORATION LTD			RECEIVED:	03/03/83	JA: PA			
8326381	18888	3706522667	103		RAYMOND 2-2	HEATHVILLE GAS FIELD	48.0	NATIONAL FUEL GAS
-BEREA OIL AND GAS CORPORATION			RECEIVED:	03/03/83	JA: PA			
8326408	19168	3712330338	107-TF		FLICK #1	WILDCAT	14.0	COLUMBIA GAS TRAN
8326407	19167	3712330338	102-3		FLICK #1	WILDCAT	14.0	COLUMBIA GAS TRAN
8326400	19160	3712330342	102-3		J L & J JOHNSON #1	WILDCAT	12.0	COLUMBIA GAS TRAN
8326401	19161	3712330342	107-TF		J L & J JOHNSON #1	WILDCAT	12.0	COLUMBIA GAS TRAN
-CABOT OIL & GAS CORP			RECEIVED:	03/03/83	JA: PA			
8326384	19083	3712132913	102-2		JERRY GALVIN #1	CANAL	50.0	TENNESSEE GAS PIP
8326383	19082	3712132913	107-TF		JERRY GALVIN #1	CANAL	50.0	TENNESSEE GAS PIP
-CARDINAL OIL CO			RECEIVED:	03/03/83	JA: PA			
8326379	18875	3703921862	107-TF		GERALD FULLER #3 82-29 CRA-21862	CONNEAUT	0.0	COLUMBIA GAS TRAN
-CASTLE GAS CO INC			RECEIVED:	03/03/83	JA: PA			
8326387	19022	3706324379	108		D F MCHEMRY #4 (C-436) IND-24379	RAYNE TOWNSHIP	5.1	COLUMBIA GAS TRAN
8326418	19239	3706326483	103		M H PEIFFER #1 PNO-5541 IND-26483	EAST MAHONING TOWNSHIP	50.0	PEOPLES NATURAL G
8326369	16885	3706326608	103		M F MCINTYRE #2 (C-749) IND 26608	CENTER TOWNSHIP	0.0	PEOPLES NATURAL G
8326385	19020	3706324659	108		R & P COAL CO J DIXON #1 (C-565)	CENTER TOWNSHIP	3.6	COLUMBIA GAS TRAN
8326386	19021	3706324913	108		R & P COAL CO J DIXON #2 (C-584)	CENTER TOWNSHIP	3.6	COLUMBIA GAS TRAN
8326388	19023	3706324613	108		R & P COAL CO SWEASY #1 (C-543)	CENTER TOWNSHIP	3.6	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION			RECEIVED:	03/03/83	JA: PA			
8326377	18622	3706327088	102-4		ROBERT J SMITH #2 WN-1904	GREEN	30.0	GENERAL SYSTEM PU
-CUMBERLAND OIL CORP			RECEIVED:	03/03/83	JA: PA			
8326388	11867	3712330158	107-TF		LEFFLER #1	SUGAR GROVE	20.0	NATIONAL FUEL GAS
-DELTA DRILLING CO			RECEIVED:	03/03/83	JA: PA			
8326378	18856	3706300000	102-4		HESS-ST CLAIR-GIMA #1 IND 27170	CHEKYHILL	0.0	COLUMBIA GAS TRAN
-DOC-NCC SERVICE CO			RECEIVED:	03/03/83	JA: PA			
8326361	15743	3712921764	108		D A & R E PORTER 890-2	EAST HUNTINGDON	13.3	TEXAS EASTERN TRA
8326364	15746	3712921861	108		E A KOCH 793-2	EAST HUNTINGDON	9.2	TEXAS EASTERN TRA
8326362	15744	3712921765	108		E C BAKER 844-2	EAST HUNTINGDON	2.5	TEXAS EASTERN TRA
8326367	15749	3712921783	108		F N STONER TRUST 761-3	EAST HUNTINGDON	8.5	TEXAS EASTERN TRA
8326366	15748	3712921864	108		F N STONER TRUST 761-4	EAST HUNTINGDON	10.3	TEXAS EASTERN TRA
8326365	15747	3712921902	108		F N STONER TRUST 761-5	EAST HUNTINGDON	11.1	TEXAS EASTERN TRA
8326360	15739	3712921847	108		FRED W STREET JR 1229-1	EAST HUNTINGDON	15.0	TEXAS EASTERN TRA
8326368	15751	3712921905	108		M L KOMENDA 429-2	EAST HUNTINGDON	12.7	TEXAS EASTERN TRA
8326370	17003	3712921821	108		T J CATALINA 822-2	EAST HUNTINGDON	23.1	TEXAS EASTERN TRA
8326363	15745	3712921822	108		W C LAYMAN 823-3	EAST HUNTINGDON	11.5	TEXAS EASTERN TRA
-FAIRMAR DRILLING CO			RECEIVED:	03/03/83	JA: PA			
8326390	19136	3703300000	102-2		MELVIN LEAMER #2 F-3657	CHERRY TREE	40.0	COLUMBIA GAS TRAN
8326406	19165	3703321422	102-2		MELVIN RAINY #1 F-3706	CHERRY TREE	100.0	COLUMBIA GAS TRAN
-FOX OIL & GAS INC			RECEIVED:	03/03/83	JA: PA			
8326419	19240	3706326525	103		J C CLARK #1	BANKS TOWNSHIP	2.4	T W PHILLIPS GAS
8326421	19242	3706326526	103		J C CLARK #2 244	BANKS TOWNSHIP	2.4	T W PHILLIPS GAS
8326420	19241	3706326549	103		MONNIE CLARK #1 258	BANKS TOWNSHIP	2.4	T W PHILLIPS GAS
-KRIEBEL WELLS #2			RECEIVED:	03/03/83	JA: PA			
8326389	19111	3703321484	103		DINSMORE #1	HUDSON - MCGEE'S MILL	15.0	
8326382	18961	3703321487	103		FREEMAN #1	TROUTVILLE	0.0	
-LEBOEUF ENERGY INC			RECEIVED:	03/03/83	JA: PA			
8326376	18573	3704922228	102-2		COFFIN #2 ERI-22228	WATERFORD	0.0	NATIONAL FUEL GAS
8326375	18572	3704922228	107-TF		COFFIN #2 ERI-22228	WATERFORD	0.0	NATIONAL FUEL GAS
8326371	17495	3704922013	102-2		PLAZA #1 ERI-22013	ERIE	0.0	NATIONAL FUEL GAS
8326372	17496	3704922013	107-TF		PLAZA #1 ERI-22013	ERIE	0.0	NATIONAL FUEL GAS
8326373	17497	3704922012	102-2		STULL #1 ERI-22012	ERIE	0.0	NATIONAL FUEL GAS

JO NO	JA DKT	API NO	D SEC(1) SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8326374	17698	3704922012	107-TF	STULL #1 ERI-22012	ERIE	0.0	NATIONAL FUEL GAS
-MERIDIAN EXPLORATION CORP			RECEIVED: 03/03/83	JA: PA			
8326417	19233	3704922050	102-2	CAMPBELL #635-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8326416	19232	3704922050	107-TF	P CAMPBELL #635-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8326357	11706	3703921362	107-TF	RIVERSIDE INN UNIT #576-1	CAMBRIDGE SPRINGS	30.0	NATIONAL FUEL GAS
8326415	19231	3704922150	107-TF	V MAHAN #554-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
8326414	19230	3704922150	102-2	V MAHAN #554-1	EDINBORO NORTH	30.0	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION			RECEIVED: 03/03/83	JA: PA			
8326410	19172	3703921897	105	L BATYKO UNIT #1	CONNEAUTVILLE (MEDINA)	41.1	COLUMBIA GAS TRAN
8326409	19171	3703921857	107-TF	L BATYKO UNIT #1	CONNEAUTVILLE (MEDINA)	41.1	COLUMBIA GAS TRAN
-NATIONAL FUEL GAS SUPPLY CORP			RECEIVED: 03/03/83	JA: PA			
8326359	14323	3710500000	100	R A GOLDSMITH #6069	OSWAYO TOWNSHIP	0.2	GENERAL SYSTEM PU
-PHILLIPS PRODUCTION CO			RECEIVED: 03/03/83	JA: PA			
8326413	19187	3703321411	102-2	WILLIAM DUNLAP #2	BURNSIDE	80.0	
-RHEA OIL & GAS CO			RECEIVED: 03/03/83	JA: PA			
8326397	19124	3703100000	100	CHANDLER FARM 38145 #1	CLARION	0.0	COLUMBIA GAS TRAN
8326396	19123	3703100000	100	CHANDLER FARM 38145 #2	CLARION	0.0	COLUMBIA GAS TRAN
8326391	19118	3703100000	100	J SUMMERVILLE FARM 38190 #1	CLARION	0.0	COLUMBIA GAS TRAN
8326394	19121	3703100000	100	LEE SUMMERVILLE FARM 38205 - #2	CLARION	0.0	COLUMBIA GAS TRAN
8326395	19122	3703100000	100	LEE SUMMERVILLE FARM 38205 #1	CLARION	0.0	COLUMBIA GAS TRAN
8326399		3703100000	100	MANLEY FARM 38175 #1	CLARION	0.0	COLUMBIA GAS TRAN
8326398	19125	3703100000	100	MANLEY FARM 38175 #2	CLARION	0.0	COLUMBIA GAS TRAN
8326393	19120	3703100000	100	RANKIN FARM 38205 #1	CLARION	0.0	COLUMBIA GAS TRAN
8326392	19119	3703100000	100	RANKIN FARM 38205 #2	CLARION	0.0	COLUMBIA GAS TRAN
-T W PHILLIPS GAS & OIL CO			RECEIVED: 03/03/83	JA: PA			
8326428	19254	3706500000	100	ALBERT WEAVER #1	ROSE	0.8	T W PHILLIPS GAS
8326429	19255	3706500000	100	ARCHIE CAMPBELL #5	ROSE	0.7	T W PHILLIPS GAS
8326427	19253	3706500000	100	C J MCKINLEY #3	ROSE	2.3	T W PHILLIPS GAS
8326424	19250	3706500000	100	CLYDE SHICK #1	WASHINGTON	0.8	T W PHILLIPS GAS
8326422	19248	3706500000	100	E S HEITRICK #1	WASHINGTON	1.7	T W PHILLIPS GAS
8326434	19260	3706520502	100	FARMERS BANK & TRUST CO #1	ARMSTRONG	5.1	T W PHILLIPS GAS
8326430	19256	3706500000	100	FRANK P. SMOCKERS #1	PINE CREEK	1.0	T W PHILLIPS GAS
8326436	19262	3706500000	100	GEORGE W UNCAPHER #3	ARMSTRONG	0.4	T W PHILLIPS GAS
8326437	19263	3706520533	100	H M & J F KIMMEL #1	ARMSTRONG	2.8	T W PHILLIPS GAS
8326423	19249	3706500000	100	J J MCCURDY #1	WASHINGTON	1.6	T W PHILLIPS GAS
8326433	19259	3706520540	100	J P WILSON AOT ETAL #1	ARMSTRONG	2.0	T W PHILLIPS GAS
8326425		3706500000	100	JAY GALBREATH #1	ROSE	1.1	T W PHILLIPS GAS
8326426	19252	3706500000	100	PARKER JOHNS #1	ROSE	1.6	T W PHILLIPS GAS
8326435	19261	3706520530	100	ROBERT O GEORGE #1	ARMSTRONG	0.6	T W PHILLIPS GAS
8326431	19257	3706500000	100	T F KAYBUCK #2	KNOX	0.6	T W PHILLIPS GAS
8326432	19258	3706320908	100	W A SCHROEDER #2	YOUNG	1.6	T W PHILLIPS GAS
-VICTORY DEVELOPMENT CO			RECEIVED: 03/03/83	JA: PA			
8326411	19174	3703321510	103	KOPP #1 CLE-21510	BURNSIDE	36.0	COLUMBIA GAS TRAN
***** WEST VIRGINIA DEPARTMENT OF MINES *****							
-ALLEGHENY LAND & MINERAL COMPANY			RECEIVED: 03/04/83	JA: WV			
8326630	4709702402	103	A-1067		WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8326624	4709703004	103	A-1087		MCCLELLAN DISTRICT	0.0	CONSOLIDATED GAS
8326629	4709702364	103	A-1088		WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8326628	4709702355	103	A-1060		WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8326631	4709702408	103	A-1024		WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8326627	4709702340	103	A-1225		HEADE DISTRICT	0.0	COLUMBIA GAS TRAN
8326620	4709703147	103	A-1152		FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8326626	4709703066	103	A-1236		MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8326622	4709703170	100	A-752		SARDIS DISTRICT	0.0	CONSOLIDATED GAS
8326621	4709703192	100	A-773		UNION DISTRICT	0.0	CONSOLIDATED GAS
8326623	4709703140	100	A-778		COVE DISTRICT	0.0	CONSOLIDATED GAS
-APPALACHIAN PETROLEUM CORP			RECEIVED: 03/04/83	JA: WV			
8326618	4710500904	107-DV	WILDMOOD #1		BURNING SPRINGS	36.0	ROARING FORK GAS
8326617	4710500905	107-DV	WILDMOOD DEVELOPMENT #2		BURNING SPRINGS	36.0	ROARING FORK GAS
-BEM PETRO I			RECEIVED: 03/04/83	JA: WV			
8326616	4707301348	107-DV	BYERS #1		MCKIM WATERSHED	11.0	COLUMBIA GAS TRAN
8326615	4707301409	107-DV	CAMPBELL #1		MCKIM WATERSHED	11.0	COLUMBIA GAS TRAN
-BKK PROSPECTING LTD			RECEIVED: 03/04/83	JA: WV			
8326632	4718301236	103	HYATT #1			2.5	
8326614	4719301257	107-DV	HYATT #2			2.5	
-DELTA DRILLING CO			RECEIVED: 03/04/83	JA: WV			
8326585	4708703564	107-DV	CLELAND/WESTFALL #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326603	4708703554	103	CLELAND/WESTFALL #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326587	4703501647	107-DV	G M SUTTLE #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326608	4703501647	103	G M SUTTLE #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326599	4708703568	107-DV	GANDER-VINEYARD #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326606	4708703568	103	GANDER-VINEYARD #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326598	4739037880	107-DV	GOOD-HASKINS #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326602	4739037880	103	GOOD-HASKINS #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326586	4703501646	107-DV	O C GILPIN #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
8326607	4703501646	103	O C GILPIN #1		SMITHFIELD	0.0	COLUMBIA GAS TRAN
-ENERGY UNLIMITED INC			RECEIVED: 03/04/83	JA: WV			
8326635	4718721185	103	MCCALE #2		UNION DISTRICT	0.0	CONSOLIDATED GAS
8326634	4718721176	103	WESTBROOK #2		UNION DISTRICT	0.0	CONSOLIDATED GAS
-INTERSTATE DRILLING INC			RECEIVED: 03/04/83	JA: WV			
8326594	4704102680	100	ALFRED #8		ROANOKE	5.0	CONSOLIDATED GAS
8326580	4704102920	100	BRIFFLEY #53		ROANOKE	12.0	CONSOLIDATED GAS
8326575	4704102682	100	ECKES #1		ROANOKE	9.0	CONSOLIDATED GAS
8326578	4704102858	100	FOX #51		ROANOKE	0.8	CONSOLIDATED GAS
8326583	4704102909	100	JACKSON #1 60		ROANOKE	10.0	CONSOLIDATED GAS
8326577	4704102740	100	JARRELL #1 #50		ROANOKE	8.4	CONSOLIDATED GAS
8326579	4704102868	100	LOND #4 #52		ROANOKE	3.0	CONSOLIDATED GAS
8326588	4704102954	100	MACE #56		ROANOKE	3.0	CONSOLIDATED GAS
8326576	4704102739	100	MERTZ LAND B 49		ROANOKE	7.2	CONSOLIDATED GAS
8326582	4704102940	100	MERTZ 3 #54		ROANOKE	3.6	CONSOLIDATED GAS
8326581	4704102939	100	SAND FORK & WEST FORK #2		ROANOKE	8.4	CONSOLIDATED GAS
-KEITH KIMFIELD			RECEIVED: 03/04/83	JA: WV			
8326633	4701303400	103	STALNAKER #5		ORMA	0.0	ROARING FORK GAS
-PEAKE OPERATING CO			RECEIVED: 03/04/83	JA: WV			
8326601	4710900859	103	#1-A EASTER		(OCEANA DISTRICT)	5.0	ROARING FORK GAS
8326574	4710900859	107-DV	EASTER #1A		(OCEANA DISTRICT)	5.0	ROARING FORK GAS
8326584	4703903853	107-DV	ENNIS #1A		(JEFFERSON DISTRICT)	5.0	
8326612	4703903855	107-DV	STEELE #1A		(JEFFERSON DISTRICT)	0.0	
-RIMROCK PRODUCTION CORP			RECEIVED: 03/04/83	JA: WV			
8326638	4707301404	107-DV	ADAMS #1		MT CARMEL RIDGE FIELD	100.0	COLUMBIA GAS TRAN
8326639	4707301405	107-DV	ADAMS #2		UNION DISTRICT MT CAR	72.0	COLUMBIA GAS TRAN
8326637	4707301481	107-DV	B F ABICHT #1		MT CARMEL RIDGE FIELD	0.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8326590		4708505469	107-DV		BAKER #1	HURSHERS RUN FIELD	108.0	COLUMBIA GAS TRAN
8326592		4708505590	107-DV		BYRD #1	PRUNTY FIELD	79.2	COLUMBIA GAS TRAN
8326619		4708505516	107-TF		CRANE #1	WOLFEM FIELD	72.0	CARNEGIE NATURAL
8326613		4708505455	107-DV		E C CURRY #1	PULLMAN	108.0	CARNEGIE NATURAL
8326591		4708505393	107-DV		MARLAN HODGE #1	HUGHES RIVER	18.0	CARNEGIE NATURAL
8326589		4708505611	107-DV		MARTIN CORBIN #1	GLENDAL FIELD	78.5	CONSOLIDATED GAS
8326593		4707301427	107-DV		NICHOLS #1	FRENCH CREEK	72.0	COLUMBIA GAS TRAN
8326593		4707301381	107-DV		ROBY #1	RT 16 FIELD	72.0	COLUMBIA GAS TRAN
8326636		4707301467	107-DV		NAUGH #1	MT CARMEL RIDGE FIELD	162.0	COLUMBIA GAS TRAN
-SPARTAN GAS COMPANY			RECEIVED:	03/04/83	JA: MV			
8326596		4709901774	103		CARLOS FERGUSON 5-5-288	LINCOLN	16.0	COLUMBIA GAS TRAN
8326597		4709901773	103		CECIL WOOTEN HEIRS 4-5-287	LINCOLN	13.0	COLUMBIA GAS TRAN
8326604		4709901766	103		DREXALL SALMONS 3-5-286	LINCOLN	15.0	COLUMBIA GAS TRAN
8326605		4709901770	103		MARY L S PERKINS 7-5-290	LINCOLN	36.0	COLUMBIA GAS TRAN
8326595		4709901775	103		THOMAS STROUD 6-5-289	LINCOLN	18.0	COLUMBIA GAS TRAN
-STERLING DRILLING AND			RECEIVED:	03/04/83	JA: MV			
8326610		4701502038	103		BRAGG #626	OTTER DISTRICT	29.0	BROOKLYN UNION GA
8326611		4701502039	103		BRAGG #627	OTTER DISTRICT	31.5	BROOKLYN UNION GA
8326609		4701502049	103		SPINKS #653	OTTER DISTRICT	68.0	BROOKLYN UNION GA
-T D DRILLING			RECEIVED:	03/04/83	JA: MV			
8326600		4710500957	103		BINGMAN #5	LITTLE KANAWHA RIVER	36.5	CABOT CORP

CORRECTIONS TO PREVIOUS NOTICES / REVISIONS TO PRIOR DETERMINATIONS

JD No.	JA	Applicant	Well Name	Orig. No.	Date FERC Pub. in Vol. Federal Register	C: Correction to prior Fed. Register notice
80-14887	KS	Robert F. White	Fritz "B" #1	155	3-06-80	C: Well Name
80-16156	PA	J & J Enterprises, Inc	R & P #13 JEF-21376	161	3-21-80	C: 108 Denied by JA
80-16157	PA	J & J Enterprises, Inc	R & P #25 JEF-21366	161	3-21-80	C: 108 Denied by JA
80-38804	TX	Conoco	West Flowers Unit #13	225	7-14-80	C: Well Name
81-06164	OK	Andover Oil Company	Jensen 35-3	487	8-14-81	C: 102-2 & 103 Approved
81-11954	TX	Conoco	Ned Wilson 133 #8	356	2-05-81	C: Well Name
81-13319	MT	Canke Oil and Gas Co	State 1-16 T26N-R17E	360	2-12-81	C: Well Name
82-29188	OK	Southwest Explora Inc	Phillips No. 1 Well	649	5-21-82	C: 103 Approved; not 102
82-33086	NH	Mid-America Petro Inc	New Mexico State "A" #1	663	6-14-82	C: 102-4 & 103 Approved
82-35625	NY	Universal Resources	E Barmore #2	673	6-28-82	C: 107-TF Approved; not 107-DV
82-35626	NY	Universal Resources	R Barmore #1	673	6-28-82	C: 107-TF Approved; not 107-DV
82-35635	NY	Universal Resources	F Barmore #1	673	6-28-82	C: 107-TF Approved; not 107-DV
82-35636	NY	Universal Resources	R Barmore #2	673	6-28-82	C: 107-TF Approved; not 107-DV
82-36239	OK	Century Oil & Gas Corp	Reich #1	675	6-28-82	C: 102-4 Denied by JA
82-47425	TX	Mitchell Energy Corp	Lula Jones #2	720	9-08-82	C: 108 & 108-ER Approved
82-49070	KS	Robert F White	Fritz "B" #1	726	9-17-82	C: Well Name
83-02174	TX	CEM & Associates Inc	Hogan #1	768	11-10-82	C: 103 Approved; not 102
83-03446	TX	Cotton Petroleum Corp	Banker #2	772	11-22-82	C: 108-SA Approved; not 108
83-05774	OK	Banker Exploration Co	Bisson #1-18	778	11-26-82	C: Well Name
83-06763	TX	HNG Oil Company	Armstrong "20" #1 101530	782	12-07-82	C: 102-2, 103&107-DP Approved
83-06782	TX	Coates Energy Trust	Rafael A Guerra #2	782	12-07-82	C: Well Name
83-06792	TX	Grace Petroleum	McAshan Gas Unit #2	782	12-07-82	C: 102-4 & 107-TF Approved
83-07304	NH	Stevens Operating Corp	Sun Federal #3	784	12-08-82	C: 102-4 & 107-TF Approved
83-08367	OK	Lear Petroleum Explo Inc	City of Weatherford 1-34	787	12-14-82	C: 102-2 Approved; not 103
83-09083	LA	Texaco Inc	SL 34 Vermilion Bay "B-71	791	12-14-82	C: 102-4 & 103 Approved
83-09179	LA	Twin Cities Gas Co	Case No. 1	791	12-14-82	C: 103 & 108 Approved
83-09194	LA	Bethlon Production Corp	Heard #1	791	12-14-82	C: 103 & 108 Approved
83-09195	LA	Bethlon Production	Bradley #1	791	12-14-82	C: 103 & 108 Approved
83-09866	TX	Gulf Oil Corp	JT McElroy Consoli #861	795	12-22-82	C: Well Name
83-10321	NH	MTS Limited Partnership	Neal Com #1	796	12-29-82	C: 102-3 & 107-TF Approved
83-11028	CO	MGF Oil Corp	Haller No. 41-21	799	12-29-82	C: 108-ER Approved; not 108
83-11029	CO	MGF Oil Corp	Johnston #14-24	799	12-29-82	C: 108-ER Approved; not 108
83-11030	CO	Vessels Oil & Gas Co	Whiteside No. 1	799	12-29-82	C: 108-ER Approved; not 108
83-11157	TX	Carolina Group Inc	Agri-Place #1	800	12-29-82	C: Well Name
83-11339	KS	TXO Production Corp	Zuercher #3	801	01-06-83	C: 102-4 Denied by JA
83-11340	KS	TXO Production Corp	Muir "D" #1	801	01-06-83	C: 102-4 Denied by JA
83-11573	OK	Ladd Petroleum Corp	Wiens "B" #2	802	01-06-83	C: Well Name
83-11630	CO	American Resources Mgmt	CC 34-d	802	01-06-83	C: 102-2 & 107-TF Approved

CORRECTIONS TO PREVIOUS NOTICES / REVISIONS TO PRIOR DETERMINATIONS

JD No.	JA	Applicant	Well Name	Orig. FEPC Vol. No.	Date Pub. in Federal Register	C: Correction to prior Fed. Register notice
83-1222RMS(LA)		Chevron USA	OCS-G-3137 #A-8	804	1-14-83	C: API No. 1770640303
83-12698	OK	Seneca Oil Company	Jolliffe #1-32	806	1-17-83	C: 102-4 & 103 Approved
83-12724	TX	Enfield Corporation	Haddox #2	807	1-17-83	C: 102-2 Approved, not 103
83-12743	TX	Humble Explora Co Inc	Paulina #1	807	1-17-83	C: 103 Approved; not 102-2
83-12814	TX	Retasco Inc	Ella Caps #2	807	1-17-83	C: 102-4 Approved, not 103
83-12881	TX	Samson Resources Co	Willis A Roberson #1	807	1-17-83	C: 107-TE Approved; not 107-TF
83-13215	KS	Walter Kuhn Drilling Co	Stephens #2-16	808	1-17-83	C: Well Name
83-13748	OK	J & C Operating Co	Miller #1-A	810	1-19-83	C: 108 Denied, by JA
83-13752	OK	An-Son Corporation	Dillard #1-25	810	1-19-83	C: Well Name
83-13811	OK	Hanover Management Co	Green #1-19	810	1-19-83	C: Well Name
83-14288	OH	United Petroleum Co	Wilt #3	812	1-24-83	C: 108 Denied by JA
83-14410	NM	Texaco Inc	C. C. Fristoe B NCT-2 #12	813	1-24-83	C: Well Name
83-14611	OH	Pine Top Estates Parta.	T R Kelly & M G Kelly #1	814	1-24-83	C: Well Name
83-14896	NY	Envirogas Inc	Glasser #1	815	1-27-83	C: Well Name
83-15093	OK	Hadson Petroleum	Burnett #1-21	816	1-27-83	C: Well Name
83-15170	OK	Davis Oil Company	Ottinger #1	816	1-27-83	C: 102-2 & 103 Approved
83-15335	OK	Kaiser-Francis Oil Co	Fossett #1	816	1-27-83	C: 102-4 & 103 Approved
83-15310	KS	Gramly, Richard E	Witt #1	817	1-27-83	C: Well Name
83-15384	PA	Ashtola Production Co	Donald O Murphy #1	817	1-27-83	C: 102-3 Approved by JA
83-15773	TX	Sun Expl & Prod.	Rupert P. Ricker #2	819	2-01-83	C: Applicant Name
83-15774	TX	Tee Operating Co	Pullen #1-U	819	2-01-83	C: 103 Approved; not 107-TF
83-15778	TX	Phillips Petroleum Co	Bowers D #2	819	2-01-83	C: 107-DF Approved; not 107-TF
83-15826	TX	Mitchell Energy Corp	L. Allen Jr	819	2-01-83	C: 103 Approved; not 102-4
83-15906	TX	Tenneco Oil Co	Mallet Land & Cattle #21A	819	2-01-83	C: Well Name
83-15958	TX	Conoco, Inc	Conoco Avno Ut #1	819	2-01-83	C: 103 & 107-DF Approved
83-15970	TX	Winn Explo/Duke Co	Pryor Ranch #43-C	819	2-01-83	C: Well Name
83-16122	TX	Reliance Energy & Min	Black Lake #1	820	2-01-83	C: Well Name
83-16270	TX	Delta Drilling Co	Williams "A" #1U	822	2-03-83	C: 103 Approved; not 108
83-16686	TX	Selco Petroleum Corp	University 13-2	822	2-03-83	C: 108-PB Approved; not 108-ER
83-16694	TX	Montanray Petroleum	Briscoe "F" 1-20	822	2-03-83	C: Well Name
83-16800	TX	Wells-Battelstein O&G	Elizabeth Almond #1	822	2-03-83	C: Well Name
83-16827	TX	Border Exploration	B S Seyfriedt #1-J	822	2-03-83	C: 103 Approved; not 102-4
83-16847	TX	RAW Energy Corp	Hodges #3	822	2-03-83	C: 102-4 Approved; not 103
83-16982	TX	Charles Cough	T.A Owens #6	822	2-03-83	C: Well Name
83-1721RMS(NM)		Northwest Pipeline Corp	Ross Unit #10	823	2-03-83	C: Well Name

[FR Doc. 83-9005 Filed 4-5-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 864]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: April 1, 1983.

The following 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).

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.

Source data from the Form 121 for this and all previous notices 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.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-GB: Geopressed 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.

NOTICE OF DETERMINATIONS

ISSUED APRIL 1, 1983

VOLUME 864

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION								
8326642	K-79-1370	1518700000	108-ER	RECEIVED: 03/07/83	JA: KS GOLDNER UNIT MN #1		0.0	EL PASO NATURAL G
8326641	K-80-0342	1508700000	108-PB	RECEIVED: 03/07/83	JA: KS INSLEG A #1	RHODES	0.0	CITIES SERVICE GA
8326804	K-80-0976A	1504700000	108-SA	RECEIVED: 03/08/83	JA: KS RUSSELL #1		0.0	KANSAS-NEBRASKA N
8326640	K-82-0844	1511920378	108-PB	RECEIVED: 03/07/83	JA: KS ADAMS #6-4	CIMARRON	0.0	COLORADO INTERSTA
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS								
8326643		3002500000	108	RECEIVED: 03/07/83	JA: NM IDA WIMBERLY #14 (DUAL)	JUSTIS	13.1	EL PASO NATURAL G
8326817		3004525396	103	RECEIVED: 03/08/83	JA: NM FARMING D COM #1-R	BLANCO PICTURED CLIFF	30.0	EL PASO NATURAL G
8326818		3004525396	103	RECEIVED: 03/08/83	JA: NM FARMING D COM #1-R	BLANCO PICTURED CLIFF	30.0	EL PASO NATURAL G
8326653		3004521320	108-PB	RECEIVED: 03/07/83	JA: NM ALLISON UNIT #40	BASIN-DAKOTA GAS	16.0	EL PASO NATURAL G
8326655		3004510366	108-PB		ATLANTIC A #6	BLANCO-MESA VERDE	15.0	EL PASO NATURAL G
8326664		3004510366	108-PB		ATLANTIC A #6	BLANCO - MESA VERDE	15.0	EL PASO NATURAL G
8326668		3004520886	108		ATLANTIC D COM G #8	BLANCO - PICTURED CLI	16.0	EL PASO NATURAL G
8326668		3003920486	108-PB		SAN JUAN 27-5 UNIT #134	TAPACITO-PICTURED CLI	17.9	EL PASO NATURAL G
8326666		3003907097	108-PB		SAN JUAN 28-6 UNIT #67	BLANCO - MESA VERDE	19.0	EL PASO NATURAL G
8326654		3003907097	108-PB		SAN JUAN 28-6 UNIT #67	BLANCO - MESA VERDE	19.0	EL PASO NATURAL G
8326662		3003921637	108-PB		SAN JUAN 28-7 UNIT #250	BASIN-DAKOTA	10.0	EL PASO NATURAL G
8326656		3003907480	108-PB		SAN JUAN 29-7 UNIT #32	BLANCO-MESAVERDE GAS	14.0	EL PASO NATURAL G
8326663		3003907480	108-PB		SAN JUAN 29-7 UNIT #32	BLANCO-MESAVERDE GAS	14.0	EL PASO NATURAL G
8326652		3003907480	108-PB		SAN JUAN 29-7 UNIT #32	BLANCO-MESAVERDE GAS	14.0	EL PASO NATURAL G
8326670		3003900000	108-PB		SAN JUAN 32-5 UNIT #10	BLANCO MESAVEVERDE	0.0	EL PASO NATURAL G
8326672		3003900000	108-PB		SAN JUAN 32-5 UNIT #10	BLANCO MESAVEVERDE	0.0	EL PASO NATURAL G
8326671		3003900000	108-PB		SAN JUAN 32-5 UNIT #10	BLANCO MESAVEVERDE	0.0	EL PASO NATURAL G
8326673		3003900000	108-PB		SAN JUAN 32-5 UNIT #10	BLANCO MESAVEVERDE	0.0	EL PASO NATURAL G
8326647		3004511137	108		SAN JUAN 32-9 UNIT #36	BLANCO - MESA VERDE	22.0	EL PASO NATURAL G
8326658		3002500000	108-PB		SHELL STATE COM E #1	EUMONT QUEEN	26.0	EL PASO NATURAL G
8326665		3003900000	108-PB		SJ 27-5 UNIT 29 PC & MV	TAPACITO PC & BLANCO-	11.3	EL PASO NATURAL G
8326669		3003906979	108-PB		SJ 27-5 UNIT 41 PC & MV	TAPACITO-PC & BLANCO-	15.7	EL PASO NATURAL G
8326650		3003906828	108-PB		SJ 27-5 36 PC & MV	TAPACITO-PC & BLANCO-	13.0	EL PASO NATURAL G
8326667		3003906828	108-PB		SJ 27-5 36 PC & MV	TAPACITO-PC & BLANCO-	13.0	EL PASO NATURAL G
8326659		3003906828	108-PB		SJ 27-5 36 PC & MV	TAPACITO-PC & BLANCO-	13.0	EL PASO NATURAL G
8326667		3003907858	108-PB		SJ 30-6 UNIT #41	BLANCO-MESAVERDE GAS	14.2	EL PASO NATURAL G
8326651		3003907858	108-PB		SJ 30-6 UNIT #41	BLANCO-MESAVERDE GAS	14.2	EL PASO NATURAL G
8326661		3004506485	108-PB		TURNER B COM B #7	FULCHER KUTZ - PICTUR	21.0	EL PASO NATURAL G
8326660		3004506485	108-PB		TURNER B COM B #7	FULCHER KUTZ - PICTUR	21.0	EL PASO NATURAL G
8326649		3002510183	108	RECEIVED: 03/07/83	JA: NM SOUTH PENROSE SKELLY #170	EUMONT & PENROSE SKEL	10.8	GETTY OIL CO
8326649			108	RECEIVED: 03/08/83	JA: NM			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8326805		3001523043	103		OLD LOCO UNIT #18	GRAYBURG JACKSON QUEE	1.5	PHILLIPS PETROLEU
8326822		3001523156	103		OLD LOCO UNIT #19	GRAYBURG JACKSON SEVE	1.5	PHILLIPS PETROLEU
8326820		3001523176	103		OLD LOCO UNIT #20	GRAYBURG JACKSON SEVE	2.0	PHILLIPS PETROLEU
8326821		3001523831	103		OLD LOCO UNIT #23	GRBG JACKSON SR QN GR	8.0	PHILLIPS PETROLEU
8326819		3001523954	103		OLD LOCO UNIT #24	GRBG JACKSON SR QN GR	5.0	PHILLIPS PETROLEU
-MOF OIL CORP			RECEIVED:	03/07/83	JA: NM			
8326644		3002527796	102-4		J SPEIGHT #1	UNDESIGNATED (YATES)	558.0	EL PASO NATURAL G
8326644		3002527633	102-4		J WRIGHT #1	UNDESIGNATED	645.1	EL PASO NATURAL G
8326645		3002527778	102-4		MOF-SUM #1	UNDESIGNATED	379.1	
-NORTHWEST PIPELINE CORPORATION			RECEIVED:	03/08/83	JA: NM			
8326811		3003900000	108-PB		AZTEC #2	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8326816		3003900000	108-PB		ROSA UNIT #26	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8326806		3003900000	108-PB		SAN JUAN 29-6 UNIT NP #94	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326810		3003900000	108-PB		SAN JUAN 29-6 UNIT NP #96	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326808		3003900000	108-PB		SAN JUAN 29-6 UNIT NP #96	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326809		3003900000	108-PB		SAN JUAN 29-6 UNIT NP #96	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326807		3003900000	108-PB		SAN JUAN 29-6 UNIT NP #96	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326813		3003900000	108-PB		SAN JUAN 30-5 UNIT #58	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8326812		3003900000	108-PB		SAN JUAN 31-6 UNIT #10	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
8326815		3004500000	108-PB		SAN JUAN 32-7 UNIT #55	BASIN DAKOTA	0.0	NORTHWEST PIPELIN
8326814		3004500000	108-PB		SAN JUAN 32-7 UNIT #55	BASIN DAKOTA	0.0	NORTHWEST PIPELIN

NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION								

-BEREA OIL AND GAS CORPORATION			RECEIVED:	03/07/83	JA: NY			
8326913	3553	3101317031	102-2		MCCRAY UNIT #1	STEBBINS CORNERS	10.0	COLUMBIA GAS TRAN
8326912	3526	3101316432	102-2		N & E REED UNIT #7	RIPLEY-MINA	12.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC			RECEIVED:	03/07/83	JA: NY			
8326909	4231	3100916993	102-2		D PAYNE #1 KA-112	CONEMANGO	30.0	COLUMBIA GAS TRAN
8326905	4237	3100917278	102-2		D PAYNE #2 KX-17	CONEMANGO	30.0	COLUMBIA GAS TRAN
8326907	4234	3100917199	102-2		D SCHULTZ #2 KX-6	CONEMANGO	30.0	COLUMBIA GAS TRAN
8326911	3210	3100916882	102-2		DONALD BEAVER #1 KA-111	RANDOLPH	30.0	COLUMBIA GAS TRAN
8326915	3554	3101316078	102-2		G BUTTON #1 KA-109	CARKOLL	30.0	COLUMBIA GAS TRAN
8326904	4160	3101317701	102-2		HOITINK UNIT #1	FRENCH CREEK	30.0	COLUMBIA GAS TRAN
8326908	4232	3101317775	102-2		MILTON HULTS #1 KA-162	CLYMER	30.0	COLUMBIA GAS TRAN
8326906	4236	3100917647	102-2		ORR KINNEY #1 KX-19	CONEMANGO	30.0	COLUMBIA GAS TRAN
8326917	3627	3101315935	102-2		WAITE UNIT #1 KA-94	CARKOLL	30.0	COLUMBIA GAS TRAN
-FAIRMONT OIL CO			RECEIVED:	03/07/83	JA: NY			
8326902	2737	3100316328	102-2		LIMDOL & RUTH HUTTON #1		41.1	NATIONAL FUEL GAS
-HUGOTON PETROLEUM INC			RECEIVED:	03/07/83	JA: NY			
8326925	3912	3101316948	102-2		PATTON #1	STEBBINS CORNERS	15.0	COLUMBIA GAS TRAN
8326924	3911	3101316949	102-2		PATTON #2	STEBBINS CORNERS	50.0	COLUMBIA GAS TRAN
-NATIONAL FUEL GAS SUPPLY CORP			RECEIVED:	03/07/83	JA: NY			
8326882	3252	3102914762	108		ANDRES #1178-I	TOWN OF COLLINS	1.9	GENERAL SYSTEM PU
8326901	3216	3102914900	108		BEVIER #1233	TOWN OF NORTH COLLINS	1.4	GENERAL SYSTEM PU
8326893	3210	3102914026	108		BOARDWAY #479	TOWN OF NORTH COLLINS	0.8	GENERAL SYSTEM PU
8326890	3219	3102914027	108		BOARDWAY #480	TOWN OF NORTH COLLINS	1.7	GENERAL SYSTEM PU
8326892	3221	3101314504	108		COOGAN FARM #1956	TOWN OF SHERIDAN	3.4	GENERAL SYSTEM PU
8326879	3251	3102915095	108		CURRY #776-I	TOWN OF HAMBURG	4.3	GENERAL SYSTEM PU
8326881	3254	3102914927	108		FILIPIAK #1253-I	TOWN OF HAMBURG	1.4	GENERAL SYSTEM PU
8326896	3213	3102914906	108		FRANK #1242	TOWN OF NORTH COLLINS	3.8	GENERAL SYSTEM PU
8326884	3248	3102915085	108		GARLOCK #47-I	TOWN OF HAMBURG	4.8	GENERAL SYSTEM PU
8326883	3250	3102903346	108		GROSS #121-I	TOWN OF HAMBURG	8.8	GENERAL SYSTEM PU
8326880	3253	3102915081	108		HECK #1307-I	TOWN OF HAMBURG	1.4	GENERAL SYSTEM PU
8326889	3249	3102914510	108		HELMICK #111-I	TOWN OF HAMBURG	1.6	GENERAL SYSTEM PU
8326898	3215	3102914903	108		HERMAN #1239	TOWN OF NORTH COLLINS	2.3	GENERAL SYSTEM PU
8326897	3214	3102914904	108		HERMAN #1240	TOWN OF NORTH COLLINS	1.9	GENERAL SYSTEM PU
8326886	3229	3102915090	108		HUFF #2370	TOWN OF EVANS	5.5	GENERAL SYSTEM PU
8326888	3254	3100913397	108		JOHNSON #1675-I	TOWN OF NASHVILLE	0.5	GENERAL SYSTEM PU
8326895	3212	3102914912	108		LANTOFF #1302	TOWN OF NORTH COLLINS	2.8	GENERAL SYSTEM PU
8326887	3255	3102914715	108		PATTERSON #1672-I	TOWN OF NASHVILLE	0.1	GENERAL SYSTEM PU
8326900	3217	3102914768	108		SCHMITZ #1201	TOWN OF NORTH COLLINS	4.1	GENERAL SYSTEM PU
8326894	3211	3102914909	108		SIXT #1249	TOWN OF NORTH COLLINS	1.1	GENERAL SYSTEM PU
8326885	3228	3102914910	108		SMITH #1250	TOWN OF NORTH COLLINS	0.7	GENERAL SYSTEM PU
8326891	3220	3102914717	108		TUGGINS FARM #1669	TOWN OF COLLINS	2.3	GENERAL SYSTEM PU
8326899	3218	3102914767	108		WITNEYER #1189	TOWN OF NORTH COLLINS	0.8	GENERAL SYSTEM PU
-NORD/MONTARA PETROLEUM CO			RECEIVED:	03/08/83	JA: NY			
8326803	2582	3112113083	107-TF		KEEM UNIT #1	JAVA	25.0	COLUMBIA GAS TRAN
-NRN PETROLEUM CORPORATION			RECEIVED:	03/07/83	JA: NY			
8326916	3855	3100916940	102-2		FLEISHMAN #1	RANDOLPH	0.0	COLUMBIA GAS TRAN
8326914	3862	3100916724	102-2		O NEILL	RANDOLPH	0.0	COLUMBIA GAS TRAN
-TRAHAN PETROLEUM INC			RECEIVED:	03/07/83	JA: NY			
8326920	3976	3100917155	102-2		BEAVER #1 31-009-17155	WILDCAT	36.0	COLUMBIA GAS TRAN
8326923	3980	3101315751	102-2		CLEMENTE NY #28 31-013-15751	LEON	36.0	COLUMBIA GAS TRAN
8326922	3978	3100917293	102-2		CONGDOM NY #100 31-009-17293	CONEMANGO	36.0	COLUMBIA GAS TRAN
8326910	4292	3101317496	102-2		DELARA #1 31-013-17496	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8326926	4291	3101317154	102-2		GLEASON #1 31-013-17154	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8326921	3974	3101312497	102-2		HESS NY #40 31-013-12497	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8326919	3972	3101317153	102-2		MELBY #1 31-013-17153	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8326903	4290	3101317783	102-2		NEICOMB #2 31-013-17783	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8326918	3970	3101317173	102-2		SCHULZ #2 31-013-17173	ELLINGTON	36.0	COLUMBIA GAS TRAN
-UNION DRILLING INC			RECEIVED:	03/07/83	JA: NY			
8326929	3254	3100916891	102-2		EUGENE SPAULDING #1 NY-0009	RANDOLPH TOWN	0.0	COLUMBIA GAS TRAN
8326928	3257	3101316445	102-2		FRANK B MARSH #1 NY-0004	POLAND TOWN	0.0	COLUMBIA GAS TRAN
8326927	3258	3100917054	102-2		HARRY W WALTERS #1 NY-0001	RANDOLPH TOWN	0.0	COLUMBIA GAS TRAN

OKLAHOMA CORPORATION COMMISSION								

-BAYTIDE PETROLEUM INC			RECEIVED:	03/07/83	JA: OK			
8326794	19322	3511920930	102-4		TREU #1-26		2.6	COLORADO GAS COMP
-BLUE QUAIL ENERGY INC			RECEIVED:	03/08/83	JA: OK			
8326827	19979	3502720663	103		STRAKA #1	STRAKA #1	162.0	CONOCO INC
-BOBBY J DARNELL			RECEIVED:	03/07/83	JA: OK			
8326779	20400	3511921877	103		LUTE #1	WEST PRAIRIE VIEW	9.0	EASON OIL CO
-DEMCO OIL & GAS COMPANY			RECEIVED:	03/07/83	JA: OK			
8326793	19644	3507122105	108		KAHLE #35-1		12.0	CITIES SERVICE GA
-EASTOK PETROLEUM CORP			RECEIVED:	03/07/83	JA: OK			
8326781	20422	3509120526	103		EASTOK #4	COATON TIGER MOUNTAIN	150.0	CARR GAS CO
-EL DORADO DRILLING INC			RECEIVED:	03/08/83	JA: OK			
8326824	17727	3510920477	102-2	103	OSWEGO GAS UNIT #80-1		373.8	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY			RECEIVED:	03/07/83	JA: OK			
8326778	21302	3512920833	107-0P		SAYRE RANCH #1	REYDON WEST UPPER MOR	610.0	EL PASO NATURAL G
-ENSERCH EXPLORATION INC			RECEIVED:	03/07/83	JA: OK			
8326796	19305	3508720784	103		IMMAN ESTATE #1-A	BLANCHARD	400.0	LOME STAR GAS CO

JD NO	JA DKT	API NO	D SEC(1) SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-GRAHAM OIL & GAS LTD				RECEIVED: 03/07/83	JA: OK		
8326795	19315	3504321403	102-4	CRAIG 81-35		1211.0	PANHANDLE EASTERN
-GREEN OPERATING CO				RECEIVED: 03/07/83	JA: OK		
8326787	20348	3504720456	108	DARROW 27-1	SOONER TREND	12.0	EXXON CO USA
8326788	20339	3500320146	108	HUME 19-1	SOONER TREND	3.0	EXXON CO USA
8326786	20341	3507300000	108	JOE HAJEK #1	SOONER TREND	10.0	EXXON CO USA
8326785	20342	3504720350	108	OAKWOOD COUNTRY CLUB #1	SOONER TREND	12.0	CHAMPLIN PETROLEU
8326784	20343	3507320358	108	THORP 31-1	SOONER TREND	2.0	PHILLIPS PETROLEU
-JAMES W WISE				RECEIVED: 03/03/83	JA: OK		
8326835	20415	3511123793	103	KECK #3	EAST OKMULGEE	20.0	PHILLIPS PETROLEU
-JORDAN OIL & GAS COMPANY				RECEIVED: 03/07/83	JA: OK		
8326799	17810	3504520641	107-TF	BERRY #1-3	GAGE SOUTHWEST	73.0	TRANSWESTERN PIPE
8326777	21383	3504520949	107-TF	EHRLICH #1-11	GAGE SOUTH	55.0	TRANSWESTERN PIPE
8326801	17718	3504520969	107-TF	HOUGH 1-35	GAGE SOUTHWEST	73.0	TRANSWESTERN PIPE
8326798	17719	3504520995	107-TF	STUART #1-4	GAGE SOUTHWEST	73.0	TRANSWESTERN PIPE
-KAY PIPELINE CORP				RECEIVED: 03/07/83	JA: OK		
8326790	20158	3507121186	108	EDNA GARTHER #34-1	EAST DILLWORTH	9.4	CITIES SERVICE GA
-MARLW OIL CORPORATION				RECEIVED: 03/07/83	JA: OK		
8326797	19022	3502520395	102-2	SMALIS #1	NORTHEAST GRIGGS	720.0	TRANSWESTERN PIPE
-MAY PETROLEUM INC				RECEIVED: 03/08/83	JA: OK		
8326837	20418	3504321496	103	HOLSAPPLE #1-9		274.0	
8326836	20417	3500722333	103	KERNS #1		274.0	
-NEEK OIL PRODUCTION CO INC				RECEIVED: 03/07/83	JA: OK		
8326800	17714	3510720959	102-4	AIKENS 5-A		0.0	SWAB CORP
-MOBIL OIL CORP				RECEIVED: 03/08/83	JA: OK		
8326831	20402	3513921610	103	BLACKMER (RNG 6) UNIT #8	GUYMON-HUGOTON COUNCI	140.0	CITIES SERVICE GA
8326832	20405	3513921651	103	ISHAM (RNG 167) UNIT #3	GUYMON-HUGOTON-CHASE	140.0	CITIES SERVICE GA
8326833	20407	3513921611	103	PARKES (RNG 221) UNIT #2	GUYMON-HUGOTON-COUNCI	140.0	CITIES SERVICE GA
-MUSTANG PRODUCTION CO.				RECEIVED: 03/08/83	JA: OK		
8326830	20371	3501520837	103	MURPHY #1-18	SOUTHWEST BRIDGEPORT	0.0	OKLAHOMA GAS & EL
-OKLAHOMA CONVEYANCE CORP				RECEIVED: 03/07/83	JA: OK		
8326789	20252	3507121562	103	C G HONICK #1-3	S FECKHAM	2.0	CITIES SERVICE GA
-OLD DOMINION OIL CORP				RECEIVED: 03/07/83	JA: OK		
8326783	20391	3500722117	103	BELL 1-A	MOCANE - LAVERNE	91.3	PHILLIPS PETROLEU
8326782	20392	3515321352	103	HANDLEY #1	UNIONED	876.0	OKLAHOMA GAS & EL
-RENAISSANCE RESOURCES INC				RECEIVED: 03/08/83	JA: OK		
8326824	17871	3511921770	102-2	SOUTH DOWNEY #2	EAST COYLE	250.0	SUN GAS TRANSMISS
-SENECA OIL COMPANY				RECEIVED: 03/08/83	JA: OK		
8326829	20379	3513723004	103	ANNA WRIGHT #1-2		77.0	
-SHAR-ALAN OIL CO				RECEIVED: 03/07/83	JA: OK		
8326791	19913	3515320031	108	CAMPBELL #1	CEDERDALE NORTHEAST	17.0	INTER NORTH INC
8326792	19912	3515320199	108	REISDORPH #1	CEDERDALE NORTHEAST	22.0	MICHIGAN WISCONSI
-SHAR-ALAN OIL CO				RECEIVED: 03/08/83	JA: OK		
8326839	21985	3515321386	103	GERALD WHITLAW 2-1	CEDERDALE NE	0.0	INTER NORTH INC
8326840	22130	3515300000	103	OTTO ROBERTS 2-26A	CEDARDALE N E	113.0	MICHIGAN WISCONSI
8326842	23153	3515300000	103	STOTMAN 1-A	CEDARDALE NE	0.0	INTER NORTH INC
8326841	22131	3515300000	103	STUBER-MCCARTY #2	CEDARDALE N E	0.0	MICHIGAN WISCONSI
8326838	21984	3515321387	103	WHITE #1-32	CEDARDALE NE	0.0	MICHIGAN WISCONSI
-STAR RESOURCES INC				RECEIVED: 03/07/83	JA: OK		
8326780	20432	3506321198	103	HAMMOND 3-9	E WETUMKA	180.0	PUBLIC SERVICE CO
-SUN EXPLORATION & PRODUCTION CO				RECEIVED: 03/08/83	JA: OK		
8326828	20369	3503724117	103	STROUD PRUE UNIT #13-10	STROUD	1.0	KERR-MCGEE CORP
-SUNRISE EXPLORATION INC				RECEIVED: 03/08/83	JA: OK		
8326825	17806	3505121162	102-2 103	HALL #2	N E AMBER	275.0	
-TIDEMARK EXPLORATION CO				RECEIVED: 03/08/83	JA: OK		
8326843	20386	3513921641	103	CLANSON #2-11	SOUTH GUYMON	109.5	PHILLIPS PETROLEU
-TOMNER PETROLEUM CO				RECEIVED: 03/07/83	JA: OK		
8326776	23272	3514920202	107-DP	ARTHUR #24-1		0.0	
-WILLIAM H DAVIS				RECEIVED: 03/08/83	JA: OK		
8326834	20410	3511921892	103	VITEK #1	WILDCAT	2.1	ARCO OIL & GAS CO
***** WEST VIRGINIA DEPARTMENT OF MINES *****							
-B F GILMORE JR				RECEIVED: 03/07/83	JA: WV		
8326934	4708504840	108		MOATS #1	HARRISVILLE	6.0	CONSUMERS GAS UTI
-CARSON PETROLEUM CORP				RECEIVED: 03/07/83	JA: WV		
8326935	4701702908	108		CATHOLIC CHURCH #1	ST CLAIR	13.0	CONSOLIDATED GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 03/07/83	JA: WV		
8326943	4700101225	108		E C ZUMBRUNNEN #12630	PLEASANT DISTRICT	16.0	GENERAL SYSTEM PU
8326944	4704103085	108		EDWARD O TAYLOR 12706	HACKERS CREEK DISTRICT	9.0	GENERAL SYSTEM PU
8326941	4703302618	108		ERNEST E SAPP 12696	CLAY DISTRICT	22.0	GENERAL SYSTEM PU
8326939	4703301944	108		LUTHER H GOFFMAN 12575	EAGLE DISTRICT	23.0	GENERAL SYSTEM PU
8326940	4703302569	108		M R LODGE 12708	SIMPSON DISTRICT	20.0	GENERAL SYSTEM PU
8326942	4703302627	108		OPAL COURTNEY 12718	UNION DISTRICT	14.0	GENERAL SYSTEM PU
8326945	4709701613	108		WESLEY D DELL 11968	WASHINGTON DISTRICT	8.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED: 03/07/83	JA: WV		
8326946	4703302224	108		E KEINER #1 KL-295	SARDIS DISTRICT	25.0	CONSOLIDATED GAS
-FLOE ENERGY INC				RECEIVED: 03/07/83	JA: WV		
8326932	4708503706	108		SNOW HENDRICKSON #1	UNION	0.0	CONSOLIDATED GAS
-NASHVILLE ASSOCIATES INC				RECEIVED: 03/07/83	JA: WV		
8326936	4700701719	108		HEFNER #1	R HEAVNER LEASE	18.0	CONSOLIDATED GAS
8326937	4700701720	108		HEFNER #2	R HEAVNER LEASE	18.0	CONSOLIDATED GAS
-PENNZOIL COMPANY				RECEIVED: 03/07/83	JA: WV		
8326933	3156C2696CC	4708701156	108	LEE WYATT HAS 35-0483550	LITTLE CREEK	11.5	CONSOLIDATED GAS
-PETRO-LEWIS CORPORATION				RECEIVED: 03/07/83	JA: WV		
8326938	4700700806	108		SINGLETON #1 WORTHY	OTTER DISTRICT	5.0	CONSOLIDATED GAS
-T M FARNSWORTH				RECEIVED: 03/07/83	JA: WV		
8326930	4702102076	108		W C BAILEY #1	TROY DISTRICT	0.0	CONSOLIDATED GAS
8326931	4702102113	108		W C BAILEY #2	TROY DISTRICT	0.0	CONSOLIDATED GAS
***** WYOMING OIL & GAS CONSERVATION COMMISSION *****							
-AMOCO PRODUCTION CO				RECEIVED: 03/07/83	JA: WY		
8326878	NG 344-82	4903721933	103	CHAMPLIN 149 AMOCO "F" #1 DAKOTA	BRUFF - DAKOTA	385.0	CITIES SERVICE GA
8326876	NG 343-82	4903721933	107-TF	CHAMPLIN 149 AMOCO "F" #1 FRONTIER	BRUFF-FRONTIER	195.0	CITIES SERVICE GA
8326871	NG 109-81	4903721051	102-2	CHAMPLIN 533 AMOCO "A" #1	WAMSUTTER	81.6	CITIES SERVICE GA
8326877	NG 353-82	4902921113	103	ELK BASIN UNIT EMBAR/TENSLEEP #333	ELK BASIN	14.0	MONTANA DAKOTA UT
8326867	NG 54-81	4902320308	107-TF	WHISKEY BUTTES #25	WHISKEY BUTTES	60.0	CITIES SERVICE GA
8326866	NG 53-81	4902320309	107-TF	WHISKEY BUTTES #32	WHISKEY BUTTES	400.0	CITIES SERVICE GA
8326868	NG 55-81	4902320313	107-TF	WHISKEY BUTTES UNIT #24	WHISKEY BUTTES	340.0	CITIES SERVICE GA
-BELCO PETROLEUM CORPORATION				RECEIVED: 03/07/83	JA: WY		
8326865	NG 29-83	4903520703	103	BPMV 15-28	BIG PINEY MESAVARDE	0.0	NORTHWEST PIPELIN
8326864	NG 28-83	4903520703	103	BPMV 15-28	BIG PINEY MESAVARDE	0.0	NORTHWEST PIPELIN
8326875	NG 328-82	4903520696	103	C 79-23	C-47	0.0	NORTHWESTERN PIPE

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8326872	NG 197-82	4903520627	103		C78-26			
-CHAMPLIN PETROLEUM COMPANY						MILLS PROSPECT	0.0	NORTHWEST PIPELIN
8326869	NG 76-81	4903721087	107-TF		WAMSUTTER 89A CSM 33-21N-94W			
-CHEVRON U S A INC						WAMSUTTER	420.0	COLORADO INTERSTA
8326844	NG 1-83	4904120320	102-4		PRU 11-8A			
8326862	NG 22-83	4904120451	102-4		PRU 22-5A			
8326855	NG 14-83	4904120422	102-4		PRU 31-7A			
8326856	NG 15-83	4904120423	102-4		PRU 42-7A			
-CITIES SERVICE COMPANY						EAST PAINTER RESERVOIR	1180.0	
8326863	NG 25-83	4900526731	102-2		HARTZOG DRAW UT TR 133 WELL #5148	HARTZOG DRAW UNIT	3.6	PANHANDLE EASTERN
-COBRA OIL AND GAS CORPORATION								
8326848	NG 6-83	4900922154	103		STODDARD-EBY "14" #1			
-GULF OIL CORPORATION						WELL DRAW	100.0	PHILLIPS PETROLEU
8326860	NG 19-83	4904120366	102-2		RAY STATE 1-36			
-HPC INC						WHITNEY CANYON (MISSI	1200.0	TENNESSEE GAS PIP
8326854	NG 12-83	4900524520	103		SMELTENN STATE #1			
-LUFF EXPLORATION CO						KINGSBURY CREEK	51.8	PANHANDLE EASTERN
8326867	NG 5-83	4903722013	103		N-23 AMOCO-CHAMPLIN			
-MARATHON OIL COMPANY						LEUCITE HILLS	876.0	MOUNTAIN FUEL SUP
8326870	NG 90-81	4900720458	107-TF		STANDARD DRAW #3-18			
-RESOURCES INVESTMENT CORPORATION						STANDARD DRAW	730.0	COLORADO INTERSTA
8326874	NG 267-81	4904521545	102-4		WEST TODD #2-5			
8326873	NG 243-81	4904521546	102-4		WEST TODD #3-5			
-ROBERT C BALSAM						WEST TODD	6.5	PHILLIPS PETROLEU
8326853	NG 11-83	4904521675	102-2		BRUCE #1 49-845-21675			
-TEXACO INC						BLACK THUNDER	10.0	PHILLIPS PETROLEU
8326861	NG 21-83	4903722115	103		TABLE ROCK UNIT #55			
-WESTERN PRODUCTION CO						TABLE ROCK	9.9	COLORADO INTERSTA
8326849	NG 7-83	4904522001	102-4		COLEN 5-10			
8326852	NG 10-83	4904522003	102-4		COLEN 6-10			
8326851	NG 9-83	4904522002	102-4		COLEN 7-10			
8326850	NG 8-83	4904522004	102-4		GRIEVES #19			
-WOODS PETROLEUM CORPORATION						SHURLEY	3.0	M G P C INC
8326846	NG 4-83	4900526754	102-4		PINE TREE UNIT #9-61			
8326845	NG 3-83	4900526754	102-4		PINE TREE UNIT #9-61			
-MYOMING RESOURCES						SHURLEY	4.0	M G P C INC
8326858	NG 17-83	4902720514	102-4		S-H TERRA #1			
8326857	NG 16-83	4902720538	102-4		S-H TERRA #1			
8326859	NG 18-83	4902720310	102-4		ZERDST #2			
*****						BOGGY CREEK	11.0	MCCULLOCH GAS PRO
*****						BOGGY CREEK	15.0	MCCULLOCH GAS PRO
*****						BOGGY CREEK	24.0	MCCULLOCH GAS PRO
***** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA *****								

-ARCO OIL AND GAS COMPANY								
8326823	G2-3412	1770540489	102-1		DCS G-3980 VERMILION BLK 104 #2	VERMILION	730.0	TENNESSEE GAS PIP
***** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE, NM *****								

-AMOCO PRODUCTION CO								
8326768	NM 1742-82	3000561743	103		107-TF GRYNBERG 17 FEDERAL "COM" #2	PECOS SLOPE ABO GAS	0.0	TRANSWESTERN PIPE
8326765	NM-1747-82	3004509129	108		E E ELLIOT "B" #8			
8326763	NM-0989-82	3004520341	108		E E ELLIOT "B" #10			
8326762	NM-0592-82	3004524645	103		GALLEGOS CANYON UNIT #217E	BASIN DAKOTA	20.0	EL PASO NATURAL G
8326772	NM-1739-82	3003982337	108		JICARILLA CONTRACT 148 #14	BLANCO - PICTURED CLI	21.0	EL PASO NATURAL G
8326773	NM 1732-82-A	3003922306	103		JICARILLA TRIBAL 396 #2	UNDESIGNATED GALLUP	6.8	EL PASO NATURAL G
8326767	NM 1737-82B	3003922306	103		JICARILLA TRIBAL 396 #2	OTERO - CHACRA	20.0	EL PASO NATURAL G
8326763	NM-0593-82	3004524755	103		MADELINE N GALT "H" #1E	UNDESIGNATED GALLUP	2.0	EL PASO NATURAL G
8326771	NM 1738-82	3004521715	108		VAN HOOK FEDERAL #1 (4TH)	CHACON-DAKOTA	20.0	EL PASO NATURAL G
8326760		3004523902	108		W D HEATH "A" #14	BLOOMFIELD CHACRA	10.0	SOUTHERN UNION GA
-ARCO OIL AND GAS COMPANY						BLANCO - PICTURED CLI	20.0	EL PASO NATURAL G
8326725	NM-1731-82	3002505327	108		DOM FEDERAL COM #1	UNDESIGNATED FARMINGT	16.0	EL PASO NATURAL G
8326740	NM-1728-82	3002527821	103		J H MCCLURE "B" WELL #23	DEAN PERMO (PENN)	10.0	TIPPERARY RESOURC
-CHACE OIL COMPANY INC						DOLLARHIDE TUBS DRINK	17.0	EL PASO NATURAL G
8326766	NM 1748-82	3003923022	103		JICARILLA 71-10			
-CONOCO INC						S LINDRITH GALLUP DAK	21.9	EL PASO NATURAL G
8326755	NM-1769-82	3003922950	103		AXI APACHE M #6			
8326754	NM-1768-82	3003922949	103		AXI APACHE N NO 17	AXI APACHE AREA	214.0	GAS COMPANY OF NE
8326723	NM 0023-82ER	3002500000	108-ER		REED B #4	AXI APACHE AREA	112.0	GAS CO OF NEW MEX
-COQUINA OIL CORPORATION						EUMONT YATES 7 RIVER	12.1	PHILLIPS PETROLEU
8326728	NM 1716-82	3001523992	103		PURE GOLD "C" FEDERAL #1			
-DUGAN PRODUCTION CORP						UNDES (W SAND DUNES M 2000.0		
8326737	NM-1637-82	3004521895	108		ABO #1			
-EL PASO EXPLORATION CO						UNDESIGNATED PICTURED	14.0	EL PASO NATURAL G
8326775	NM-1729-82	3003921989	108		CHACON JICARILLA D #14	CHACON - DAKOTA ASSOC	14.0	EL PASO NATURAL G
8326777	NM 0281-82PB	3003906568	108-PB		JICARILLA 119 N #1	TAPACITO - PICTURED C	23.0	NORTHWEST PIPELIN
8326796	NM 0280-82PB	3003922073	108-PB		JICARILLA 120 C #16	SOUTH BLANCO PICTURED	14.0	NORTHWEST PIPELIN
8326789		3003922076	108-PB		JICARILLA 120 C #19	BLANCO SOUTH - PICTUR	22.0	NORTHWEST PIPELIN
-EL PASO NATURAL GAS COMPANY								
8326795	NM 0289-82PB	3003900000	108-PB		JICARILLA 123 C #20	BLANCO SOUTH	0.0	NORTHWEST PIPELIN
8326713	NM 0259-82PB	3004506326	108-PB		LODEWICK #5	BASIN DAKOTA	21.0	EL PASO NATURAL G
8326712	NM 0256-82PB	3004500000	108-PB		LODEWICK #10	BASIN-DAKOTA	20.0	EL PASO NATURAL G
8326735	NM-1655-82	3004503989	108		LUDEWICK #11 PC & MV	AZTEC - PICTURED CLIF	20.0	EL PASO NATURAL G
8326708	NM 0268-82PB	3003907012	108-PB		S & J 27-5 UNIT #12	BLANCO-MESAVERDE GAS	15.0	EL PASO NATURAL G
8326703	NM 0272-82PB	3003906872	108-PB		SAN JUAN 27-4 UNIT #12	TAPACITO PICTURED CLI	0.0	EL PASO NATURAL G
8326707	NM 0265-82PB	3003920484	108-PB		SAN JUAN 27-4 UNIT #60	BASIN DAKOTA	17.0	EL PASO NATURAL G
8326710	NM 0263-82PB	3003920954	108-PB		SAN JUAN 27-4 UNIT #78	TAPACITO - PICTURED C	11.0	EL PASO NATURAL G
8326701	NM 0269-82PB	3003906914	108-PB		SAN JUAN 27-5 UNIT #11	BLANCO-MESAVERDE	15.0	EL PASO NATURAL G
8326701	NM 0276-82PB	3003982363	108-PB		SAN JUAN 27-5 UNIT #80	TAPACITO - PICTURED C	19.0	EL PASO NATURAL G
8326707	NM 0253-82PB	3003920175	108-PB		SAN JUAN 28-4 UNIT #33	BASIN - DAKOTA	6.0	EL PASO NATURAL G
8326700	NM 0275-82PB	3003907197	108-PB		SAN JUAN 28-5 UNIT #26	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8326704	NM 0270-82PB	3003907342	108-PB		SAN JUAN 28-6 UNIT #46	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8326793	NM 0286-82PB	3003907167	108-PB		SAN JUAN 28-6 UNIT #32	BLANCO - MESAVERDE GA	16.0	EL PASO NATURAL G
8326702	NM 0271-82PB	3003907339	108-PB		SAN JUAN 28-6 UNIT #32	BLANCO - MESA VERDE	19.0	EL PASO NATURAL G
8326719	NM 0251-82PB	3003907271	108-PB		SAN JUAN 28-6 UNIT #32	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8326798	NM 0282-82PB	3003982366	108-PB		SAN JUAN 28-6 UT #108	SOUTH BLANCO PICTURED	0.0	EL PASO NATURAL G
8326716	NM 0254-82PB	3003907255	108-PB		SAN JUAN 286 UNIT #38	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8326799	NM 0274-82PB	3003907793	108-PB		SAN JUAN 30-6 UNIT #11	BLANCO - MESAVERDE	16.0	EL PASO NATURAL G
8326709	NM 0262-82PB	3003907863	108-PB		SAN JUAN 30-6 UNIT #80	BLANCO-MESAVERDE GAS	19.7	EL PASO NATURAL G
8326794	NM 0266-82PB	3003900000	108-PB		SAN JUAN 32-5 UNIT #17	BASIN-DAKOTA	20.0	EL PASO NATURAL G
8326704	NM 0273-82PB	3003906937	108-PB		SJ 27-4 UNIT 21 PC & MV	TAPACITO-PICTURED CLI	14.9	EL PASO NATURAL G
8326718	NM 0252-82PB	3003906943	108-PB		SJ 27-5 UNIT #75	TAPACITO-PICTURED CLI	15.7	EL PASO NATURAL G
8326715	NM 0255-82PB	3003907828	108-PB		SJ 30-4 UNIT NP #9	BLANCO EAST-PICTURED	20.0	EL PASO NATURAL G
8326714	NM 0260-82PB	3003907992	108-PB		SJ 32-5 UNIT #7	BLANCO-MESAVERDE GAS	15.0	EL PASO NATURAL G
8326711	NM 0264-82PB	3004508337	108-PB		VANDWART A #5	BLANCO-MESAVERDE	18.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-EXXON CORPORATION			RECEIVED:	03/03/83	JA: NM 4			
8326741	NM-1799-82	3001524194	103		YATES FEDERAL "C" #3	UNDESIGNATED BURTON F	269.0	
-GETTY OIL COMPANY			RECEIVED:	03/03/83	JA: NM 4			
8326690	NM-1771-82	3001523692	102-2		SALT DRAW 11 FEDERAL COM #1	UNDESIGNATED MORROW	109.5	UNITED GAS PIPELI
-GULF OIL CORPORATION			RECEIVED:	03/03/83	JA: NM 4			
8326691	NM-1778-82	3001524154	103		WHITE CITY PENN GAS COM UNIT 3 #2	WHITE CITY PENN	0.0	TRANSWESTERN PIPE
-HNO OIL COMPANY			RECEIVED:	03/03/83	JA: NM 4			
8326730	NM-1676-82	3001523846	103		GOLDEN LAKE "1" FEDERAL #1	HILDCAT ATOKA	182.5	EL PASO NATURAL G
-KEN BLACKFORD			RECEIVED:	03/03/83	JA: NM 4			
8326687	NM-1782-82	3003921822	108		WELL 37-B #6 LEASE 009-000037-B	BALLARD PICTURED CLIF	15.0	EL PASO NATURAL G
8326686	NM-1780-82	3003921801	108		WELL 37-B #7 LEASE NO 09-000037-B	BALLARD PICTURED CLIF	0.8	EL PASO NATURAL G
-MERRISON OIL & GAS CORP			RECEIVED:	03/03/83	JA: NM 4			
8326727	NM-1715-82	3003922449	108		EAST LINDRITH #6	SOUTH BLANCO PICTURED	14.0	EL PASO NATURAL G
8326726	NM-1714-82	3003922429	108		EAST LINDRITH #7	SOUTH BLANCO PICTURED	11.0	EL PASO NATURAL G
8326732	NM-1713-82	3004320273	108		JICARILLA #28 #6	BALLARD PICTURED CLIF	11.0	NORTHWEST PIPELIN
-MESA PETROLEUM CO			RECEIVED:	03/03/83	JA: NM 4			
8326684	NM-0664-82	3003922880	103		SOUTH BLANCO NAVAJO # 2	LYBROOK GALLUP EXTENS	120.0	
-MOBIL PRDO TEXAS & NEW MEXICO INC			RECEIVED:	03/03/83	JA: NM 4			
8326770	NM-1735-82	3001520856	108		FEDERAL MM COM #1	CARLSBAD SOUTH MORROW	21.8	LLANO INC
8326492	NM-1772-82	3003923036	103		LINDRITH B UNIT #22	CHACON DAKOTA ASSOCIA	93.8	EL PASO NATURAL G
-NORTHWEST PIPELINE CORPORATION			RECEIVED:	03/03/83	JA: NM 4			
8326724	NM-063482B	3004524973	103		SAN JUAN 32-7 NP #34	BASIN DAKOTA	0.0	EL PASO NATURAL G
8326720	NM-0235-82PB	3004521330	108-PB		SAN JUAN 32-7 UT #34	BASIN DAKOTA	0.0	EL PASO NATURAL G
-PERRY R BAS			RECEIVED:	03/03/83	JA: NM 4			
8326731	NM-1709-82	3001524062	103		JAMES RANCH UNIT #13	LDS MEDANOS	1400.8	NATURAL GAS PIPEL
-READ & STEVENS INC			RECEIVED:	03/03/83	JA: NM 4			
8326764	NM-17482103	3000561437	103		WEST HAYSTACK FEDERAL #2	UNDESIGNATED (CISCO)	273.0	TRANSWESTERN PIPE
-SOUTHERN UNION EXPLORATION COMPANY			RECEIVED:	03/03/83	JA: NM 4			
8326677	NM-1629-82	3004524024	108		FOSTER #6	BALLARD	0.0	GAS CO OF NEW MEX
8326675	NM-1620-82	3004505750	108		HODGES #7	BALLARD PICTURE CLIFF	8.3	GAS CO OF NEW MEX
8326735	NM-1672-82	3003921030	108		JICARILLA "A" #17	TAPACITO PICTURE CLIF	7.0	GAS CO OF NEW MEX
8326736	NM-1671-82-B	3003921853	103		JICARILLA A #22-Y	BLANCO MESAVARDE	2000.0	GAS CO OF NEW MEX
8326729	NM-1671-82-A	3003921853	103		JICARILLA A #22Y	BASIN DAKOTA	430.0	GAS CO OF NEW MEX
8326674	NM-1666-82	3003900000	108		JICARILLA B #2	BLANCO	0.0	GAS CO OF NEW MEX
8326734	NM-1670-82	3004523828	108		LARGO FEDERAL #3	WILDCAT FARMINGTON SA	7.0	SOUTHERN UNION GA
8326679	NM-1619-82	3004524327	108		NEWSOM #10-R	BALLARD PICTURE CLIFF	1.8	GAS CO OF NEW MEX
8326681	NM-1614-82	3004505904	108		NEWSOM #12	BALLARD PICTURE CLIFF	3.2	GAS CO OF NEW MEX
8326678	NM-1617-82	3004524326	108		NEWSOM #23	BALLARD PICTURE CLIFF	9.5	GAS CO OF NEW MEX
8326676	NM-1623-82	3004524564	108		NICKERSON #20	BALLARD	0.0	GAS CO OF NEW MEX
8326733	NM-1669-82	3004505708	108		NICKSON #8	BALLARD PICTURE CLIFF	5.0	GAS CO OF NEW MEX
-SOUTHLAND ROYALTY CO			RECEIVED:	03/03/83	JA: NM 4			
8326721	NM-0250-82PB	3004521800	108-PB		CAIN #21	AZTEC	19.0	SOUTHERN UNION GA
-SUPRON ENERGY CORPORATION			RECEIVED:	03/03/83	JA: NM 4			
8326761	NM-1753-82B	3003922529	103		JICARILLA "L" #7	OTERO CHACRA	323.0	GAS CO OF NEW MEX
8326760	NM-1753-82A	3003922529	103		JICARILLA "L" #7	PICTURED CLIFFS	86.0	GAS CO OF NEW MEX
8326762	NM-1754-82	3003922596	103		MCCRODEN "B" #3	BLANCO MESAVARDE	713.0	GAS CO OF NEW MEX
8326688	NM-1783-82	3004524562	103		NEWSOM "A" #10	BALLARD PICTURED CLIF	1136.0	GAS CO OF NEW MEX
8326758	NM-1760-82	3004524637	103		NEWSOM "A" #11	BALLARD PICTURED CLIF	114.0	GAS CO OF NEW MEX
8326752	NM-1757-82	3004525076	103		NEWSOM "A" #14	BALLARD PICTURED CLIF	193.0	GAS CO OF NEW MEX
8326759	NM-1751-82	3004524787	103		NICKSON #21	BALLARD PICTURED CLIF	85.0	EL PASO NATURAL G
8326734	NM-1755-82	3004524759	103		SUPRIT #11	BLOOMFIELD CHACRA EXT	550.0	SOUTHERN UNION GA
-TEHNECO OIL COMPANY			RECEIVED:	03/03/83	JA: NM 4			
8326763	NM-1745-82	3004525108	103		107-TF BARNES 17	BASIN DAKOTA	500.0	EL PASO NATURAL G
8326769	NM-1744-82	3004525341	103		107-TF BARNES 18	BASIN DAKOTA	500.0	EL PASO NATURAL G
8326739	NM-1797-82	3004525327	103		HAMNER 11	UNDES GALLUP	170.0	EL PASO NATURAL G
8326746	NM-1794-82	3004525403	103		HUGHES A 2E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8326745	NM-1795-82	3004525328	103		HUGHES A 6E	BASIN DAKOTA	100.0	EL PASO NATURAL G
8326750	NM-1787-82	3003922893	103		JICARILLA A 6E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8326748	NM-1786-82	3003922896	103		JICARILLA A 7E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8326746	NM-1796-82	3003922897	103		JICARILLA A 8E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8326747	NM-1785-82	3003922895	103		JICARILLA B 7E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8326722	NM-0634-82-A	3004524973	103		LANSON 1R	BLANCO MESAVARDE	500.0	SOUTHERN UNION GA
8326749	NM-1788-82	3004524912	103		MICHEHER 2E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8326752	NM-1743-82	3004525301	103		OTLER A15	UNDES FRUITLAND	500.0	
8326742	NM-1791-82	3004525371	103		TAPP 2E	BASIN DAKOTA	100.0	EL PASO NATURAL G
8326751	NM-1789-82	3004525304	103		VANDEHART B 1E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8326743	NM-1793-82	3004525190	103		WILCH 2E	BASIN DAKOTA	100.0	EL PASO NATURAL G
-WESTERN RESERVES OIL COMPANY			RECEIVED:	03/07/83	JA: NM 4			
8326862	NM-0288-82	3000560936	103		107-DP BEVMOR 24 FEDERAL #1	UNDESIGNATED (ADO)	206.0	TRANSWESTERN PIPE
-YATES PETROLEUM CORPORATION			RECEIVED:	03/03/83	JA: NM 4			
8326774	NM-1724-82	3001524191	103		ENG "EX" FEDERAL #1	UND MORROW	0.0	TRANSWESTERN PIPE
8326753	NM-174482102	3000561451	102-3		107-TF LEEMAN OC FED #4	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE

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83-17389	NM	Carl A Schellinger	Campbell Station U #1	824	2-09-83			C: 102-2 & 107-TF Approved
83-18145	OH	Moreland Oil & Gas	Ruth Carothers #1	828	2-18-83			C: 107-TF Approved; not Denied
83-18190	OH	Whitman Oil & Gas Corp	Swaney #1	828	2-18-83			C: 107-DV A
83-18191	OH	Whitman Oil & Gas Corp	USA McKinnon #2	828	2-18-83			C: 107-DV Approved; not 107-TF
83-18192	OH	Whitman Oil & Gas Corp	Dale & Phillis Haught #10	828	2-18-83			C: 107-DV Approved; not 107-TF
83-18193	OH	Whitman Oil & Gas Corp	Hille Heirs #1	828	2-18-83			C: 107-DV Approved; not 107-TF
83-19064	NM	Cities Service Co	State E #5	832	2-18-83			C: Well Name
83-19286	TX	Andress Petroleum Inc.	J F Welder Heirs #11	834	2-24-83			C: Well Name
83-19374	TX	Arco Oil & Gas Co	A C Soape Gas U #4	834	2-24-83			C: 102-3 & 107-TF Approved
83-19398	TX	Mitchell Energy Corp	Lamance #1	834	2-24-83			C: 108 & 108-ER Approved
83-19809	TX	Coastal Oil & Gas	Thompson 2015J	835	3-01-83			C: Well Name
83-20304	LA	Reliance Trusts	Manville #3	837	3-01-83			C: 103 & 107-TF Approved

[FR Doc. 83-9006 Filed 4-5-83; 8:45 am]

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Wednesday, April 6, 1983

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication

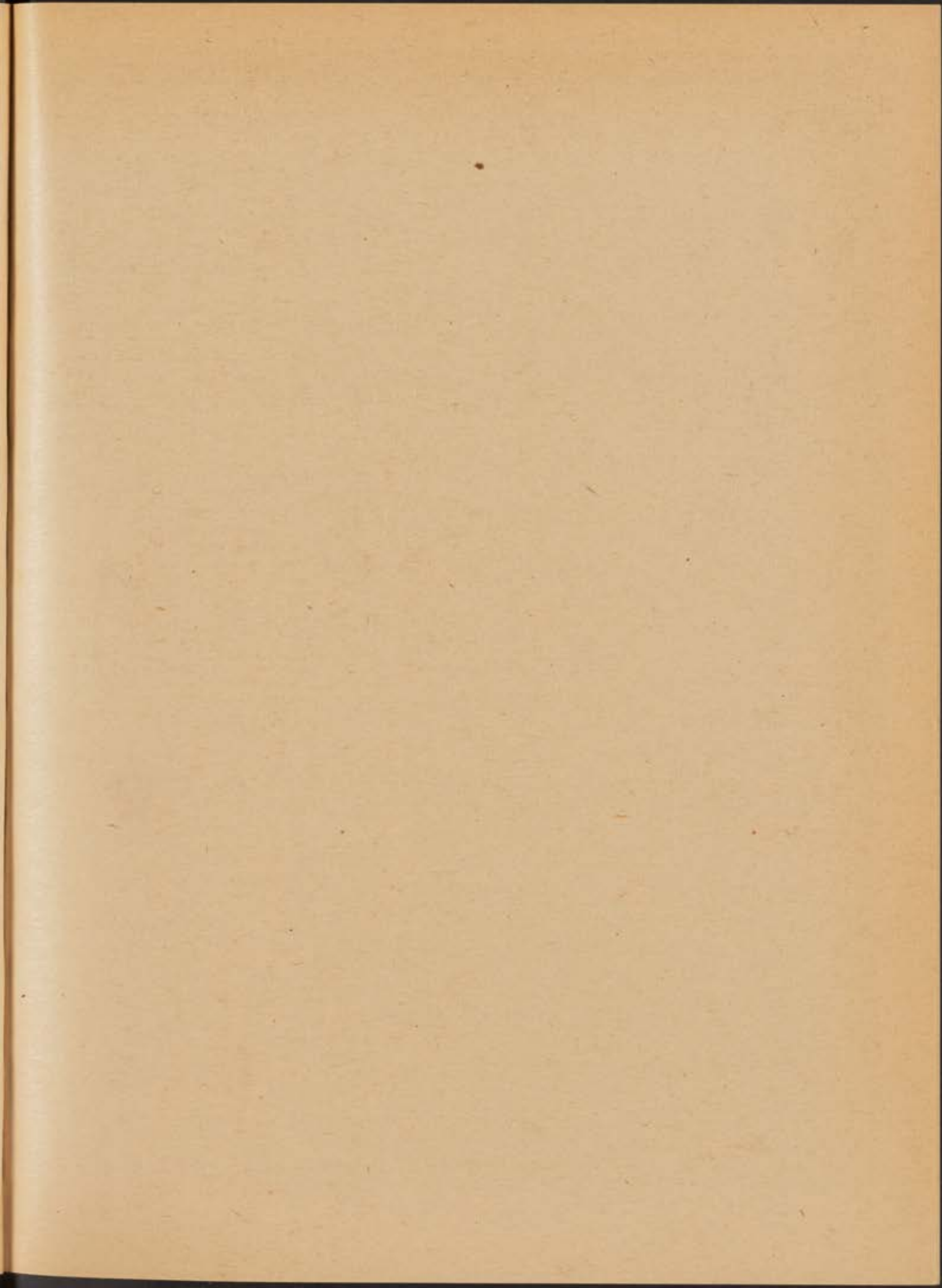
on a day that will be a Federal holiday will be published the next work day following the holiday.

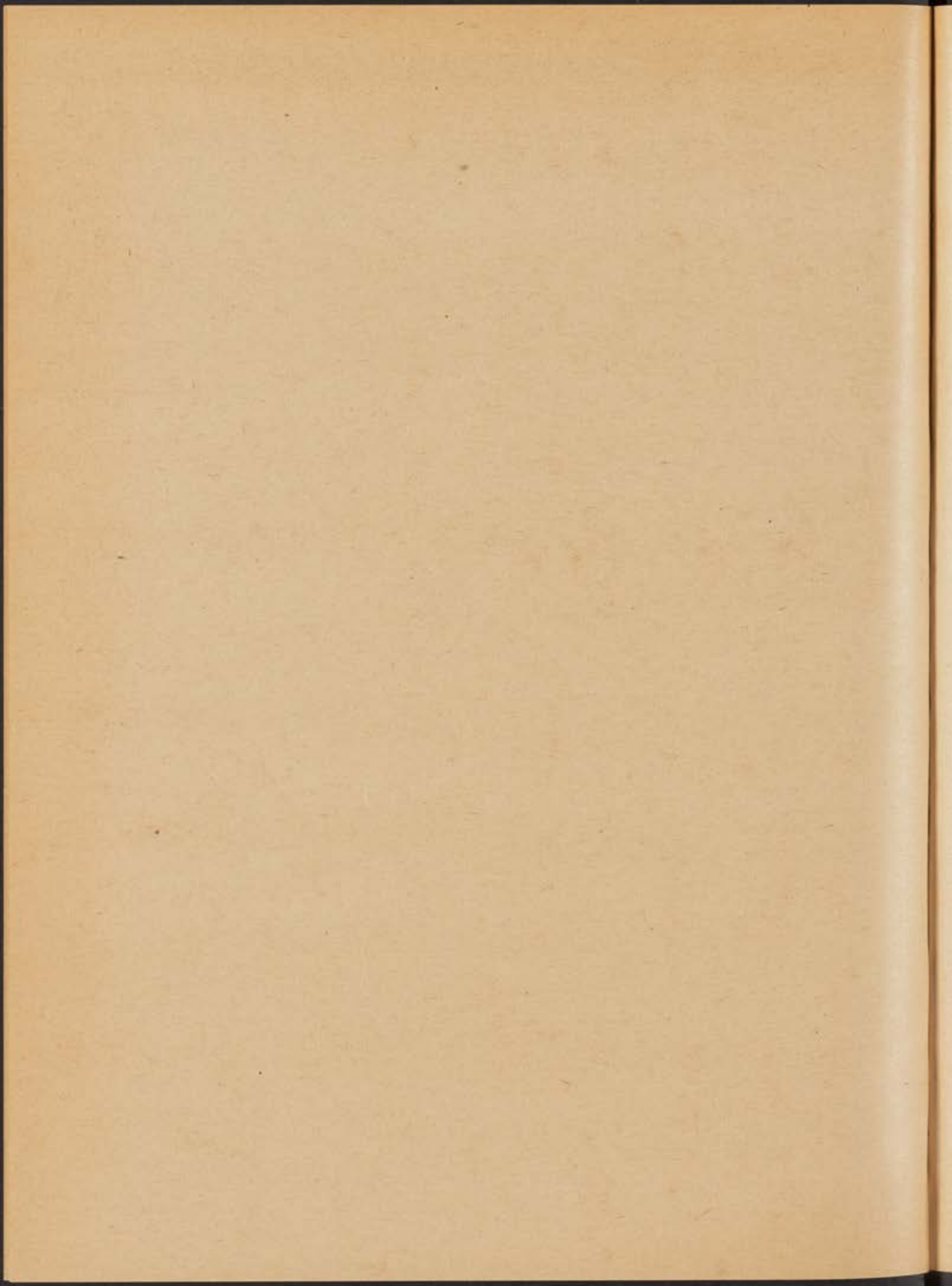
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