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Wednesday
August 3, 1983

Selected Subjects

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Selected Subjects

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Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 25

Revised Access Authorization Fees for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the access authorization investigation fees charged to licensee personnel who require access to National Security Information and/or Restricted Data. The revised fees will reflect the current access authorization investigation cost charged to the NRC by the Office of Personnel Management plus part of NRC's overhead associated with the processing of access authorization requests.

EFFECTIVE DATE: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Security Policy Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427–4549.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) conducts access authorization background investigations for the NRC under an interagency agreement and sets the basic cost for these investigations. In order to comply more promptly with the OPM cost adjustment timetable, § 25.17 was recently revised on June 16, 1983 (48 FR 27533) to establish July rather than December as the month when the annual access authorization fee schedule would be published. Since the access authorization fee schedule for this Part was last published in the **Federal Register** on March 4, 1982 (47 FR 9194), OPM has notified the NRC of an increase to the basic cost of the full field investigation. This OPM-conducted full field investigation is used by the NRC as a basis in granting a "Q" access authorization. Effective July 1, 1982, the full field investigation charge to NRC by OPM was raised from $1,350.00 to $1,450.00. Due to various cost efficiencies implemented by OPM, their July 1, 1983 full field investigation charge to the NRC has remained at $1,450.00. However, NRC has yet to reflect in its fee schedule the July 1, 1982 full field investigation cost increase by OPM. Therefore, the new fee, applicable immediately, recovers this $1,450.00 OPM-cost plus a part of NRC's overhead associated with the processing of these "Q" access authorizations. The NRC overhead cost equals approximately 15% of the OPM investigative cost, resulting in a revised NRC "Q" access authorization fee of $1,665.00. The collection of such fees is authorized by 31 U.S.C. 9701. The fees associated with the processing of an "L" access authorization have not been changed.

When the original Part 25 fee schedule was developed, it was recognized that the actual amount charged to NRC by OPM for conducting investigations would be the decisive factor governing future fees charged by NRC. This relationship between the amounts charged by OPM and the resulting fees charged by NRC continues and, therefore, has been affected by the July 1, 1982 increase by OPM. Since NRC is authorized to recover the costs incurred in processing access authorization requests pursuant to this Part, the NRC's amendatory action in this notice is merely ministerial and does not require the notice and comment procedures of the Administrative Procedure Act of 1980 (5 U.S.C. 553).

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget Approval Number 3150–0046.

List of Subjects in 10 CFR Part 25

Classified information, Investigations, Penalty, Reporting requirements, Security measures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 9701 of Title 31 and Section 553 of Title 5 of the United States Code, the following amendment to Part 25 of Title 10, Chapter I, Code of Federal Regulations is published as a document subject to codification.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Appendix A to 10 CFR Part 25 is revised to read as follows:

Appendix A—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	$15
Reinstatement of "L" Access Authorization	[1] 15
Extension or Transfer of "L" Access Authorization	[1] 15
Initial "Q" Access Authorization	1,665
Reinstatement of "Q" Access Authorization	[1] 1,665
Extension or Transfer of "Q"	[1] 1,665

[1] Full fee will only be charged if investigation is required.

Dated at Bethesda, Maryland, this 25th day of July 1983.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 83-21117 Filed 8-2-83; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 207

[Docket No. R-0457]

Regulation G: Securities Credit by Persons Other Than Banks, Brokers, or Dealers; Complete Revision and Simplification of Regulation G

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Regulation G, governing securities credit extensions by persons other than banks or brokers or dealers, has been revised in its entirety. The new Regulations G is written in simplified language and organized in a more logical fashion. Certain regulatory burdens and obsolete provisions have been removed.

EFFECTIVE DATE: August 31, 1983.

FOR FURTHER INFORMATION CONTACT: At the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, contact: Laura Homer, Securities Credit Officer, or Robert Lord, Attorney, Division of Banking Supervision and Regulation (202) 452-2781. At the Federal Reserve Bank of New York, contact: Mindy Silverman, Assistant Counsel, (212) 791-5032.

SUPPLEMENTAL INFORMATION: On February 23, 1983, the Board issued for public comment proposals to completely revise and simplify Regulations G and U (12 CFR Parts 207 and 221, respectively), which govern securities credit extended by banks and other lenders (48 FR 8466, March 1, 1983). Regulation G is being adopted in substantially the same form as proposed, with modifications reflecting the public comments. This final revision incorporates amendments made to Regulation G in January, 1982 which: (1) Removed existing provisions that prohibited lenders subject to the rule from extending both regulated and nonregulated credit to the same borrower and prohibited mixed collateral loans and (2) clarified the definition of the term "indirectly secured" (47 FR 2981, January 21, 1982). It also included the amendment adopted by the Board covering the criteria for inclusion on the Board's List of OTC Margin Stocks (47 FR 21756, May 20, 1982).

This final revision raises the registration threshold for G-lenders to $200,000 and eliminates the registration requirements for those who arrange but do not extend credit secured by margin securities.

In addition, the existing provision prohibiting unsecured loans to a broker or dealer by a G-lender is removed. The prohibition in section 8 of the Securities Exchange Act of 1934 (1934 Act) (15 U.S.C. 78a et seq.) which prevents anyone except a bank from lending to a broker or dealer on the collateral of registered securities is retained in the regulation.

A futher reduction in regulatory burden will be achieved by the liberalization of the "Plan-lender" provision, which covers extensions of credit under employee stock option and stock purchase plans. The revision will permit companies and their affiliates to finance employee purchases of company stock without a specific scheduled paydown of the loan or a three-year lockup of the stock as is the case in the present rule. The new regulation will continue to permit a company to extend credit to plan participants in excess of the current maximum loan value of the securities.

Changes in Forms F.R. G-1, G-2 and G-4 (OMB No. 7100-0011) arising from these reduced burdens are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act.

Explanation of Organizational Changes

The revised Regulation G is divided into seven sections which, in the following order: (1) State the legal basis and scope of the regulation, (2) define the terms used throughout the regulation, (3) state the general requirements for regulated lenders, (4) separately treat loans made to brokers or dealers for specified purposes, (5) provide special treatment for loans to employee stock option and stock purchase plans meeting certain qualifications, (6) set forth the criteria for inclusion on the List of OTC Margin Stocks, and (7) establish the maximum loan value of different types of collateral.

Unless otherwise noted, no substantive changes have been made to the regulation. The regulation has been reorganized in a more logical fashion and the language has been simplified for easier understanding. In addition, obsolete terms and provisions have been removed, and parts of the regulation incorporate Board and staff interpretations issued during the course of administration of the rule.

A section by section analysis of the revised Regulation G follows.

1. *Authority, Purpose and Scope*

This section states the Board's legal authority to promulgate Regulation G, the purpose of the rule, and the fact that its coverage is limited to lenders other than banks, brokers, or dealers that are required to register under the regulation.

2. *Definitions*

This section defines twelve terms used throughout the regulation. All terms of art not defined in the 1934 Act itself are defined in this section. Other terms which have, over the past five decades, achieved "common usage" status in margin regulation parlance have been incorporated into the regulation and are, therefore, defined in this section. Definitions which are scattered throughout the current regulation have been brought within a single definitional section in this revision of Regulation G.

3. *General Requirements*

This section contains the general rules which lenders other than banks, brokers, and dealers ("G-lenders") must follow when extending, maintaining or arranging credit on the collateral of margin securities. It places limits on the amount of credit G-lenders can extend when the purpose is to purchase or carry securities and when the loan is secured by margin securities.

The registration threshold has been raised from $100,000 to $200,000 and the registration requirement for G-lenders who merely arrange credit has been eliminated. Registered G-lenders will continue to be subject to restrictions on securities credit that they arrange. In addition, a G-lender will be able to terminate its registration whenever it has not had more than $200,000 of margin credit outstanding during the preceding six months; the current regulation also requires that the G-lender not extend any new credit during such period.

The "general requirements" section also contains the "single credit" rule, which directs G-lenders to aggregate the amount of purpose credit extended to a single customer in order to prevent evasion of the rule. This section also specifically permits the use of other collateral with margin securities to support a purpose credit extension. Under the present rule, as written, there is some ambiguity as to whether such "mixed collateral" loans are permissible.

This section also requires G-lenders who extend credit on margin securities to obtain a Form G-3 (OMB No. 7100-0018), which requires the borrower to state the purpose and amount of the loan and list the margin stock used as collateral for the loan. In the case of revolving credit agreements, this section permits the filing of a G-3 form at the time of the initial extension of credit and

does not require a new Form G–3 to be executed each time a disbursement is made. "Plan-lenders" who extend credit for company stock option, purchase or ownership plans will not be required to obtain the purpose statement but the information should otherwise be available on the loan documentation.

Withdrawals and substitutions of collateral for an existing loan are permitted by this section (1) as long as such action would not result in an increase in the amount by which the credit exceeds the maximum loan value of the collateral, or (2) at any time that the collateral has loan value in excess of that required by the regulation. In addition, withdrawals of collateral are permitted to enable a customer to participate in an exchange offer, provided any nonmargin, nonexempted securities received in exchange are substituted for the securities withdrawn and treated as margin stock for a period of sixty days after the exchange.

Provisions regarding extensions and maturities of credit, transfers of credit, mistakes made in good faith, and action which a G-lender may take for its own protection have been consolidated in this section. These provisions are scattered throughout the current regulation.

Finally, this section requires a G-lender to file an annual report form (Form G–4) with its local Federal Reserve Bank.

4. *Credit to Brokers and Dealers*

In conformity with section 8 of the 1934 Act, this section prohibits G-lenders from lending, but not arranging, credit on a secured basis to brokers and dealers except in emergencies or when the public interest so demands. The current prohibition against unsecured loans by G-lenders to brokers and dealers has been removed.

5. *Credit to Finance Employee Stock Plans*

This section liberalizes current rules with respect to credit extended by a corporation to its own employees and officers for the purpose of purchasing the company's stock. The revision will permit companies and their affiliates to finance employee purchases of company stock without a specific loan reduction schedule or a restriction on the disposition of the stock, as required under the present rule. In addition, plan-lenders will be able to finance ESOPs qualified under section 401 of the Internal Revenue Code without regard to margin restrictions. Plan-lenders that otherwise meet the registration requirements of the regulation will continue to be required to register and to file annual reports (Form G–4). The registration and reporting requirements will provide a mechanism by which the Board can monitor future developments with respect to plan-lender credit. Credit for the tax payment required in connection with the exercise of an option may be extended at the same time as the purpose credit is extended with no regulatory constraints.

6. *List of OTC Margin Securities*

This section contains the criteria for initial and continued inclusion on the Board's List of OTC Margin Stocks. These criteria were recently amended to conform more closely with the listing requirements of major securities exchanges (47 FR 21,756, May 20, 1982).

7. *Supplement*

This final section assigns value to various types of collateral for purposes of the regulation. Three specific types of collateral are given loan value: (1) margin stock has a maximum loan value of fifty percent of its current market value; (2) all other collateral, other than puts, calls for combinations thereof, are assigned a "good faith" loan value; and (3) puts, calls and combinations thereof have no loan value.

Final Regulatory Flexibility Analysis

These changes are part of a program to simplify all of the Board's margin regulations and to reduce specific administrative and regulatory burdens imposed upon lenders. The **Federal Register** document published on March 1, 1983, contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation G (48 FR 8467). Comments received on the proposal agree with the Board's analysis. The Board, therefore, certifies for the purposes of 5 U.S.C. 605(b) that the changes are not expected to have an adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 207

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to sections 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w) the Board revises Part 207 of Regulation G (12 CFR Part 207) to read as follows:

Regulation G

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

Sec.

Authority: Sections 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w).

§ 207.1 Authority, purpose, and scope.

(a) *Authority.* Regulation G (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a et seq.).

(b) *Purpose and scope.* This part applies to persons other than banks, brokers or dealers, who extend or maintain credit secured directly or indirectly by margin stock and who are required to register with the Board under § 207.3(a) of this part. Credit extended by such persons is regulated by limiting the loan value of the collateral securing the credit, if the purpose of the credit is to buy or carry margin stock.

§ 207.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Affiliate" means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

(b) "Carrying" credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a stock that is currently a margin stock.

(c) "Current market value" of (1) a security means: (i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing in any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method.

(d) "Customer" includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

(e) "Good faith" with respect to: (1) The loan value of collateral means that amount (not exceeding 100 percent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Accepting a statement or notice from or on behalf of a customer means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful.

(f) "Indirectly secured" (1) includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be cause for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value of the assets subject to the arrangement, as determined by any reasonable method, are margin securities;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another creditor that is not an affiliate of the lender;

(iii) The lender holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) If the lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the credit.

(g) "In the ordinary course of business" means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

(h) "Lender" means any person subject to the registration requirements of this part.

(i) "Margin stock" means: (1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(4) Any warrant or right to subscribe to or purchase a margin stock; or

(5) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(12)).

(j) "Maximum loan value" is the percentage of current market value assigned by the Board under section 207.7 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of current market value. All other collateral has "good faith" loan value except that puts, calls and combinations thereof have no loan value.

(k) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC Margin Stocks.

(l) "Purpose credit" is credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying a margin stock.

§ 207.3 General requirements.

(a) *Registration; termination of registration.* (1) Every person who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form F.R. G–1 (OMB No. 7100–0011) within 30 days after the end of any calendar quarter during which (i) the amount of credit extended equals $200,000 or more, or (ii) the amount of credit outstanding at any time during that calendar quarter equals $500,000 or more.

(2) A registered lender may apply to terminate its registration, by filing Federal Reserve Form F.R. G–2 (OMB No. 7100–0011), if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(b) *Limitation on extending purpose credit.* No lender, except a plan-lender, as defined in § 207.5(a)(1) of this part, shall extend any purpose credit, secured directly or indirectly by margin stock in an amount that exceeds the maximum loan value of the collateral securing the credit, as set forth in § 207.7 of this part.

(c) *Maintaining credit.* A lender may continue to maintain any credit initially in compliance with this part, regardless of:

(i) Reduction in the customer's equity resulting from change in market prices;

(ii) Change in the maximum loan value prescribed by this part; or

(iii) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(d) *Arranging credit.* No lender may arrange for the extension or maintenance of any credit, except upon the same terms and conditions under which the lender itself may extend or maintain credit under this part except this limitation shall not apply with respect to the arranging by a lender for a bank to extend or maintain credit on margin stock or exempted securities.

(e) *Purpose statement.* Except for credit extended under section 207.5 of this part, whenever a lender extends credit secured directly or indirectly by any margin stock, the lender shall require its customer to execute Form F.R. G–3 (OMB No. 7100–0018), which shall be signed and accepted by a duly authorized representative of the lender acting in good faith.

(f) *Purpose statement for revolving credit or multiple draw agreements.* (1) If a lender extends credit, secured directly or indirectly by any margin stock, under a revolving credit or other multiple draw agreement, Form F.R. G–3 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form F.R. G–3 a current list of

collateral which adequately supports all credit extended under the agreement.

(g) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part.

(2) A lender that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the margin stock securing the prior credit.

(3) If a lender extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin securities, the credits shall be combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (i) of this section.

(4) If a lender extends purpose credit secured by any margin stock and nonpurpose credit to the same customer, the lender shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(h) *Mixed collateral loans.* A purpose credit secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by the margin stock and one by all other collateral. A lender may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(i) *Withdrawals and substitutions.* (1) A lender may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(j) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization, or exchange offer that is made to holders of an issue of margin stock a lender may permit substitution of the securities received. A nonmargin nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(k) *Renewals and extensions of maturity.* A renewal or extension of the maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(l) *Transfers of credit.* (1) A transfer of a credit between customers or lenders shall not be considered a new extension of credit if:

(i) The original credit was in compliance with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same lender shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by a duly authorized representative of the lender acting in good faith. The lender shall keep such statement with its records of the transferee account.

(3) When a transfer is made between lenders, the transferee lender shall obtain a copy of the Form F.R. G–3 orginally filed with the transferor lender and retain the copy with its records of the transferee account.

(m) *Action for lender's protection.* Nothing in this part shall require a lender to waive or forego any lien, or prevent a lender from taking any action it deems necessary for its protection.

(n) *Mistakes in good faith.* A mistake in good faith in connection with the extension or maintenance of credit shall not be a violation of this part.

(o) *Annual Report.* Every registered lender shall, within 30 days following June 30 of every year, file Form F.R. G–4 (OMB No. 7100–0011).

(p) *Where to register and file applications and reports.* Registration statements, applications to terminate registration, and annual reports shall be filed with the Federal Reserve Bank of the district in which the principal office of the lender is located.

§ 207.4 Credit to Broker-Dealers.

No lender shall extend or maintain credit secured, directly or indirectly, by any margin stock to a creditor who is subject to Part 220 of this Chapter except in the following circumstances:

(a) *Emergency Loans.* Credit extended in good faith reliance upon a certification from the customer that the credit is essential to meet emergency needs arising from exceptional circumstances. Any collateral for such credit shall have good faith loan value.

(b) *Capital Contribution Loans.* Credit that the Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate.

§ 207.5 Employee Stock Option and Stock Purchase Plans.

(a) *Plan-lender; eligible plan.* (1) Plan-lender means any corporation, (including a wholly-owned subsidiary, or a lender that is a thrift organization whose membership is limited to employees and former employees of the corporation, its subsidiaries or affiliates) that extends or maintains credit to finance the acquisition of margin stock of the corporation, its subsidiaries or affiliates under an eligible plan.

(2) *Eligible Plan.* An eligible plan means any employee stock option, purchase, or ownership plan adopted by a corporation and approved by its stockholders that provides for the purchase of margin stock of the corporation, its subsidiaries, or affiliates.

(b) *Credit to exercise rights under or finance an eligible plan.* (1) If a plan-lender extends or maintains credit under an eligible plan, any margin security that directly or indirectly secures that credit shall have good faith loan value.

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except sections 207.3(a) and 207.3(o) of this part.

§ 207.6 Requirements for the List of OTC Margin Stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer

required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such security outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such a stock, as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such security, as determined by the Board, is at least $2 per share;

(3) (1) The security is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or benefical owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list of OTC margin stocks.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meet the provisions of paragraph (b) of this section or § 207.2(k).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from, the OTC margin stock list any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any lender to make, or cause to be made, any representation to the effect that the inclusion of a security on the list OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other communication containing a reference to the Board in connection with the list or securities on that list shall be an unlawful representation.

§ 207.7 Supplement: Maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of a margin stock.* The maximum loan value of any margin stock, except options, is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of a nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Whether they are margin stock or not, puts, calls, and combinations thereof have no loan value.

By order of the Board of Governors of the Federal Reserve System, July 28, 1983.

William W. Wiles,

Secretary of the Board.

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12 CFR Part 221

[Docket No. R-0458]

Regulation U: Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock; Complete Revision and Simplification of Regulation U

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Regulation U, governing securities credit extended by banks, has been revised in its entirety. The new Regulation U is written in simplified language and organized in a more logical fashion. Obsolete provisions and certain regulatory burdens and form-filing requirements have been removed.

EFFECTIVE DATE: August 31, 1983.

FOR FURTHER INFORMATION CONTACT: At the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, contact: Laura Homer, Securities Credit Office, or Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781. At the Federal Reserve Bank of New York, contact: Mindy Silverman, Assistant Counsel, (212) 791–5032.

SUPPLEMENTARY INFORMATION: On February 23, 1983, the Board issued for public comment proposals to completely revise and simplify Regulations G and U (12 CFR Parts 207 and 221, respectively), which govern securities credit extended by banks and lenders other than banks and broker-dealers (48 FR 8466, March 1, 1983). Pursuant to the proposal, and after receiving public commentary, Regulation U is revised by (1) simplifying the language in all provisions, (2) removing obsolete provisions and certain form-filing requirements, and (3) reordering provisions in a more logical manner. This revision incorporates amendments made to Regulation U in January 1982 which exempted bank credit not secured by margin stock from the regulation and clarified the definition of the term "indirectly secured" (47 FR 2981, January 21, 1982).

Certain filing requirements with respect to loans to OTC and third market makers and block positioners have been removed from the regulation. The related forms, FR U–2, U–3, U–5, and U–6 (OMB No. 7100–0116) therefore, will be eliminated. Also, in cooperation with the Securities and Exchange Commission ("SEC"), references to related SEC forms X–17A–12 (1) and (2), X–17A–16 (1) and (2), and X–17A–17 are being deleted so that the SEC may proceed with its proposal to eliminate these forms (SEC Release No. 34–19595).

Changes involving reduction in reporting burdens have been submitted to the Office of Management and Budget.

A new section has been added to Regulation U to notify nonmember banks who propose to lend to brokers and dealers on registered securities that they are required by statute (15 U.S.C. 78h) to comply with securities credit laws and regulations applicable to member banks. Currently, notice of this requirement is contained in Regulation T (12 CFR Part 220), but not in Regulation U. Notice of this requirement should also be contained in Regulation U since the statute places as affirmative duty of

compliance upon banks as well as brokers and dealers. This addition to Regulation U will not place any new compliance responsibilities on banks.

The Board has removed, in its entirety, current § 221.3(q), which regulates loans to certain lenders. This section was added to Regulation U in 1959 to limit the amount of credit available to "collateral lenders," who were neither banks nor broker-dealers and, therefore, not subject to the Board's then existing margin regulations. A comprehensive regulation (Regulation G, 12 CFR 207) was adopted by the Board in 1968 to cover all lenders other than banks and broker-dealers, including collateral lenders. Because of the adoption of Regulation G, the retention of § 221.3(q) is no longer necessary.

Explanation of Changes

The new Regulation U is divided into eight sections which, in the following order, (1) state the legal basis and scope of the regulation, (2) define the terms used throughout the regulation, (3) state the general rule, (4) require nonmember banks to file agreements with the Board before they engage in securities credit transactions with brokers or dealers, (5) separately treat loans made to brokers or dealers for market facilitating purposes, (6) specify transactions which are exempt from the requirements of the regulation, (7) set forth the criteria for inclusion on the List of OTC Margin Stocks, and (8) establish the maximum loan value of different types of collateral.

A section by section analysis of the new Regulation U follows:

1. Authority, Purpose, and Scope

This section states the Board's legal authority to promulgate Regulation U, the purpose of the rule, and the fact that its coverage is limited to banks.

2. Definitions

This section contains eleven definitions of terms used throughout the regulation. All terms of art not defined in the Securities Exchange Act of 1934 ("1934 Act")(15 U.S.C. 78a et seq.) itself are defined in this section. The term "bank", although defined in the 1934 Act, is defined more precisely in the proposed regulation. Other terms which have, over the past five decades, achieved "common usage" status in margin regulation parlance have been incorporated into the regulation and are, therefore, defined in this section. Some definitions are scattered throughout the current regulation. All such definitions have been brought within a single definitional section.

The revised definition of "indirectly secured" adopted by the Board in January, 1982 did not contain a specific exception (contained in an earlier definition) that a loan will not be considered "indirectly secured" if a lender in good faith has not relied upon margin stock as collateral. It was not the intent of the Board, however, to remove this exception, and interpretations have been issued making this point clear. To avoid misunderstanding, language has been added to the definition in the new regulation to clarify this point.

In view of comments received, (1) The definition of "good faith" has been revised to clarify that in valuing assets on a "good faith" basis, the bank may not lend more than 100 per cent of the current market value of the collateral and may not look to other assets held as collateral in connection with unrelated transactions; separate extensions of purpose credit may be made on an unsecured basis if the financial circumstances of the borrower otherwise warrant; (2) the definition of "carrying credit" was revised to delete language relating to maintenance of a "position in a margin security"; and (3) the definition of "current market value" was revised to delete references to determinations "in accordance with generally accepted accounting principles". The Board wishes to make clear that book value can be considered a reasonable method of valuation, in appropriate circumstances.

3. General Requirements

A. This section contains the general rules which banks must follow when extending, maintaining, or arranging credit on the collateral of margin stock. It places limits on the amount of credit banks can extend when the purpose is to purchase or carry securities and the loan is secured by margin stock.

B. The "general requirements" section also contains the "single credit" rule, which directs bank to aggregate the amount of purpose credit extended to a single customer in order to prevent evasion of the rule. This section also specifically permits the use of other collateral with margin stock to support a purpose credit. Under the present rule, as written, there is some ambiguity as to whether such "mixed collateral" loans are permissible.

C. This section also requires banks who extend credit on margin stock to obtain a Form FRU–1 (OMB No. 7100–0115), which requires a borrower to state the purpose and amount of a loan, and list the margin stock used as collateral.

This section also outlines the procedure for obtaining purpose statements in connection with revolving credit or other multiple draw agreements.

Withdrawals and substitutions of collateral for an existing loan are permitted by this section (1) as long as such action would not result in an increase in the amount by which the credit exceeds the maximum loan value of the collateral, or (2) at any time that the collateral has loan value in excess of that required by the regulation. In addition, withdrawals of collateral will be permitted to enable a customer to participate in a reorganization, recapitalization or, an exchange offer, provided any nonmargin securities received in exchange are substituted for the securities withdrawn and treated as margin stock for a period of sixty days following the exchange.

Provisions regarding extensions and maturities of credit, transfers of credit, mistakes made in good faith, and action which a bank may take for its own protection have been consolidated in this section.

4. Agreements of Non-Member Banks

This is a new section of Regulation U. Section 8 of the 1934 Act (15 U.S.C. 78h) prohibits brokers and dealers from borrowing on registered securities in the ordinary course of business unless they borrow from either a member bank or a nonmember bank that has filed an agreement with the Board agreeing to comply with all laws applicable to member banks in connection with securities credit transactions. This statutory requirement is currently embodied in Regulation T (12 CFR 220.15), which is applicable to brokers and dealers. However, it is the nonmember bank which has the affirmative duty to file such agreements (FR T–1 and FR T–2) with the Board. In the interest of providing nonmember banks with more adequate notice of this statutory requirement, this section is being added to Regulation U.

5. Special Purpose Loans to Brokers and Dealers

Since the inception of Regulation U, the Board recognized that banks made certain specialized loans to brokers and dealers which were either short-term loans to facilitate the settlement and clearance of securities transactions or loans regulated at another level. These loans have always been treated differently from regular margin loans. Provision is made in a separate section, therefore, by which banks may lend on a "good faith" basis to brokers and dealers who borrow for any one or more of the thirteen specialized purposes listed in the regulation. Special

treatment of such loans is conditioned upon receipt of certified statements from the broker or dealer as to the purpose of the loan. Comparable exceptions to the general credit limitations are in the current Regulation U, but the proposed rule consolidates all of these exceptions into one section and removes any limitations on the type of collateral securing the loans. In view of comments received, the language of regulation U has been changed to reflect the Board's intent that, unless otherwise noted, the "good faith" requirement applies only to the acceptance of the notice or certification that the loan is for one of the purposes specified in the regulation.

The provisions regarding credit extended to block positioners, OTC market makers, and third market makers will no longer require the filing of board forms FR U–2, U–3, U–5 and U–6. In conjunction with this change, the regulation will delete references to the related SEC Forms X–17A–12(1), X–17A–16(1), and X–17A–17. This will obviate the need for filing these forms with the SEC as a prerequisite to eligibility for special credit. In coordination with the Board, the SEC is rescinding its rules pursuant to which these forms are required.

6. Exempted Transactions

This section exempts from Regulation U eight specific kinds of nonbroker-dealer bank loans. All but one or these exemptions are contained in various sections of the current regulation. The proposed rule consolidates the existing exemptions into one section. A new exemption is provided for loans to employee stock ownership plans (ESOPs) qualified under section 401 of the Internal Revenue Code. The purpose of this new exemption is to permit banks to treat loans to employee stock ownership plans in the same manner as they are now permitted to treat loans to similar corporate lenders referred to as "plan lenders."

7. List of OTC Margin Stocks

This section contains the criteria for initial and continued inclusion on the Board's List of OTC Margin Securities. These criteria were amended to more closely conform with the listing requirements of major exchanges (47 FR 21,756, May 20, 1982).

8. Supplement

This final section assigns value to various types of collateral for purposes of the regulation. Three specific types of collateral are given loan value: (1) Margin stock has a maximum loan value of fifty per cent of its current market value; (2) all other collateral, other than puts, calls or combinations thereof, are assigned a "good faith" loan value; and (3) except for loans to specialists to finance specialist transactions, puts, calls and combinations are given no loan value.

9. Combining Regulations G and U

The Board requested specific public comment on the question whether Regulations G and U should be combined to form a new comprehensive regulation with various subchapters or whether the two regulations should be maintained separately in their simplified forms. The majority of those responding to this question opposed combining the regulations on the basis that doing so could lead to more confusion than clarity and that separate regulations are warranted in light of differences between the two types of lenders. Regulations G and U will, therefore, be maintained separately in their simplified forms.

Final Regulatory Flexibility Analysis

The Revision of Regulation U is part of a program to simplify all of the board's margin regulations, generally, and to reduce specific administrative and regulatory burdens imposed upon banks. The **Federal Register** document published on March 1, 1983 contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation U (48 FR 8472). Comments received on the proposal agree with the Board's analysis. The Board, therefore, certifies for the purposes of 5 U.S.C. 605(b) that the changes proposed are not expected to have any adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 221

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to sections 3, 7, 8 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h and 78w), Part 221 (Regulation U) is completely revised to read as follows:

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK

Sec.

Authority: Sections 3, 7, 8 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h and 78w).

§ 221.1 Authority, purpose, and scope.

(a) *Authority.* Regulation U ("this part") is issued by the Board of Governors of the Federal Reserve System ("the Board") pursuant to the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a et seq.).

(b) *Purpose and scope.* This part imposes credit restrictions upon "bank" (as defined in § 221.2(b) of this part) that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Banks may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in § 221.8 (the Supplement).

§ 221.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Affiliate" means: (1) Any bank holding company of which a bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(d));

(2) Any other subsidiary of such bank holding company; and

(3) Any other corporation, business trust, association, or other similar organization that is an affiliate as defined in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(c)).

(b)(1) "Bank" has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes: (i) Any subsidiary of a bank;

(ii) Any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611); and

(iii) Any agency or branch of a foreign bank located within the United States.

(2) "Bank" does not include: (i) Any savings and loan association,

(ii) Any credit union,

(iii) Any lending institution that is an instrumentality or agency of the United States, or

(iv) Any member of a national securities exchange.

(c) "Carrying" credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

(d) "Current market value" of (1) a security means: (i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the bank may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method in accordance with sound banking practices.

(e) "Customer" includes any person or persons acting jointly, to or for whom a bank extends or maintains credit.

(f) "Good faith" with respect to: (1) The loan value of collateral, means that amount (not exceeding 100 per cent of the current market value of the collateral) which a bank, exercising sound banking judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Accepting notice or certification from or on behalf of a customer means that the bank or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful;

(g) "Indirectly secured" (1) Includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be caused for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the bank;

(iii) The bank holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) The bank, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

(h) "Margin stock" means: (1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any debt security convertible into a margin stock, or carrying a warrant or right to subscribe to or purchase a margin stock;

(4) Any warrant or right to subscribe to or purchase a margin stock; or

(5) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661), or

(ii) A company which has at least 95 per cent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(12)).

(i) "Maximum loan value" is the percentage of current market value assigned by the Board under § 221.8 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls and combinations thereof have no loan value except for purposes of § 221.5(c)(10) of this part. All other collateral has "good faith" loan value.

(j) "OTC margin stock" is any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC margin stocks.

(k) "Purpose credit" is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

§ 221.3 General requirements.

(a) *Extending, maintaining, and arranging credit.* (1) *Extending credit.* No bank shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit. The maximum loan value of margin stock (set forth in § 221.8 of this part) is assigned by the Board in terms of a percentage of the current market value of the margin stock. All other collateral has "good faith" loan value, as defined in § 221.2(f) of this part.

(2) *Maintaining credit.* A bank may continue to maintain any credit initially extended in compliance with this part, regardless of:

(i) Reduction in the customer's equity resulting from change in market prices;

(ii) Change in the maximum loan value prescribed by this part; or

(iii) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(3) *Arranging credit.* No bank may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions under which the bank itself may extend or maintain purpose credit under this part.

(b) *Purpose statement.* (1) Except for credit extended under paragraph (c) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, the bank shall require its customer to execute Form F.R. U–1 (OMB No. 7100–0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(c) *Purpose statement for revolving credit or multiple-draw agreements.*

(i) If a bank extends credit, secured directly or indirectly by any margin stock, under a revolving credit or other multiple-draw agreement, Form F.R. U–1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(ii) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the bank shall obtain and attach to the executed Form F.R. U–1 a current list of collateral which adequately supports all credit extended under the agreement.

(d) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part.

(2) A bank that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the collateral securing the prior credit.

(3) If a bank extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin stock, the credits shall be combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (f) of this section.

(4) If a bank extends purpose credit secured by any margin stock and non-purpose credit to the same customer, the bank shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(e) *Mixed collateral loans.* A purpose credit secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by margin stock and one by all other collateral. A bank may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(f) *Withdrawals and substitutions.* (1) A bank may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(g) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization or exchange offer that is made to holders of an issue of margin stock, a bank may permit substitution of the securities received. A nonmargin, nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(h) *Renewals and extensions of maturity.* A renewal or extension of maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(i) *Transfers of credit.* (1) A transfer of a credit between customers or banks shall not be considered a new extension of credit if:

(i) The original credit was in compliance with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same bank shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted an signed by an officer of the bank acting in good faith. The bank shall keep such statement with its records of the transferee account.

(3) When a transfer is made between banks, the transferee bank shall obtain a copy of the form F.R. U–1 originally filed with the transferor bank and retain the copy with its records of the transferee account.

(j) *Action for bank's protection.* Nothing in this part shall require a bank to waive or forego any lien or prevent a bank from taking any action it deems necessary in good faith for its protection.

(k) *Mistakes in good faith.* A mistake in good faith in connection with the extension of maintenance of credit shall not be a violation of this part.

§ 221.4 Agreements of nonmember banks.

(a) Banks that are not members of the Federal Reserve System shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form T–1 for domestic nonmember banks and Form T–2 for all other nonmember banks) prior to extending any credit secured by any nonexempt security registered on a national securities exchange to persons subject to Part 220 of this Chapter, who are borrowing in the ordinary course of business.

(b) Any nonmember bank may terminate its agreement upon written notification to the Board.

§ 221.5 Special purpose loans to brokers and dealers

(a) *Special purpose loans.* A member bank and a nonmember bank that is in compliance with § 221.4 of this part, may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in § 221.3 and 221.8 of this part, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

(b) *Written notice.* Prior to extending credit for more than a day under this section, the bank shall obtain and accept in good faith a written notice or certification from the borrower as to the purposes of the loan. The written notice or certification shall be evidence of continued eligiblity for the special credit provisions until the borrower notifies the bank that it is no longer eligible or the bank has information that would cause a reasonable person to question whether the credit is being used for the purpose specified.

(c) *Types of special purpose credit.* The types of credit that may be extended and maintained on a good faith basis are as follows:

(1) *Hypothecation loans.* Credit secured by hypothecated customer securities that, according to written notice received from the broker or dealer, may be hypothecated by the broker or dealer under Securities and Exchange Commission ("SEC") rules.

(2) *Temporary advances in payment-against-delivery transactions.* Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(4) *Intra-day loans.* Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(5) *Arbitrage loans.* Credit to finance proprietary or customer bona fide arbitrage transactions. For the purpose of this section "bona fide arbitrage" means:

(i) Purchase or sale of a security in one market, together with an offsetting sale or purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

(ii) Purchase of a security that is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security, together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the price of the two securities.

(6) *Distribution loans.* Credit to finance the distribution of securities to customers.

(7) *Odd-lot loans.* Credit to finance the odd lot transactions of a person registered as an odd lot dealer on a national securities exchange.

(8) *Emergency loans.* Credit that is essential to meet emergency needs of the broker-dealer business arising from exceptional circumstances.

(9) *Capital contribution loans.* (i) Credit that Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies

to the Board that the exemption is appropriate; or

(ii) Credit to a customer for the purpose of making a subordinated loan or capital contribution to a broker or dealer in conformity with the SEC's net capital rules and the rules of the broker's or dealer's Examining Authority, provided:

(A) The customer reduces the credit by the amount of any reduction in the loan or contribution to the broker or dealer; and

(B) The credit is not used to purchase securities issued by the broker or dealer in a public distribution.

(10) *Loans to specialists.* Credit extended to members of a national securities exchange who are registered and acting as specialists on the exchange for the purpose of financing transactions in the specialty security and permitted offset positions, provided the credit is extended on a good faith loan value basis.

(11) *OTC market maker credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified OTC market maker" in an OTC margin security as defined in SEC Rule 3b–8 (17 CFR 240.3b–8) and that the credit will be used solely for the purpose of financing the market making activity, provided the credit is extended on a good faith loan value basis.

(12) *Third market maker loans.* Credit to a dealer who has given written notice to the bank that it is a "qualified third market maker," as defined in SEC Rule 3b–8 (17 CFR 240.3b–8), and that the credit will be used solely for the purpose of financing positions in securities assumed as a "qualified third market maker," provided the credit is extended on a good faith loan value basis.

(13) *Block positioner credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified block positioner" for a block of securities, as defined in SEC Rule 3b–8 (17 CFR 240.3b–8), and that the credit will be used to finance a position in that block, provided the credit is extended on a good faith loan value basis.

§ 221.6 Exempted transactions.

A bank may extend and maintain purpose credit without regard to the provisions of this part if such credit is extended:

(a) To any bank;

(b) To any foreign banking insititution;

(c) Outside the United States;

(d) To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C 401);

(e) To any "plan lender" as defined in Part 207 of this Chapter to finance such a plan, provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt deliver, if the credit is to be repaid in the ordinary course of business upon completion of the transaction;

(g) Against securities in transit, if the credit is not extended to enable the customer to pay for securities purchased in an account subject to Part 220 of this Chapter; or

(h) To enable a customer to meet emergency expenses not reasonably foreseeable, and if the extension of credit is supported by a statement executed by the customer and accepted and signed by an officer of the bank acting in good faith. For this purpose, emergency expenses include expenses arising from circumstances such as the death or disability of the customer, or some other change in circumstances involving extreme hardship, not reasonably foreseeable at the time the credit was extended. The opportunity to realize monetary gain or to avoid loss is not a "change in circumstances" for this purpose.

§ 221.7 Requirements for the list of OTC margin stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section (12)(g)(2)(G) of the Act, is issued by a closed end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under secton 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer had at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of ten percent or more of the stock, or the average daily trading volume of such a stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are coninuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of ten percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list.* The Board shall periodically remove from the list any stock that:

(1) ceases to exist or of which the issuer ceases to exist, or

(2) no longer substantially meets the provisions of paragraph (b) of this section or § 221.2(j).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from, the OTC margin stock list, any equity security, if in the judgment of the Board, such action is

necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any bank to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the list or stocks on that list shall be an unlawful representation.

§ 221.8 Supplement, maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock expect options is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Except for purposes of §221.5(c)(10) of this part, puts, calls, and combinations thereof have no loan value.

By order of the Board of Governors of the Federal Reserve System, July 28, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-20981 Filed 8-2-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 261

[Economic Regulations Reissuance of Part 261; ER-1353]

Filing of Agreements

AGENCY: Civil Aeronautics Board

ACTION: Final rule.

SUMMARY: The CAB reissues its procedures for filing intercarrier agreements for Board approval and antitrust immunity. The filing of intercarrier agreements is now voluntary, with the exception of mutual aid agreements, which must be filed at the Board. The rule simplifies and clarifies existing rules for those agreements that must still be filed. Further, carriers filing intercarrier agreements will not be required to submit environmental documents. This rulemaking is at the CAB's initiative to update its rules in accord with statutory changes.

DATES: Adopted: July 14, 1983. Effective: August 3, 1983; however, the reporting requirements are not yet approved by the Office of Management and Budget (OMB). The Board will give notice concerning OMB's decision.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Before 1978, air carriers were required to file copies of all agreements affecting air transportation at the Board under section 412 of the Federal Aviation Act (49 U.S.C. 1382). Part 261 of the Board's rules (14 CFR Part 261) set forth the procedures for filing these agreements.

The Airline Deregulation Act of 1978 (Pub. L. 95-504) amended section 412 to limit mandatory filing of agreements to mutual aid agreements and those affecting foreign air transportation. A carrier seeking Board approval could still file an agreement affecting domestic transportation, but that filing became voluntary. The International Air Transportation Competition Act (Pub. L. 96-192) further amended section 412 of the Act to make the filing of agreements affecting foreign air transportation voluntary.

With the exception of mutual aid agreements, which carriers must continue to file pursuant to section 412(c)(2) of the Act, the filing of intercarrier agreements under section 412 of the Act is now optional. Air carriers and foreign air carriers continue to file intercarrier agreements to the Board for approval, however, because they may also seek antitrust immunity from the Board under section 414 of the Act (49 U.S.C. 1384).

Additionally, in PR-218 (45 FR 16132, March 12, 1980), the Board amended Part 312 of its rules to include approval of carrier agreements among the actions that normally do not require preparation of an environmental impact statement or assessment. With this change, the section on environmental documents in Part 261 is unnecessary. If the Board asks carriers to submit environmental documents in future, the guidelines in Part 312 will apply.

The Board is reissuing Part 261 to reflect the voluntary nature of agreement filing under section 412 of the Federal Aviation Act, and to simplify the procedures for those carriers that elect to file agreements at the Board. For example, the Board is eliminating the special filing requirements that applied to affiliated air carriers. That type of detailed examination of these agreements is no longer warranted.

Paperwork Reduction Act

The collection-of-information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Those requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addresed to: Office of Information and Regulatory Affairs, Attn: Desk Officer for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503

Since this amendment revises Board rules of procedure to conform to earlier statutory and regulatory changes, and imposes no new regulatory requirements, the Board finds for good cause that notice and public procedure are unnecessary and that it may become effective less than 30 days after publication in the **Federal Register.**

Lists of Subjects in 14 CFR Part 261

Air carriers, Antitrust.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 261, by revising it to read as follows:

PART 261—FILING OF AGREEMENTS

Sec.

Authority: Secs. 204, 412, 414, Pub. L. 85-726, as amended, 72 Stat. 743, 770; 49 U.S.C. 1324, 1382, 1384.

§ 261.1 Purpose.

This part establishes procedures for the filing of contracts and agreements between and among air carriers and foreign air carriers for Board approval, ⅛ when warranted, and for antitrust immunity under sections 412 and 414 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1382, 1383), respectively.

§ 261.2 Applicability.

The procedures set forth in this Part apply to the filing of carrier contracts and agreements filed under section 412 of the Federal Aviation Act and to the carrier parties to those contracts and agreements. The provisions of this part are applicable to contracts and agreements filed for the Board's prior approval under § 302.1601 of this chapter only to the extent consistent

with Subpart P of Part 302 of this chapter.

§ 261.3 Who shall file.

Any air carrier, foreign air carrier, or association of air carriers or foreign air carriers may file a contract or agreement for Board approval under section 412 of the Act and for antitrust immunity under section 414. A filing by an association of carriers shall indicate which of the association's member carriers are parties to the contract or agreement. The Board presumes that any contract or agreement filed under this part is filed on behalf of all the carriers that are parties to it.

§ 261.4 What to file.

Parties to a contract or agreement filed under this Part must give to the Board two complete copies of that contract or agreement. Oral contracts and agreements shall be filed by use of complete written memoranda stating the terms of that contract or agreement. Contracts or agreements filed that are shown by correspondence or by resolutions of associations of carriers shall be accompanied by complete copies of that correspondence or those resolutions.

§ 261.5 Requirements for filed documents.

Documents filed under this part shall conform to the requirements of § 302.3(b) of this chapter.

§ 261.6 Place and time of filing.

Filings under this part shall be made at the office of the Civil Aeronautics Board, Washington, D.C. 20428.

§ 261.7 Modification or cancellation.

If the Board approves and, when warranted, grants antitrust immunity to a contract or agreement filed under this Part, then all modifications or cancellations of that contract or agreement shall also be filed in accordance with this part. The modifications or cancellations shall be filed within 30 days after they are agreed to by the parties, and will not have antitrust immunity until granted by the Board.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-21127 Filed 8-2-83; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 263

[Economic Regulation Amendment 1 to Part 263; ER-1354]

Participation of Air Carrier Associations in Board Proceedings

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its rules for participation by air carrier associations in CAB proceedings. Among other things, those rules require CAB approval of association by laws. That requirement is outdated, unneeded and inconsistent with deregulation, since agreement filing by carriers with the CAB is now voluntary. The amendment confirms an existing CAB waiver of the rule.

DATES:

Adopted: July 14, 1983.

Effective: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, 1825 Connecticut Avenue N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: The Board has issued rules (14 CFR Part 263) for the participation in its proceedings of associations made up of U.S. carriers. Among other things, that Part requires CAB approval of association by laws and articles of incorporation. That requirement is based on former statutory requirements under section 412 of the Federal Aviation Act (49 U.S.C. 1382) that air carriers file their agreements with the Board for approval. That statutory requirement has been changed to state that the filing of agreements is now voluntary.

The Board does not believe that this detailed and limiting requirement is consistent with the statutory change in section 412 of the Act or with its intent to remove the Board from involvement in most carrier affairs. In addition, in Order 81-8-89, dated August 14, 1981, the Board waived the applicability of that requirement in Part 263 for associations whose articles and by laws had not been approved by the Board at that time. The Board stated that any potential anti-competitive effects of an agreement governing an association are best left to operation of the antitrust laws. Elimination of the requirement conforms the Board's rules to that waiver and to the statutory change making agreement filing necessary.

Those associations that had in the past filed under this part, and received antitrust immunity for their organizational agreements, will continue to hold that immunity. The immunity is, of course, subject to review. Changes to immunized agreements must be filed with the Board if continued immunity is sought.

A conforming change is also made in the section of the rule defining association to reflect the fact that agreement filing is now voluntary.

Because the rule reflects an earlier statutory change and a previous waiver of the rule, and removes a restriction on carrier associations, the Board finds for good cause that public notice and procedure are unnecessary and that the rule may become effective upon publication in the **Federal Register.**

List of Subjects in 14 CFR Part 263

Administrative practice and procedure, Air Carriers.

PART 263—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 263, *Participation of Air Carrier Associations in Board Proocedings*, as follows:

The authority for Part 263 is:

1. **Authority:** Secs. 102, 204, 412, 1001, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 770, and 788; 49 U.S.C. 1302, 1324, 1382, 1481.

2. Paragraph (a) of § 263.1 is revised to read:

§ 263.1 Definitions.

(a) "Air carrier association" means an association composed entirely or in part of direct air carriers.

* * * * *

§ 263.2 [Removed and reserved]

3. Section 263.2 is removed and reserved.

4. The table of contents of Part 263 is revised to read:

Sec.
263.1 Definitions.
263.2 [Reserved]
263.3 Participation.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-21126 Filed 8-2-83; 8:45 am]

BILLING CODE 6320-01-M

4 CFR Part 289

[Economic Regulations Removal of Part 289; ER-1355]

Exemption of Air Carriers From Agreement Filing Requirements of Section 412 of the Federal Aviation Act of 1958; Removal of Part

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB simplifies provisions for filing intercarrier agreements. Intercarrier agreements, with the exception of mutual aid agreements, are now filed with the Board at the carriers' option. An exemption from the statutory provision is thus no longer needed.

DATES:

Effective: August 3, 1983.

Adopted: July 14, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Before 1978, section 412 of the Federal Aviation Act (49 U.S.C. 1382) required air carriers to file copies with the Board of all intercarrier agreements. Part 289 of the Board's rules (14 CFR Part 289) exempted air carriers from that requirement for three types of agreements: ground services and facilities, free or reduced-rate transportation, and pick-up and delivery.

The Airline Deregulation Act of 1978 (Pub. L. 95-504) amended section 412 to limit mandatory filing of intercarrier agreements to mutual aid agreements and agreements affecting foreign air transportation. As a result, carriers could still file agreements that affected only domestic air transportation, but that filing became voluntary, with the above exceptions. The International Air Transportation Competition Act (Pub. L. 96-192) further amended section 412 of the Act, to make the filing of agreements affecting foreign air transportaton voluntary as well.

With nearly all agreement filing under section 412 of the Act now voluntary, the exemptions set out in Part 289 are no longer necessary. The Board is, therefore, removing this part.

Because this action merely deletes a rule that has become obsolete because of other changes that have taken place, the Board finds for good cause that notice and public procedure are unnecessary and that this action may become effective upon publication in the **Federal Register.**

List of Subjects in 14 CFR Part 289

Air carriers, Antitrust.

PART 289—REMOVED AND RESERVED

Accordingly, the Civil Aeronautics Board removes and reserves 14 CFR Part 289, *Exemption of Air Carriers from Agreement Filing Requirements of Section 412 of the Federal Aviation Act of 1958.*

(Secs. 204, 416, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-21124 Filed 8-2-83; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-20021; 40-13408; File No. S7-954]

Facilitating Shareholder Communications Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of rule amendments relating to recommendations of the Commission's Advisory Committee on Shareholder Communications. The amendments are designed to improve the process by which issuers communicate with the beneficial owners of securities registered in the name of a broker, bank or other nominee.

EFFECTIVE DATE: New paragraph (c) of § 240.14b-1 and amended § 240.17a-3(a)(9) are effective January 1, 1985. The other amendments are effective November 1, 1983.

FOR FURTHER INFORMATION CONTACT: Prior to the effective dates, contact Eric E. Miller, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. After the effective dates, contact John J. Gorman, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain rule amendments relating to recommendations of the Advisory Committee on Shareholder Communications ("Advisory Committee") in its report, *Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities* ("Report").[1] The amendments are designed to tighten the timetable for proxy dissemination; to excuse, under certain limited circumstances, issuers from sending annual reports, proxy statements and information statements to security holders; and to establish a means by which an issuer can communicate directly with its non-objecting security holders whose securities are registered in the name of a nominee. The amendments are being adopted substantially as proposed with the exception of a few modifications relating primarily to the direct communication proposal.

Specifically, the rule changes:

(1) Amend paragraph (d) of Rule 14a-3 [17 CFR 240.14a-3] under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq., as amended] to (a) require that the issuer's inquiry required by that paragraph be made by first class mail or other equally prompt means at least twenty calendar days prior to the record date of a meeting of security holders and (b) provide issuers an exemption from the twenty day requirement in the context of special meetings where compliance is impracticable;

(2) Add a new paragraph (f) to Rule 14a-3 that would (a) excuse issuers from having to send annual reports or proxy statements to a security holder if a proxy statement and an annual report for two consecutive annual meetings or all, and at least two, dividend or interest checks (if sent by first class mail) during a twelve month period have been mailed to the security holder's address of record and have been returned undeliverable, unless state law requires otherwise and (b) contain the exception for multiple annual report mailings to the same address previously set forth elsewhere in the Rule;

(3) Add to pargraph (a) of Rule 14c-2 [17 CFR 240.14c-2] under the Exchange Act a provision excusing an issuer from mailing information statements to a security holder if the issuer would not have to deliver proxy statments and annual reports under Rule 14a-3(f);

(4) Amend Rule 14b-1 [17 CFR 240.14b-1] under the Exchange Act to require that brokers (a) respond to the inquiry made by issuers or persons acting on their behalf pursuant to Rule 14a-3(d) no later than seven business days after receipt of the inquiry and (b) mail proxy material and/or annual reports no later than five business days after the receipt of such material;

[1] Copies of the Report can be obtained by sending a self-addressed stamped ($2.40 postage) envelope (10" by 12") to: Publication Section, Room 3C-38, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

(5) Add a new paragraph (c) to Rule 14b–1 to (a) require brokers to provide issuers upon request and assurance of reimbursement of reasonable expenses (direct and indirect) with the names, addresses and securities positions of customers who are beneficial owners of the issuer's securities and who have not objected to such disclosure and (b) include an explicit restriction on an issuer's use of the information furnished; and

(6) Add to paragraph (a)(9) of Rule 17a–3 [17 CFR 240.17a–3] under the Exchange Act a requirement that a record with respect to each cash or margin account for which securities are held in nominee name include whether or not the beneficial owner has objected to disclosure of his or her identity, address and securities positions to issuers.

This release focuses primarily upon the changes made to the proposals published for comment in December 1982 [2] and the reasons for such revisions. Interested persons are directed to the text of the amendments and the Proposing Release for a more complete understanding.

I. Background

The amendments which are the subject of this release were proposed as the Commission's third rulemaking initiative under its comprehensive review of the rules and regulations applicable to the solicitation of proxies ("Proxy Review Program").[3] The proposals grew out of the work of the Advisory Committee,[4] which presented its Report to the Division of Corporation Finance in June 1982. In the Report, the Advisory Committee made twenty-nine recommendations directed to the Commission, the New York and American Stock Exchanges ("Exchanges"), the National Association of Securities Dealers, Inc. ("NASD"), the federal bank regulatory agencies, banks and issuers. The Commission believed that the Advisory Committee's recommendations warranted serious consideration and, accordingly, proposed to amend its rules to reflect the recommendations directed to it.[5]

II. Discussion

A. General

The proposals set forth in the Proposing Release generated significant comment.[6] Commentators generally endorsed the proposals designed to tighten the timetable for proxy dissemination and to eliminate, under certain limited circumstances, the obligation of an issuer to disseminate proxy statements and annual reports. Most comment was directed to the proposals to establish a means by which issuers can communicate directly with their consenting beneficial owners. Issuer commentors who addressed the direct communication proposals almost unanimously favored their adoption in one form or another. Almost all banking and securities industry commentators, however, were opposed to these proposals. The Commission is adopting the proposals with a number of modifications that reflect several of the specific comments. These comments, as well as others not reflected in the adopted amendments, are discussed below.

B. Rule 14a–3(d)

Consistent with the recommendation of the Advisory Committee, the Commission proposed to revise current Rule Rule 14a–3(d) [7] to require that an issuer's inquiry be made by first class mail or other equally prompt means twenty (rather than ten) calendar days prior to the record date of a meeting. Commentators almost unanimously supported this proposal. Several commentators, however, asserted that compliance with the proposal might not be possible in the context of certain special meetings of security holders called on short notice because issuers may not know twenty days in advance of the record date that such a meeting will be called. In view of these comments, the Commission is adopting the twenty day requirement, with an exemption where compliance would be impracticable in the context of a special meeting of security holders. Where such circumstances arise, the Rule requires that issuers make the inquiry as many days in advance of the record date as is practicable.

The Commission also proposed to establish a central list of record dates of issuers' annual meetings by requiring issuers to mail to the Commission a copy of the inquiry (which would contain notification of the record date). The Advisory Committee contemplated that a private vendor would make this information available to the public. While most commentators supported the proposal, no vendor indicated an interest in disseminating the information. In the absence of vendor interest and in view of the Commission's inability to provide the resources necessary for such a service, the Commission has determined not to act upon the proposal at this time. If, in the future, a vendor indicates an interest in providing such a service, the Commission will revisit the issue.

C. Rule 14a–3(f)

The Commission, pursuant to the Advisory Committee's recommendation, also proposed to amend Rule 14a–3 to excuse an issuer from delivering a proxy statement or annual report to any security holder of record where at least two consecutive annual meeting mailings sent to the security holder's address of record have been returned undeliverable, unless state law requires otherwise.[8] While most commentators

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[1] Release No. 34–19291 (December 2, 1982) [47 FR 55491] ("Proposing Release").

[2] The first initiative under the Commission's Proxy Review Program was the adoption of a new uniform Regulation S–K item relating to the disclosure of certain relationships and transactions involving managment (Release No. 33–6441 (December 2, 1982) [47 FR 55861]). The second was the proposal of amendments to the Commission's shareholder proposal rule, Rule 14a–8 (Release No. 34–19135 (October 14, 1982) [47 FR 47420]). The most recent initiative involves proposed revisions to Item 402 of Regulation S–K the uniform item governing the disclosure of managment remuneration in proxy statements, registration statements and periodic reports (Release No. 33–6449 (January 17, 1983) [48 FR 3625]).

[3] The Advisory Committee was established by the Commission in 1981 to advise the Director of the Division of Corporation Finance on various difficult, complex and technical questions relating to the development of a better means for issuers to communicate with their beneficial owners of securities registered in the name of a broker, bank or other nominee (Release No. 34–17707 (April 10, 1981) [46 FR 22508]). It was composed of fourteen persons including representatives of issuers, exchanges, banks, broker-dealers and others and met for twelve days during its nine meetings held between May 1981 and May 1982.

[5] At the time the Commission issued the Proposing Release, it sent letters to the NASD, the Exchanges, the registered securities depositories and the bank regulatory agencies relating to the recommendations directed to them by the Advisory Committee. In addition, on June 8, 1983 before the Senate Committee on Banking, Housing, and Urban Affairs and on June 16, 1983 before the House Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce, the Commission testified in support of an amendment to Section 14(b) of the Exchange Act which would give the Commission the authority to require that banks perform the same tasks as brokers under that section. This legislative initiative is in furtherance of an Advisory Committee recommendation. (*See* fn. 13, *infra*).

[6] More than three hundred and twenty-five letters were received in response to the Commission's solicitation of comment. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. (*See* File No. S7–954).

[7] Pursuant to Rule 14a–3(d), if an issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorization are held of record by a broker, bank or voting trustee, or their nominees, the issuer must inquire of such record holder the number of sets of proxy material needed for beneficial owners.

[8] This change was set forth in the Proposing Release as a change to Rule 14a–3(b).

supported the Commission's proposal, several requested that the exemption be expanded to excuse mailings to security holders if dividend or interest checks have been returned undeliverable. They asserted that such a standard also would provide accuracy since dividend and interest checks typically are sent by first class mail and, thus, are easily monitored under existing procedures. The Commission believes that a standard based on dividend or interest checks will provide additional flexibility to issuers.

Accordingly, the Commission has adopted a new paragraph (f) to Rule 14a–3 that provides an exemption for issuers if they satisfy either the test based on annual meeting mailings, as proposed, or one based on the return of dividend or interest checks over a twelve month period.[9] The alternative test based on undeliverable checks also requires that all checks be sent by first class mail and that at least two checks be mailed to the address of record during a twelve month period. These additional requirements, like the requirement regarding two successive annual meeting mailings, should ensure that sufficient time has passed and that enough mailings have been attempted to assure that a security holder cannot be contacted.

The Commission solicited specific comment on whether the proposed exemption from mailings under Rule 14a–3 should include an express requirement that issuers resume mailings of proxy statements or annual reports once they learn of a security holder's new address. While the commentators were divided as to the need for an explicit statement, the Commission has determined such a statement is necessary for purposes of clarity and has amended the proposal to reflect that change.[10]

Finally, the Commission believes that the rationale underlying the new paragraph (f) of Rule 14a–3, that issuers should be relieved of the expense of printing and transmitting proxies and annual reports where, for reasons beyond their control, such material cannot be delivered, applies equally in the context of mailings of information statements under Rule 14c–2(a). Accordingly, the Commission has determined to amend Rule 14c–2(a) by providing an exemption from the requirement to mail information statements to security holders if an issuer can satisfy either of the tests provided in Rule 14a–3(f) with respect to proxy statements and annual reports.[11]

D. Rules 14b–1 (a) and (b)

The Commission proposed to amend Rule 14b–1(a) to require brokers to respond to an issuer's inquiry pursuant to Rule 14a–3(d) no later than seven business days after receipt and to amend paragraph (b) of Rule 14b–1 to require brokers to forward proxy materials to beneficial owners no later than four businsess days after receipt of the materials from an issuer. Currently, both Rules 14b–1 (a) and (b) require brokers to perform such tasks "promptly."

An overwhelming majority of commentators supported the amendment to Rule 14b–1(a) and the Commission has determined to adopt it as proposed. In addition, although most commentators supported the proposed amendment to Rule 14b–1(b), several banks and brokers indicated that the proposed four day turnaround was too short, particularly during a high volume period such as the proxy season. In the Proposing Release, the Commission indicated that it believed the proposed requirement reflected industry practice. Several commentators suggested, however, that five business days would be more consistent with industry practice and would provide needed flexibility. In view of these comments, the Commission has adopted a modification of proposed paragraph (b) to require delivery of proxy materials no later than five business days after receipt from an issuer.[12] Five business days should provide adequate flexibility during peak periods while supplying the necessary certainty.

E. Direct Communication—Rules 14b–1(c) and 17a–3(a)(9)

After an extensive study of the feasibility of providing a system for issuers to identify their security holders whose securities are held in nominee name, the Advisory Committee recommended that the Commission establish a system that would retain the existing procedure for disseminating proxy information, but would provide issuers with access to the names, addresses and securities positions of consenting security holders.[13] The Advisory Committee contemplated that the system would be used to augment the proxy distribution process by permitting issuers to contact such security holders to determine whether they have received proxy materials and to urge them to vote their shares, and for other incidential purposes, such as the dissemination of interim reports and other shareholder communications. The Commission believed that the Advisory Committee recommended a reasonable solution to a difficult issue and, accordingly, proposed to: (1) add a new paragraph (c) to Rule 14b–1 that would require brokers to provide an isssuer, upon request and assurance of payment for reasonable expenses (both direct and indirect), with the names, addresses and securities positions, compiled as of an issuer's record date, of consenting beneficial owners of securities held of record by the broker or its nominee; and (2) amend Rule 17a–3(a)(9) to require that the record required to be kept with respect to each cash or margin account for which securities are held in nominee name include whether or not the beneficial owner consents to disclosure to issuers of his or her identity, address and securities positions. However, recognizing that such a system would not be without cost, the Commission specifically solicited comment on the costs and benefits of such a system.

Three hundred commentators addressed these proposals. An overwhelming majority, most of whom were issuers, supported the proposals, either unconditionally or with suggestions for modification, while almost all commentators from the banking and securities industries opposed the proposals. In view of the

[9] New paragraph (f) also contains the other exception to the annual report mailing requirement, that relating to the necessity for multiple mailings of annual reports to security holders of record having the same address. This exception previously had been set forth as Note 2 to paragraph (d) of Rule 14a–3.

[10] Several commentators appeared to interpret the proposed amendment as a mandatory rule. It should be noted, however, that the amendment is permissive—each issuer may make its own decision whether to cease mailings in reliance on the exemption.

[11] The Commission believes it is unnecessary to make the amendment to Rule 14c–2 the subject of a separate proposal, because it presents the same issues as the amendment to Rule 14a–3 and makes Rule 14c–2 consistent with the changes made to Rule 14a–3.

[12] Paragraph (b) also has been modified to make clear a broker's obligation to send proxy materials or annual reports to customers who become beneficial owners of an issuer's securities between the inquiry required by Rule 14a–3(d) and the issuer's record date.

[13] The Advisory Committee's recommendation was limited to brokers, because Section 14(b) and the rules and regulations thereunder are applicable only to brokers. The Advisory Committee recommended that Section 14(b) be amended to require banks to perform the same tasks required of brokers. While the Commission did not specifically solicit comment on the issue of whether banks should be included in Section 14(b), many commentators stated that similar regulations should apply to banks. As indicated earlier, the Commission is pursuing a legislative initiative in furtherance of the Advisory Committee recommendation. It should be noted that the Advisory Committee also expressed the strong belief that in the interim banks should voluntarily adopt similar procedures, and the Commission concurs.

Advisory Committee's recommendations and the significant commentator support, the Commission has adopted the proposed amendments, with certain modifications. The Commission believes that these amendments will facilitate communication between issuers and their security holders whose securities are held in nominee name and will not unnecessarily interfere with the existing proxy dissemination process.

a. *Consent.* Central to the development of a means of direct communication is the resolution of the issue of security holders' consent, which presents two significant questions. First is the question of what evidence of consent a broker should have before it provides disclosure, *i.e.*, whether an affirmative act should be required or whether failure to object should suffice. Second is the issue of how a broker should communicate with its customers to determine whether they consent. The Proposing Release did not define the phrase "consenting beneficial owner" nor specify the way in which a broker should communicate with beneficial owners, but solicited comment on these issues.

With respect to the first question, the Advisory Committee believed that any standard should safeguard the privacy interests of brokerage customers, but not be so burdensome as to deter beneficial owners from communicating their preference. The issuer commentators advocated that brokers be required to disclose the beneficial owner information unless such owner specificially objects. These commentators asserted that this non-objection standard would help facilitate communication between issuers and beneficial owners and would not compromise any privacy interest, because beneficial owners could object to disclosure. On the other hand, some bank and securities industry commentators were concerned about confidentiality and customers' expectations.

The Commission has adopted a non-objection standard for disclosure of the beneficial owner information. The Commission beleives that such a standard best facilitates shareholder communications by encouraging the greatest participation of shareholders whose securities are held in nominee name. At the same time, the Commission believes that privacy concerns are adequately addressed by giving beneficial owners an opportunity to object to disclosure. Accordingly, Rules 14b–1(c) and 17a–3(a)(9) have been amended to reflect this change from the proposals.[14]

Most commentators that urged the adoption of a non-objection standard also suggested that any objection be required to be in writing. The Commission is of the view that customers should not be restricted in the way they communicate with their brokers and, thus, has not imposed such a requirement.

A large number of commentators addressed the second question of how brokers are to ascertain whether beneficial owners object to disclosure. Commentators asserted that brokers need flexibiliy, because they communicate with their customers in a variety of ways, such as by telephone and in mailings of research reports, confirmations and monthly account statements. In addition, each broker is in the best position to determine the most cost effective method of communicating with its customers. The Commission agrees that it is appropriate to leave to brokers' discretion the way in which they communicate with their customers [15] and has made no change in the proposal in this regard.

b. *Costs/reasonable expenses.* The Advisory Committee concluded that the benefits of the direct communication proposals would exceed any cost and that, in any case, brokers would be reimbursed for their "reasonable expenses." In the Proposing Release, as noted above, the Commission requested specific comment on the costs attendant to these proposals. The Commission also requested comment on whether it would be necessary or appropriate to specify in Rule 14b–1(c) the way in which reasonable expenses, which the Commission contemplated would include start-up and maintenance costs, should be determined.

Most bank and securities industry commentators expressed concern about the costs attendant to the proposals. They were concerned primarily about start-up costs, especially those associated with an inquiry of existing customers, and subsequent maintenance costs. As measures designed to reduce start-up costs, commentators suggested that brokers be permitted to use their regular account mailings to conduct the customer inquiry and that the Commission provide a long transition period to allow for such procedures.

The Commission believes that there are many ways for brokers to reduce the costs arising from the amendments adopted today, including the use of regular mailings to conduct an inquiry of existing customers. Moreover, the Commission is providing a lengthy transition period—until January 1, 1985. This should permit brokers sufficient time to undertake any necessary changes, including a customer inquiry, in the least costly way. Furthermore, the Commission does not believe that maintenance costs will be significant, particularly because brokers already maintain extensive customer account information. In any event, a broker's expenses are subject to issuer reimbursement.

The majority of commentators that addressed the issue of how "reasonable expenses" should be determined and whether that determination should be codified concluded that the Commission should leave the determination to the self-regulatory organizations. While one stock exchange was skeptical about its ability to make the determination, another stock exchange asserted that it expected to participate in any such undertaking. The Commission continues to believe that, because the self-regulatory organizations represent the interests of both issuers and brokers, they are in the best position to make a fair allocation of all the costs associated with the amendments, including start-up and overhead costs. In addition, the lengthy transition period should give them sufficient time to make the determination.

c. *Restrictions on use of the beneficial owner information.* The Commission requested comment on whether it would be appropriate to include explicit restrictions on the use of the information provided to issuers in the Rule. A majority of the commentators that responded to this solicitation asserted that such restrictions should be included in the Rule. In view of these comments, the Commission had added a sentence to Rule 14b–1(c) which provides that issuers may use the list exclusively for purposes of corporate communications.[16] Pursuant to this

[14] An additional revision has been made to Rule 17a–3(a)(9)(ii) to make clear that a broker must maintain a record of whether a beneficial owner objects to disclosure of his or her name, address and securities positions only with respect to those beneficial owners of securities registered in nominee name.

[15] Commentators requested that issuers be permitted to prepare letters to be sent to beneficial owners as a means for issuers to inform beneficial owners of the benefits of direct communication. Under current rules of the national securities exchanges (see New York Stock Exchange Guide ¶ 2465 and American Stock Exchange ¶ 9537) brokers are required to mail to beneficial owners material sent by issuers upon assurance of reimbursement. Thus, issuers already are permitted to mail to beneficial owners any communication provided they bear the cost.

[16] Several commentators urged the Commission to ensure that the beneficial owner lists acquired by

restriction, for example, it would be unlawful for them to sell the information acquired pursuant to Rule 14b–1(c).

d. *Clarifying changes.* Certain clarifying changes have been made to Rule 14b–1(c) pursuant to comment. Specifically, the Commission has inserted language to make clear that: (1) an issuer is permitted to obtain information only with respect to its beneficial owners; (2) a broker is only required to disclose the information regarding its customers who are beneficial owners of the issuer's securities and that information need not be disclosed with respect to those who have beneficial interests in the customers; and (3) the information required by the Rule must be provided only once annually.

III. Statutory Authority and Findings

The Commission hereby adopts Rules 14b–1(c) and 14a–3(f) and amendments to Rules 14a–3(d), 14b–1(a), 14b–1(b), 14c–2(a) and 17a–3(a)(9) pursuant to its statutory authority under Sections 12, 14, 17 and 23(a) of the Exchange Act. As required by Section 23(a) of the Exchange Act the Commission has considered the impact that these rulemaking actions would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

List of Subjects in 17 CFR 240

Reporting and recordkeeping requirements and securities.

IV. Text of Rules

In accordance with the foregoing, Title 17, Chaper II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By amending Regulation 14A (§ 240.14a–3 to § 240.14b–1) by revising paragraph (d), by removing Note 2 to paragraph (d), by redesignating note 3 to paragraph (d) as Note 2, and by adding new paragraph (f) to § 240.14a–3 to read as follows:

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issuers under Rule 14b(c) are included in the stockholder lists covered by Rule 14a–7 [17 CFR 240.14a–7] in the context of a proxy contest and Rule 14d–5 in the context of a tender offer. Equal access to these lists in such contexts, they asserted, is essential if the balance between issuers and proxy contestants or tender offerors is to be maintained. The Commission concurs and anticipates making any necessary changes in the proxy and tender offer rules. It expects to have these changes in place prior to the time Rule 14b–1(c) and the amendment to Rule 17a–3(a)(9) become effective.

Regulation 14A: Solicitations of Proxies

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(d) If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall:

(1) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, is so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners;

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or (ii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(3) Shall supply the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in a timely manner, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

Note 1: * * *

Note 2: The attention of issuers is called to the fact that broker-dealers have an obligation pursuant to § 240.14b–1 and applicable self-regulatory requirements to obtain and forward annual reports and proxy soliciting materials to beneficial owners for whom such broker-dealers hold securities.

* * * * *

(f) Notwithstanding paragraphs (a) and (b) of this section:

(1) An issuer is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that (i) such security holders are not holding such issurer's securities in nominee name, (ii) at least one report is sent to a holder of record at that address and (iii) the holders of record to whom a report is not sent agree thereto in writing; and

(2) Unless state law requires otherwise, and issuer is not required to send an annual report or proxy statement to a security holder if (i) an annual report and a proxy statement for two consecutive annual meetings or (ii) all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. However, an issuer's obligation to deliver an annual report or a proxy statement under this section is reinstated once it has such security holder's current address.

2. By revising paragraphs (a) and (b); and adding new paragraph (c) to § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.

A broker registered under Section 15 of the Act shall:

(a) Respond no later than seven business days after receipt of an inquiry made in accordance with § 240.14a–3(d) by or on behalf of an issuer soliciting proxies, consents or authorization by indicating, by means of a search card or otherwise, the approximate number of its customers who are beneficial owners of the issuer's securities that are held of record by the broker or its nominees;

(b) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders and of assurances that its reasonable expenses shall be paid by the issuer, forward such materials to its customers who are beneficial owners of the issurer's securities no later than five business days after the receipt of the proxy material or annual reports; and

(c) Provide the issuer, upon its request and assurance that it will reimburse the broker's reasonable expenses (direct and indirect), with the names, addresses and securities positions, compiled as of the issuer's record date for its latest annual meeting of security holders, of its customers who are beneficial owners of the issuer's securities and who have not objected to disclosure of such information. Issuers shall use the information so furnished exclusively for purposes of corporate communications.

3. By revising paragraph (a) of §240.14c–2 to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of

securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c-101) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-15 (§ 239.29) and containing the information specified in such form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided*, however, that (1) in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer; and (2) no such statements need be transmitted to a security holder if an issuer would be excused from delivery of an annual report or a proxy statement under Rule 14a-3(f)(2) (§ 240.14a-3(f)(2)) if such section were applicable.

* * * * *

4. By revising paragraph (a)(9) of §240.17a-3 to read as follows:

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(9) A record in respect of each cash and margin account with such member, broker or dealer indicating (i) the name and address of the beneficial owner of such account, (ii) whether or not the beneficial owner of securities registered in the name of such members, brokers or dealers, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers, and (iii) in the case of a margin account, the signature of such owner; *Provided*, That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

* * * * *

(Secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565-568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 78l, 78n, 78q, 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

July 28, 1983.

[FR Doc. 83-21178 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Federal Bureau of Investigation

Drug Enforcement Administration

21 CFR Part 1316

28 CFR Part 0

28 CFR Part 9

[Order No. 1024-83]

Delegation of Authority to FBI and DEA Officials

AGENCY: Federal Bureau of Investigation, Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: As a result of the Attorney General expanding the jurisdiction of the Federal Bureau of Investigation to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States, this final rule delegates to FBI officials the authority to administratively forfeit certain property seized in connection with the violation of such drug offenses. This final rule also delegates to FBI officials the authority to remit or mitigate the forfeiture of such property.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: John A. Mintz, Assistant Director—Legal Counsel, Federal Bureau of Investigation, Department of Justice, Washington, D.C. 20535 (202-324-5018), or William M. Lenck, Associate Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537 (202-633-1141).

SUPPLEMENTARY INFORMATION: On January 28, 1982, the Attorney General by Order No. 968-82 (47 FR 4989, February 3, 1982; 28 CFR 0.85(a)) authorized the Director of the Federal Bureau of Investigation to investigate violations of the criminal drug laws of the United States, including the authority to seize, forfeit, and remit or mitigate the forfeiture of property subject to administrative forfeiture under Section 511 of the Controlled Substances Act (21 U.S.C. 881). This order amends the regulations applicable to such forfeitures in order to facilitate the administrative forfeiture and the remission or mitigation of such property by FBI officials.

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, this matter will have no impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects

21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Seizures and forfeitures.

28 CFR Part 0

Authority delegations (Government agencies), Drug traffic control, Seizures and forfeitures.

28 CFR Part 9

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Seizures and forfeitures.

By virtue of the authority vested in me, including 28 U.S.C. 509 and 510, 21 U.S.C. 871 and 21 U.S.C. 881(d), the following amendments are made to Title 21, §§ 1316.77, 1316.79(a), 1316.81, and to Title 28, §§ 0.85(a), 9.1, 9.4(a), 9.4(b), 9.4(c), 9.4(e) of the Code of Federal Regulations:

TITLE 21

PART 1316—[AMENDED]

Title 21 is amended as follows:

1. Section 1316.77 is revised to read as follows:

§ 1316.77 Summary forfeiture.

(a) For property seized by officers of the Drug Enforcement Administration, if the appraised value does not exceed $10,000, and a claim and bond are not filed within the 20 days hereinbefore mentioned, the DEA Special Agent-in-Charge shall declare the property forfeited. The DEA Special Agent-in-Charge shall prepare the Declaration of Forfeiture and foward it to the Administrator of the Administration as notification of the action he has taken. Thereafter, the property shall be retained in the district of the DEA Special Agent-in-Charge or delivered elsewhere for official use, or otherwise disposed of, in accordance with official instructions received by the DEA Special Agent-in-Charge.

(b) For property seized by officers of the Federal Bureau of Investigation, if

the appraised value does not exceed $10,000, and a claim and bond are not filed within the 20 days hereinbefore mentioned, the FBI Property Management Officer shall declare the property forfeited. The FBI Property Management Officer shall prepare the Declaration of Forfeiture. Thereafter, the property shall be retained in the field office or delivered elsewhere for official use, or otherwise disposed of, in accordance with the official instructions of the FBI Property Management Officer.

2. In § 1316.79, paragraph (a) is revised to read as follows:

§ 1316.79 Petitions for remission or mitigation of forfeiture.

(a) Any person interested in any property which has been seized, or forfeited either summarily or by court proceedings, may file a petition for remission or mitigation of the forfeiture. Such petition shall be filed in triplicate with the Special Agent-in-Charge of the DEA or FBI, depending upon which agency seized the property, for the judicial district in which the seizure occurred. It shall be addressed to the Director of the FBI or the Administrator of the DEA, depending upon which agency seized the property, if the property is subject to summary forfeiture pursuant to § 1316.77, and addressed to the Attorney General if the property is subject to judicial forfeiture pursuant to § 1316.78. The petition must be executed and sworn to by the person alleging interest in the property.

* * * * *

3. Section 1316.81 is revised to read as follows:

§ 1316.81 Handling of petitions.

Upon receipt of a petition, the custodian shall request an appropriate investigation. The petition and the report of investigation shall be forwarded to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property. If the petition involves a case which has been referred to the U.S. Attorney for the institution of court proceedings, the custodian shall transmit the petition to the U.S. Attorney for the judicial district in which the seizure occurred. He shall notify the petitioner of this action.

TITLE 28

Title 28 is amended as follows:

PART 0—[AMENDED]

4. In § 0.85, paragraph (a) is amended by adding the following sentence at the end of the paragraph:

§ 0.85 General functions.

(a) * * * The Director and his authorized delegates may seize, forfeit and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881, 21 CFR 1316.71–1316.81, and 28 CFR 9.1–9.7.

* * * * *

PART 9—[AMENDED]

5. Section 9.1 is revised to read as follows:

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of Title 19, United States Code, and are applicable only to those civil forfeitures which arise under the Contraband Transportation Act, Comprehensive Drug Abuse Prevention and Control Act of 1970, customs laws, Federal Alcohol Administration Act and other laws relating to gambling, firearms, and liquor (except the Indian Liquor Laws), and which are assigned to the supervision of the Criminal Division, the Federal Bureau of Investigation, or the Drug Enforcement Administration by the Attorney General or his duly authorized delegate (§§ 0.55(d), 0.85, 0.100 of this chapter.

6. In § 9.4, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 9.4 Procedure relating to administrative drug forfeitures.

(a) A petition for remission or mitigation of forfeiture of property seized for drug violations that is subject to administrative forfeiture (appraised value of $10,000 or less) shall be addressed to the Director of the Federal Bureau of Investigation (FBI) or to the Administrator of the Drug Enforcement Administration (DEA), depending upon which agency seized the property. Such a petition shall be filed in triplicate with the Special Agent-in-Charge of the FBI or the DEA, depending upon which agency seized the property, for the judicial district in which the seizure occured.

(b) Upon receipt of a petition for property subject to administrative forfeiture, the Special Agent-in-Charge of the FBI or the DEA, depending upon which agency seized the property, shall have an investigation of the petition conducted. The completed petition investigation and the recommendation of the Special Agent-in-Charge of the FBI or the DEA on the petition will be forwarded to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property.

(c) Upon the receipt of a petition and a report thereon by the Director of the FBI or the Administrator of the DEA, he shall assign it within his agency to the FBI Legal Counsel Division, or to the DEA Office of Chief Counsel, where a ruling shall be made based on the petition and the report of investigation. No hearing shall be held. The ruling on a petition properly addressed to the Director of the FBI shall be made by the FBI Assistant Director, Legal Counsel Division, the Deputy Assistant Director, Legal Counsel Division, or the Unit Chief, Legal Forfeiture Unit, Legal Counsel Division. The ruling on a petition properly addressed to the Administrator of the DEA shall be made by the DEA Chief Counsel or Forfeiture Counsel.

* * * * *

(e) A request for consideration of the denial may be submitted within 10 days from the date of the letter denying the petition. Such request shall be addressed, depending upon which agency seized the property, to the Director of the FBI for referral to the FBI Legal Counsel Division, or to the Administrator of the DEA for referral to the Office of the Chief Counsel, and shall be based on evidence recently developed or not previously considered.

* * * * *

Dated: July 28, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-20948 Filed 8-2-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-83-1108]

Mutual Mortgage Insurance and Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule would reduce the mortgage insurance premium for housing in federally impacted areas (Section 238(c) of the National Housing Act) from one percent to the 0.5 percent rate applicable to most other FHA single family insurance programs. HUD has

determined that the actuarial experience under Section 238(c) provides no basis for charging a higher mortgage insurance premium in federally impacted areas.

EFFECTIVE DATE: October 10, 1983.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Office of Financial Management, Department of Housing and Urban Development, Room 6186, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 426–4325. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 238(c) of the National Housing Act ("the Act") authorizes HUD to insure mortgages executed in connection with the construction, repair, rehabilitation, or purchase of property located near any installation of the United States Armed Forces in federally impacted areas in which conditions are such that one or more of the applicable insuring requirements cannot be met. Insurance may only be provided if HUD finds that the benefits to be derived from providing the insurance outweigh the risk of probable costs to the government, and the Secretary of Defense certifies that there is no present intention to curtail substantially the personnel assigned or to be assigned to the installation. Currently, the mortgage insurance premium (MIP) for mortgages insured under section 238(c) is 1 percent per year. The Department of Defense requested HUD to reduce the MIP to 0.5 percent, the rate which currently applies to most other FHA home mortgage insurance programs. This rule implements this change.

Section 238(c)(2) of the Act requires the Secretary of HUD to establish premiums for this program" . . . on a basis which, in the Secretary's judgment, is designed to be actuarially sound . . ." . HUD has insured 81 loans under this program. Seven have been terminated, but only one resulted in an insurance claim. In view of this low level of activity and the absence of any indication of serious claim problems, HUD believes sufficient justification exists to reduce the premium rate to the same rate as charged for other home mortgage insurance programs. Accordingly, HUD is removing § 203.269 of the regulations (formerly § 203.270, see FR 48 28794, 28806), which provides that mortgage insurance premiums in federally impacted areas will be calculated on the basis of a 1.0 percent rate. The effect of removing this special provision on premium rates will be to make applicable the general rule on premiums (§ 203.260), which provides for a rate of one-half of one percent of the average outstanding principal obligation of the mortgage.

HUD has determined that because this rule confers a benefit on potential mortgagors in federally impacted areas and is based upon actuarial findings, general notice of proposed rulemaking is unnecessary. Accordingly, 24 CFR § 203.269 is being removed by final rule making.

Under 24 CFR § 50.20(1), the rule is a rate determination which does not require an environmental assessment.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The program affected by this rule does not affect a substantial number of small entities; as noted above, HUD has insured, to date, only 81 loans under this program.

This Catalog of Federal Domestic Assistance program number is 14165.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1983 (48 FR 18054), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects 24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended by removing § 203.269.

Authority: Section 238(c)(2), National Housing Act (12 U.S.C. 1715z–3(c)(2)); Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: July 21, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83–20930 Filed 8–2–83; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 7903]

Employment Taxes and Collection of Income Tax at Source; Undue Hardship for Withholding on Interest, Dividends, and Patronage Dividends

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides a final regulation which delays for all payors through August 5, 1983, the application of the withholding on interest, dividend, and patronage dividend requirements of sections 3451 through 3456 of the Internal Revenue Code of 1954 on account of undue hardship. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulation affects payors and payees of interest, dividends, and patronage dividends and provides them with necessary guidance as to the effective date of the law.

DATES: This amendment to the regulations is effective for payments of interest, dividends, or patronage dividends paid or credited from July 1, 1983, through August 5, 1983.

FOR FURTHER INFORMATION CONTACT: Pamela F. Olson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (202–566–3829).

SUPPLEMENTARY INFORMATION:

Background and Explanation

On June 21, 1983, the Internal Revenue Service published in the **Federal Register** a rule-related notice of undue hardship for withholding on interest and dividends. This rule-related notice stated that the Secretary has determined that undue hardship exists with respect to all payors of interest, dividends, or patronage dividends paying or crediting those amounts from July 1, 1983, through July 31, 1983, since the United States Senate has adopted an amemdment to H.R. 2973 (98th Cong., 1st Sess.) (the bill which would repeal withholding on interest, dividends, and patronage dividends) that would provide expanded backup withholding and other compliance measures. Because Congress may not complete action on H.R. 2973 before August 5, 1983, the Secretary of

the Treasury has determined that undue hardship exists for all payors paying or crediting interest, dividends, or patronage dividends through August 5, 1983.

Drafting Information

The principal author of this regulation is Pamela F. Olson of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the amendment, on matters of both substance and style.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this amendment to the final regulations is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Since the regulation contained herein merely delays the effective date of the final regulations relating to withholding on interest and dividends, the Internal Revenue Service has concluded that the notice and public procedure requirements or 5 U.S.C. 553 do not apply. Accordingly, this regulation is not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding, Interest, Dividends, Patronage dividends.

Adoption of the Amendment to the Regulations.

The amendment to 26 CFR Part 31 is as follows:

PART 31—[AMENDED]

Section 31.3451(a)–1 is amended by adding the following new language at the end of paragraph (d):

§ 31.3451(a)–1 Requirement of withholding on payments of interest, dividends, and patronage dividends.

* * * * *

(d) *Extension of time to begin withholding.* * * * Undue hardshop shall be deemed to exist for withholding on payments of interest, dividends, or patronage dividends paid or credited from July 1, 1983, through August 5, 1983, for all payors. No application is required for a payor to obtain a waiver of the requirements through August 5, 1983.

This Treasury decision is issued under the authority contained in section 308 (b) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 591) and in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

James I. Owens,

Acting Commissioner of Internal Revenue.

Aproved: July 29, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-21018 Filed 7-29-83; 4:14 pm]

BILLING CODE 4830-01-M

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26 CFR Part 35

[T.D. 7904]

Employment Taxes and Collection of Income Tax at Source

Withholding From Pensions, Annuities, and Certain Other Deferred Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides additional temporary regulations relating to withholding from pensions, annuities, and certain other deferred income. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). These regulations affect payors and payees of pensions, annuities, and certain other deferred income and provide them with guidance necessary to comply with the law.

DATE: The temporary regulations provided by this document are effective for payments made after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia K. Keesler of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR–T), 202–566–3903, not a toll-free call.

SUPPLEMENTARY INFORMATION

Background

This document contains temporary regulations relating to withholding of Federal income tax from pensions, annuities, and certain other deferred income. Sections 3405, 6047(e), and 6704 were added to the Internal Revenue Code of 1954, and section 3402(o) of the Code was amended, by section 334 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, 96 Stat. 623). These regulations clarify and supplement the questions and answers published on October 14, 1982, and December 1, 1982, in the **Federal Register** (47 FR 45868 and 54065).

A notice of proposed rulemaking containing more comprehensive rules about withholding on pensions, annuities, and other deferred income will be published at a later date (EE–115–82). The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject.

Format

These temporary regulations are presented in the form of questions and answers. The questions and answers are intended to provide guidelines which may be relied upon by payors and others in order to resolve questions specifically considered. However, no inferences should be drawn regarding issues not raised which may be suggested by a particular question and answer or as to why certain questions, and not others, are included.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

Because there is a need for immediate guidance with respect to the provisions contained in this document, it has been found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Patricia K. Keesler of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35

Employment taxes, Income taxes, Withholding.

Adoption of amendments to the regulations

Section 35.3405–1 is amended by revising item a–4 of paragraph a; removing item f–18 of paragraph f; revising items f–19, f–20, f–22, f–23, and f–24 of paragraph (f) and redesignating them f–18, f–19, f–21, f–22, f–23, respectively, redesignating f–21 as f–20 and adding a new f–24 and f–27 at the end of paragraph (f); and adding new item g–25 at the end of paragraph (g). The revised and added provisions read as follows:

§ 35.3405–1 Questions and Answers relating to withholding on pensions, annuities, and certain other deferred income.

a. *In general.*

* * * * *

a–4. Q. What is a commercial annuity for purposes of the new withholding rules?

A. A commercial annuity is an annuity obligation existing in connection with an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. See, also, question f–21.

* * * * *

f. *Other.*

* * * * *

f–18. Q. Are amounts paid in connection with a partial or complete surrender or upon the maturity or endowment of a commercial annuity subject to the new withholding rules?

A. Yes. Amounts paid in connection with a partial or complete surrender or upon the maturity or endowment of a commercial annuity are subject to the new withholding rules to the extent that they are designated distributions. Thus, withholding is required on the complete or partial surrender of an annuity, life insurance or endowment contract to the extent they are designated distributions.

f–19. Q. Are amounts paid in connection with a partial surrender of a commercial annuity periodic payments?

A. Generally, no. Unless the amount paid in connection with the partial surrender is one of a series of payments payable over a period of greater than one year and taxable under section 72 as an amount received as an annuity, the amount paid is not a periodic payment.

* * * * *

f–21. Q. Is it reasonable to believe that amounts distributed in connection with a commercial annuity that was acquired on or before August 13, 1982, or are otherwise described in section 72(e)(5), which are not treated as amounts received as an annuity under section 72, will not be includible in the gross income of the recipient?

A. Generally, yes. Under the rules of section 72(e) prior to the passage of TEFRA, amounts not received as an annuity were not taxable until the investment in the contract was recovered. Thus, for distributions that are not received as an annuity under a commercial annuity contract acquired on or before August 13, 1982, it is reasonable to believe that amounts distributed are not includible in the payee's gross income to the extent they represent unrecovered investment in the contract. The special transitional rule of question a–33, available for plan administrators, may be used until December 31, 1983, by payors of commercial annuities who lack records with regard to the payee's unrecovered investment in the contract.

f–22. Q. For commercial annuity contracts entered into after August 13, 1982, which are not described in section 72(e)(5), is it reasonable to believe that amounts distributed, which are not amounts received as an annuity under section 72, are not includible in gross income?

A. Generally, no. TEFRA amended section 72(e) to provide that amounts not received as an annuity will be includible in gross income until all earnings or other amounts that are not part of the investment in the contract have been distributed. Thus, it is not reasonable to believe that amounts distributed in connection with a commercial annuity contract entered into after August 13, 1982, are excludible from gross income until all earnings or other amounts that are not part of the investment in the contract have been distributed. This new rule does not apply to distributions from commercial annuities described in section 72(e)(5). Question f–21 provides the proper rule with respect to distributions from commercial annuities described in section 72(e)(5).

f–23. Q. Is it reasonable to believe that amounts involved solely in connection with an exchange of commercial annuities under section 1035 of the Code will not be includible in the gross income of the recipient?

A. Yes. Designated distributions include only amounts that it is reasonable to believe are includible in the gross income of the recipient. In the case of a commercial annuity exchange under section 1035 in which no cash or other property is exchanged, it is reasonable to believe that no portion is includible in the gross income of a recipient. An annuity exchange includes an exchange of annuity, endowment, or life insurance contracts issued by a life insurance company licensed to do business under the laws of any State. Thus, such exchanges are not subject to the withholding rules of section 3405. However, see question e–8 concerning recordkeeping requirements with respect to the nontaxable exchange of commercial annuity contracts under section 1035.

f–24. Q. Is it reasonable to believe that amounts distributed in connection with a surrender of a life insurance or endowment contract, or in connection with an exchange of life insurance or endowment contracts in which cash or other property is distributed, will not be includible in gross income?

A. Generally, no. Amounts distributed in connection with the surrender of a life insurance or endowment contract, or in connection with an exchange of life insurance or endowment contracts in which cash or other property is distributed are includible in income to the extent that the amount received exceeds the policyholder's investment in the contract. However, if a life insurance or endowment contract issued before August 13, 1982, is surrendered within ten years of the date of its issuance, or is exchanged within ten years of the date of its issuance, the payor may assume that no amounts are includible in the gross income of the policyholder if the cash or other property received by the policyholder in connection with the sale or exchange of the life insurance or endowment contract does not exceed $10,000. If a life insurance or endowment contract issued before August 13, 1982, is surrendered or exchanged ten years or more after the date of its issuance, the payor may assume that no amounts are includible in the gross income of the policyholder if the cash or other property received by the policyholder in connection with the sale or exchange of the life insurance or endowment contract does not exceed $5,000. If the payor utilizes the special rule in the two preceding sentences, the payor must notify the policyholder, at the time described in question d–4, that all or part of the amount distributed may be includible in the policyholder's gross income. See question f–23 for additional rules concerning certain exchanges of annuity contracts.

* * * * *

f–27. Q. When must notice of the right to elect not to have withholding apply be given as to designated distributions from an individual retirement account (IRA) described in section 408(a) that is payable on demand even though payments are scheduled to be made over a period greater than one year?

A. Under question f–15, designated distributions from an IRA that are payable upon demand are treated as nonperiodic distributions subject to withholding at the 10 percent rate even if the distributions are paid over a certain period. Section 3405(d)(10)(B)(i) requires the payor of a nonperiodic distribution to transmit to the payee notice, at the time of the distribution or at such earlier time as may be provided in regulations, of the right to elect not to have withholding apply. If distributions from an IRA have begun and are scheduled to be made at quarterly or more frequent intervals, then, in lieu of providing a notice at the time of each distribution, the payor may furnish a blanket notice applicable to all such distributions that are expected to be made to the payee from the account during a calendar year. Such a blanket notice must be furnished at a reasonable time before the first payment made in the calendar year to which the notice relates, except that a blanket notice relating to distributions from an IRA during 1983 may be made by the later of July 1, 1983, or the date of the first designated distribution from the IRA.

* * * * *

g. *Delay procedures.*

* * * * *

g–25. Q. Will the notice and withholding requirements of section 3405 apply before January 1, 1984, with respect to the exchange or complete or partial surrender of a commercial annuity under which the recipient had not irrevocably chosen, prior to January 1, 1984, to receive payments in the form of an annuity?

A. In the case of the exchange or complete or partial surrender of a commercial annuity under which the recipient had not irrevocably chosen, prior to January 1, 1984, to receive payments in the form of an annuity, the application of the notice and withholding provisions of this section may be delayed, so long as undue hardship exists, up to January 1, 1984. Prior approval from the Internal Revenue Service is not required for such delay, and should not be requested. For purposes of this delay, undue hardship will be presumed to exist, in the absence of bad faith, so long as the payor can establish that at least one of the conditions in question g–6 is present. The payor should prepare and retain a statement of undue hardship as described in question g–9 and should maintain any documents necessary to support the representations made in that statement.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 6047(e), and 7805 of the Internal Revenue Code of 1954 (96 Stat. 625 and 68A Stat. 917; 26 U.S.C. 6047(e) and 26 U.S.C. 7805) and section 334(e) (5) and (6) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 623).

(Approved by the Office of Management and Budget under control number 1545–0119)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: June 30, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83–21129 Filed 8–2–83; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 51 and 150

[T.D. 7905]

Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Base Prices of Tier 2 and Tier 3 Oil

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final excise tax regulations under section 4989(d)(1) of the Internal Revenue Code, relating to the determination of base prices of tier 2 and 3 oil for purposes of the windfall profit tax on domestically produced crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. These regulations provide the public with the guidance needed to determine base prices of tier 2 and tier 3 oil.

DATE: Unless otherwise provided, the regulations are effective with respect to tax liability for windfall profit tax on crude oil removed from the premises after September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Donald W. Stevenson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T); (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains final excise tax regulations under section 4989(d)(1) of the Internal Revenue Code of 1954, relating to base prices for tier 2 and tier 3 oil. On September 30, 1980 and November 14, 1980, the **Federal Register** (45 FR 64603, 75231) published amendments to proposed Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) that had been published on April 4, 1980 (45 FR 23400). Numerous comments were received suggesting a number of changes to the proposed amendments. A public hearing on the proposed amendments was held on March 3, 1981. After consideration of all comments regarding the proposed amendments, those amendments are adopted with only minor changes by this Treasury decision. The remainder of the preamble discusses suggested changes to the proposed regulations and reasons for not adopting most of these suggested changes.

This Treasury decision is issued under the authority contained in sections 4989(d), 4997(b) and 7805 of the Internal Revenue Code of 1954 (94 Stat. 233, 26 U.S.C. 4989(d); 94 Stat. 249, 26 U.S.C. 4997(b); 68A Stat. 917, 26 U.S.C. 7805).

Actual v. Posted Prices

The statute authorizes the Secretary of the Treasury to develop permanent base price rules that approximate the price at which all domestic crude oil would have sold for in December 1979 if all domestic crude oil were uncontrolled and the average removal price for all domestic crude oil (except Sadlerochit oil) were $15.20 a barrel for tier 2 oil and $16.55 a barrel for tier 3 oil. Although the statute mandates the use of posted prices in determining base prices in the interim rules, Congress noted that "the Secretary may determine, after analyzing the data, that a formula based on actual selling prices, not posted prices, would be more accurate." H.R. No. 96–817, 96th Cong. 2d Sess. 96 (1980).

The proposed regulations use actual prices received for oil sold in uncontrolled sales during December 1979 as the basis for determining base prices rather than posted prices. Several commenters urged the Service to readopt posted prices as the basis for determining base prices under the permanent base price rules because the task of compiling information on actual removal prices is costly and burdensome. One commenter argued that actual removal prices did not accurately reflect the value of oil sold during December 1979 because the "extremely tight" nature of the oil market at that time produced oil payments which reflected more the relative bargaining power of the parties

than the relative grade, quality, and location of the oil.

The suggestion was rejected because Treasury has concluded that a rule based on actual prices reflects the best available method for approximating the prices at which all domestic oil would have sold for in a hypothetical uncontrolled December 1979 market. In addition, the continuation of the existing rule, which taxpayers, operators, and withholding agents have been using for almost three years, seems preferable to requiring a wholesale shift to a new system. Some taxpayers would be aggrieved by such a change, and the administrative burdens it would generate, including innumerable recertifications, recomputations, and tax payments or refunds, would be massive.

Minimum Base Price

The minimum base price rule was prescribed in response to Congress observation that the selection of December 1979 as the base period "may lead to inequities in the case of oil produced in California and certain other areas because its December 1979 price was much lower, relative to the national average, than it had been in prior years and is likely to be in the future." The Secretary was given enough flexibility to devise a permanent solution to this problem. H.R. Rep. No. 96–817, 96th Cong., 2d Sess. 97 (1980). The minimum base price rule in the notice of proposed rulemaking provides that base prices of tier 2 and tier 3 oil shall not be less than the product of the ceiling price which would have applied to the oil under the March 1979 energy regulations if it had been produced and sold in May 1979 as upper tier oil multiplied by 1.1 for tier 2 oil and 1.2 for tier 3 oil. The method by which the Treasury Department arrived at this rule was explained in a Draft Regulatory analysis ("Draft") prepared by Treasury.

Commenters criticized the minimum base price rule and the assumption and methodology of the Draft. For example, commenters argued that by dividing total crude oil revenues by total barrels, the Draft derived an "average value" rather than an "average price," as intended by Congress. They contended that an average price must be calculated for each degree of API gravity rather than for all crude oil without differentiation by API gravities. They suggested that 1.24 and 1.35 would be appropriate factors to use for base price computation in lieu of the 1.1 and 1.2 prescribed in the notice.

One commenter argued that it is inappropriate to determine base prices (as the Draft would) by reference to the historical relationship between the price of California crude oil and the national average price of crude oil (*i.e.*, that California prices are 80 percent of the national average) since adhering to this historic relationship perpetuates the inequity Congress intended Treasury to correct. Another commenter argued that, in determining the multiplier for tier 2 oil, the Draft should have utilized the relationship between California crude oil prices and crude oil prices across the country in December 1979, rather than in May 1979.

In light of those comments, the methodology and findings of the Draft have been reexamined. However, it has been concluded that the minimum base price rules adequately reflect the effects of decontrol, and the Final Regulatory Analysis adopts the findings and conclusion of the Draft. Hence, suggestions by commenters to modify the proposed permanent minimum base price rule were not adopted.

Constructive Removal Price

The proposed regulations provide that the uncontrolled base period price for all oil removed from a property that did not produce oil sold in uncontrolled sales during the base period is the representative price of oil of similar grade and quality produced from the same reservoir and sold in uncontrolled sales during the base period, or if no oil of similar grade or quality was produced from the same reservoir, the representative price of oil from the nearest reservoir.

Several commenters expressed a preference for using posted prices. However, the suggestion to use posted prices in determining constructive removal prices was rejected because the representative price, rather than posted price, is considered a more accurate measure of the constructive removal price.

Other Suggested Changes

Commenters suggested two other minor changes to the proposed regulations: Extend from February 29, 1980, to March 15, 1980, the cutoff date by which price adjustments made before that date may be taken into account in determining the December 1979 removal prices and provide rules for unitized properties that did not exist in December 1979. The final regulations extend the cutoff date for making price adjustments to the December 1979 removal prices from February 29, 1980, to March 31, 1980. The issue of unitization will be addressed in another regulations project (LR–225–81).

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this Treasury decision as it will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Donald W. Stevenson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Excise taxes, Petroleum.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved:

John E. Chapoton,

Assistant Secretary of the Treasury.

July 1, 1983.

PART 51—[AMENDED]

§ 51.4989–1 [Amended]

PART 150—[AMENDED]

§ 150.4989–1 [Amended]

Adoption of Amendment to the Regulations

Accordingly, the proposed regulations under section 4989(d)(1) of the Internal Revenue Code of 1954, the text of which is set out as temporary regulations under § 150.4989–1(c)(1)–(7), are adopted as final regulations under § 51.4989–1(c)(1)–(7). Section 51.4989–1 is amended by removing "§ 150.6050C–1" and "March 1, 1980" and inserting in lieu thereof "51.6050C–1" and "April 1, 1980,"

respectively, in paragraph (c)(2), by removing "March 1, 1980" and inserting in lieu thereof "April 1, 1980" in paragraph (c)(3), and by removing "150.4995–1" and "150.4995–3" everwhere they appear in paragraph (c)(7) and inserting in lieu thereof the "51.4995–1" and "51.4995–3," respectively. Except for paragraph (c)(8) of § 150.4989–1, these final regulations supersede paragraph (c) of § 150.4989–1.

* * * * *

(c) *Base prices for tier 2 and tier 3 oil—(1) In general.* The base price rules contained in this paragraph are designed to approximate the price at which oil would have sold in December 1979, taking into account the quality, grade and field of the oil, if it is assumed that all domestic crude oil was uncontrolled and the average removal price of all domestic crude oil (other than Sadlerochit oil) was $15.20 a barrel for tier 2 oil and $16.55 a barrel for tier 3 oil. Except as otherwise provided in the minimum base price and interim rules set forth in paragraph (c) (6) and (8) of this section, the base price of oil is determined by multiplying the uncontrolled base period price per barrel (as defined in paragraph (c) (2) and (3) of this section) by the tier 2 multiplier in the case of tier 2 oil or by the tier 3 multiplier in the case of tier 3 oil. See paragraph (c)(5) for definitions of those multipliers. The base prices shall attach in all tier 2 or tier 3 oil produced from a property and do not change due to changes in the identity of a producer, operator, or purchaser. In the case of a change in the identity of an operator of a property after February 29, 1980, if the former operator made a determination of the same base price of oil from the property that the new operator must determine, the former operator shall provide the new operator with all books, records, and other; documents upon which the former operator based that determination. For purposes of this paragraph, references to operators include any persons making determinations of base price in place of the operator.

The term "property" has the meaning set forth in § 150.4996–1(i); however; solely for purposes of this paragraph in the case of multiple reservoirs subject to a single right to produce, a reservoir from which no oil was removed pursuant to that right before November 14, 1980, shall be treated as a separate property. This applies even if oil from the reservoir is produced or sold commingled with other oil. See paragraph (c)(7) for effective date provisions.

(2) *Uncontrolled base period price of oil from a property with uncontrolled base period sales.* The uncontrolled base period price per barrel of oil from a property that produced oil sold in uncontrolled sales during the base period is the weighted average removal price per barrel of oil from the property sold in such sales. For this purpose, price adjustments shall not be taken into account in the absence of clear and convincing evidence that the adjustments were fixed before April 1, 1980. The weighted average is obtained by multiplying the number of barrels sold at each price by the price at which the barrels were sold, adding the products, and dividing by the total number of barrels sold in such sales. In the absence of information from which the removal prices of oil sold in uncontrolled base period sales can be ascertained with reasonable certainty, the uncontrolled base period price shall be determined under the rules set forth in paragraph (c)(3) of this section. For purposes of operator certifications of adjusted base price of oild pursuant to paragraph (b)(3) of § 51.6050C–1 the removal prices shall be treated ascertained with reasonable certainty if—

(i) The operator has books and records maintained by the operator (or by a former operator) which the current operator reasonably believes to be correct and which contain sufficient information to enable the operator to accurately compute such price for the property; or

(ii) The operator receives a written statement or statements under the penalties of perjury (from a person or persons who were purchasers or producers of oil removed from the property during December 1979 or the operator or holder of a division order with respect to the property during such month) from which the uncontrolled base period price for the property can be accurately computed. Every person who was a purchaser, producer, operator or division order holder with respect to oil removed from the property in December 1979 shall submit to the current operator, within 2 weeks of receipt of a request therefore in writing by the operator, such a statement setting forth all facts known to such person that bear on the uncontrolled base period price. In the absence of books and records that meet the requirements of paragraph (c)(2)(i) the operator shall promptly request such statements from appropriate persons in order to have statements in hand from which to compute the property's uncontrolled base period price.

(3) *Uncontrolled base period price of oil from a property with no uncontrolled base period sales.* The uncontrolled base period price for oil removed from a property that did not produce oil sold in uncontrolled sales during the base period is the price that would have been obtained for the oil if it had been sold in uncontrolled sales during the base period. In making this determination of uncontrolled base period price:

(i) If oil of similar grade and quality was produced from the same reservoir and sold in uncontrolled sales during the base period, then the uncontrolled base period price is the representative price of such oil for such sales.

(ii) If paragraph (c)(3)(i) does not apply, then the uncontrolled base period price is the representative price of oil of similar grade and quality, from the nearest reservoir from which such oil was produced and sold in uncontrolled sales during the base period, for such sales. Price adjustments shall not be taken into account in the absence of clear and convincing evidence that the adjustments were fixed before April 1, 1980.

* * * * *

(7) *Effective dates.* The rules of paragraph (c) (1) through (6) of this section are effective with respect to tax liability for crude oil removed from the premises after September 30, 1980. However, persons required by § 51.4995–1 to withhold windfall profit tax or by § 51.4995–3 to deposit payments of that tax may, at their option, use through December 14, 1980, either (i) the interim rule set forth in paragraph (c)(8) of this section for purposes of determining the amount to be withheld or deposited, or (ii) the rules of paragraph (c) (1) through (6) as in effect under Treasury Decision 7721. After December 14, 1980, withholding and depositing under the new rules are mandatory and adjustments to withholding for prior inaccuracies in withholding, taking account of the new rules in the case of oil removed after September 30, 1980, shall be made pursuant to paragraph (c) of § 51.4995–1.

* * * * *

[FR Doc. 83-21006 Filed 8-2-83; 8:45 am]
BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-250031D; PH-FRL 2406-2]

Enforcement of Insecticide, Fungicide, and Rodenticide Provision; Notification to the Secretary of Agriculture of a Final Regulation To Exempt Certain Products Containing Pheromone Attractants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a final regulation to exempt from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) all pheromones and identical or substantially similar compounds labled for use in pheromone traps and pheromone traps in which those compounds are the sole active pesticide ingredient[s]. This notice is required by section 25 (a)(2)(B) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: David Alexander, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Acency, Rm. 1114C, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-0592).

SUPPLEMENTARY INFORMATION: Section 25 (a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** any time after the 15-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Pub.L. 92-516, 86 Stat. 973 as amended; (7 U.S.C. 136 et seq.))

Dated: May 31, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-20472 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2770/R555; PH-FRL 2410-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity cranberries. 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 August 3, 1983.

ADDRESS: Written objections may be sent 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 and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the **Federal Register** of March 23, 1983 (48 FR 12112) 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 3E2770 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Massachusetts, New Jersey, Oregon, Wisconsin, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide acephate (*0,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *0,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity cranberries at 0.5 ppm (of which no more than 0.1 ppm is *0,S*-dimethyl phosphoramidothioate).

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. 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 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: July 23, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.108 is amended by adding and alphabetically inserting the raw agricultural commodity cranberries to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cranberries (of which no more than 0.1 ppm is *0,S*-dimethyl phosphoramidothioate)	0.5
* * * * *	

[FR Doc. 83-21091 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-7-FRL 2409-4]

Hazardous Waste Management Program; Nebraska; Request for Extension of Application Deadline for Final Authorization

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Application Submission and Interim Authorization Period.

SUMMARY: On March 9, 1983, the State of Nebraska Department of Environmental Control (NDEC) requested an extension beyond the July 26, 1983, deadline for application for final authorization under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting this extension. Retention of the extension is contingent upon the satisfaction or special conditions. The effect of this action it to allow NDEC to submit its application for final after July 26, 1983 without experiencing mandatory termination on July 26 of the interim authorization which EPA granted previously to the State for the Phase I portion of the hazardous waste management program.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Waste Management Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Telephone (816) 374-6536.

SUPPLEMENTARY INFORMATION:

Background:

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the state has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the state program terminates, EPA is to administer and enforce the Federal program in those states. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim or final authorization application and the deadline for termination of the authorized State program.

Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).

Nebraska received Phase I interim authorization on May 14, 1982. Because of the large amount of program development work and necessary legislative/regulatory changes, it was impossible for Nebraska to meet the July 26, 1983 deadline for submission of a Phase II application. In order to prevent a piecemeal approach, a one-time revision of state regulations to meet the final authorization requirements was proposed.

In their request for extension of the interim authorization, Nebraska has committed to the following schedule for applying for final authorization:

By September 16, 1983—submit draft regulations to EPA

By December 1, 1983—submit draft final authorization application to EPA

By January 31, 1984—Environmental Control Council to hold public hearing and approve regulations

By April 30, 1984—submit final authorization application

This schedule appears to be attainable by the State of Nebraska. In addition, EPA has outlined in a letter of July 25, 1983, a number of substantive program implementation issues concerning Phase I activities with which the state must concern itself. EPA believes these concerns will be adequately addressed by the State in accordance with the schedule set forth in the letter.

Decision

For good cause, effective July 26, 1983, I am approving Nebraska's request to extend the deadline for amending the application to include all components of interim authorization. Nebraska's retention of the Phase I interim authorization is contingent upon the State securing necessary legislative amendments, NDEC meeting the above schedule for final authorization, and meeting the requirements outlined in a letter dated July 25, 1983 to NDEC. Interim authorization will be extended until NDEC achieves final authorization or no later than January 26, 1985. Failure to secure necessary legislative amendments by the end of the 1984 Nebraska Legislative Session will be grounds for termination. Failure to comply with the final authorization schedule and the other terms in the July 25, 1983 letter to NDEC may be grounds for termination of interim authorization. Administration of the Phase I hazardous waste program in Nebraska, if terminated, will revert to EPA.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: July 25, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-21097 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-7-FRL 2409-2]

Hazardous Waste Management Program; Iowa; Request for Extension of Application Deadline for Final Authorization

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Application Submission and Interim Authorization Period.

SUMMARY: On March 1, 1983, the State of Iowa Department of Environmental Quality (IDEQ), now Iowa Department of Water, Air and Waste Management (IDWAWM), requested an extension beyond the July 26, 1983, deadline for application for final authorization under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting this extension. Retention of the extension is contingent upon satisfaction of special conditions. The effect of this action is to allow IDWAWM to submit its application for final authorization after July 26, 1983 without experiencing mandatory termination on July 26 of the interim authorization which EPA granted previously to the State for the Phase I portion of the hazardous waste management program.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Waste Management Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Telephone (816) 374-6536.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26,

1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim or final authorization application and the deadline for termination of the authorized State program.

[Note.—40 CFR Part 123, including the July 26, 1982 amendments [47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).]

Iowa received Phase I interim authorization on January 30, 1981. Because of the large amount of program development work and necessary legislative/regulatory changes, it was impossible for Iowa to meet the July 26, 1983 deadline for submission of a Phase II application. In order to prevent a piecemeal approach, a one-time revision of state regulations to meet the final authorization requirements was proposed.

In their request for extension of the interim authorization, Iowa has committed to the following schedule for applying for final authorization:

By October 17, 1983—Water, Air and Waste Management Commission to approve hazardous waste regulations.

By December 14, 1983—Hazardous waste rules become effective.

By December 24, 1983—Draft final application submitted to EPA.

By July 26, 1984—Final application submitted to EPA.

This schedule does not consider the potential need for legislative changes to achieve final authorization. If such changes are determined as necessary, then the schedule will be revised to reflect those changes and they must be achieved by the final day of the 1984 Legislative Session.

This schedule appears to be attainable by the State of Iowa. In addition, EPA has outlined in a letter of July 25, 1983, a substantive program implementation issue concerning Phase I activities with which the state must concern itself. EPA believes this concern will be adequately addressed by the state concurrent with the authorized schedule set forth in the letter.

Decision

For good cause, effective July 26, 1983, I am approving Iowa's request to extend the deadline for amending the application to include all components of interim authorization. Iowa's retention of Phase I interim authorization is contingent upon the State securing necessary legislative amendments, IDWAWM meeting the above schedule for final authorization and meeting the requirements outlined in a letter dated July 25, 1983 to IDWAWM. Interim Authorization will be extended until IDWAWM achieves final authorization or no later than January 26, 1985. Failure to secure necessary legislative amendments by the end of the 1984 Iowa Legislative Session will be grounds for termination. Failure to comply with the final authorization schedule and the other terms in the July 25, 1983 letter to IDWAWM may also be grounds for termination of interim authorization. Administration of the Phase I hazardous waste program in Iowa, if terminated, will revert to EPA.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: July 25, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-21098 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-7-FRL 2409-5]

Hazardous Waste Management Program; Kansas; Request for Extension of Application Deadline for Final Authorization

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of application submission and interim authorization period.

SUMMARY: On June 7, 1983, the State of Kansas requested a three hundred forty-one (341) day extension beyond the July 26, 1983, deadline for application for final authorization under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting this extension. Retention of interim authorization is contingent upon the State adopting the necessary legislative amendments and regulatory revisions and strengthening the program in keeping with recommendations made by EPA in the program audit report. One effect of this action is to allow Kansas to submit its application after July 26, 1983, without experiencing mandatory termination on July 26 of the interm authorization which EPA granted previously to the State for the Phase I portion of the hazardous waste program.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Waste Management Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri, 64106, Telephone (816) 374-6536.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that states which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where a state has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim or final authorization application and the deadline for termination of the authorized State program.

[Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).]

Kansas received Phase I interim authorization on September 17, 1981. However, the Kansas Legislature failed to adopt the necessary revised statutes to allow the State to adopt its final authorization application by July 16, 1983. Anticipating enactment of the needed statutes by April 30, 1984, Kansas has committed to the following revised schedule for applying for final authorization:

September 1, 1983 to December 31, 1983

KDHE revises statutes incorporating pre-application legal review recommendations

KDHE submits draft authorization application to EPA

KDHE initiates action for adoption of emergency regulations as permanent ones

KDHE submits regulations to Kansas Revisor of Statutes for review by 1984 Legislature; if Legislature takes no action, the revised regulations become permanent regulations on April 30, 1984.

January 1, 1984 to April 30, 1984

KDHE submits revised statutes to Legislature

Legislature approves revised statutes

EPA conducts preliminary review of application

EPA returns comments to KDHE.

May 1, 1984 to June 30, 1984

KDHE submits revised final authorization application to EPA based on 1984 legislative action

EPA returns comments to State.

July 1, 1984 to October 30, 1984

KDHE issues notices of intent to submit application

KDHE holds public hearing.

November 1, 1984 to January 26, 1985.

KDHE receives approval for final authorization.

This schedule appears to be attainable by the State of Kansas. In addition, EPA made recommendations to Kansas on strengthening the hazardous waste management program in the audit report of the State's program. The audit was conducted on May 18, 19, and 20, 1983 by the staff of the EPA Region VII Office. EPA believes the State will adequately address the recommendations made to strengthen the State's program during the coming months.

Decision: On July 22, 1983, in consideration of the State Department of Health and Environment's efforts to obtain the necessary legislation and Kansas' past performance in managing and implementing a hazardous waste management program, I found there was good cause to grant the State's request for an extension to amend their application to include all components of interim authorization. Kansas' retention of the Phase I interim authorization is contingent upon the State (1) adopting the necessary legislative amendments and regulatory revisions in accordance with the schedule given above and (2) strengthening the program as discussed in the audit report. Interim authorization will be extended until Kansas achieves final authorization or no later than January 26, 1985. The State's failure to adopt the necessary legislative amendments by the end of the 1984 Legislative Session will be grounds for termination of interim authorization. Additionally, the State's failure to comply with the final authorization schedule and to strengthen the program as recommended in the audit report may be grounds for termination of interim authorization. If terminated, administration of the Phase I activities in Kansas will revert to EPA.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: July 25, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-21099 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. F-498, Supp. 1]

GSA Review of Data, Facsimile, and Record Telecommunication Service Requests

AGENCY: General Services Administration.

ACTION: Temporary regulation supplement.

SUMMARY: The purpose of this regulation is to extend the expiration date of FPMR Temporary Regulation F-498. Basically F-498 permits agencies to acquire intercity, data, and facsimile services that are less than $50,000 a year without obtaining GSA approval. This provides a continuation of a reduction of paperwork burdens and increases the economy and efficiency of government data communications services in accordance with the objectives of the GSA telecommunications program.

DATES:

Effective date: June 22, 1983.

Expiration date: June 30, 1984.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Policy Branch (KMPP), Policy and Regulations Division (202-566-0194).

Chapter 101—[Amended]

In 41 CFR Chapter 101, FPMR Temporary Regulation F-498, Supplement 1 is added to the appendix at the end of Subchapter F to read as follows:

Federal Property Management Regulations Temporary Regulation F-498; Supplement 1

To: Heads of Federal agencies

Subject: GSA review of data, facsimile, and record telecommunication service requests

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation F-498.

2. *Effective date.* This regulation is effective June 22, 1983.

3. *Expiration date.* This regulation expires June 30, 1984 unless sooner superseded or canceled.

4. *Information and assistance.* For further information and assistance contact General Services Administration (KMPP), Washington, DC 20405, telephone FTS or local 566-0194, commercial toll 202-566-0194.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: July 6, 1983.

Ray Kline,

Acting Administrator.

[FR Doc. 83-20730 Filed 8-2-83; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6450

[W-29044]

Wyoming; Public Land Order No. 6388, Correction Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This document will correct two errors in the land description contained in Public Land Order No. 6388 of May 16, 1983.

EFFECTIVE DATE: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307-772-2089.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The description of two parcels of land in Public Land Order No. 6388 of May

16, 1983, as published in FR Doc. 83–13903 appearing at page 23225 in the issue of Tuesday, May 24, 1983, in the first column under T. 24 N., R. 105 W., lines 5 and 6, reads E½W¼; it is hereby corrected to read E½W½.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 26, 1983.

[FR Doc. 83–20977 Filed 8–2–83; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6451

[W–41022]

Wyoming; Public Land Order No. 6380, Correction; Partial Revocation of Military Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the metes and bounds description of the land contained in Public Land Order No. 6380, dated May 9, 1983, which partially revoked an Executive order as to 226.75 acres of public land withdrawn for military purposes.

EFFECTIVE DATE: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307–772–2089.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6380 of May 9, 1983, as published in FR Doc. 83–13172, appearing on page 22151 in the issue of Tuesday, May 17, 1983, in the second column under Sixth Principal Meridian, Kansas, T. 11 S., R. 5 E., the fifth line reads "273,770.15 E. 2,323,384.55 in the Fort." It is hereby corrected to read "273,770.15 E. 2,323,384.55 in the westerly boundary of the Fort."

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 26, 1983.

[FR Doc. 83–20978 Filed 8–2–83; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 1, 10, 67, 99

Education Regulations

AGENCY: Office of the Secretary, HHS.

ACTION: Removal of obsolete rules.

SUMMARY: The Department's authority under various statutes relating to education was transferred in 1979 to the newly-established Department of Education (20 U.S.C. 3441). Although most of this Department's regulations governing the affected programs were subsequently removed from the Code of Federal Regulations, several regulations were inadvertently retained. These are 45 CFR Part 10 (Departmental Fellowship Review Panel), 45 CFR Part 67 (Student Loan Marketing Association—Issuance and Transfer of Common Stock), and 45 CFR Part 99 (Privacy Rights of Parents and Students). Since the authorities that these parts implement have been transferred to the Department of Education, the regulations are being revoked. In addition, a reference in 45 CFR 1.1 to the location of education regulations among this Department's regulations is being deleted since such regulations no longer exist.

EFFECTIVE DATE: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Beverly Dennis, (202) 245–6733.

SUPPLEMENTARY INFORMATION: Since we are merely removing obsolete regulations, the action is not a major rule under Executive Order 12291. For the same reason, the Secretary certifies pursuant to the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities. The use of notice and comment procedures is unnecessary because the regulations being removed are obsolete, and such procedures are therefore waived.

List of Subjects

45 CFR Part 1

Code of Federal Regulations, Organization and functions (government agencies).

45 CFR Part 10

Administrative Practice and Procedure, Scholarships and fellowships.

45 CFR Part 67

Securities, Students.

45 CFR Part 99

Privacy, Students.

Therefore, Subtitle A of Title 45 of the Code of Federal Regulations is amended as follows:

PART 1—HHS'S REGULATIONS

§ 1.1 [Amended]

1. 45 CFR 1.1 is amended by removing the following sentence:

"Education regulations are located at Parts 100–199 and 1300–1599 of Title 45."

PART 10—DEPARTMENTAL FELLOWSHIP REVIEW PANEL [REMOVED]

2. 45 CFR Part 10 is removed.

PART 67—STUDENT LOAN MARKETING ASSOCIATION—ISSUANCE AND TRANSFER OF COMMON STOCK [REMOVED]

3. 45 CFR Part 67 is removed.

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS [REMOVED]

4. 45 CFR Part 99 is removed.

Dated: July 27, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83–21089 Filed 8–2–83; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL MARITIME COMMISSION

46 CFR Part 536

[General Order 13, Amdt. 11; Docket No. 83–81]

Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This amends FMC tariff filing rules to permit conferences and rate agreements to file, on behalf of member line controlled carriers, lower rates on less than 30 days' notice to meet the independent action rates of member line non-controlled carriers and to meet the actions taken by member line non-controlled carriers on open rated commodities. It also permits member line controlled carriers to initiate action and lower their rates on open-rated commodities to a level at or above the conference minimum. This will permit controlled carriers to compete on a more equal basis with non-controlled carriers.

EFFECTIVE DATE: September 2, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Warner, Chief, Office of Foreign Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Commission previously gave notice (48 FR 12576–77) that it proposed to amend 46 CFR Part 536 to permit conferences and rate agreements to file reduced rates with less than 30 days' notice, on

behalf of member line controlled carriers on open-rated commodities and independent action rates, where the basic agreement provides for independent action. Such filings, however, would not be permitted where controlled carrier member line rates would be lower than rates of non-controlled carrier member lines.

Comments were received from a controlled carrier,[1] a manufacturers association,[2] 7 conferences or rate agreements[3] and a non-controlled carrier.[4]

All commentators support the Commission's proposed rule though some have expressed reservations about certain aspects. The Inter-American Freight Conference is concerned that the rule will make Conferences responsible for identifying a given carrier as a "controlled carrier" without their having all the facts necessary to make that determination. This concern has merit, and the rule has been amended so that conferences may rely upon the Commission's prior and continuing determinations as to which carriers are controlled and subject to the regulatory provisions of the Shipping Act, 1916, as amended (the Act).

The Trans-Pacific conferences suggest that the rule be changed to specifically permit controlled carrier members to initiate rate reductions on open-rated commodities where the conference or ratemaking agreement has established open rates subject to minimum rate levels. The Commission concurs. Establishing rates "open, subject to a minimum" requires collective conference action. Therefore, controlled carrier members should be allowed to initiate rates and lower their rates on open-rated commodities to a level at or above the conference minimum. This would violate neither the intent nor the letter of the Act. That portion of the rule has been amended to permit controlled carriers to initiate actions on open-rated commodities subject to a conference imposed minimum.

The Commission finds that these amendments to its rules are exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability relating to rates * * * or practices relating to such rates * * *." As the proposed amendments clearly relate to rates and rate practices the Regulatory Flexibility Act requirements are inapplicable.

List of Subjects in 46 CFR Part 536

Rates, Maritime carriers.

PART 536—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and sections 18(c) and 43 of the Shipping Act, 1916 (46 U.S.C. 817(c) and 841a), 46 CFR Part 536 is amended by:

§ 536.6 [Amended]

1. The addition of a new sentence at the end of § 536.6(n), as follows:

* * * * *

(n) * * * *Provided however,* that conferences or rate agreements may, on less than 30 days' notice, file reduced rates on behalf of controlled carrier members for open-rated commodities: (1) at or above the minimum level set by the conference or rate agreement, or (2) at or above the level set by a member of the conference or rate agreement that has not been determined by the Commission to be a controlled carrier subject to section 18(c) of the Shipping Act, 1916, in the trade involved.

* * * * *

§ 536.10 [Amended]

2. The addition of a new sentence at the end of § 536.10(a)(3) as follows:

(a) * * *

(3) * * * *Provided further,* that conferences or rate agreements whose basic agreements provide for independent action, may file on behalf of their controlled carrier members, lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference or rate agreement that has not been determined by the Commission to be a controlled carrier, subject to section 18(c) of the Shipping Act, 1916, in the trade involved.

* * * * *

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-20623 Filed 8-2-83; 8:45 am]

BILLING CODE 6730-01-M

[1] Shipping Corporation of India.

[2] Motor Vehicle Manufacturers Association of the United States, Inc., whose members are: American Motors Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, International Harvester Company, M.A.N. Truck & Bus Corporation, PACCAR Inc., Volkswagen of America, Inc., and Volvo North America Corporation.

[3] Malaysia Pacific Rate Agreement, Trans-Pacific Freight Conference of Japan/Korea, Japan/Korea-Atlantic and Gulf Freight Conference, Philippine North America Conference, Agreement No. 10107, Agreement No. 10108, and Inter-American Freight Conference.

[4] Sea-Land Service, Inc.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service,

50 CFR Part 20

Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1983–84 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag and possession limits for the 1983–84 season. These seasons may open prior to October 1, 1983, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Flordia, Iowa, Kentucky, and Tennessee; experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and extended falconry seasons.

DATE: Effective on August 3, 1983.

Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) by July 29, 1983, for pubication in the **Federal Register** as amendments to §§ 20.103 through 20.106 of 50 CFR 20.

Effective on August 2, 1983. Season selections due from the States by July 29, 1983.

ADDRESS: Season selections from States are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, D.C. 20240, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: On April 5, 1983, the U.S. Fish and Wildlife Service published for public comment the **Federal Register** (48 FR 14700)

proposals to amend 50 CFR Part 20, with comment periods ending June 22, 1983, for Alaska, Puerto Rico, and the Virgin Islands frameworks; July 15, 1983, for other early season frameworks; and August 19, 1983, for late season frameworks. That document dealt with establishment of seasons, limits, and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the **Federal Register** dated June 17, 1983 (48 FR 27799).

On June 22, 1983, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, sandhill cranes, and other species. The meeting was announced in the **Federal Register** on April 5, 1983 (48 FR 14700) and June 17, 1983 (48 FR 27799). Proposed hunting regulations were discussed for these species and for common snipe; rails; gallinules; September teal seasons in the Mississippi and Central Flyways; early duck seasons in Florida, Iowa, Kentucky and Tennessee; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and falconry seasons. Public comments on these matters were received.

On July 7, 1983, the Service published in the **Federal Register** (48 FR 31266) a third document in the series of proposed and final rulemaking documents dealing specifically with proposed frameworks for the 1983–84 season from which, when finalized, wildlife conservation agency officials may select season dates for hunting certain migratory birds in their respective jurisdictions during the 1983–84 season. On July 22, 1983, the Service published in the **Federal Register** (48 FR 33488) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico, and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1983–84 season. These seasons may open prior to October 1, 1983, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and extended falcony seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1890.

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on April 5, 1983 (48 FR 14700) and June 17, 1983 (48 FR 27799), and discussed at the June 22, 1983, Public Hearing in Washington, D.C. These responses appeared in the **Federal Register** on June 17, 1983 (48 FR 27799,) July 7, 1983 (48 FR 31266), and July 22, 1983 (48 FR 33488). Twelve additional comments, relating to proposed early season frameworks, have been received and are discussed here. They include comments by 4 State representatives, 3 individuals, and 4 organizations. They are discussed in the same order as the items, to which they apply, were listed in previous 1983 **Federal Register** publications.

2. *Framework dates for ducks and geese in the United States.* Four organizations and 2 individuals commented on a proposed September 26 opening date for hunting geese in 10 western counties of the Upper Peninsula of Michigan. Three organizations representing Michigan hunters and 2 individuals endorsed the proposal. One other individual endorsed the proposal but recommended that the opening date be on Saturday, September 24, because this would afford greater and more equitable hunting opportunity. In four of the above comments it was noted that substantial numbers of geese migrate through the area in September. The representative of the Northern Region Regulations Committee of the Mississippi Flyway Council noted that the proposal was in line with a recommendation by the Upper Region Regulations Committee, but cautioned that there may be recommendations from the Mississippi Valley Population (MVP) Canada Goose Committee that could affect season frameworks for hunting geese in Michigan and elsewhere in the 1983–84 season. The Committee will develop recommendations in late July.

Response. The Service recognizes that recommendations about hunting MVP geese will be forthcoming from the MVP Committee and could affect goose hunting in the area where a September 26 opening would apply.

Michigan is represented on the MVP Committee and will have a voice in any recommendations that may be developed. The Service will consider such recommendations when they are received. In the meantime, a September 26 opening will be included in the frameworks for hunting geese in the 10 western counties in the Upper Peninsula of Michigan. Because a September opening date and a 10 county area was specified in the recommendation of the Flyway Council, and additional recommendations on MVP goose hunting are expected, it is judged best not to change the date or the area at this time.

21. *Woodcock.* Two States and 1 individual commented on the proposal for an October 1 opening for the woodcock season framework in the Eastern Region. In 1982, the opening date of the framework was delayed from September 1 to October 5 to assist the recovery of breeding woodcock whose numbers were reduced following a severe blizzard. The Service proposed to relieve this restriction somewhat for 1983 by changing the framework opening date from October 5 to October 1 because breeding population levels are somewhat improved over 1982. New York reiterated the view that an October opening is inappropriate in that State because breeding woodcock indices in New York are above the Eastern Region average and have increased rather than decreased in recent years. They state, also, that woodcock harvest in late September and early October in New York consists of resident rather than migrant birds. New York requested a framework that would permit them to open the woodcock season on September 20 in their northern zone.

Vermont asked that the framework allow for a September 24 opening in that State because biological data show an increase in the woodcock breeding population in 1983. One individual expressed opposition to any delay date for woodcock hunting in the opening in New York because he had been told that the Central New York area had an abundant supply of woodcock.

Response. The Service concurs that the population status of woodcock is better in New York than in some of the other areas to which the restriction in framework opening date would apply. In both New York and Vermont, 1983 breeding population indices were improved over 1982. Nevertheless, there has been a decrease in the indices in these two States, as well as other States in the northeast, since 1980. As noted in

the July 7, 1983, **Federal Register** (48 FR 31266), migratory bird hunting season frameworks are, by long established and accepted practice, applied uniformly throughout a management unit, such as the Eastern Region, rather than on a State-by-State basis. This is generally accepted as necessary for migratory birds because management responsibilities and benefits are shared among many different jurisdictions. It was further noted in the above cited **Federal Register** that the Service would be willing to consult further with New York and other States in the Eastern Region regarding the situation in New York. The same would apply in regard to Vermont. Recent contacts by the Service with a number of the northeastern States indicates that there is no consensus as yet about how best to deal with special situations like this. The Service has previously expressed a desire to review overall long term management strategies for woodcock with States in the Eastern Region. It appears that the best approach to dealing with the question of appropriate season frameworks for New York and other States would be to include them in such a review. While no convenient organizational structure for conducting such a review presently exists, the Service, nevertheless, will seek a review in early 1984 to include such matters as season frameworks as well as other regulatory measures that may be appropriate. In the meantime, it appears that an October 1 opening date for the woodcock season framework in the Eastern Region, which provides some relief from the 1982 restriction, should apply for the 1983–84 hunting season.

23. *Mourning doves.* Two States and 1 organization commented on proposed mourning dove regulations. Texas requested that an option for two zones, which has been allowed since 1946, should be continued in 1983 in addition to an option for three zones. The two zone option was not included in the proposals published in the **Federal Register** on July 7, 1983 (48 FR 31266).

Alabama expressed support for the proposed option of a 60-day season (rather than 45 days as permitted last year) with a daily bag limit of 15 mourning doves. Reference was made to a 6-year cooperative study involving 70-day seasons with an 18-bird daily bag limit which failed to show detrimental effects to mourning dove breeding populations. The Central Flyway Council stated that they would not oppose an option for a 60-day season provided the Service considered it appropriate in the light of available information on the management of mourning doves in the Central Management Unit, and the United States generally.

Response. The option to select two zones for regulating mourning dove harvests will be continued in Texas, in addition to an option for three zones.

The Service believes that the option for a 60-day season as opposed to a 45-day season in association with a 15-bird daily bag limit for mourning doves is appropriate in the light of presently available information. Results of banding analysis and other studies show that a relatively small part of the total annual mortality of mourning doves is a result of hunting. In the Central Management Unit it has been found that hunting accounts for about 10 percent of the annual mortality of adults and about 11 percent of that for immatures.

24. *White-winged doves.* Texas requested a minor change in the language used to describe white-wing dove zoning options. The change involves reference to zone names used exclusively under the 3-zone option.

Response. The Service concurs in the proposal and adopts the recommended language.

Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act [and] * * * by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 28, 1983, the Chief, Office of Endangered Species, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated April 5, 1983 (at 48 FR 14700), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, as required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 22, 1983 (48 FR 33468).

Authorship

The primary author of this final rulemaking is John P. Rogers, Chief, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus,

when the proposed rules were published April 5, June 17, and July 7, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours, and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands for the 1983–84 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

Lists of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Regulations Frameworks for 1983–84 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, limits, shooting hours, and outside dates within which States may select seasons for mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoter, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry regulations. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, gallinules, sandhill cranes, or extended falconry seasons to open in September must make its selection no later than July 29, 1983. States desiring these seasons to open after September 27 may make their selections at the time they select regular waterfowl seasons. Season selections for the 4 States offered experimental September duck seasons must also be made by July 29, 1983.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 29, 1983. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1983, and January 15, 1984, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: *Alabama, Georgia, Illinois, Louisiana,* and *Mississippi* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston, and Henry Counties. North Zone: Remainder of the State.

Georgia—U.S. Highway 280 from Columbus to the Little Ocmulgee River, down the Little Ocmulgee to the Ocmulgee River, southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east along the Altamaha River to the eastern border of Tattnall County, north along the eastern boundary of Tattnall and Evans Counties to Candler County, north along the eastern border of Candler County, then east along the northern border of Bulloch County and the southern border of Screven County to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1983.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: Option 1—In addition to the basic framework and the alternative, *Texas* may select hunting seasons for each of 2 previously established zones subject to the following conditions:

A. The hunting season may be split into not more than 2 periods.

B. The North Zone may have a season of not more than 70 (or 60 under the

alternative) days between September 1, 1983, and January 22, 1984.

C. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20 1983, and January 22, 1984. In that portion of Texas where white-winged dove hunting is allowed, the mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining days must be within the September 20, 1983–January 22, 1984, period.

Option 2—*Texas* may select hunting seasons for each of 3 zones described below:

Panhandle Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

El Paso Portion of Panhandle Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; west along Interstate Highway 10 to the Texas-New Mexico State line.

Rio Grande Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; North along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 37 in San Antonio; south along Interstate Highway 37 to U.S. Highway 181 in San Antonio; southeast along U.S. 181 to State Highway 361 at Gregory; east along State Highway 361 to the Corpus Christi Channel; east along the Corpus Christi Channel to the Gulf of Mexico.

Special White-Winged Dove Area in Rio Grande Zone—That portion of the State south and west of a line beginning at the International bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to U.S. Highway 277 at Sonora; south along U.S. Highway 277 to State Highway 55; southeast along State Highway 55 to U.S. Highway 83 at Uvalde; south along U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the Panhandle and Rio Grande Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where white-winged dove hunting is allowed, the mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves.

B. Each zone may have a season of not more than 70 days (or 60 under the alternative) between September 1, 1983, and January 25, 1984.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively.

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates: *Arizona, California, Nevada, New Mexico,* and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1983.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mouring and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for that portion of the State where the species occurs. The daily bag and possession limits may not exceed 10 and 20 white-winged doves, respectively. The season may be split within the overall time frame.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1983, and January 25, 1984, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under alternative), of which not more than 2 may be whitewings. The possession limit of both species in the aggregate may not exceed (or 30 under the alternative), of which not more than 4 may be whitewings.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1983, and January 15, 1984, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, in either seasons, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and the Nevada counties of Carson City, Douglas, and Lyon.

Outside Dates: Between September 1 1983, and January 15, 1984.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with a bag and possession limit of 5. Nevada may select an experimental season in Carson City,

Douglas, and Lyon Counties coinciding with that selected by California in Alpine County. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning: *California* may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30, 1983.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: *New Mexico* may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State Line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1983, in the North Zone and October 1 and November 30, 1983, in the South Zone.

Rails

(Clapper, King, Sora, and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1983, and January 20, 1984, on clapper, king, sora, and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20, respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway,[1] [2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1983, and February 28, 1984. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland,* and *Virginia* the season must end no later than January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1983, and February 28, 1984.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: *New Jersey* may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 55 days.

Common Snipe

Outside Dates: Between September 1, 1983, and February 28, 1984. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland,* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi, and Central Flyways and 93 days in Pacific Flyway portions of *Montana, Wyoming, Colorado,* and *New Mexico.* In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Gallinules

Outside Dates: September 1, 1983 through January 20, 1984 in the Atlantic and Mississippi Flyways, and September 1, 1983 through January 22, 1984 in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and gallinules, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1983, and February 28, 1984, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1983, and February 28, 1984 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay, and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary) not to exceed 93 days between September 1, 1983, and February 28, 1984.

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit. Exceptions are made for experimental seasons described below where State permits are required.

Experimental Seasons in New Mexico: New Mexico may select experimental seasons, to be described in detail in State hunting regulations, in portions of Dona Ana, Luna, and Sierra Counties as follows:

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof.

Area 1 (those portions of Dona Ana, Luna, and Sierra Counties west of Interstate Highway 25, north of Interstate Highway 10, east of New Mexico Highways 26 and 27 between Deming and Hillsboro, and south of New Mexico Highway 90): October 28–30, 1983; December 16–18, 1983; and January 13–15, 1984, not to exceed 40 special permits during each season; and

Area 2 (that portion of Luna County south of Interstate Highway 10): October 28–30, 1983; December 16–18, 1983; and January 13–15, 1984, not to exceed 75 special permits during each season.

Bag and Possession Limits: Not to exceed 3 cranes which must be tagged upon taking.

Permits: Each person participating in the experimental seasons must obtain and have in possession while hunting, a valid special permit issued by the State of New Mexico.

Experimental Season in Arizona: Arizona may select an experimental sandhill crane season subject to the following conditions:

1. The season may not exceed 4 days in November 1983.

2. The hunting area is confined to Game Management Units 30A, 30B, 31, and 32.

3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select an experimental season on sandhill cranes and Canada geese subject to the following conditions:

1. The season will be September 1–14, 1983.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1983, and January 20, 1984.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island,* and *Connecticut;* in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in *Delaware, Maryland, North Carolina,* and *Virginia;* and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than July 29, 1983. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1983, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee,* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by July 29, 1983.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1983, the 5-day season segment may commence no earlier than September 17, with daily bag and possession limits being the same as those in effect during the 1983 regular duck season.

Tennessee, Kentucky, and Florida September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky,* and *Florida* subject to the following conditions:

1. *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons;

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit;

3. The experimental season will be for 3 years to facilitate evaluation; and

4. Additional information to be gathered by the States to evaluate the experiment will include hunter and harvest surveys, banding, and population surveys.

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate.

during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

Dated: July 21, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-20877 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 30729-146]

Atlantic Tuna Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues this document to make necessary technical amendments to correct and clarify inadvertent omissions from the final rule published on June 17, 1983 (48 FR 27745), to implement revised regulations for the Atlantic Tuna Fisheries. Some confusion is now occurring in the fishery concerning daily catch rate limits for giant Atlantic bluefin tuna in the General category and the permitted gear allowed in taking young school, school, and medium sized Atlantic bluefin tuna. The intended effects of these technical amendments are to prevent further confusion and to clarify the intent of the regulations.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 325.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on June 17, 1983 (48 FR 27745) to implement revised regulations for the Atlantic Tuna Fisheries. The final rule as published contained minor technical errors of inadvertent omission in §§ 285.3, 285.22, 285.24 and 285.31, respectively.

In § 285.3, a new paragraph is added to clarify for fishermen that tunas may be landed in only two forms. This clarification is necessary to ensure effective enforcement of the regulations in this Part.

In § 285.24(a), the item omitted had been part of the rules governing the 1982 Atlantic bluefin tuna fishery and, therefore, is not a new restriction. The technical amendment will clarify some confusion that is now occurring in the fishery by clearly stating that vessels permitted in the General category are prevented from possessing more than a single day's catch as allowed by the daily catch rate limit in effect at that time.

In §§ 285.22 and 285.31, new paragraphs are added to clarify for fishermen the intent of the present regulations that young school, school, and medium sized Atlantic bluefin tuna may not be taken or retained except under the quotas for incidental catch, purse seining, and angling.

The action is taken under the authority of 50 CFR Part 285, and is taken in compliance with Executive Order 12291.

Dated: July 29, 1983.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Accordingly NOAA is amending 50 CFR Part 285 as follows:

1. The authority citation for Part 285 reads as follows:

Authority: 16 U.S.C. 971 *et seq.*

PART 285—AMENDED

2. Section 285.3 is amended by adding a new paragraph (f) which reads as follows:

§ 285.3 Prohibitions.

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed.

3. Section 285.22 is amended by adding a new paragraph (h) which reads as follows:

§ 285.22 Quotas.

* * * * *

(h) The catching or retention of young school, school, or medium Atlantic bluefin tuna is prohibited except as allowed by subsections (d), (e), and (f).

§ 285.24 [Amended]

4. Section 285.24(a) is amended by adding a final sentence which reads as follows: Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch rate limit in effect at that time.

5. Section 285.31 is amended by redesignating paragraph (bb) as (cc) and adding a new paragraph (bb) which reads as follows:

§ 285.31 Prohibitions.

* * * * *

(bb) To fish for or catch young school, school, and medium sized Atlantic bluefin tuna with gear other than hook and line, which is hand held, or rod and reel made for this purpose or except as allowed by § 285.23(a) through (f); or

* * * * *

[FR Doc. 83-21174 Filed 8-1-83; 3:47 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611, 672, and 675

[Docket No. 30627-115]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 83-18111 beginning on page 31044 in the issue of Wednesday, July 6, 1983, make the following correction: On page 31046, the first column, the seventh line, the citation should read " In accordance with 50 CFR 611.92(c),".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 48, No. 150
Wednesday, August 3, 1983

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 420

[Amdt. 4]

Proposed Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1984 and succeeding crop years, by: (1) Changing the policy to make it easier to read, (2) eliminating the reduction in production guarantee for unharvested acreage and its related provisions, (3) adding a provision permitting the determination of indemnities based on the acreage report rather than at loss adjustment time, (4) adding a provision to provide a coverage level if the insured does not select one, (5) providing that residue shall be left intact for seven days after harvest in the event of a probable loss, (6) adding a replanting payment provision, (7) adding a 60-day claim for indemnity provision, (8) adding a provision regarding appraisals following the end of the insurance period for unharvested acreage, (9) adding a hail/fire provision for appraisals on uninsured causes, (10) changing the cancellation/termination dates to conform with farming practices, (11) providing that any change in the policy will be available in the service office by a certain date, (12) adding a definition for "service office," (13) providing for a unit determination when the acreage report is filed, and (14) adding a section on "descriptive headings."

In addition, FCIC proposes to issue a new subsection in the grain sorghum crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring grain sorghum in accordance with Secretary's Memorandum No. 1512–1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

DATE: Written comments on this proposed rule must be submitted not later than October 3, 1983, to be sure of consideration.

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

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

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

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

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

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

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Proposed Rule

PART 420—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Grain Sorghum Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 420 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (1506, 1516).

2. 7 CFR Part 420 is amended in the Table of Contents thereof by removing the word "Reserved" from § 420.3 and inserting, in its place, the words "OMB control numbers assigned pursuant to the Paperwork Reduction Act."

3. 7 CFR 420.3 is revised to read as follows:

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

The information collection requirements contained in these regulations (7 CFR Part 420) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 420.7 [Amended]

4. 7 CFR 420.7(d) is amended by removing the Grain Sorghum Crop Insurance Policy therein and inserting the following:

* * * * *

(d) * * *

Grain Sorghum Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. *Causes of Loss.* a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period: (1) Adverse weather conditions; (2) fire; (3) insects; (4) plant disease; (5) wildlife; (6) earthquake, or (7) volcanic eruption unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

1b. We shall not insure against any cause of loss of production due to:

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

(2) the failure to follow recognized good grain sorghum farming practices;

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

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

2. *Crop, Acreage, and Share Insured.* a. The crop insured shall be grain sorghum which is initially planted to a combine-type hybrid grain sorghum for harvest as grain, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

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

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

d. We do not insure any acreage:

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

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

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

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

(5) Of volunteer grain sorghum;

(6) Planted to a forage sorghum or initially thick planted for silage or fodder;

(7) Of a second grain sorghum crop following a grain sorghum corp harvested in the same crop year;

(8) Planted to a type or variety of grain sorghum not established as adapted to the area or excluded in the actuarial table; or

(9) Planted with a crop other than grain sorghum.

e. Where insurance is provided for an irrigated practice:

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

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

f. Unless otherwise provided in the actuarial table, insurance shall attach only on acreage initially planted in rows far enough apart to permit cultivation, as determined by us, if not irrigated. If such acreage is destroyed and replanted to any grain-producing type grain sorghum or in any planting pattern the acreage shall be considered insured acreage and not as acreages put to another use.

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

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

3. *Report of Acreage, Share, and Practice.* You shall report on our form: a. All the acreage of grain sorghum in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting. You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any grain sorghum planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We do determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. *Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.* a. The production guarantees, coverage levels, and prices for computing indemnities shall be contained in the actuarial table.

b. If you have not elected a coverage level, you shall have coverage level 2.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. *Annual Premium.* a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, tiems the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

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

[Percent adjustments for unfavorable insurance experience]

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

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

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

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

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

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

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

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

6. *Deductions for Debt.* Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. *Insurance Period.* Insurance attaches when the grain sorghum is planted and ends at the earliest of:

(a) Total destruction of the grain sorghum;

(b) Combining, threshing or removal from the field;

(c) Final adjustment of a loss; or

(d) The date immediately following planting as follows:

(1) Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof, September 30;

(2) All other Texas counties and all other states, December 31.

8. *Notice of Damage or Loss.* a. In case of damage or probable loss:

(1) You must give us written notice if:

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

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

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

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

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

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and:

(a) All residue on the unit shall be left intact for a period of 7 days from the date harvest is completed, unless earlier released in writing by us; or

(b) A representative sample of the unharvested grain sorghum (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

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

(a) Total destruction of the grain sorghum on the unit;

(b) Harvest of the unit; or

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

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

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

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

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

(1) Total destruction of the grain sorghum on the unit;

(2) Harvest of the unit; or

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

b. We shall not pay any indemnity unless you:

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

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

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

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

(2) Subtracting therefrom the total production of grain sorghum to be counted (see section 9f);

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

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

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

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

(1) Mature grain sorghum production:

(a) Which otherwise is not eligible for quality adjustment and which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Which, due to insurable causes, does not grade No. 4 or better in accordance with the Official United States Grain Standards, shall be adjusted by:

(i) Dividing the value per bushel of such grain sorghum, as determined by us, by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of such grain sorghum.

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

(2) Appraised production to be counted shall include:

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

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

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

(c) Any appraised production on unharvested acreage.

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

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

(b) Is harvested; or

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

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

(5) When you have elected to exclude hail and fire as insured causes of loss and the grain sorghum is damaged by hail and fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

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

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

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

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

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

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

(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 7 bushels multiplied by the price election and that product multiplied by your share.

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

Any replanting payment will be considered as an indemnity.

h. You shall not abandon any acreage to us.

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

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

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

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

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

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

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

11. *Transfer of Right to Indemnity on Insured Share.* If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. *Assignment of Indemnity.* You may only assign to another party your right to an indemnity for the crop year on our prescribed form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogation.* (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

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

15. *Life of Contract: Cancellation and Termination.* a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

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

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

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

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

d. The cancellation and termination dates for each crop year are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas and all Texas counties lying south thereof.	Feb. 15.
Winkler, Ector, Upton, Regan, Sterling, Coke, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south thereof to an including Mavfrich, Zavalla, Frio, Atascosa, Karnes, Gonzales, Lavaca, Wharton and Matagorda Counties, Texas; Arizona and Florida.	Mar. 15.
Alabama, Arkansas, California, Georgia, Louisiana, Mississippi, Nevada, North Carolina and South Carolina.	Mar 31.
All other Texas counties and all other states.	Apr. 15.

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

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

16. *Contract Changes.* We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of any written notice from you to cancel the contract.

17. *Meaning of Terms.* For the purposes of grain sorghum crop insurance:

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

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

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

d. "Replanting" means performing the cultural practice necessary to replant insured acreage to Grain Sorghum.

e. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

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

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

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

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

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

k. "Unit" means all insurable acreage of grain sorghum in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grain sorghum on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share of you or the bona fide share of any other person having an interest therein.

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

Approved by the Board of Directors on April 26, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 27, 1983.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 83-21001 Filed 8-2-83; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 437

[Amendment No. 2]

Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1984 and succeeding crop years, by: (1) Changing the policy to make it easier to read, (2) eliminating the substitute crop provision, (3) eliminating the reduction of production guarantee for unharvested acreage and its related provisions, (4) providing for determination of indemnities based on the acreage report rather than at loss adjustment time, (5) adding a provision to provide for a coverage level if the insured does not select one, (6) providing that residue shall be left intact in the event of a probable loss, (7) adding a 60-day claim for indemnity provision, (8) adding a section regarding appraisals following the end of the insurance period for unharvested acreage, (9) adding a hail/fire provision for appraisals for uninsured causes, (10) changing the cancellation/termination dates to conform with farming practices, (11) providing that any change in the policy will be available in the service office by a certain date, (12) adding a definition for "service office," (13) providing for a unit determination when the acreage report is filed, and (14) adding a section regarding "descriptive headings."

In addition, FCIC proposes to issue a new subsection in the sweet corn crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring sweet corn in accordance with Secretary's Memorandum No. 1512-1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

DATE: Written comments on this proposed rule must be submitted not later than October 3, 1983, to be sure of consideration.

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

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review dates established for these regulations is April 1, 1988.

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

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

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

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

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 437

Crop insurance, Sweet corn.

PROPOSED RULE

PART 437—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sweet Corn Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 437 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (1506, 1516).

2. 7 CFR Part 437 is amended in the Table of Contents thereof by removing the word "Reserved" from § 437.3 and inserting, in its place, the words "OMB control numbers assigned pursuant to the Paperwork Reduction Act."

3. 7 CFR 437.3 is revised to read as follows:

§ 437.3 OMB controll numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 437) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 437.7 [Amended]

4. 7 CFR 437.7(d) is amended by removing the Sweet Corn Crop Insurance Policy therein and inserting the following:

* * * * * *

(d) * * *

Sweet Corn Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. *Causes of Loss.* a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period: (1) Adverse weather conditions; (2) fire; (3) insects; (4) plant disease; (5) wildlife; (6) earthquake; or (7) volcanic eruption unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(4).

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

(1) Sweet corn not being timely harvested, unless we determine that due to unusual weather conditions, a substantial number of acres of sweet corn in the area were ready for harvest at the same time.

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

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

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

(5) Any cause not specified on section 1a as an insured loss.

2. *Crop, Acreage, and Share Insured.* a. The crop insured shall be canning and freezing sweet corn which is planted for harvest; which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

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

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

d. We do not insure any acreage:

(1) Of sweet corn not grown under a contract executed with a processor before you report your acreage or excluded from the processor contract for, or during, the crop year;

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

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

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

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

(6) Of volunteer sweet corn;

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

(8) Planted for the development or production of hybrid seed or for experimental purposes; or

(9) Planted with a crop other than sweet corn.

e. Where insurance is provided for an irrigated practice:

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

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

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

g. An instrument in the form of a "lease" under which the insured grower retains control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a contract under which the insured has the share in the crop.

3. *Report of Acreage, Share, and Practice.* You shall report on our form:

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

b. The practice; and

c. Your share at the time of planting.

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

4. *Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.* a. The production guarantees, coverage levels, and prices for computing indemnities shall be contained in the actuarial table.

b. If you have not elected a coverage level, you shall have coverage level 2.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

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

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

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

[Percent adjustments for unfavorable insurance experience]

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

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

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

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

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

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

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

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

6. *Deduction for Debt.* Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. *Insurance Period.* Insurance attaches when the sweet corn is planted and ends at the earliest of:

(1) Total disteruction of the sweet corn;

(2) Harvest;

(3) Final adjustment of a loss; or

(4) September 20 of the calendar year in which sweet corn is normally harvested, except if any acreage of sweet corn is not timely harvested, insurance shall cease when the acreage should have been harvested, as determined by us.

8. *Notice of Damage or Loss.* a. In case of damage or probable loss:

(1) You must give us written notice if:

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

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

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

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

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and:

(a) All residue on the unit shall be left intact for a period of 7 days from the date harvest is completed, unless earlier released in writing by us; or

(b) A representative sample of the unharvested sweet corn (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) If you are going to claim an indemnity on any unit which is not to be harvested or harvest has been discontinued notice shall be given not later than 48 hours after:

(a) Discontinuance of harvest; or

(b) Before harvest would normally start.

If such notice is given of if unharvested acreage is not left intact, the appraisal on such acreage shall be the production guarantee.

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

(a) Total destruction of the sweet corn on the unit;

(b) Harvest of the unit; or

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

b. You must obtain written consent from us before you destroy any of the sweet corn which is not be harvested.

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

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

(1) Total destruction of the sweet corn on the unit;

(2) Harvest of the unit; or

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

b. We shall not pay any indemnity unless you:

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

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

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

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

(2) Subtracting therefrom the total production of sweet corn to be counted (See section 9e);

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

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual preium determined to be due, the indemnity shall be reduced proportionately.

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

(1) Appraised production to be counted shall include:

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

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

(c) Any appraised production on unharvested acreage.

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

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

(b) Is harvested; or

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

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

(4) When you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

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

f. You shall not abandon any acreage to us.

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

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

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

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

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

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

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

11. *Transfer of Right To Indemnity on Insured Share.* If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. *Assignment of Indemnity.* You may only assign to another party your right to an indemnity for the crop year on our prescribed form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogotion.* [Recovery of loss from a third party.] Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

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

15. *Life of Contract: Cancellation and Termination.* a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

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

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

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

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

d. The cancellation and termination dates are April 15 for all states.

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

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

16. *Contract Changes.* We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. *Meaning of Terms.* For the purposes of sweet corn crop insurance:

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

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

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

d. "Harvest" means the removal of the ears and husks from the stalks for the purpose of delivery to the processor.

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

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

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

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

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

j. "Unit" means all insurable acreage of sweet corn in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

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

Approved by the Board of Directors on April 26, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 28, 1983.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 83-21002 Filed 8-3-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1290

Floral Research and Consumer Information Order; Proposed Procedure for Referenda and Rules of Practice for Modification or Exemption

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319) authorizes a program of research and promotion to be developed through the promulgation of an order. Based on evidence received at a public hearing, the U.S. Department of Agriculture recently recommended that an order be issued. To become effective, however, the order must be approved by flower and plant producers and importers in referendum. This proposes procedures for the conduct of referenda and a basis for persons to petition for change in the order or its administration.

DATE: Comments due by August 19, 1983.

ADDRESS: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–2615.

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

The Floral Research and Consumer Information Act (Pub. L. 97–98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301–4319) authorizes the development of a nationally coordinated program of research, promotion, and consumer education for flowers and plants. A public hearing was held on a proposed floral research and consumer information order in October and November 1982. Based on the record of the hearing, a recommended decision was issued which concluded that an order would effectuate the purposes of the Act. Comments on the decision are allowed through August 19, 1983. A final decision will be issued after consideration of the comments; and if it also supports an order, the Act requires that a referendum be held to determine whether affected producers and importers favor the order.

This proposal would establish procedures to be followed in conducting referenda under this part. In addition it would establish rules for proceedings on petitions to modify or be exempted from an order. Such procedures are necessary to meet the requirements of the Act.

List of Subjects in 7 CFR Part 1290

Administrative practice and procedure, Advertising, Agricultural research, Floral products, Promotion.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended by adding Part 1290 to read as follows:

PART 1290—REFERENDA PROCEDURES

Subpart—Procedure for the Conduct of Referenda in Commection With Floral Research and Consumer Information Order

Sec.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From an Order

Authority: Pub. L. 97–98, 7 U.S.C. 4301–4319.

Subpart—Procedure for the Conduct of Referenda in Connection With Floral Research and Consumer Information Order

§ 1290.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination or suspension of a Floral Research and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1290.201 Definitions.

(a) "Act" means the Floral Research and Consumer Information Act, Pub. L. 97–98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301–4319.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and Department means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Order" means the order (including an amendment to an order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 1709 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to, (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing or importing of flowers and plants for market and the authority to transfer title to the flowers and plants so produced or imported.

(h) "Eligible producer" means any person defined as a producer in the order, engaged in the growing of flowers and plants domestically with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period and who: (1) Owns and farms land (or a greenhouse), resulting in the ownership of the flowers and plants produced there; (2) rents and farms land, resulting in the ownership of all or a portion of the flowers and plants produced thereon; or (3) owns land which the person does not farm and, as rental for such land, obtains the ownership of a portion of the flowers and plants produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the flowers and plants grown thereon shall not be deemed to result in such owners or lessees becoming producers.

(i) "Eligible importer" means any person defined as an importer in the order, engaged in the importation of flowers and plants with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period. Importation occurs when commodities originating outside the United States are released from Customs by the U.S. Customs Service and introduced into the stream of commerce within the United States. Included are persons who hold title to foreign-grown flowers and plants immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of flowers and plants from customs and introduce them into commerce.

(j) "Floraboard" means the administrative board provided for under Section 1707 of the Act.

§ 1290.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to only one vote in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce flowers and plants, in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only his or her share of the ownership.

(b) Proxy voting is not authorized but an officer or employee of a corporate eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1290.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the acreage or square footage of flowers and plants produced by the voting producer during the representative period, (3) the total sales value of flowers and plants produced and/or imported during the representaive period, and (4) in a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media or public information sources (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: Except that no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting of the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for apropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1290.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointments, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to eligible producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1290.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1290.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1290.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart——Rules of Practice Governing Proceedings oon Petitions To Modify or To Be Exempted From an Order

§ 1290.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice vera, as the case may demand.

§ 1290.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Floral Research and Consumer Information Act, Pub. L. 97–98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301–4319;

(b) The term "Department" means the U. S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any administrative law judge in the Office of Administrative Law Judges, U. S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agriculture Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "**Federal Register**" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under Section 1714(a) of the Act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U. S. Department of Agriculture, Washington, D. C.;

(m) The term "presiding officer" means the administrative law judge conducting a proceeding under this Act;

(n) The term "presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material inssues of fact, law or discretion, as will as the reason or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(o) The term "petition" includes an amended petition.

§ 1290.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, adn respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition —(1) Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply,

in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from plans shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Dated: July 19, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-19980 Filed 8-2-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Procurement and Assistance Management Directorate, Assistant Secretary for Management and Administration, DOE.

ACTION: Extension of comment period on Appendix A to proposed rule.

SUMMARY: The comment period for the Standard Sales Provisions is extended to September 16, 1983, from the original due date of August 1, as published in the **Federal Register** on June 15, 1983 (48 FR 27482). This extension is being granted because the Department also plans to provide an additional comment period on the proposed rule for Sale of Strategic Petroleum Reserve Petroleum, 10 CFR Part 625. Those who have already developed comments are urged to submit them as soon as possible so that they may be considered and incorporated into current departmental activities.

Initial submissions may be supplemented within the extended response period.

DATE: Written comments must be submitted by September 16, 1983.

ADDRESS: Send comments to: Lynne Warner, MA-453.1, Department of Energy, 1000 Independence Avenue, SW., Room 1J-027, Washington, D.C. 20585.

Issued in Washington, D.C., July 28, 1983.

William S. Heffelfinger,

Director of Administration Management and Administration.

[FR Doc. 83-20709 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statement Docket 41597; PSDR-80]

Statements of General Policy

Dated: July 14, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The CAB is proposing to remove from its rules a statement of policy about conditions on foreign air carrier permits. That policy now states two conditions on permits: that the permit is subject to treaties or agreements governing that transportation, and that the foreign carrier waives sovereign immunity in any U.S. court case with respect to claims against it. These conditions are standard in foreign air carrier permits. The removal of the policy statement would thus reduce an unnecessary and duplicative rule.

DATES: Comments by: October 3, 1983. Reply comments by: October 18, 1983.

Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on Service List by: August 15, 1983.

The Docket Section prepares the Service List and sends it to each person on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41597, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Nancy Pitzer Trowbridge, Regulatory Affairs Division, 202-673-5134, or Joseph A. Brooks, Office of the General Counsel, 202-673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: The Board places its statements of general policy in 14 CFR Part 399. Among other things, those statements include two of the standard conditions placed on permits given to foreign air carriers allowing them to provide air transportation to and from the United States. This proposal would remove that one policy statement.

The two conditions listed in the policy statement are that: (1) any permit is subject to agreements and treaties between the United States and the carrier's home country, and (2) the carrier must waive any sovereign immunity defense against claims actions in U.S. courts. Since that policy statement was adopted, those two conditions have been made standard in all foreign air carrier permits. For that reason, there no longer appears to be a reason to publish these conditions as a statement of general policy.

In any matter affected by these conditions with respect to a specific foreign air carrier, the public and government officials have access to the carrier's permit, which would contain the treaty and sovereign immunity conditions. Applicants wishing to know the standard conditions on foreign air carrier permits may look at them at the Board or ask for a copy of them. The standard conditions include many more than the two listed in the policy statement. There is thus apparently no reason to keep this statement of policy in the Code of Federal Regulations as a public reference.

The conditions will, along with several others, continue to be placed in foreign air carrier permits.

Regulatory Flexibility Act

In accordance with the Regulatory Flexiblity Act, Pub. L. 96-354, 5 U.S.C. 605(b), the Board certifies that the

proposed change, if adopted, would not have a significant economic impact on a substantial number of small entities. The standard conditions will continue to be placed in foreign air carrier permits. The proposed change only removes a duplicate statement of the conditions.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Freight forwarders, Grant programs—Transportation, Hawaii, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

Proposed Rule

PART 399—AMENDED

Accordingly, the Civil Aeronautics Board proposed to amend 14 CFR Part 399, *Statements of General Policy*, as follows:

§ 399.13 [Removed and Reserved]

1. Section 399.13, *Standard provisions in foreign air carrier permits*, would be removed and reserved.

2. The Table of Contents would be amended accordingly.

Secs. 101, 102, 105, 204, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 782, 788, 797; (49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1386, 1481, 1482, 1502, 1504), unless otherwise noted.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc.83-21125 Filed 8-2-83; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 30614-108]

National Estuarine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: These proposed regulations revise existing procedures for selecting and designating national estuarine sanctuaries and provide guidance for their long-term management. Site identification and selection is to be based on a revised biogeographic classification scheme and typology of estuarine areas. The regulations place a greater emphasis on management planning by individual states early in the process of evaluating a potential site. The regulations reflect a progression from the initial identification of a site, through the designation process, and continued management of the sanctuary by the state after Federal financial assistance has ended. The regulations provide for a programmatic evaluation of sanctuary performance. Clarifications in the financial assistance application and award process have also been made.

DATES: Comments will be accepted until October 3, 1983. After the close of the comment period and review of the comments received, final regulations will be published in the **Federal Register.**

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John Epting, (202) 634-4236.

SUPPLEMENTARY INFORMATION: NOAA is publishing revised regulations for implementing the National Estuarine Sanctuary Program, pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461. The Program has been operating under estuarine sanctuary guidelines published June 4, 1974 (39 FR 19922) and proposed regulations published September 9, 1977 (42 FR 45522). Based on experience in operating the program, a number of refinements in operational procedure and policy have been designed. The proposed regulations implement these refinements, which include:

I. Defining the Mission and Goals of the Program

The Mission Statement and Goals for the continued implementation of the National Estuarine Sanctuary Program stress the importance of designating estuarine areas, through federal-state cooperative efforts, for long-term research and educational benefits. Though broad in scope, they establish a framework within which specific Program activities are conducted. The Mission Statement and Goals are adopted by the revised regulations (§ 921.1).

II. Revision of the Procedures for Selecting, Designating and Operating Estuarine Sanctuaries

(A) Revision of the Biogeographic Classification Scheme and Proposed Estuarine Typologies. The 1974 guidelines identified 11 biogeographic regions from which representative sites throughout the coastal waters of the United States would be chosen. Section 921.4(b) of the guidelines provided that "various sub-categories will be developed and utilized as appropriate."

In 1981, a study was undertaken to assess the original biogeographic classification scheme and make recommendations, as necessary. A system with 27 subcategories, termed regions, was proposed. The subcategories fit within the original scheme and further define the coastal areas to assure adequate sanctuary representation (Clark. *Assessing the National Estuarine Sanctuary Program: Action Summary*, March 1982, cited as *The Clark Report).*

The Clark Report also recommends adopting an estuarine typology system for use in evaluating and selecting sites. The typology system recognizes that there are significant differences in estuary characteristics not related to regional location. Such factors include water source, water depth, type of circulation, inlet dynamics, basin configuration, watershed type, and dominant ecological community.

The proposed regulations adopt the revised biogeographic classification scheme and typology in § 921.3.

(B) *Site Designation.* Eligible states may apply for preacquisition awards to aid in selecting an estuarine site in conformity with the classification scheme and typology system. A description of the site selection process to be carried out by the state, including a provision for public participation in the process, must be submitted for NOAA's approval. These steps require that the procedures for the site selection process be planned prior to implementing the selection process and approval of the preacquisition award. Figure 1 depicts the entire designation process.

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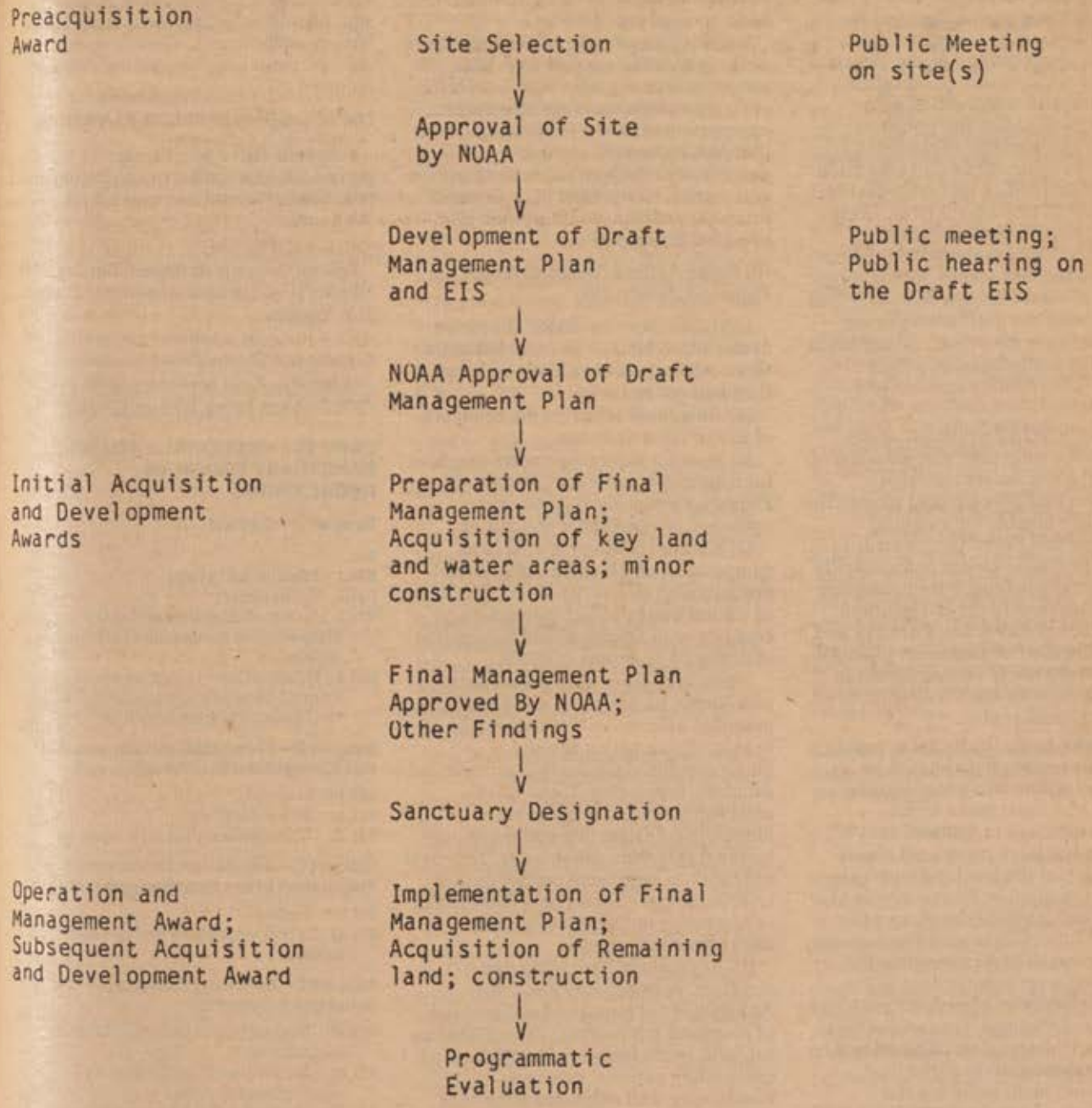
Figure 1. National Estuarine Sanctuary Program Designation Process



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After selection of a site, a draft management plan is prepared. Requiring the development of a comprehensive draft management plan in the preacquisition phase is designed to ensure that early in the estuarine sanctuary designation process the state considers management policies, an acquisition and construction plan (including schedules and priorities), staffing requirements, a research component, interpretive and education plans, future funding and other resource requirements, and alternatives. Draft and final environmental impact statements (EIS) are prepared analyzing the environmental and socioeconomic impacts of establishing a sanctuary and implementing the draft management plan. The EIS is prepared in accordance with NEPA procedures, including provisions for public comment and hearings.

Following NOAA approval of the draft management plan and issuance of the EIS, the site enters an initial acquisition and development phase. The state is then eligible for an initial acquisition and development award. During this phase, award funds may be used to purchase land, construct minor facilities (subject to pre-designation construction policies, see § 921.21), and prepare the final management plan. All of these tasks are to be carried out in conformance with the NOAA-approved draft management plan.

The tasks under the initial acquisition and development phase should be completed within two years. At this stage, NOAA must make formal findings, specified in § 921.30, that the final plan has been completed and is approved, that the key land and water areas as specified in the management plan are under state control, and that a memorandum of understanding between the state and NOAA concerning the state's long-term commitment to the sanctuary has been signed. After NOAA makes these findings, the sanctuary is considered "designated". The state then begins implementation of the final management plan, including the construction of necessary facilities and additional land acquisition. The state is also eligible for operation and management awards to provide assistance in implementing the final management plan.

The regulations also provide procedures for the programmatic evaluation of a sanctuary during the period of the operation and management awards (or under the initial acquisition and development award if the sanctuary is not designated within two years) and for a continuing, biennial review of an estuarine sanctuary after Federal funding has expired. Procedures for withdrawing designation, if a sanctuary fails to meet established standards, have been added (§ 921.35).

Financial assistance requirements and procedures have also been revised. The programmatic information required for each type of award is specified in the appropriate sections—in preacquisition (Subpart B); acquisition and development (Subpart C); and operation and management (§ 921.321). General financial assistance information is provided in Subpart F.

III. Other Actions Associated with the Proposed Rulemaking

(A) *Classification Under Executive Order 12291.* NOAA has concluded that these regulations are not major because they will *not* result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed rules amend existing procedures for selecting and processing potential national estuarine sanctuaries in accordance with a revised biogeographic classification scheme and estuarine typologies. These rules establish a revised process for identifying, designating and managing national estuarine sanctuaries. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

(B) *Regulatory Flexibility Act Analysis.* A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying and designating national estuarine sanctuaries, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses.

(C) *Paper Work Reduction Act of 1980 (Pub. L. 96-511).* These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 other than those already approved by the Office of Management and Budget (approval number 0648-0121) for use through September 30, 1983.

(D) *National Environmental Policy Act.* NOAA has concluded that publication of the proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921.

Administrative practice and procedure, Coastal zone, Environmental protection, Natural resources, and Wetlands.

Dated: July 29, 1983.

Federal Domestic Assistance Catalog Number 11-420 Estuarine Sanctuary Program.

K. E. Taggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 921 be revised as follows:

PART 921—NATIONAL ESTUARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Subpart B—Preacquisition: Site Selection and Management Plan Development

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

Subpart D—Sanctuary Designation and Subsequent Operation

Subpart E—Research Funds

Subpart F—General Financial Assistance Provisions

Appendix 1—Biogeographic classification scheme.

Appendix 2—Typology of National Estuarine Areas.

Authority: Sec. 315(1), Pub. L. 92–583, as amended; 86 Stat. 1280 (16 U.S.C. 1461(1)).

Subpart A—General

§ 921.1 Mission and goals

(a) The mission of the National Estuarine Sanctuary Program is the establishment and management, through Federal-state cooperation, of a national system of estuarine sanctuaries representative of the various regions and estuarine types in the United States to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program for carrying out this mission are:

(1) Enhance resource protection by implementing a long-term management plan tailored to the site's specific resources;

(2) Provide opportunities for long-term scientific and educational programs in estuarine areas to develop information for improved coastal decisionmaking;

(3) Enhance public awareness and understanding of the estuarine environment through resource interpretive programs; and

(4) Promote Federal-state cooperative efforts in managing estuarine areas.

(c) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the national estuarine sanctuary system. As part of this role, NOAA will ensure that information and ideas from one sanctuary are made available to others in the system.

(d) Multiple uses are encouraged to the degree compatible with the sanctuary's overall purpose as provided in the management plan and consistent with paragraphs (a) and (b) of this section. The sanctuary management plan describes the uses and establishes priorities among these uses. The plan discusses uses requiring a permit, as well as areas where uses are encouraged or prohibited. In general, sancturaries are intended to be open to the public; low intensity recreational and interpretive activities are generally encouraged. The use levels of these activities are set by the individual state and analyzed in the management plan. Certain manipulative activities, including research and habitat management, may be allowed on a permit basis as specified in the management plan as long as they are consistent with overall sanctuary purposes.

(e) The National Oceanic and Atmospheric Administration (NOAA) may provide financial assistance, not to exceed 50 percent of all actual costs to coastal states, to assist in the designation and operation of national estuarine sanctuaries. Three types of awards are available under the National Estuarine Sanctuary Program. The *preacquisition award* is for site selection and draft management plan preparation. The *acquisition and development award* is intended primarily for land acquisition and construction purposes. The *operation and management award* provides funds to assist in implementing the research, educational, and administrative programs detailed in the sanctuary management plan. At the conclusion of Federal financial assistance, funding for the long-term operation of the sanctuary becomes the responsibility of the state.

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315 of the Act, 16 U.S.C. § 1461, establishes the National Estuarine Sanctuary Program.

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his/her successor or designee.

(c) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes, see 16 U.S.C. 1454 (7).

(d) "National Estuarine Sanctuary" means an area, including all or part of an estuary, and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, which is established to provide long-term opportunities for research, education, and interpretation.

§ 921.3 National estuarine sanctuary classification scheme and estuarine typologies.

(a) National estuarine sanctuaries are chosen to reflect regional differences in biogeography and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's castal zone has been developed. The biogeographic classification scheme is used to ensure that the National estuarine Sanctuary System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the Program reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions.

(c) The typology is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

(a) The National Estuarine Sanctuary Program is intended to provide information to state agencies and other entities involved in coastal zone management decisionmaking pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Sanctuary Program.

(b) Where feasible, the National Estuarine Sanctuary Program will be conducted in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1434), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate ocean waters as marine sanctuaries to protect or restore their conservation, recreational, ecological, or esthetic values.

Subpart B—Preacquisition: Site Selection and Management Plan Development

§ 921.10 General.

A state may apply for a preacquisition award for the purpose of site selection and preparing the documents specified in § 921.12 (draft management plans and environmental impact statement (EIS)). The total Federal share of the preacquisition award may not exceed $50,000, of which up to $10,000 may be used for site selection as described in § 921.11. Financial assistance procedures are specified in Subpart F.

§ 921.11 Site selection.

(a) A state may use up to $10,000 in Federal preacquisition funds, which must be matched by the state (see § 921.51(e)), to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart F, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the

biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site. Site selection shall be guided by the following principles:

(1) The site's benefit to the National Estuarine Sanctuary Program relative to the biogeographic classification scheme and typology set forth in § 921.3 and Appendices 1 and 2;

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site should, to the maximum extent possible, be a natural system that is capable of sustaining "baseline" monitoring over a long-term period;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. National estuarine sanctuaries may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced, see § 921.51(e)(ii);

(4) The site's importance for research, including proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts.

(d) Early in the site selection process, the state must seek the views of affected landowners, local governments, Federal agencies, and other parties who are interested in the area(s) being considered for selection as a potential estuarine sanctuary. After the local government and affected landowners have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting.

§ 921.12 Management plan development.

(a) After a site is selected by NOAA and the state, the state may request the use of the remainder of the preacquisition funds to develop the management plan and environmental impact statement. The request must be accompanied by the information specified in subpart F and the following programmatic information:

(1) An analysis of the site based on the biogeographic scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted;

(4) A list of all sites considered and a brief statement of the basis for not selecting the non-preferred sites; and

(5) A draft management plan outline (see paragraph (b) of this section) and an outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state roles in sanctuary management during the period of federal funding and expressing the state's long-term commitment to operate and manage the sanctuary.

(b) The state shall develop a draft management plan setting out in detail:

(1) Sanctuary goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) A research plan;

(3) An interpretive plan (including interpretive, educational and recreational activities);

(4) A plan for public access to the sanctuary;

(5) A construction plan, including a proposed construction schedule, drawings, and a preliminary engineering report, if a visitor center, research center or any other facilities are proposed for construction or renovation at the site.

Note.—Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64830 (1977)), which is supplied to award recipients);

(6) An acquisition plan identifying the ecologically key land and water areas of the sanctuary, priority acquisitions, and strategies for acquiring these areas. This plan should identify ownership patterns within the proposed sanctuary boundaries; land already in the public domain; an estimate of the fair market value of land to be acquired; the method of acquisition, or the feasible alternatives (including less than fee techniques) for the protection of the estuarine area; a schedule for acquisition with an estimate of the time required to complete the proposed sanctuary; and a discussion of any anticipated problems; and

(7) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the estuarine sanctuary, and expressing the long-term commitment by the state to maintain effectively the sanctuary after Federal financial assistance ends. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection of the sanctuary. The MOU shall be signed prior to sanctuary designation. If other MOUs are necessary (such as with a federal agency or another state agency), drafts of such MOUs must be included in the plan.

(c) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on an estuarine sanctuary proposal, the state shall provide all necessary information to NOAA regarding the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan.

(d) Early in the development of the draft management plan and the DEIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action.

(e) NOAA will publish a **Federal Register** notice of intent to prepare a DEIS. After the DEIS is prepared, and after it is accepted by the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed sanctuary. The hearing will be held no sooner than 15 days after appropriate notice by NOAA of the meeting has been given in the principal news media. After a 45-day comment period, a final EIS is prepared.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.

(a) After NOAA approval of the site, the draft management plan and the draft

MOU, and completion of the final EIS, a state may apply for an acquisition and develolpment award to acquire land and water areas for inclusion in the sanctuary and to construct research and educational facilities in accordance with the draft management plan. The acquisition and development award has two phases. In the initial phase, state performance should work to meet the criteria required for formal sanctuary designation, i.e., acquiring the key land and water areas as specified in the draft management plan and preparing the final plan. These requirements are specified in § 921.30. The initial acquisition and development phase is expected to last no longer than two years after the start of the award. If necessary, a longer time period may be negotiated between the state and NOAA. After the sanctuary is designated, funds may be used to acquire any remaining land and for construction purposes.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in: (1) Acquiring land and water areas to be included in the sanctuary boundaries; (2) minor construction, as provided in paragraphs (b) and (c) of this section; (3) preparing the final management plan; and (4) up to the point of sanctuary designation, for initial management costs, e.g., implementing the NOAA-approved draft management plan, preparing the final management plan, hiring a sanctuary manager and other staff as necessary, and for other management-related activities. Application procedures are specified in Subpart F.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. Preliminary architectural and engineering plans and specifications and minor construction activities, consistent with paragraph (c) of this section are allowed, if the NOAA-approved draft management plan includes a construction plan and a public access plan.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted under the initial acquisition and development award. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the EIS, that the construction activity will not be detrimental to the environment and that the PER requirements are satisfied.

(d) Except as specifically provided in paragraphs (a)–(c) of this section, construction projects, to be funded in whole or in part under the acquisition and development award, may not be initiated until the sanctuary receives formal designation, see § 921.30.

Note.—The intent of these requirements and the phasing of the acquisition and development award is to ensure that substantial progress in acquiring the land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in acquisition has been made, as defined in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

Subpart D—Sanctuary Designation and Subsequent Operation

§ 921.30 Designation of national estuarine sanctuaries.

(a) The AA may designate an area as a national estuarine sanctuary pursuant to section 315 of the Act, based upon written findings that the state has met the following conditions:

(1) A final management plan has been developed and approved by NOAA;

(2) Sanctuary construction and access policies, § 921.21(b)-(d), have been followed;

(3) Key land and water areas of the proposed sanctuary, as identified in the management plan, are under state control; and

(4) A MOU between the state and NOAA ensuring a long-term commitment by the state to the sanctuary's effective operation and implementation has been signed.

(b) The term "state control" in § 921.30(a)(3) does not necessarily require that the land be owned by the state in fee simple. Less-than-fee interests and regulatory measures may suffice where the state makes a showing that the lands are adequately controlled consistent with the purposes of the sanctuary.

§ 921.31 Supplemental acquisition and development awards.

After sanctuary designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award for construction and acquiring any remaining land. Application procedures are specified in subpart F.

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the sanctuary is formally designated, the state may apply for assistance to provide for operations and management. The purpose of this phase in the estuarine sanctuary process is to implement the approved management plan and to take the necessary steps to ensure the continued effective operation of the sanctuary after direct Federal support is concluded.

(b) Federal funds of up to $250,000, to be matched by the state, are available for the operation and management of the national estuarine sanctuary. Operation and management awards are subject to the following limitations:

(1) No more than $50,000 in Federal funds per annual award; and

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (i.e., $10,000 maximum per year).

§ 921.33 Boundary changes and amendments to the management plan.

(a) Changes in sanctuary boundaries and major changes to the final management plan, including state-promulgated regulations affecting the sanctuary, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice and an opportunity for comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final environmental impact statement (FEIS) require public notice and the opportunity for comment; in certain cases, an environmental assessment will be required.

§ 921.34 Program evaluation.

(a) Performance during the term of the operation and management award (or under the initial acquisition and development award, if the sanctuary is not designated within two years) will be monitored annually by the program office and periodically in accordance with the provisions oif section 312 of the Act to determine compliance with the conditions of the award.

(b) After Federal funding expires, NOAA will begin a biennial review of the state's performance in managing the estuarine sanctuary to ensure that the purposes for which the sanctuary were designated are still being maintained.

§ 921.35 Withdrawal of designation.

(a) Upon a finding by the Program Office through its programmatic evaluation (§ 921.34) that an estuarine sanctuary is not meeting the mandate of section 315 of the Act, the national program goals or the policies established in the management plan, NOAA will provide the state with a

written notice of the deficiency. Such a notice will explain the deficiencies in the state's approach, propose a solution or solutions to the deficiency and provide a schedule by which the state should remedy the deficiency. The state shall also be advised in writing that it may comment on the Program Office's finding of a deficiency and meet with Program officials to discuss the finding and to seek a remedy to the deficiency.

(b) If the issues cannot be resolved within a reasonable time, the Program Office will make a recommendation regarding withdrawal of designation to the Assistant Administrator for Ocean Services and Coastal Zone Management (AA).

(c) The state shall be provided the opportunity for an informal hearing before the AA to consider the Program Office's recommendation and finding of deficiency, as well as the state's comments on and response to the recommendation and finding.

(d) Within 30 days after the informal hearing, the AA shall issue a written decision regarding the sanctuary. If a decision is made to withdraw sanctuary designation, the procedures specified in paragraph (e) of this section regarding the disposition of real property acquired with federal funds shall be followed.

(e) Deeds for real property acquired for the sanctuary under acquisition funding shall contain substantially the following provision: "Title to the property conveyed by this deed shall vest in the [recipient of the CZMA section 315 award or other Federally-approved entity] subject to the condition that the property shall remain part of the Federally-designated [Name of National Estuarine Sanctuary]. In the event that the property is no longer included as part of the sanctuary, or if the sanctuary designation of which it is part is withdrawn, then the National Oceanic and Atmospheric Administration or its successor agency may exercise any of the following rights regarding the disposition of the property:

(1) The recipient may be required to transfer title to the Federal Government. In such cases, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property; or

(2) At the discretion of the Federal Government, (i) the recipient may either be directed to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (minus actual and reasonable selling and fix-up expenses, if any, from the sale proceeds); or (ii) the recipient may be permitted to retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property."

Subpart E—Research Funds

§ 921.40 Application procedures.

(a) To stimulate high quality research within designated estuarine sanctuaries, NOAA may fund research on a competitive basis to sanctuaries having an approved final management plan. This amount must be matched by the state, consistent with § 921.51(e)(iii) ("allowable costs"). Such research funds are provided in addition to any funds available to the state under the operation and management or acquisition and development awards. Individual states may apply for more than one research project per sanctuary.

(b) Research funds are intented to support significant research projects that will lead to enhanced scientific understanding of the sanctuary environment, improved coastal decisionmaking, improved sanctuary management, or enhanced public appreciation and understanding of the sanctuary ecosystem. Emphasis will be placed on projects that are also of benefit to other sanctuaries in the system. Proposals for research under the following categories will be considered:

(1) Baseline Data and to Establish a Monitoring Program (e.g., studies related to gathering and interpreting baseline information on the estuary; funds are available to establish a monitoring system. The long-term support for a monitoring system must be carried out as part of overall sanctuary implementation);

(2) Estuarine Ecology (e.g., studies of individual species' relationships with their estuarine environment, studies of biological community relationships, studies on factors and processes that govern the biological productivity of the estuary);

(3) Estuarine Processes (e.g., studies on dynamic physical processes that influence and give the estuary its particular physical characteristics, including studies related to climate, patterns of watershed drainage and freshwater drainage and freshwater inflow patterns of water circulation within the estuary, and studies on oceanic or terrestrial factors that influence the condition of estuarine waters and bottoms);

(4) Applied Research (e.g., studies designed to answer specific management questions); and

(5) Socioeconomic Research (e.g., studies on patterns of land use, sanctuary visitation, archaeological research).

(c) Research opportunities will be identified in final management plans for national estuarine sanctuaries. Research funds will be used to fill obvious voids in available data, as well as to support creative or innovative projects.

(d) Proposals for research in national estuarine sanctuaries will be evaluated in accordance with criteria listed below:

(1) Scientific merits;

(2) Relevance or importance to sanctuary management or coastal decisionmaking;

(3) Research quality (i.e., soundness of approach, environmental consequences; experience related to methodologies); and

(4) Importance to the National Estuarine Sanctuary Program.

Subpart F—General Financial Assistance Provisions

§ 921.50 Application information.

(a) The maximum total federal funding per sanctuary is $3,000,000 for the preacquisition, acquisition and development, and operation and management awards. The research funding under § 921.40 is excluded from this total.

(b) Only a state Governor, or his/her designated state agency, may apply for estuarine sanctuary financial assistance awards. If a state is participating in the national Coastal Zone Management Program, the recipient of an award under Section 315 of the Act shall consult with the state coastal management agency regarding the application.

(c) No acquisition and development award may be made by NOAA without the approval of the Governor of the state in which the land to be acquired is located.

(d) All applications are to be submitted to: Management and Budget Group, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven St., N.W. Washington, D.C. 20235.

(e) An original and two copies of the complete application must be submitted at least 60 working days prior to the proposed beginning of the project. The Application for Federal Assistance Standard Form 424—(Non-construction Program) constitutes the formal

application for preacquisition and operation and management awards. The Application for Federal Assistance Standard Form 424—(Construction Programs) constitutes the formal application for land acquisition and development awards.

The application must be accompanied by the information required in Subpart B (preacquisition), Subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management), as applicable. All applications must contain backup data for budget estimates (federal and non-federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Appraisals and title information;

(3) Governor's letter approving the sanctuary proposal; and

(4) Written approval from NOAA of the draft or final management plan.

The Standard Form 424 has been approved by the Office of Management and Budget (approval number 0648-0121) for use through September 30, 1983.

§ 921.51 Allowable costs.

(a) Allowable costs will be determined in accordance with OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", and A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, local, and Federally Recognized Indian Tribal Governments"; the financial assistance agreement; these regulations; and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period, except as provided under preagreement costs, paragraph (d) of this section.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A-102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) *Preacquisition Awards*—Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and Development Awards*—Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the sanctuary boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state (pursuant to OMB Circular A-102, Attachment F) may also be used as match. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standards for Federal Land Acquisitions". Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match. Land, including submerged lands, already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Sanctuary Program, may be used as match only if it was acquired within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine sanctuary. For state lands not in a fully-protected status (e.g., a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the sanctuary.

A state may initially use a match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the estuarine sanctuary.

(3) *Operations and Management Awards; Research Funds*—Cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable.

§ 921.52 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revision of the approved project budget, or extension of the performance period must be submitted to NOAA and approved in writing.

Appendix 1—Biogeographic Classification Scheme

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod)

Virginian

3. Southern New England (Cape Cod to Sandy Hook)
4. Middle Atlantic (Sandy Hook to Cape Hatteras)
5. Chesapeake Bay

Carolinian

6. Northern Carolinas (Cape Hatteras to Santee River)
7. South Atlantic (Santee River to St. John's River)
8. East Florida (St. John's River to Cape Canaveral)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south)
10. West Florida (Ft. Jefferson to Cedar Key)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay)
12. Mississippi Delta (Mobile Bay to Galveston)
13. Western Gulf (Galveston to Mexican border)

Californian

14. Southern California (Mexican border to Point Concepcion)
15. Central California (Point Concepcion to Cape Mendocino)
16. San Francisco Bay

Columbian

17. Middle Pacific (Cape Medocino to the Columbia River)
18. Washington Coast (Columbia River to Vancouver Island)
19. Puget Sound

Great Lakes

20. Western Lakes (Superior, Michigan, Huron)

21. Eastern Lakes (Ontario, Erie)

Fjord

22. Southern Alaska (Prince of Wales Island to Cook Inlet)
23. Aleutian Islands (Cook Inlet to Bristol Bay)

Sub-Arctic

24. Northern Alaska (Bristol Bay to Demarcation Point)

Insular

25. Hawaiian Islands
26. Western Pacific Islands
27. Eastern Pacific Islands

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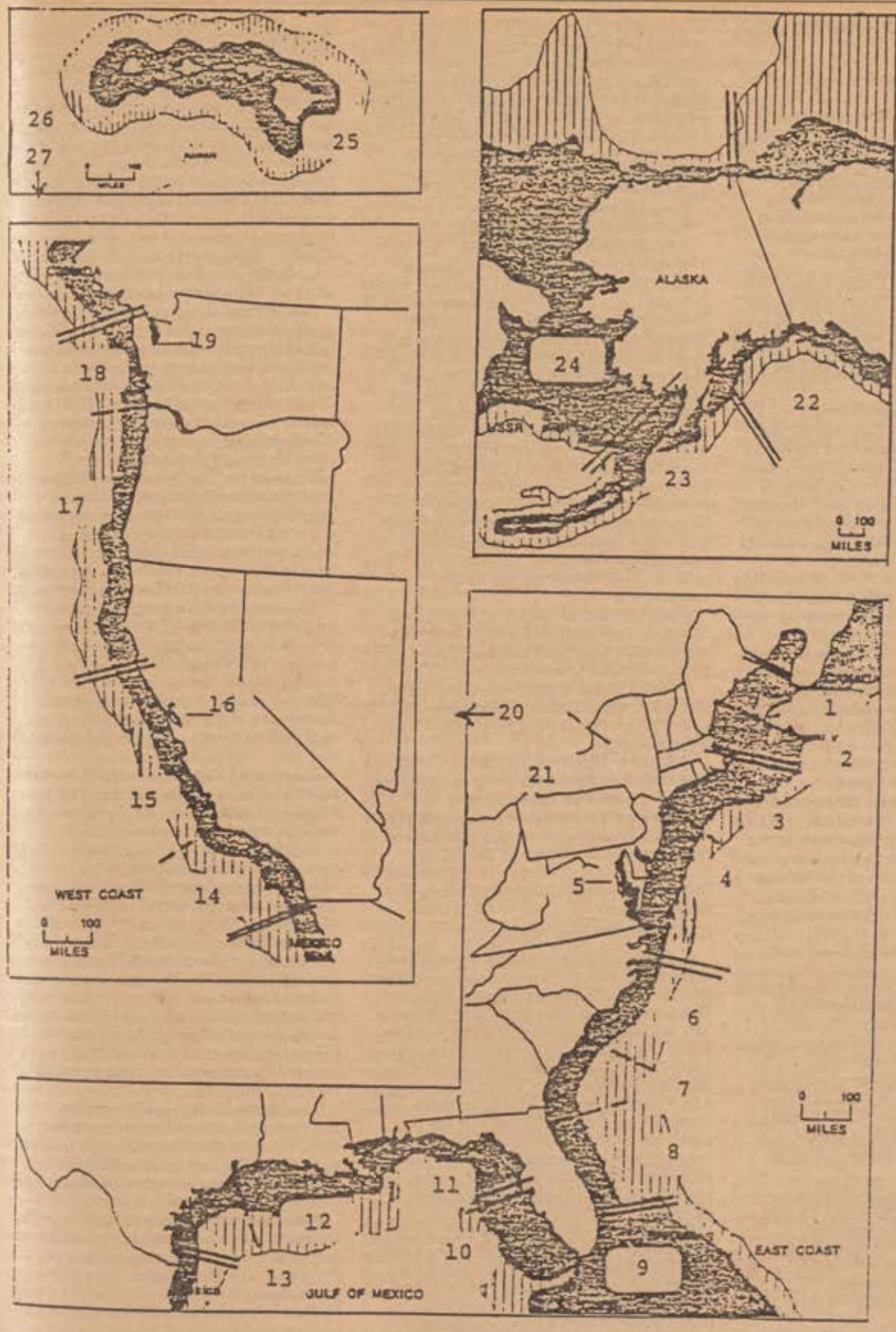

Figure 1. Biophysical Regions of the United States.

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Appendix 2—Typology of National Estuarine Areas

Class I—Ecosystem Types

Group I—Shorelands

As. Maritime Forest-Woodland—This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features, such as barrier islands and beaches, and may be divided into the follo virg biomes:

1. Northern Coniferous Forest Biome: This is an area of predominantly evergreens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white spruce (*Thuja*), with poor development of the shrub and herb layers, but high annual productivity and pronounced seasonal periodicity.

2. Moist Temperate (Mesothermal) Coniferous Forest Biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has a relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate Deciduous Forest Biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the *pine edaphic forest* of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved Evergreen Subtropical Forest Biomes: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. Coast Shrublands—This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern Areas: Characterized by *Hudsonia*, various erinaceous species, and thickets of *Myrica*, *Prunus*, and *Rosa*.

2. Southeast Areas: Floral dominants include *Myrica*, *Baccharis*, and *Ilex*.

3. Western Areas: *Adenostoma*, *Arcotyphylos*, and *Eucalyptus* are the dominant floral species.

C. Coastal Grasslands.—This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila*, *Agropyron* and *Calamovilfa*, tall grasses (5 to 8 feet tall), such as *Spartina*, and trees such as the willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Populus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus;*
2. Northeast/West: *Ammophila;*
3. Southeast/Gulf: *Uniola;* and
4. Mid-Atlantic/Gulf: *Spartina patens.*

D. Coastal Tundra—This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low termperatures, a short growing season, and some permafrost, producing a low, treeless mat community made of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana*, the lichens *Cetraria* and *Cladonia*, and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus*. Common species on the coastal beach ridges of the high arctic desert include *Dryas intergrifolia* and *Saxifraga oppositifolia*. This area can be divided into two main subdivisions:

1. Low Tundra: characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: a bare area except for a scanty growth of lichens and grasses, with underlying ice wedges forming raised polygonal areas.

E. Coastal Cliffs—This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceaous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. Coastal Marshes—These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: a) tidal, which is periodically flooded by either salt or brackish water; b) non-tidal (freshwater); or c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal Mangroves—This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia racemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

C. Intertidal Beaches—This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritusbased nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (Gammaridae), ghost crabs (*Ocypode*), and bivalve molluscs such as the coquina (*Donax*) and surf clams (*Spisula* and *Mactra*).

D. Intertidal Mud and Sand Flats—These areas are composed of unconsolidated, high organic content sediments that function as a short term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflagellates, filamentous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donax*, the scallop *Pecten*, tellin shells *Tellina*, the heart urchin *Echinocardium*, the lug worm *Arenicola*, sand dollar *Dendraster*, and the sea pansy *Renilla*. In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite*, the boring clam *Playdon*, the deep sea scallop *Placopecten*, the quahog *Mercenaria*, the echiurid worm *Urechis*, the mud snail *Nassarius*, and the sea cucumber *Thyone*.

E. Intertidal Algal Beds—These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. *Northern Latitude Rocky Shores:* It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Ascophyllum* at the mid-tidal level, and *Laminaria* and other kelp-like algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. *Southern Latitudes:* The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentous green, blue-green, and red algae, and small thalloid brown algae.

3. *Tropical and Subtropical Latitutes:* The intertidal in this region is very reduced and contains numerous calcareous algae such as *Porolithan* and *Lithothamnion*, as well as green algae with calcareous particles such as *Halimeda*, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal Hardbottoms—This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic

origin). It is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. If light levels are sufficient, a covering of microscropic and attached macroscopic algae, such as kelp, may also be found.

B. Subtidal Softbottoms—Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal Grassbeds—This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group 1—Geologic

A. *Basin Type*—Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. *Exposed coast*—Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shorefront.

2. *Sheltered coast*—Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. *Bay*—Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flusing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. *Embayment*—A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. *Tidal river*—The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. *Lagoon*—Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. *Perched Coastal Wetlands*—Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constitutents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. *Anchioline systems*—These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection to the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthic algae such as *Rhizoclonium*, the mineral encrusting *Schizothrix*, and the vascular plant *Ruppia maritima*. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks *Theodoxus neglectus* and *T. cariosus*, the small red shrimp *Metabetaeus lohena* and *Halocaridina rubra*, and the fish *Eleotris sandwicensis* and *Kuhlia sandvicensus*. Although found through the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. *Basin Structure*—Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. *Coastal plains estuary*—Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, and irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord—Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. The generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume, river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, ofter making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800 m to 1200 m, while still depths usually range from 40 m to 150 m.

3. *Bar-bounded estuary*—These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. *Tectonic estuary*—These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding, or movement of the earth's bedrock, often with a large inflow of freshwater.

5. *Volcanic estuary*—These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. *Inlet Type*—Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types on inlets:

1. *Unrestricted*—An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receive the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. *Restricted*—Restrictions of estuaries can exist in many forms: bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or *bore*. Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary

3. *Permanent*—Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea. Sedimentation and deposition are minimal.

4. *Temporary (Intermittent)*—Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea and sound waters, the frequency of storms, and the amount of littoral transport.

D. *Bottom Composition*—The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. *Sand*—Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shores and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. *Mud*—At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silt, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. *Rock*—Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. *Oyster shell*—Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. *Circulation*—Circulation patterns are the result of the combined influences of freshwater flow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. *Stratified*—This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. *Non-stratified*—Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. *Lagoonal*—An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. *Tides*—This is the most important ecological factor in an estuary, as it effects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as *datum*. The tidal cycle, although complex, falls into two main categories:

1. *Diurnal*—This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. *Semidiurnal*—This refers to a twice daily rise and fall in water that can be observed along the shoreline.

C. *Freshwater*—According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. *Surface water*—This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. *Subsurface water*—This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. *Vadose water*—This is water in the soil above the water table. Its volume with respect to the soil, is subject to considerable fluctuation.

b. *Groundwater*—This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief land, being high below hills and sloping into valleys.

Group III—Chemical

A. *Salinity*—This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. *Positive estuary*—This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. *Negative estuary*—This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. *Salinity zones (expressed in ppt):*

a. *Hyperhaline*—greater than 40 ppt

b. *Euhaline*—40 ppt to 30 ppt

c. *Mixohaline*—30 ppt to 0.5 ppt

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea

(2) Polyhaline—30 ppt to 5 ppt

(3) Mesohaline—18 ppt to 5 ppt

(4) Oligohaline—5 ppt to 0.5 ppt

d. *Limnetic*—5 ppt to 0.5 ppt

B. *pH Regime*—This is indicative of the mineral richness of estuarine waters and fall into three main categories:

1. *Acid*—Waters with a pH of less than 5.5.

2. *Circumneutral*—A condition where the pH ranges from 5.5 to 7.4.

3. *Alkaline*—Waters with a pH greater than 7.4.

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0012]

Dillon Companies, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Hutchinson, Kansas operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of 5 years, the company would be prohibited from requiring price checkers to purchase items to be priced, as a condition of allowing them to price check; denying price checkers the same access to its grocery stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. Additionally, the order would require the company to offer to reimburse TeleCable up to $1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, the company would be further required to post signs and place newspaper ads

notifying the public that such a program is being broadcast.

DATE: Comments must be received on or before Oct. 3, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-6, Ronald A. Bloch, Washington, D.C. 20580. (202) 724-1410.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

Dillon Companies, Inc., Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Dillon Companies, Inc., a corporation, and it now appearing that Dillon Companies, Inc., hereinafter sometimes referred to as "Dillon," and The Kroger Co., hereinafter sometimes referred to as "Kroger," are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and among Dillon Companies, Inc., by its duly authorized officer and its attorney, The Kroger Co., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Dillon Companies, Inc., is a Kansas corporation with its principal office at 700 E. 30th Avenue, Hutchinson, Kansas.

2. Dillon admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Dillon waives:

a. Any further procedural steps;

b. The requirement that the Federal Trade Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement is for settlement purposes only and does not constitute an admission by Dillon that the law has been violated as alleged in the draft complaint here attached.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Federal Trade Commission. If accepted by the Federal Trade Commission, this agreement, together with the draft complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement pursuant to the provisions of Section 2.34 of the Commission's Rules and so notify Dillon, in which event it will take such action as it may consider appropriate, or without further notice to Dillon issue and serve its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following Order in disposition of the proceeding and make information public in respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Dillon's address as stated in this agreement shall constitute service. Dillon waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

6. A responsible official of Dillon has read the proposed complaint and Order contemplated hereby on behalf of Dillon. Dillon understands that once the Order has been issued, Dillon will be required to file one or more compliance reports showing that it has fully complied with the Order. Dillon further understands that it will be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

7. a. Pursuant to an agreement and plan of merger approved by the shareholders of both corporations on January 25, 1983 which preceded the execution of this agreement, Dillon had become a wholly-owned subsidiary of The Kroger Co., an Ohio corporation with its principal office at 1014 Vine Street, Cincinnati, Ohio. For that reason Korger has also signed this agreement. Kroger intends to continue to operate Dillon as a subsidiary.

b. Although not named in the Order, The Kroger Co., its retail grocery divisions and subsidiaries, its officers, representatives, agents, employees, successors, and assigns ("Kroger") shall be bound by the Order. However, except as provided in subparagraph (c) below, Kroger's obligations under Parts II and VI of the Order shall be limited to the retail grocery operations of its Dillon subsidiary.

c. If, following the execution of this agreement, Dillon is not operated as a separate subsidiary, or if any Dillon retail grocery store is transferred to a Kroger division and another Kroger subsidiary, Parts II and VI of the Order shall apply to Kroger as follows:

(i) Parts II.A. and VI shall apply in those geographic areas (as that term is defined in Part I.H. of the Order) in which Dillon operated retail grocery stores, or in which Kroger operated retail grocery stores bearing any of Dillon's trade names, on or after the date of this agreement;

(ii) Parts II.B. and II.C. shall only apply to supermarkets in the geographic areas defined in Part I.J. of the Order as the Springfield Division. Parts II.B. and II.C. shall not be binding on Kroger beyond the date on which they would have expired as to Dillon.

d. Service upon Dillon as provided in paragraph 5 of this agreement shall constitute service upon Kroger.

e. Kroger's obligations under the Order shall terminate after a period of one year during which Kroger has not directly or indirectly owned or operated any retail grocery store (other than the stores at 1015 W. 23rd Street, Lawrence, Kansas, and 210 E. 5th Street, Fulton, Missouri) in any geographic area in which, pursuant to the provisions of this agreement and the Order, Part II of the Order applied.

Order

I

For the purpose of this Order, the following definitions shall apply:

A. "Dillon" means Dillon Companies Inc., its retail grocery divisions and subsidiaries, its officers, representatives, agents, employees, successors and assigns.

B. "Price check" or "price checking" means the collecting, from information

available to customers, of retail price of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. "Price checker" means any person engaged in price checking.

D. "Price reporting" or "price report" means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. "Springfield" means the counties of Christian and Greene, Missouri.

F. "Customer" means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. "Person" means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. "Geographic area" means: (1) a Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. "Supermarket" means any retail grocery store (SIC 5411) with annual sales of more than one million dollars ($1,000,000.00).

J. "Springfield Division" means (i) Washington County, Arkansas; Crawford County, Kansas; Mayes and Ottawa Counties, Oklahoma; and Boone, Callaway, Camden, Cass, Cole, Greene, Henry, Jasper, Miller, Moniteau and Morgan Counties, Missouri; and (ii) any other geographic area in which the Dillon retail division based in Greene County, Missouri, operated a supermarket on or after October 14, 1981.

II

It is further ordered that: A. Dillon shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose of effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraph II.C., for five (5) years following the date on which this Order becomes final, Dillon shall cease and desist from taking or threatening to take any unilateral action in its Springfield Division that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Dillon's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C.1. Nothing in paragraph II.B. shall prevent Dillon from adopting reasonable non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Dillon's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Dillon from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Dillon believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Dillon believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Dillon's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Dillon may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set for in Dillon's statement shall exist. In any civil penalty action against Dillon for a violation of subparagraph II.B. 2. occurring after notice to Federal Trade Commission was given by Dillon as provided in this subparagraph, Dillon shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagraph have been met. In meeting its burden, Dillon may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

III

It is further ordered that, upon the resumption of price reporting by TeleCable of Springfield similar in quality and coverage to that broadcast by it prior to October 14, 1981, and upon receipt by Dillon of written request for payment from TeleCable, Dillon shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars ($250.00) per week. Dillon's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars ($1,000) or three (3) years following the date on which this Order becomes final, whichever occurs first. Dillon shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV

It is further ordered that, within seven (7) days following the date on which this Order becomes final, Dillon shall send a letter, which has been approved in advance by the Federal Trade Commission, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Dillon's obligations under Parts II and V of this Order, TeleCable's rights under Part II, and the notices that Dillion must receive from TeleCable before certain Order provisions become binding upon Dillon.

V

It is further ordered that, if at any time during the two years following the date on which this Order becomes final, the President of the Dillon Springfield Division is notified in writing by TeleCable of Springfield that price reporting that includes any of Dillon's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Dillon shall post signs no smaller than 30 inches by 40 inches in a front window in each of Dillon's supermarkets in Springfield, stating:

Grocery Price Survey

A price survey comparing prices of selected grocery items at Dillon's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel ——— and is broadcast from ——— to ———.

B. For a period of sixty (60) days following the receipt of such notice, whenever Dillon places food advertisements in the Springfield Daily News of one-half page or larger, Dillon shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by

3 inches wide and shall be printed in conspicuous type. In each week in which Dillon does not place a one-half page or larger food advertisement in the Springfield Daily News, Dillon shall place this announcement as a display advertisement in the Lifestyle/Food Section of the Springifield Daily News.

VI

It is further ordered that Dillon shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three years, provide a copy of this Order to each of its officers and supermarket managers, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII

It is further ordered that Dillon shall, within sixty (60) days after the date on which this Order becomes final, file with the Commission a verified written report, setting forth in detail the manner and form in which Dillon has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

It is further ordered that Dillon shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in it such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation or its retail grocery operations, which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dillon Companies, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation in this matter concerned actions taken on or about October 14, 1981, by Dillon Companies, Inc. ("Dillon"), and three other Springfield, Missouri, grocery retailers to prevent an independent price checking firm from collecting comparative grocery price information from their stores for broadcast to the public over cable television.

Since the proposed consent order was negotiated during the investigational stage of the proceedings, the complaint proposed by Commission attorneys was not issued. That complaint charges that, be agreeing with others to prevent the collection and public dissemination of comparative grocery price information, Dillon has engaged in conduct that constitutes price fixing and a group boycott, and that Dillon's conduct constituted an unfair method of competition or an unfair act or practice in violation of Secton 5(a)(1) of the Federal Trade Commission Act. The complaint alleges that this conduct had the following anticompetitive effects: (1) Price competition among Springfield grocery retailers has been suppressed; (2) consumers in Springfield have been deprived of price information that can be used in the selection of a grocery store; (3) competition in the collection and dissemination of price information has been hindered and restrained; (4) competition in the development of new forms of price information has been hindered and restrained; and (5) the free forces of competition have been prevented from determining the amount of comparative price information that will be available to consumers in the marketplace.

The proposed Order provides that Dillon must: (1) Refrain from engaging in concerted action to impede the collection or dissemination of comparative grocery price information; (2) refrain for five years from taking three specific types of actions to impede the collection or dissemination of comparative grocery price information; (3) reimburse the Springfield, Missouri, cable television station up to $1,000 for the broadcast of a comparative grocery price program, if the cable station elects to broadcast such a program; (4) if the cable station elects to broadcast such a program, to post signs and place newspaper advertisements for sixty (60) days notifying the public that such a program is being broadcast; (5) notify certain of its officers and employees of the terms of the order; (6) file periodic verified written compliance reports setting forth its compliance with the provisions of the order; and (7) provide the Federal Trade Commission at least 30 days notice prior to effecting changes in the corporation that may affect its compliance obligations arising from the order.

The proposed order, by requiring Dillon to refrain from concerted and individual action to impede the collection or dissemination of comparative grocery price information, should ameliorate the anticompetitive effects resulting from the concerted action. The proposed order permits the marketplace to determine whether a comparative price survey is broadcast in Springfield, and ensures that the development of new forms of consumer price information is not inhibited.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary

[FR Doc. 83-20966 Filed 8-2-83; 8:45 am]

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16 CFR Part 13

[Docket 9162]

Amana Refrigeration, Inc.; Proposed Consent Agreement with Analysis To Aid Public Comment

Correction

In FR Doc. 83–19330 beginning on page 32596 in the issue of Monday, July 18, 1983, make the following corrections:

1. On page 32597, in the first column, after the fifteenth line, insert on a new line "II".

2. Also on page 32597, in the first column, in the tenth line from the bottom, "connection" should read "convection".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits, Black Lung Benefits, Supplemental Security Income for the Aged, Blind and Disabled, and Organization and Procedures; Reopening and Revising Determinations and Decisions Expedited Appeals Process

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to make five unrelated changes in our rules on when a determination or decision affecting someone's rights under programs

administered by the Social Security Administration may be reopened and revised. The programs are Old-Age, Survivors, and Disability Insurance, Black Lung Benefits (Part B), and Supplemental Security Income for the Aged, Blind, and Disabled. Most of the changes expand the exceptions to the time limits on reopening. Two of the changes are to take into account legislative changes. The other three changes add long-standing policies to the regulations.

In addition, we propose to make the time limit for appealing a determination or decision on benefit rights to a Federal district court pursuant to the "expedited appeals process," the same as the time limits for other appeals of our determinations or decisions. This change allows slightly more time to appeal under the "expedited appeals process" and makes the rules on appeals more consistent.

The proposed regulatory changes affect 20 CFR 404.927, 404.988, 410.629e, 410.672, 416.1427, and 422.210, and add new §§ 404.991a, 404.996, 410.675a, and 416.1491.

DATE: Your comments will be considered if we receive them no later than October 3, 1983.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations affect the Old-Age, Survivors, and Disability Insurance program under title II of the Social Security Act, the Supplemental Security Income program under title XVI of the Social Security Act, and Part B of the Black Lung Benefits program under title IV of the Federal Mine Safety and Health Act of 1977.

The Social Security Act and the Federal Mine Safety and Health Act of 1977 have no provisions on reopening and revising determinations and decisions. Our existing regulations which provide for reopening and revising determinations and decisions within specified time limits (or at any time with regard to certain matters) are based on general rulemaking authority granted the Secretary under these Acts. We believe that we and the individual to whom the determination or decision applies should be able to rely on its correctness and, at some point, the finality of the determination or decision. Therefore, current regulations provide that when a determination or decision is made with respect to entitlement to, eligibility for, the amount of, or the actual payment of benefits, it is generally final and binding upon us and the individual unless there is a timely appeal. However, there are special circumstances set out in current regulations which may permit reopening and revising of a determination or decision which is otherwise final.

Under current regulations, a determination or decision we make about a person's rights under title II or XVI of the Social Security Act or under part B of title IV of the Federal Mine Safety and Health Act of 1977 may be reopened: (1) Within 12 months of the date of the notice of the initial determination for any reason, (2) within 4 years (2 years for title XVI) of the date of that notice if we find good cause as defined in our regulations, or (3) at any time under certain exceptions spelled out in the regulations. Most of the proposed regulatory changes involve adjustments to the existing lists of exceptions to the time limits for reopening. The proposed regulations also change the starting date for the running of the time limit for filing a civil action in Federal district court under the "expedited appeals process" to conform with our other rules on appealing administrative determinations and decisions.

The Proposed Regulations

(1) Changes to Take Account of Legislation

(A) *Conviction of a Felony.* Effective October 1, 1980, section 5 of Pub. L. 96–473 restricts the use of felony-related and prison-related impairments in determining disability under title II of the Social Security Act where the individual is convicted of a felony committed after October 19, 1980. This law provides that any impairment, or aggravation of a preexisting impairment, that occurs during the commission of a felony for which the individual is subsequently convicted may never be used in establishing disability. Further, any impairment, or increase in severity of a preexisting impairment, that occurs while an individual is confined to a penal institution for conviction of a felony will be disregarded in determining disability for benefits payable (but not for establishing a period of disability for disabled workers) for as long as the person is confined. Section 5 also prohibits payment of title II worker's disability or childhood disability benefits to a person confined to a penal institution for conviction of a felony committed at any time who is not actively and satisfactorily participating in a court-approved rehabilitation program. Finally, section 5 prohibits payment of title II student benefits to a person confined for conviction of a felony committed after October 19, 1980.

If we make a determination or decision awarding benefits to a person based on a felony-related impairment and the person is subsequently convicted of the felony, the conviction provides a basis for reopening and revising the determination or decision in order to exclude the felony-related impairment from consideration in determining disability. Under existing regulations, the determination or decision in this case may be reopened within four years of the date of the notice of the initial determination. However, if the conviction occurs more than four years after the date of the notice of the initial determination, our existing regulations on reopening prevent retroactive correction of the determination or decision. Also, when we make a determination or decision applying any one of the prisoner provisions of Pub. L. 96–473 due to the person's conviction of a felony, the person may, in the meantime, be appealing his or her conviction. If the conviction is overturned on appeal, that action provides a basis for reopening the determination or decision, which under current regulations is permitted only within four years after the date of the notice of the initial determination. Our existing regulations prevent retroactive correction of the determination or decision if the conviction is overturned after the expiration of the four-year time limit for reopening.

The proposed regulations revise § 404.988(c) (which lists the exceptions to the time limits for reopening) by adding a new subparagraph to cover the prisoner provisions. The revision permits reopening and revision at any time of a determination or decision that is incorrect because of a person's conviction of a crime that affects benefit rights or because the person's conviction has been overturned on appeal.

(B) *Deemed Wages for Certain Persons Interned During World War II.* Section 231 of the Social Security Act provides deemed wage credits for title II benefit purposes to persons who were interned in the United States during World War II at a place operated by the Government of the United States for the internment of United States citizens of Japanese ancestry. However, these deemed wages are not provided if the person's period of internment is credited toward a benefit which is determined by any agency of the United States to be payable under another Federal law or under a system set up by that agency.

Effective October 1, 1978, Pub. L. 95-382 amended the Civil Service Retirement Act to grant credit for that internment toward Civil Service pensions. If we award Social Security benefits based on deemed wage credits for the period of internment, and we learn more than four years after the date of the notice of our initial determination that a Civil Service pension is payable based on internment, our existing regulations on reopening determination or decisions prevent correcting the determination or decision in order to retroactively remove the wage credits for Social Security benefit purposes. Similarly, our existing regulations prevent correcting the determination or decision, if we learn after the expiration of the four-year period that we erroneously denied someone the wage credit because we were erroneously informed that a Civil Service pension was payable based on this internment.

The proposed regulations add a new subparagraph to paragraph (c) of § 404.988 to permit reopening at any time if either our granting or our denying of wage credits for internment is discovered to be incorrect because of information regarding the crediting of that internment toward a benefit payable under another Federal law or system.

(2) Changes to Add Long-Standing Policies to the Regulations

(A) *Late Completion of Timely Investigation.* We may revise a determination or decision after the applicable time limit for reopening expires if the revision is made as the result of an investigation which we began before the applicable time limit expired. We may begin the investigation into the possibility of changing the determination or decision either based on a request by an individual or by an action on our part. We may complete consideration and actually change the determination or decision after the time limit has run.

Where in title II and Black Lung cases we begin an investigation within the time limit but the applicable time limit for reopening subsequently lapses, we may revise the determination or decision if we have diligently pursued the investigation to its conclusion. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. The revision may be favorable or unfavorable for the beneficiary or claimant. Where we have not diligently pursued the investigation, we will not revise the determination or decision when the result will be unfavorable for the individual. Where the result will be favorable for the beneficiary or claimant, we may revise the determination or decision even if we have not diligently pursued the investigation. This requirement of diligent pursuit has not been applied to title XVI cases in the past. However, our experience has shown that there is really no basis for a difference in the title II, Black Lung, and title XVI programs in this respect. Therefore, we believe that this policy should also be extended to title XVI cases to make the rules under the three programs consistent.

The proposed regulations add new §§ 404.991a, 410.675a, and 416.1491 to provide that if we reopen a determination or decision before the end of the time limit for doing so but do not complete our investigation before the end of the time limit, we may revise the determination or decision if we have diligently pursued the investigation, regardless of whether the revision is favorable or unfavorable to the beneficiary or claimant. If we reopen a determination or decision before the end of the time limit for doing so but do not diligently pursue the investigation, and do not complete it until after the end of the time period, we will not make any revision that is unfavorable to the individual. If the revision would be favorable to the beneficiary or claimant, we may make it.

(B) *Increase in Future Benefits Where Time Limit for Reopening Expires.* If, more than four years after the date of the notice of the initial determination of his or her benefit amount, a title II beneficiary submits new evidence that establishes different earnings or a different date of birth, for example, and the difference means that his or her benefits should be higher, our existing regulations prevent reopening the determination or decision concerning his or her benefit amount. However, our policy is to make the increase, but only with respect to benefits payable after the new evidence was submitted. (If the new evidence received after the four-year period of limitation for reopening would lead to a decrease in benefits, we take no action.) This policy, which is subject to the statutory limitations on correction of earnings records, has never been in the regulations.

The proposed regulations add a new § 404.996 to provide that if we learn, more than four years after the date of the notice of the initial determination, that benefits should be higher or should be paid for additional months, we will make the correction but only for future benefits. Any revision is also subject to the statutory limitation for correcting earnings records.

(C) *Location or Identification of Body.* If we deny a title II or Black Lung claim for survivor's benefits because the worker's death cannot be established, but the death is later established by location or identification of the body, the denial may be reopened though more than four years have elapsed since the date of the notice of the initial determination. However, this exception to the four-year time limit for reopening is not in our regualtions.

The proposed regulations revise §§ 404.988(c)(4) and 410.672(c)(4), which now provide that a determination or decision denying survivor's benefits because the worker's death was not proven may be reopened at any time if death is later established by reason of the worker's unexplained absence from his or her residence for a period of 7 years. The revision permits, in addition, reopening at any time if death is established by location or identification of the body.

(3) Change in Time Limit for Filing Action in Federal District Court Under Expedited Appeals Process

The time limit for appealing our determination or decision at each of the three administrative levels of appeal and for filing a civil action in Federal district court is 60 days after the date the claimant receives the notice of the determination or decision that he or she wishes to appeal. The title II and title XVI regulations require that the notice be mailed and define the date notice is received as five days after the date on the notice unless the claimant shows that it was not received in this time period. The "expedited appeals process" permits the claimant to go directly to a Federal district court without first completing the administrative review process if we agree with the claimant that the only factor preventing a

determination or decision favorable to the claimant is a provision in the law that the claimant believes is unconstitutional. Under our present regulations, the time limit for going to court is 60 days after the date our authorized representative signs an agreement to use the "expedited appeals process."

To make the time limit for going to court under the "expedited appeals process" consistent with the time limits for other administrative levels of appeals, the proposed regulations revise §§ 404.927, 410.629e, 416.1427, and 422.210(c) so that the time limit for filing a civil action in Federal district court is 60 days from the date the claimant receives notice (a signed copy of the agreement will be mailed to the claimant and will constitute notice) of our signing of the agreement to use the "expedited appeals process."

Executive Order No. 12291—These regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation because they result in negligible program and administrative costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

The proposed amendments are to be issued under the authority contained in sections 205, 1102, and 1631 of the Social Security Act, as amended; 53 Stat. 1368, 49 Stat. 647, 86 Stat. 1475; 42 U.S.C. 405, 1302, and 1383; sections 413 and 426 of the Federal Mine Safety and Health Act of 1977, 83 Stat. 794, 83 Stat. 798; 30 U.S.C. 923 and 936.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance; 13.806 Black Lung Benefits—Special Benefits for Disabled Coal Miners; 13.807 Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 410

Administrative Practice and Procedure, Black lung benefits, Death benefits, Disabled, Miners.

20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative Practice and Procedure, Freedom of Information, Organization and functions (Government agencies), Social Security.

Dated: June 1, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: July 13, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Parts 404, 410, 416, and 422 of 20 CFR are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 reads as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302).

§ 404.92 [Amended]

2. Section 404.927 is amended by changing "60 days after the date the agreement is signed" to read "60 days after the date you receive notice (a signed copy of the agreement will be mailed to you and will constitute notice) that the agreement has been signed".

3. Paragraphs (c)(4), (c)(8), and (c)(9) of § 404.988 are revised and new paragraphs (c)(10) and (c)(11) are added to § 404.988 to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(4) Your claim was denied because you did not prove that the insured person died, and the death is later established—

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

* * * * *

(8) It is wholly or partially unfavorable to a party, but only to correct clerical erroror an error that appears on the face of the evidence that was considered when the determination or decision was made;

(9) It finds that you are entitled to monthly benefits or to a lump sum death payment based on the earnings of a deceased person, and it is later established that: (i) You were convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or (ii) if you were subject to the juvenile justice system, you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(10) It either—

(i) Denies the person on whose earnings record your claim is based deemed wages for internment during World War II because of an erroneous finding that a benefit based upon the internment had been determined by an agency of the United States to be payable under another Federal law or under a system established by that agency; or

(ii) Awards the person on whose earnings record your claim is based deemed wages for internment during World War II and a benefit based upon the internment is determined by an agency of the United States to be payable under another Federal law or under a system established by that agency; or

(11) It is incorrect because—

(i) You were convicted of a crime that affected your right to receive benefits or your entitlement to a period of disability; or

(ii) Your conviction of a crime that affected your right to receive benefits or your entitlement to a period of disability is overturned.

4. New § 404.991a is added to read as follows:

§ 404.991a Late completion of timely investigation.

We may revise a determination or decision after the applicable time period in § 404.988(a) or § 404.988(b) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either based on a request by you or by an action on our part.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted.

(b) If we have not diligently pursued the investigation to its conclusion, we may revise the determination or

decision if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

5. New § 404.996 is added to read as follows:

§ 404.996 Increase in future benefits where time period for reopening expires.

If, after the time period for reopening under § 404.988(b) has ended, new evidence is furnished showing a different date of birth or additional earnings for you (or for the person on whose earnings record your claim was based) which would otherwise increase the amount of your benefits, we will make the increase (subject to the limitations provided in section 205(c) (4) and (5) of the Act) but only for benefits payable after the time we received the new evidence. (If the new evidence we receive would lead to a decrease in your benefits, we will take no action if we cannot reopen under § 404.988.)

PART 410—[AMENDED]

6. The authority citation for Subpart F of Part 410 reads as follows:

Authority: Secs. 413(b), 426(a), 507, and 508, 83 Stat. 794; 30 U.S.C. 923(b), 936(a), 956, and 957.

7. Section 410.629e is revised to read as follows:

§ 410.629e Expedited appeals process; effect of agreement.

The agreement described in § 410.629d, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date of receipt of notice by the party (parties) that the agreement has been signed by the authorized representative of the Secretary. Any civil action under the expedited appeals process must be filed within 60 days after the date of receipt of notice (a signed copy of the agreement will be mailed to the party (parties) and will constitute notice) that the agreement has been signed by the Secretary's authorized representative. For purposes of this section, the date of receipt of notice of signing shall be presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary.

8. Section 410.672(c)(4) is revised to read as follows:

§ 410.672 Reopening initial, revised or reconsidered determinations of the Administration and decisions of an Administrative Law Judge or the Appeals Council; finality of determinations and decisions.

* * * * *

(c) * * *

(4) The death of the individual on whose account a party's claim was denied for lack of proof of death is established—

(i) By reason of an unexplained absence from his or her residence for a period of 7 years (see § 410.240(g)(2)); or

(ii) By location or identification of his or her body; or

* * * * *

9. New § 410.675a is added to read as follows:

410.675a Late completion of timely investigation.

The Administration may revise a determination or decision after the applicable time period in § 410.672(a) or § 410.672(b) expires if the Administration begins an investigation to determine whether to revise the determination or decision before the applicable time period expires. The Administration may begin the investigation based either on a request by the party or an action by the Administration.

(a) If the Administration has diligently pursued the investigation to its conclusion, the Administration may revise the determination or decision. The revision may be favorable or unfavorable to the party. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted.

(b) If the Administration has not diligently pursued the investigation to its conclusion, the administration may revise the determination or decision if it will be favorable to the party. The Administration will not revise the determination or decision if it will be unfavorable to the party.

PART 416—[AMENDED]

10. The authority citation for Subpart N of Part 416 reads as follows:

Authority: Secs. 1102, 1631(c), and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475, 86 Stat. 1478 (42 U.S.C. 1302, 1383, and 1383b).

§ 416.1427 [Amended]

11. Section 416.1427 is amended by changing "60 days after the date the agreement is signed" to read "60 days after the date you receive notice (a signed copy of the agreement will be mailed to you and will constitute notice) that the agreement has been signed".

12. New § 416.1491 is added to read as follows:

§ 416.1491 Late completion of timely investigation.

We may revise a determination or decision after the applicable time period in § 416.1488(a) or § 416.1488(b) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either based on a request by you or by an action on our part.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted.

(b) If we have not diligently pursued the investigation to its conclusion, we may revise the determination or decision if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

PART 422—[AMENDED]

13. The authority citation for Subpart C of Part 422 reads as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871, 53 Stat. 1368 as amended, 68 Stat. 1081, as amended, 79 Stat. 330, 331; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18,631; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh. Sec. 422.203(a) is also issued under sec. 413(b) of title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923(b).

§ 422.210 [Amended]

14. Section 422.210(a) is amended by changing "§§ 404.916e" to read "§§ 404.924" and "416.1424d" to read "416.1424".

15. Section 422.210(c) is revised to read as follows:

* * * * *

(c) *Time for instituting civil action.* Any civil action described in paragraph (a) of this section msut be instituted within 60 days after the Appeals Council's notice of denial of request for review of the presiding officer's decision or notice of the decision by the Appeals Council is received by the individual, institution, or agency, except that this time may be extended by the Appeals Council upon a showing of good cause. For purposes of this section, the date of receipt of notice of denial of request for review of the presiding officer's decision

or notice of the decision by the Appeals Council shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. Where pursuant to the expedited appeals procedures an agreement has been entered into under 42 CFR 405.718c, a civil action under section 205(g) of the Act must be commenced within 60 days from the date of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in the first sentence of this paragraph (c) has been extended by the Secretary upon a showing of good cause. Where pursuant to the expedited appeals procedures an agreement has been entered into under §§ 404.926, 410.629d, or 416.1426 of this chapter, a civil action under section 205(g) of the Act must be commenced within 60 days after the date the individual receives notice (a signed copy of the agreement will be mailed to the individual and will constitute notice) of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in this paragraph (c) has been extended by the Secretary upon a showing of good cause.

[FR Doc. 83-21086 Filed 8-2-83; 8:45 am]
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203, 234 and 235

[Docket No. R-83-1084]

Insurance of Growing Equity Mortgages

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide for the insurance of Growing Equity Mortgages (GEMs) covering certain one- to four-family dwellings under section 203 of the National Housing Act and one-family condominium units under section 234(c) of the Act. A GEM is a type of graduated payment mortgage in which the first year's monthly payments for principal and interest cover full debt service based on a 30-year level payment schedule. The monthly payments increase in the following years, with the amount of the increase applied to reduce the outstanding principal obligation of the loan. Under the proposed rule, the increase would be a fixed percentage, not exceeding 5 percent of the preceding year's payment.

Demand for alternatives to the level payment, fixed-rate mortgage has risen in recent years. This rule would provide one alternative, which would increase homeownership affordability for consumers and also encourage continued investment in housing.

The rule would also make a number of technical amendments to clarify the scope and applicability of the Graduated Payment Mortgage Program pursuant to section 245(a) of the National Housing Act and the Modified Graduated Payment Mortgage Program pursuant to section 245(b) of the Act.

DATE: Comments must be received by: October 3, 1983.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background Information

Since the introduction by HUD of the Graduated Payment Mortgage (GPM) in 1976 and the Federal Home Loan Bank Board's introduction of the variable rate mortgage in 1979, the shift by lenders and investors away from the level payment, fixed-rate mortgage has increased. While these alternative mortgages have facilitated the financing of homes for many purchasers, the instruments have characteristics which discourage complete acceptence by both consumers and lenders. The GPM, for example, provides the consumer the advantages of a fixed-rate mortgage for 30 years with a predetermined payment schedule. Yet these same features, the fixed-rate and long term, discourage lenders and investors from committing their funds to this type of mortgage during times when frequent interest rate changes could present more attractive investments. The variable rate mortgage, on the other hand, provides the lender and the investor with a return which can vary over the full term of the mortgage in accordance with various cost of money indices, assuring competitive rates of return to the lender. The variable rate mortgage, however, presents the consumer with unanticipated changes in mortgage payment after the initial adjustment period. Furthermore, should the particular index change result in an interest rate adjustment greater than the payment adjustment, the mortgage may negatively amortize.

In an effort to promote financing which would increase homeownership affordability for consumers and also encourage continued investment in housing, the Department proposes to provide insurance for a mortgage instrument—the Growing Equity Mortgage (GEM)—which combines features that are favorable to borrowers, as well as attractive to lenders. As proposed in this rule, the GEM would involve initial monthly payments based on a 30-year term with complete amortization over that term. The mortgage would provide for annual increases in the monthly payments after the first year, with the additional payment increments applied to reduce the outstanding principal balance of the loan. The mortgage could provide for an increase for each year of the mortgage or for a limited number of years.

This faster repayment of principal would considerably shorten the effective life of the mortgage, making the GEM more attractive to lenders and investors than other fixed-rate investments in an uncertain financial climate. Because the amount of yearly increases is predetermined and can be factored into the underwriting analysis, the risk of default for lenders and investors should be less than that on other types of mortgages subject to unpredictable increases. These features—shorter term and lower default probability—would increase the yield and the safety of the investment, enabling lenders to offer the GEM at rates below those on level payment fixed-rate mortgages. Potential homebuyers would also benefit from the lower, overall interest costs and accelerated equity build-up from the GEM's faster repayment of principal.

II. Specific Provisions of the GEM Program

GEMs would be insured pursuant to the GPM insuring authority contained in section 245(a) of the National Housing Act ("the Act"). Insurance would be written under section 203 of the Act—HUD's basic home mortgage insurance authority—and section 234(c) of the Act—HUD's insuring authority for one-family condominium units. GEMs would be generally available for the programs

authorized under these authorities, except that they could not be used in connection with HUD's authority to insure: (1) open-end advances, (2) miscellaneous mortgages pursuant to section 223(a) of the Act, (3) mortgages in older, declining urban areas pursuant to section 223(e) of the Act, or (4) mortgages with assistance payments under section 235 of the Act. In addition, the GEM could not be used to finance the acquisition of a dwelling designed for less than year-round occupancy.

These restrictions on eligibility for insurance are the same as those which the Department imposes on GPMs and Modified Graduated Payment Mortgages (MGPMs). These restrictions would be imposed because the underlying transactions involved increased mortgage risks which are not appropriate for loans which require increasing mortgage payments. Finally, the GEM provisions would not apply to a mortgage with a negotiated interest rate established pursuant to section 3(a)(2) of Pub. L. 90–301, because section 3(a)(2)(C) of that statute prohibits the use of negotiated interest rates with mortgages which are subject to section 245 of the Act. For the applicability of the proposed GEM to other regulatory provisions, see the chart in IV, below.

Under the GEM, the first year's monthly payments for principal and interest are based on a 30-year level payment amortization. After this initial year, the monthly payment increases on the anniversary date of the mortgage by a percentage—and for the number of years—provided in the mortgage. The portion of the monthly payment attributable to the increase above the payment for the initial year is applied to reduce the principal. The increase in monthly payment for a given year could not exceed five percent of the previous year's monthly payment for principal and interest.

The mortgage limits would be identical to those which apply to the Department's Section 203 and Section 234(c) programs. The lender would be required to explain fully to the mortgagor the nature of the obligation undertaken, and the mortgagor would be required to certify that he or she fully understands the obligation.

III. Amendments to the Graduated Payment Mortgage and Modified Graduated Payment Mortgage Programs

The proposed rule would make several amendments to the GPM and MGPM programs that are primarily clarifications. First, §§ 203.29(c)(1), 203.46(d)(1), 234.75(c)(1), and 234.76(c)(1) would be revised to make it clear that the high-cost limits for Alaska, Guam and Hawaii apply to these programs. Second, §§ 203.45(g) and 234.76(i), would be revised to clarify that nonoccupant mortgagors (§ 203.18(c)), mortgagors in outlying areas (§ 203.18(d)), and disaster victims (§203.18(e)) are not eligible for these programs. Third, §§ 234.75(g) and 234.76(i) would be revised to clarify that nonoccupant mortgagors of one family condominiums are not eligible for these programs. Fourth, §§ 203.45(g) and 203.46(i) would be revised to make the negotiated interest rate provisions of § 203.51 inapplicable to GPMs and MGPMs. This revision would comply with the statutory prohibition against the use of negotiated interest rates in conjunction with mortgages subject to section 245 of the Act. None of these proposed revisions would change current HUD policy.

In addition, this proposed rule would amend § 203.43(c) to eliminate reference to § 203.45. This revision would make mortgagors acquiring membership in a cooperative housing development eligible for GPM mortgages. Such mortgagors are eligible for insurance under current MGPM regulations and under the proposed GEM regulations.

IV. Table Indicating the Applicability (as modified by this rule) of Various Provisions to the Graduated Payment Mortgage, Modified Graduated Payment Mortgage and Growing Equity Mortgage Programs

PROGRAM AND CITATION TO RESTRICTIONS (CITATIONS ARE TO TITLE 24, CODE OF FEDERAL REGULATIONS. PARENTHETICAL REFERENCES ARE TO PARAGRAPHS WITHIN THE CITED SECTIONS.)

Provision and citation	Single family			Condominium		
	GPM § 203.45	MGPM § 203.46	GEM § 203.47	GPM § 234.75	MGPM § 234.76	GEM § 234.77
Nonoccupant mortgagors § 203.18(c)/§ 234.27(d)	NE	NE	E	NE	NE	E
	(g)	(i)	—	(g)	(i)	—
Outlying areas § 203.18(d)	NE	NE	E	O	O	O
	(g)	(i)	—	None	None	None
Disaster victims § 203.18(e)	NE	NE	E	O	O	O
	(g)	(i)	—	None	None	None
Level amortization § 203.21/§ 234.36	I	I	I	I	I	I
	(f)	(h)	(f)	(f)	(h)	(f)
Miscellaneous mortgages § 203.43	NE	NE	NE	O	O	O
	(g)	(i)	(g)	None	None	None
Certain neighborhoods § 203.43a	NE	NE	NE	O	O	O
	(g)	(i)	(g)	None	None	None
Seasonal occupancy § 203.43b	NE	NE	NE	O	O	O
	(g)	(i)	(g)	None	None	None
Cooperative housing § 203.43c	E	E	E	O	O	O
	—	—	—	None	None	None
Open-end advances § 203.44/§ 234.70	I	I	I	I	I	I
	(f)	(h)	(f)	(f)	(h)	(f)
GEM § 203.47/§ 234.77	E	NE	—	E	NE	—
	(1)	(i)	—	(1)	(i)	—
Rehab loan § 203.50	E	NE	E	O	O	O
	—	(i)	—	None	None	None
Negotiated rate § 203.51	NE	NE	NE	O	O	O
	(g)	(i)	(g)	None	None	None

[1] A mortgage which meets the eligibility requirements of both the GPM and GEM programs could be insured under either program.

Explanation of Codes:
E=Eligible—The program identified can be used in conjunction with the Department's authority to insure a mortgage meeting the described provision.
NE=Not eligible—The program identified cannot be used in conjuction with the Department's authority to insure a mortgage meeting the described provision.
I=Inapplicable—The regulation expressly makes the identified provision inapplicable to the program.
O=None—The condominium program has no provision equivalent to the one identified for the single family program.

V. Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely expands the types of mortgages eligible for HUD mortgage insurance to include Growing Equity Mortgages.

This rule is listed at 48 FR 18083 as item H-85-82 in the Department's Semiannual Agenda of Regulations, published on April 25, 1983 (48 FR 18054) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.159 and 14.172.

List of Subjects

24 CFR Part 203

Home improvement loan, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department proposes to amend 24 CFR Parts 203, 234 and 235 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. In § 203.43c, by revising paragraph (a) to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43b, 203.44 and 203.50 of this part shall not apply to mortgages insured under Section 203(n) of the National Housing Act.

* * * * *

2. In § 203.45, by redesignating paragraph (g) as paragraph (h), by revising paragraphs (c)(1) and (f), and by adding a new paragraph (g), to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(c) * * *

(1) The limits prescribed by §§203.18, 203.18a, 203.18b and 203.29 or,

* * * * *

(f) Sections 203.21 and 203.44 shall not apply to this section

(g) This section shall not apply to a mortgage which meets the requirements of §§ 203.18(c), (d), (e) and (f), 203.43, 203.43a, 203.43b, or 203.51.

* * * * *

3. In § 203.46, by redesignating paragraphs (i), (j) and (k) as paragraphs (j), (k) and (l), respectively, by revising paragraphs (d)(1) and (h), and by adding a new paragraph (i), to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(d) * * *

(1) The limits prescribed in §§ 203.18, 203.16a, 203.18b and 203.29: *Provided*, That the appraised value shall not exceed 110 percent of the median prototype housing cost limits as established by the Commissioner for the market area in which the property is located, or

* * * * *

(h) Sections 203.21 and 203.44 shall not apply to this section.

(i) This section shall not apply to a mortgage which meets the requirements of §§ 203.18(c), (d), (e) and (f), 203.43, 203.43a, 203.43b, 203.47, 203.50 or 203.51.

* * * * *

4. By adding a new § 203.47, to read as follows:

§ 203.47 Eligibility of growing equity mortgages.

A mortgage containing provisions for accelerated amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(a) The mortgage must contain complete amortization provisions, satisfactory to the Secretary, requiring monthly payments by the mortgagor not in excess of the mortgagor's reasonable ability to pay, as determined by the Secretary.

(b) The mortgage must contain a provision setting forth the payments required for principal and interest in each year of the mortgage.

(c) The monthly payments for principal and interest for the initial year shall be determined on the basis of a 30-year level payment amortization schedule. Subsequent monthly payments for principal and interest may increase annually over the life of the mortgage or for a shorter term, and under such schedules as may be approved by the Commissioner, up to five percent above the payments for principal and interest for the previous year. Any increase in the payments shall occur only on the anniversary date of the beginning of amortization.

(d) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) The mortgage amount shall not exceed the limits prescribed by §§ 203.18, 203.18a, 203.18b or 203.29.

(f) Sections 203.21 and 203.44 shall not apply to this section.

(g) This section shall not apply to a mortgage which meets the requirements of §§ 203.43, 203.43a, 203.43b or 203.51.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245(a) of the National Housing Act.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

5. In § 234.75, by redesignating paragraph (g) as paragraph (h), by revising paragraph (c)(1), and by adding a new paragraph (g), to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(c) * * *

(1) The limits prescribed in §§ 234.27 and 234.49,

* * * * *

(g) This section shall not apply to a mortgage which meets the requirements of § 234.27(d).

6. In § 234.76, by redesignating paragraphs (i), (j) and (k) as paragraphs (j), (k) and (l), respectively, by revising paragraph (d)(1), and by adding a new paragraph (i), to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(c) * * *

(1) The limits prescribed in §§ 234.27 and 234.49: *Provided*, That the appraised value shall not exceed 110 percent of the median prototype housing cost limits as established by the Commissioner for the market area in which the property is located.

* * * * *

(i) This section shall not apply to a mortgage which meets the requirements of §§ 234.27(d) and 234.77.

* * * * *

7. By adding a new § 234.77 to read as follows:

§ 234.77 Eligibility of growing equity mortgages.

A mortgage containing provisions for accelerated amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(a) The mortgage must contain complete amortization provisions satisfactory to the Secretary, requiring monthly payments by the mortgagor not in excess of the mortgagor's reasonable ability to pay, as determined by the Secretary.

(b) The mortgage must contain a provision setting forth the payments required for principal and interest in each year of the mortgage.

(c) The monthly payments for principal and interest for the initial year shall be determined on the basis of a 30-year level payment amortization schedule. Subsequent monthly payments for principal and interest may increase annually over the life of the mortgage or for a shorter term, and under such schedules as may be approved by the Commissioner, up to five percent above the payments for principal and interest for the previous year. Any increase in the payments shall occur only on the anniversary date of the beginning of amortization.

(d) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) The mortgage amount shall not exceed the limits prescribed by § 234.27 or 234.49.

(f) Sections 234.36 and 234.70 shall not apply to this section.

(g) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245(a) of the National Housing Act.

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

8. In § 235.1, by inserting in the cross-reference table, between "203.46 Eligibility of modified graduated payment mortgages." and "203.50 Eligibility of rehabilitation loans.", the following:

203.47 Eligibility of growing equity mortgages.

(Sec. 245, National Housing Act, as amended (12 U.S.C. 1715z-10); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C 3535(d))

Dated: July 8, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-20954 Filed 8-2-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[LR-181-76]

Estate Tax Treatment of Retained Voting Rights; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation concerning the estate tax consequence of a decedent's retention of voting rights in lifetime transfers of stock. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Revenue Act of 1978. This proposed regulation, if adopted, will provide the public with guidance needed to comply with those Acts.

DATES: Written comments and requests for a public hearing must be delivered by October 3, 1983. This regulation is proposed to apply to stock transfers made after June 22, 1976.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, LR-181-76, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John R. Harman of the Legislation & Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20244, Attention: CC:LR:T, LR-181-76, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed estate tax regulation (26 CFR Part 20) under section 2036(b) of the Internal Revenue Code of 1954 (Code). The regulation is proposed to conform the regulations to the amendment of the Code made by section 2009(a) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1893) and section 702(i) of the Revenue Act of 1978 (Pub. L. 95-600, 92 Stat. 2931). The regulation, when adopted, will be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805).

Byrum Case

Prior to the Tax Reform Act of 1976, the United States Supreme Court, in *U.S. v. Byrum*, 408 U.S. 125 (1972) held that the mere retention of the power to vote stock in a closely held corporation did not constitute the retention of enjoyment of transferred property under section 2036 of the Code. Thus, stock in which the decedent retained voting rights was not required to be included in the gross estate.

The Tax Reform Act of 1976

The Tax Reform Act of 1976 provides that, pursuant to section 2036 of the Code, the retention of voting rights in stock shall be treated as the retention of the enjoyment of transferred property if the decendent retained the voting rights for life, for any period not ascertainable without reference to the decedent's death, or for any period which does not in fact end before the decedent's death. The capacity in which the decedent can exercise voting rights is immaterial. Thus, voting power exercisable as a trustee is one type of voting right subject to the rule.

The Revenue Act of 1978

The Revenue Act of 1978 made two changes to the rule contained in the 1976 Act. First, the rule is limited to the retention of voting rights in stock of a controlled corporation. A controlled corporation is defined as a corporation in which 20 percent of the voting power is deemed owned by the decedent, applying the constructive ownership rules of section 318. Second, the 1978 Act makes it clear that the rule applies to direct and indirect transfers. Thus, if the decedent transfers cash to a trust and the trust purchases stock in a controlled corporation from the decedent (directly or indirectly), the decedent will be considered to have made a transfer of the stock. In such a transaction, if the decedent acquires the right to vote the stock, he will be treated as though he retained the right to vote the stock.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that, although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5

U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility analysis is required for this rule.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this proposed regulation is John R. Harman of the Legislation & Regulation Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 20

Estate taxes.

Proposed Amendment to the Regulations

The proposed amendment to 26 CFR Part 20 is as follows:

PART 20—[AMENDED]

Paragraph. There is added immediately after § 20.2036–1 the following new section:

§ 20.2036–2. Special treatment of retained voting rights.

(a) *In general.* For purposes of section 2036(a)(1) and § 20.2036–1(a), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation is a retention of the enjoyment of the transferred property if:

(1) The transfer was made after June 22, 1976;

(2) The corporation was a controlled corporation at any time after transfer of that stock; and

(3) The corporation was a controlled corporation at any time during the three-year period ending on the decedent's death.

The rule of this section does not require inclusion of stock in the gross estate if the transferred stock has not voting rights or if the donor has not retained voting rights in the stock transferred. Thus, for example, if a person owning 100 percent of the voting and nonvoting stock of a corporation transfers the nonvoting stock, that person shall not be treated as having retained the enjoyment of the property transferred merely because of voting rights in the stock retained. Stock carrying voting rights that will vest only when conditions occur, such as preferred stock which gains voting rights only if no dividends are paid, is subject to this section. However, if the decedent's right to vote such stock is only in a fiduciary capacity (*e.g.*, because the decedent is trustee of a trust to which the stock has been transferred), such stock is subject to this section only if, after the transfer by the decedent, the conditions occur that give the decedent the right to vote the stock. Stock that possesses voting rights in only extraordinary matters, such as mergers or liquidations shall be subject to this section unless the decedent's retention of voting rights is only in a fiduciary capacity.

(b) *Relinquishment or cessation of voting rights within three years of death.* In general, the relinquishment or cessation of retained voting rights shall be treated as a "transfer of property" for purposes of section 2035 (transfer within three years of death) if:

(1) The voting rights were retained in a transfer made after June 22, 1976; and

(2) The corporation was a controlled corporation at some point in time occurring after the transfer, before the relinquishment or cessation of voting rights, and within three years of death.

However, to the extent that a relinquishment of voting rights is in exchange for voting rights in another controlled corporation, the relinquishment shall not be treated as a "transfer of property" for purposes of section 2035. *See* paragraph (e)(3) of this section for the treatment of voting rights in such other corporation.

(c) *Meaning of right to vote.* For purposes of this section, the term "right to vote" means the power to vote, whether exercisable alone or in conjunction with other persons. The capacity in which the decedent can exercise voting power is immaterial. Accordingly, a fiduciary power exercisable as trustee, co-trustee, or as officer of a corporation is a right to vote stock within the meaning of this section. For purposes of section 2036(b)(1) and § 20.2036–2(a), the constructive ownership rules of section 318 shall not be used to attribute the retention of voting rights to the decedent. Therefore, the fact that a relative of the decedent is trustee of a trust to which the dcedent has transferred stock shall not in itself require a finding that the decedent indirectly retained the right to vote that stock. However, any arrangement to shift formal voting power away from the decedent will not be treated for this purpose as a relinquishment of all voting rights if, in substance, the decedent has retained voting power. Moreover, voting power shall be deemed retained in cases where there is any agreement with the decedent, express or implied, that the shareholder, or other holder of the power to vote stock, either will vote the stock in a specified manner or will not vote the stock. If the decedent has the power to obtain the right to vote, such as where he may appoint himself as trustee of a trust holding the stock, the decedent has retained the right to vote for purposes of section 2036.

(d) *Meaning of controlled corporation*—(1) *In general.* For purposes of this section, the term "controlled corporation" means a corporation in which the decedent, with application of the constructive ownership rules of section 318, is deemed to own or have a right to vote stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(2) *Computations*—(i) *Total combined voting power of all classes of stock.* For purposes of this paragraph, the total combined voting power of all classes of stock shall include only stock that currently has voting power. Stock that may vote only on extraordinary matters, such as mergers or liquidations, shall be disregarded. Similarly, treasury stock and stock that is authorized but unissued shall be disregarded.

(ii) *Decedent's percentage of total combined voting power.* For purposes of this paragraph, in determining whether the voting power possessed by the decedent is a least 20 percent of the total combined voting power of all classes of stock, consideration will be given to all the facts and circumstances. Generally, the percentage of voting power possessed by a person in a corporation may be determined by reference to the power of stock to vote for the election of directors. Instruments that do not have voting rights shall be disregarded. Instruments having no voting rights but which may be converted into voting stock shall be disregarded until such conversion occurs. Instruments carrying voting rights that will vest only when conditions, the occurrence of which is indeterminate, have been met will be disregarded until the conditions have occurred which cause the voting rights to vest. An example of such an instrument is preferred stock which

gains voting rights only if no dividends are paid.

(iii) *Example.* The following example illustrates the application of paragraphs (d)(1) through (d)(2)(ii) of this section.

Example. A corporation has three classes of stock outstanding, consisting of 40 shares of class A voting stock, 50 shares of class B voting stock, and 60 shares of class C preferred stock which is nonvoting except for extraordinary matters or unless the arrearages in dividends exceed a specified amount. Assume for purposes of this example that except for extraordinary business matters, the voting stock's only voting power is the right to vote in the election of directors. The class A stockholders are entitled to elect 7 of the 10 corporate directors, and the class B stockholders are entitled to elect the other 3 of the 10 directors. Thus, the class A stock (as a class) possesses 70 percent of the total combined voting power of all classes of stock, and the class B stock (as a class) possesses 30 percent of such voting power. At the time of *D*'s death, *D* has voting rights in 9 shares of class A stock directly; and with the constructive ownership rules of section 318, *D* is deemed to have voting rights in 3 additional shares of class A stock. *D* has no interest in the class B stock and owns all 60 shares of the class C stock. Thus, *D* is deemed to possess 21 percent ((9+3) shares/40 shares x 70 percent) of the total combined voting power of all classes of stock. By reason of such voting power, the corporation is a controlled corporation within the meaning of this section.

(e) *Direct versus indirect retention of voting rights*—(1) *Direct transfers.* Subject to the limitations contained in paragraph (a) of this section, if the decedent transfers stock of a controlled corporation (except in case of a bona fide sale for adequate and full consideration in money or money's worth), the retention of voting rights in the stock transferred shall require a portion of the fair market value of the stock to be included in the gross estate. For purposes of this paragraph (e)(1), transfers of stock in exchange for, in whole or in part, either property donated by the decedent or property for which the decedent supplied the purchase consideration, will not be considered a bona fide sale for adequate and full consideration. The amount included in the gross estate under this paragraph (e)(1) shall be an amount, not less than zero, equal to the fair market value at death of the stock transferred less the value of any consideration the decedent received in exchange.

(2) *Indirect transfer.* Section 2036 applies to indirect as well as direct transfers. The acquisition of voting rights in stock acquired through the exercise of other instruments transferred by the decedent (such as through the exercise of warrants or options, or the conversion rights on convertible nonvoting stock or indebtedness) shall cause the stock to be treated as acquired with consideration furnished by the decedent and an indirect transfer by the decedent. If a third party makes a transfer to the trust and the consideration for the transfer was furnished by the decedent, the transfer by the third party to the trust will be treated as a transfer by the decedent to the trust. In addition, if the decedent makes a transfer by gift to a trust, and the trust subsequently acquires stock in which the decedent has voting rights, then for purposes of section 2036(a), the transaction will be treated as an indirect transfer of stock by the decedent (irrespective of whether the acquisition of the stock can be traced to the gift). The amount included in the gross estate in such a case is equal to the fair market value at death of the portion of the stock acquired with funds provided by the decedent. In the case of a purchase of stock from a third party by a trust, the stock shall be treated as purchased with funds provided by the decedent to the extent there are funds in the trust treated as provided by the decedent. For this purpose, the portion of the funds in the trust treated as provided by the decedent shall be determined after each addition to the trust and is equal to a fraction. The numerator of the fraction is the sum of—

(i) The total value of the trust immediately prior to the latest addition multiplied by the fraction of such value treated as provided by the decedent because of prior additions, and

(ii) The amount of the latest addition to the extent provided by the decedent.

The denominator of the fraction is the total value of the trust immediately after the latest addition.

(3) *Exchange of voting rights.* For purposes of this section, if a decedent is deemed to have retained the right to vote shares of stock of a controlled corporation in a transfer occurring after June 22, 1976, the subsequent relinquishment of those voting rights in exchange for voting rights in other stock of a controlled corporation, shall be treated as a retention of voting rights in such other stock. Furthermore, for purposes of section 2036(a), such other stock shall be treated as property transferred by the decedent. For example, if a person transfers stock in ABC Corporation (a controlled corporation) after June 22, 1976, to a trust for which that person is a trustee—thus retaining voting rights in a fiduciary capacity—and the trust later sells the ABC Corporation stock, using the proceeds to purchase stock in XYZ Corporation (a controlled corporation), that person will be treated as having retained the right to vote the shares of XYZ Corporation. In such a transaction, the shares of XYZ Corporation shall be treated as transferred by that person. If the stock in XYZ Corporation is acquired directly from the decedent, the amount included in the gross estate shall be determined under paragraph (e)(1) of this section. If the stock in XYZ Corporation is acquired from someone other than the decedent, the amount included in the decedent's gross estate shall be determined under paragraph (e)(2) of this section.

(4) *Examples.* The following examples illustrate the application of section 2043 and paragraphs (e)(1) and (e)(2) of this section.

Example (1). During 1977, *D* transferred by gift $100,000 cash to a trust. During 1979, *D* transferred to the trust 1000 shares of ABC Corporation voting stock worth $100,000. The 1979 transfer was in exchange for $50,000 cash and *D* retained voting rights in all the stock transferred. Assume that at some time after the stock transfer, ABC Corporation is a controlled corporation within the meaning of this section. *D* dies during 1981, at which time the stock is worth $150,000. As a result of the stock transfer, the amount included in *D*'s gross estate under section 2036 is $100,000, computed as follows:

Fair market value of instruments at death	$150,000
Less consideration received by *D*	50,000
Amount included in *D*'s gross estate	100,000

Example (2). The facts are the same as in *example (1)* except that the 1979 transfer to the trust (1000 shares of ABC Corporation) was in exchange for $100,000 cash. As a result of the stock transfer, the amount included in *D*'s gross estate under section 2036 is $50,000, computed as follows:

Fair market value of instruments at death	$150,000
Less consideration received by *D*	100,000
Amount included in *D*'s gross estate	50,000

The 1979 transfer is not considered a *bona fide* sale for adequate and full consideration in money or money's worth since *D* provided the consideration by virtue of his 1977 transfer to the trust.

Example (3). During 1979, *D* transferred by gift 1000 shares of ABC Corporation voting stock worth $100,000 to his wife *W*. During 1980, *W* made a gift of the same stock to a trust. Assume that *D* becomes trustee of the trust and hense acquires the right to vote the stock in that capacity. Assume further that, at some time after *D*'s transfer, ABC Corporation is a controlled corporation within the meaning of this section. *D* dies during 1981, at which time the stock is worth $150,000. The full $150,000 is included in *D*'s gross estate under section 2036.

Example (4). During 1979, *D* transferred by

gift $90,000 to a trust that already had $90,000 of funds, all of which is attributable to contributions by persons other than *D*. During 1980, the trust purchased at full fair market value 1000 shares of ABC Corporation voting stock worth $100,000, at which time, because of appreciation, the value of the trust was $210,000. Assume that *D* aquires the right to vote the stock as trustee of the trust and that at some time after the stock purchase, ABC Corporation is a controlled corporation within the meaning of this section. *D* dies during 1981, at which time the stock is worth $150,000. Pursuant to paragraph (e)(2) of this section, at the time of the stock purchase, $105,000 (50 percent of $210,000) of funds in the trust were funds supplied by *D*, $100,000 of which are treated as used to purchase the stock. Accordingly, the amount included in *D*'s gross estate under section 2036, $150,000, is the value at death of the portion of the stock acquired with funds provided by *D*.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-21092 Filed 8-2-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; notice of hearing.

SUMMARY: OSM is announcing that a public hearing will be held on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are proposed changes to the Ohio regulations which would revise permitting and subsidence control requirements for underground coal mine operators. This notice announces the public hearing but does not alter the time and location at which the Ohio program and proposed amendments are available for public inspection or the comment period during which interested persons may submit written comments on the proposed program amendments.

DATE: The public hearing will be held on August 11, 1983, at 9:00 a.m. Written comments from the public must be received by 4:30 p.m., August 12, 1983, to be considered in the decision on whether the proposed amendments should be approved.

ADDRESSES: The hearing will be held in Room 220, Old Federal Building, 85 Marconi Boulevard, Columbus, Ohio 43215. Written comments and requests to speak at the hearing should be mailed, hand-delivered or telephoned, as appropriate, to: Ms. Nina Rose Hatfield, Field office Director, Columbus Field office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: On July 13, 1983, notice of opportunity to request a public hearing on proposed amendments to the Ohio program was published in the **Federal Register** (48 FR 32031). The notice stated that a public hearing on the proposed amendments would be held only if requested. Several persons directed requests for a hearing to Ms. Hatfield and she scheduled the public hearing.

The hearing will be transcribed. Filing of a written statement at the time of the hearing is requested and would greatly assist the transcriber. The public hearing will continue until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard. Persons wishing to be included on the list of scheduled speakers should contact Ms. Hatfield at the adress listed above under "ADDRESSES" by the close of business on Wednesday, August 10, 1983.

As noted above, this notice does not alter the time or location at which the Ohio program and proposed amendments are available for public inspection, or the comment period during which interested persons may submit written comments on the proposed program amendments. Written comments must be received by 4:30 p.m., August 12, 1983 to be considered in the Director's decision on whether to approve or disapprove the amendments.

Dated: July 28, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 83-21091 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Post-Vietnam Era Veterans' Educational Assistance Program; Programs of Education

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed Regulation.

SUMMARY: This proposed regulation states which paragraphs of 38 CFR 21.4230 do not apply to programs of education pursued under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). This proposal will eliminate any confusion that may exist in this area.

DATE: Comments must be received on or before September 1, 1983. It is proposed to make this regulation effective the date of final approval.

ADDRESS: Send written comments to the Administrator of Veterans' Affairs (271A), Veterans Administration 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at this address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 12, 1983. Anyone visiting Veterans Administration Central Office in Washington, DC for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: Section 21.5230, Title 38, Code of Federal Regulations is amended to state correctly which paragraphs of 38 CFR 21.4230 do not apply to programs of education under 38 U.S.C. chapter 32.

The Veterans Administration and the Department of Defense have determined that this proposed regulation is not a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The proposal will not result in any major increases in costs or prices for

anyone. It will have no significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veteran's Affairs and the Secretary of Defense hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this proposed regulation contains a technical change which does not affect basic Veterans Administration policy. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

Approved: June 10, 1983.
By direction of the Administrator:

Everett Alvarez, Jr.,
Deputy Administrator.

Approved: July 13, 1983.

R. Dean Tice, LTG USA
Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

It is proposed to amend 38 CFR Part 21 as set forth below: Section 21.5230 is revised to read as follow:

§ 21.5230 Programs of education.

In the administration of benefits payable under chapter 32, title 38, United States Code, the Veterans Administration will apply § 21.4230—Requirements (except paragraphs (d) (2), (e) and (f) of this section) in the same manner as it is applied in the administration of Chapters 34 and 36. (38 U.S.C. 1641)

[FR Doc. 83-21079 Filed 8-2-83; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-FRL-2400-6]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate the existing dredged material (Mud) disposal site located in the New York Bight as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an ocean dumping site for the current and future disposal of this material. EPA also solicits comments on contaminant inputs, navigation hazards, and dredged material permitting policy and announces the scheduling of two public hearings.

DATES: Comments must be received on or before September 19, 1983. The public hearings will be held on August 23, 1983, in West Long Branch, New Jersey, and on August 25, 1983, in New York City.

ADDRESSES: Send comments to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, DC 20460.

The Environmental Impact Statement (EIS) is 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/OAD Northeast Office, Old Biology Building, State University of New York, Stony Brook, New York

The locations for the public hearings are as follows:

August 23: Lecture Hall E–1, Edison Science Hall, Monmouth College, Cedar and Norwood Avenues, West Long Branch, New Jersey
August 25: College Hall, Saint George Campus, College of Staten Island, 130 Stuyvesant Place, Staten Island, 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 proposed 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 was last extended on February 7, 1983 (48 FR 5557 et seq.). That list established this site as an interim site.

The purpose of this notice is to provide the public with an opportunity to comment on the proposed final designation, as an EPA Approved Ocean Dumping Site, of a site in the New York Bight for the continuing disposal of dredged material.

The location of the site is approximately 5.3 nautical miles east of Highlands, New Jersey, and 9.6 nautical miles south of Rockaway, Long Island, positioned approximately in a rectangle with coordinates as follows:

40°23'48"N., 73°51'28"W.;
40°21'48"N., 73°50'00"W.;
40°21'48"N., 73°51'28"W.;
40°23'48"N., 73°50'00"W.

The site occupies an area of approximately 2.2 square nautical miles. Water depths within this area range from 15.8 to 28.8 meters. Disposal operations at the site began in 1914. Other ocean sites closer to the New York Harbor were used between 1888 and 1914.

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. ("NEPA"), requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186.

EPA has prepared a draft and final EIS entitled "Environmental Impact Statement (EIS) For New York Dredged Material Disposal Site Designation." On February 19, 1982, a notice of availability of the draft EIS for public review and comment was published in

the **Federal Register** (47 FR 7488). The public comment period on this draft EIS closed April 5, 1982. On September 3, 1982, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (47 FR 38983). The public comment period on the final EIS closed October 5, 1982.

This EIS evaluated ocean alternatives to the continued use of the New York Bight dredged material (Mud) disposal site. These alternatives include no action and sites on and off the Continental Shelf. Three sites on the Shelf were evaluated in detail: The proposed site, the Christiaensen Basin site, and the Outer Apex site. The latter site was proposed by the New Jersey Department of Environmental Protection but was determined to be the least preferred of these three sites because it is outside the present shellfish closure zone (an area in which shellfishing is prohibited by the Food and Drug Administration), so an additional area would be affected if dumping were to occur there. The Christiaensen Basin site is presently impacted by sewage sludge dumping at a nearby site. Thus, monitoring of impacts due only to dredged material dumping would be extremely difficult. Therefore, the Christiaensen Basin site was rejected in preference to the existing site.

The proposed site (Mud) has several advantages. It has been used historically, so the disposal would continue to occur within the range of influence of previous dumping. It is within the influence of the Hudson-Raritan plume and within the existing shellfish closure area. De-designation of the site would not result in reopening this area to shellfishing because of bacterial inputs to the area from the Hudson plume. Disposal at the site would be relatively economical because it is close to shore and navigational considerations do not preclude its use. Monitoring studies to date have not shown that continued use of the site is a threat to public health or water quality. It can reasonably continue to be used provided that it is closely monitored. The major disadvantage of the site is that accumulation of dredged material from previous dumping precludes use of the northwestern quadrant of the site. Another disadvantage is that the site is adjacent to a recreational fishing ground. For a more complete discussion of the ocean dumping site selection criteria considered, interested persons are referred to pages 2–18 through 2–31 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 E of the final EIS.

Based on the information reported in the EIS, EPA proposes to designate the existing (Mud) site for continuing use for the ocean disposal of dredged material from the Port of New York and New Jersey where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

At current rates of disposal, the capacity of the site is likely to reach its limit in approximately ten years and become a hazard to navigation. Because of this EPA proposes to restrict its period of use to ten years. During this time EPA and the U.S. Army Corps of Engineers plan to evaluate alternative sites for possible future use.

In addition to restricting the period of use of the site to ten years, dumping within the northwest corner of the site will be limited to specific projects such as research or capping. This limitation has been imposed since past dumping has caused shoaling in this area of the site which is hazardous to deep-draft navigation.

While a large contaminant input to the Bight Apex is associated with the dumping of dredged material, a significant fraction of this contaminant load is sequestered in the mound built up at the dump site over the years. Therefore, many of the contaminants are not readily available to marine organisms.

EPA's permitting policy with regard to dredged material dumping at the Mud site is to insure no further degradation. The Agency is working with the Corps to develop a comprehensive plan to manage the disposal of materials—including contaminated materials—dredged from channels and berths in the Port of New York and New Jersey. The future implementation of alternate disposal or mitigation (e.g., capping) technology is expected to improve the environmental quality at and near the dump site.

While the Mud site is located in the heavily trafficked entrance to New York Harbor and within the precautionary zone established by the Coast Guard, EPA is not aware of any serious concerns over potential hazards to navigation associated with dredged material dumping vessel traffic at the site. In normal operations, dredged material dumping activities are completed as rapidly as possible.

Recognizing the considerable concern by port interests who need a disposal site and environmental groups who are concerned over impacts on resort and fisheries industries, EPA today solicits written comments on contaminant loading, potential for navigational problems, and dredged material permitting policy. Since EPA has received requests for public hearings on continued use of the Mud site, two hearings are scheduled as follows:

August 23, 1983, Monmouth College

There will be a morning session from 9 a.m. to 12 noon. If all those wishing to make statements cannot be accommodated during the morning session, an afternoon session will be held starting at 2 p.m. An evening session is scheduled to begin at 7 p.m.

August 25, 1983, College of Staten Island

There will be a morning session from 9 a.m. to 12 noon. If all those wishing to make statements cannot be accommodated during the morning session, an afternoon session will be held starting at 2 p.m. An evening session is scheduled to begin at 7 p.m.

The designation of the existing New York Bight dredged material (Mud) disposal site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region II. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of a Corps permit for the actual disposal of materials at sea. It would remain the responsibility of each applicant to demonstrate compliance with EPA' s ocean dumping criteria in order to receive a Corps permit under the Ocean Dumping Act.

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 proposed 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 dredged

material. 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 proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed 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.

Authority: 33 U.S.C. Sections 1412 and 1418.

Dated: July 25, 1983.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended by removing and reserving paragraph (a)(1)(i)(B), the New Yok Mud Dump site, of § 228.12 and adding § 228.12(b), a new subparagraph (18), an ocean dumping site for Region II to read as follows:

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

* * * * *

(b) * * *

(18) Dredged Material (Mud) Site—Region II.

Location: 40d 23' 48"N, 73d 51' 28"W; 40d 21' 48"N, 73d 50' 00"W; 40d 21' 48"N, 73d 51' 28"W; 49d 23' 48"N, 73d 50' 00"W.
Size: 2.2 square nautical miles.
Depth: Ranges from 15.8 to 28.8 meters.
Primary Use: Dredged material.
Period of Use: Until December 31, 1992.
Restriction: Disposal shall be limited to dredged material from the Port of New York and New Jersey. Dumping within the area described by the following coordinates shall be limited to projects determined by the Corps and EPA to demonstrate a specific need, such as research or final capping.
40d 23' 48"N, 73d 51' 28"W; 40d 23' 23"N, 73d 51' 28"W; 40d23' 23"N, 73d 51' 06"W; 40d 23' 48"N, 73d 51' 06"W.

[FR Doc. 83-20842 Filed 8-2-83; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 83-737; FCC 83-329]

Role of Non-Federal Government Frequency Coordinating Committees in the Private Land Mobile Radio Services Frequency Assignment Process; Inquiry To Develop Record

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry responds to the congressional recommendations contained in the Communications Amendments Act of 1982 Conference Report. Since the Commission could not determine from the record at hand whether or not to expand the role of frequency coordinating committees and, if it did, to what extent, it is issuing this Notice of Inquiry to elicit more information on the subject.

DATES: Comments are due by November 30, 1983 and replies by December 30, 1983.

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

FOR FURTHER INFORMATION CONTACT: Eugene Thomson or Herb Zeiler, Private Radio Radio Bureau (202) 634-2443.

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

Notice of Inquiry

In the matter of frequency coordination in the Private Land Mobile Radio Services; PR Docket No. 83-737.

Adopted: July 14, 1983.
Released: July 25, 1983.
By the Commission.

By this notice the Commission is commencing a proceeding to evaluate its frequency coordination processes and procedures in anticipation of proposing revised rules where appropriate.[1]

1. Prior to 1958 the Commission's Rules governing the private land mobile radio services contained few provisions designating specific procedures for frequency coordination. They did, however, recite the over-riding policy that these frequencies where available only on a shared basis, and that applicants and licensees were expected to cooperate in their selection and use.[2] To assist in carrying out this requirement, interested parties, over the years, formed committees which maintained records of frequency usage. Through the licensing data gathered in this fashion, these committees were able to make recommendations designed to minimize interference potentials at the local level between proposed stations and those previously authorized. These advisory committees were generally representatives of the entities using their services so that individual applicants had the assurance that, in selecting a frequency for the applicant's use, the judgement of the committee involved would be both knowledgeable and impartial.

2. This system worked quite well at a time when "block allocations" were made, and produced, from the Commission's prespective, substantial advantages in spectrum management. Accordingly, in 1958, the Commission amended its rules to include definite and detailed procedures with respect to effecting coordination in the selection of frequencies and also an alternative procedure whereby the applicant could work through a representative advisory committee and secure a frequency recommendation for submission to the Commission.[3]

3. It was typical that these committees provided their services on a no-fee basis for members and non-members alike. However, in 1968 the Special Industrial Radio Service Association, Inc., (SIRSA), the coordinator for the Special Industrial Radio Service, requested a ruling as to whether or not any of the rules, regulations, or policies of the Federal Communications Commission prevented charging non-members a fee for coordinating their proposed use. In its request, it pointed out, *inter alia*, that it was handling more than 4,000 requests for coordination annually; that all such requests were being processed free of charge with members underwriting through dues the costs for themselves as well as non-members; and that the increased volume and complexity of the work required it to obtain financial assistance through some kind of fee system. After reviewing the facts, the Commission concluded that the matter appeared to be one for the coordinator's judgment, not one appropriate for Commission directive.[4] SIRSA, in

[1] 47 CFR 90.175, which contains the present frequency coordination requirements, is set forth at Appendix A.

[2] 47 CFR 90.173.

[3] *In the Matter of Amendment of Port 11, Rules Governing the Industrial Radio Services, To Delete, Modify and Create Services and to Effect Changes in the Availability of Frequencies*, First Report and Order, Docket No. 11991, FCC 58-602, 23 FR 4784 (June 28, 1958). (17 RR 1569, (1958)).

[4] *Frequency Coordination in the Industrial Radio Services*, 18 FCC 2d 299, 302 (1969).

response, commenced charging a fee on February 1, 1968.

4. The authority of a coordinator to charge such fee was challenged by Levitt and Sons, Inc. who sought rule making to modify the frequency coordination process. In support Levitt contended that SIRSA was "exploting its coordination function to gain dues-paying members."[5] Levitt argued that SIRSA used its position as frequency coordinator for the Special Industrial Radio Service "as a tool to enhance its private interests" because applicants and licensees had no alternative to the coordination service. Field studies, Levitt maintained, were seldom conducted because of the difficulty entailed and the uncertainty of the results. Levitt further pointed out that applicants and licensees choose to coordinate their requests with frequency advisory committees because it was "simpler, cheaper and just as effective." As relief, Levitt sought the elimination of the field study requirement and instead requested that applicants essentially be premitted to state "that the frequency selected will result in the least amount of interference to existing stations." Other alternatives suggested by Levitt were that the Commission: (1) direct SIRSA to discontinue the practice of charging non-members coordination fees or (2) "open up the frequency coordination function for competitive bidding" to "anyone who may be willing to do the job" * * *."

5. The Commission rejected Levitt's petition for rulemaking on a variety of grounds, including the following: (1) That there were alternatives to use of the frequency coordinating committee; (2) that the recommendation of the committee was only that, and not binding on the applicant or the Commission; and (3) that the charging of a fee to non-members was not discriminatory and there was no sound basis for causing SIRSA to abandon the practice since the alternative was to compel SIRSA's membership to underwrite the costs of the coordination service for non-SIRSA members.

6. The general principles on the subject of frequency coordinating committees enunciated by the Commission in 1969 in that proceeding were:

(1) That the frequency advisory committees must be representative of all eligibles in the radio service concerned in the area the committee purports to serve;

(2) That the recommendation is advisory, and not binding on either the applicant or the Commission;

(3) That the Commission had the power to remedy the situation should there be discrimination or misuse of functions by the coordinating committees;

(4) That there was no bar to alternative frequency coordinating committees;

(5) That any fee charged may only represent the cost of providing the service;

(6) That there can be no discrimination between members and non-members in the provision of service; and

(7) That all requests for coordination must be honored.[6]

7. Generally, these principles have governed the functions of all frequency coordinating committees from 1969 to the present. In 1982, however, the Congress amended the Communications Act. Among other things, it ratified that the Commission had the authority to utilize assistance furnished by advisory coordinating committees. 47 U.S.C. 332(b)(1). It also recognized the "value of the assistance" provided to the Commission by these committees. Specifically, the Conference Report pointed out that:

> "The frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating activity some of these applicants would not be able to afford the engineering required in the application process. Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor * * *.
>
> To further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service. The Conferees also encourage the Commission to develop rules or procedures for monitoring the performance of coordinating committees." H.R. Rep. No. 97-765, 97 Cong., 2d Sess. 53 (1982).

8. It is in response to this Congressional action that we are commencing this inquiry to evaluate and, if necessary, update our policies governing the operations of coordinating committees.

9. We ask for comments on the following:

(1) *Functions of frequency coordinating committees.* Frequency coordinating committees currently recommend frequencies they believe "will result in the least amount of interference to all existing stations operating in the particular area."[7] They cannot decline to coordinate eligible applications. They must also respond to interservice frequency sharing requests.[8] It appears that these two functions must continue under any scheme of coordination. There may be other functions, such as after post-licensing conflict resolution, which should also be the formal responsibility of the coordinators.

(2) *Authority of frequency coordination committees.* Currently, committees recommend frequency assignments but we retain the final decision authority. In some situations, committees have asked for Commission guidance as to the preferred assignment methodology while in others, they have developed their methodology independently. We could extend the coordinators' authority to encompass authority to require changes in the proposed parameters of the system as a precondition for grant. At the other extreme, the Commission could develop a model or computer program, by which the coordinators would only administer the selection process, not determine or influence it. Or we could require the coordinators to develop an assignment algorithm but submit it to us for review and approval.

(3) *Exclusive or multiple freqency coordinating committees.* Presently there is only one committee in any land mobile service in any area. We must provide a great deal of information to coordinators and the paper reproduction and distribution (of license grants and field studies, for example) is voluminous. In addition, licensing actions must sometimes await advice from a coordinator and we have been concerned about undue delay if many coordinators were involved in a radio service.[9] However, in the private microwave services there are a number of frequency coordinators. The existence of multiple coordinators might allow competitive processes to regulate to some extent their performance, whereas exclusive coordinator designation may

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[5] *Id.*

[6] See generally, Frequency Coordination in the Industrial Radio Services *supra* at 305-306.

[7] Section 90.175 of the Rules.

[8] In the *Report and Order*, Docket No. 81-110, FCC 82-288 (1982), we established rules governing interservice frequency sharing. Comments on whether this authority should be delegated to coordinating committees, or whether the Commission should set specific guidelines, would be useful.

[9] In a *Notice of Inquiry*, in Docket 83-483, 48 FR 23667 (1953) the Commission is considering the issue of public remote access to the Commission's electronically filed data. This could alter the administrative impact of our dealings with coordinators.

require more detailed selection and oversight processes by the Commission.

(4) *Oversight of frequency coordinating committees.* Currently, the critical requirement of frequency coordinating committees is that they be representative of all the users. We could oversee committees by imposing pre-recognition requirements, such as representativeness, data processing capabilities, compatibility with FCC data system etc. We could alternatively or additionally oversee coordinators on the basis of performance, i.e., quality and timeliness of recommendations. Suggested performance standards would be useful. There is also the issue as to whether we should regulate the fees charged by coordinators or impose restraints on profitability or use of profits.

(5) Field studies. The standards for what constitutes a "field study" have been vague. According to the rules, a field study report should indicate the degree of probable interference to all existing co-channel stations within a set distance along with a statement that all the co-channel stations within the prescribed distance have been notified of the application. The quality of field studies varies widely; some appear to be vitually arbitrary frequency choices. In addition, the notification requirements are sometimes ignored or abused. We could ban field studies altogether, insisting that applicants utilize frequency coordinators. If we retain field studies, we wish to set standards for this which will insure that they are a quality approach to frequency selection, not an arbitrary one aimed only at avoiding a coordination fee and then wasting a spectrum efficient selection process. We also invite comments on whether uniform standards for field studies and coordinating requirements would be feasible.

10. In addition to the matters that have been specifically addressed in this *Notice*, any other comments related to frequency coordination matters which have not been addressed by questions herein are welcome.

11. Accordingly, the Commission adopts this Notice of Inquiry, under the authority contained in Sections 4(i), 303(r), and and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 403. Pursuant to the procedures set out § 1.415 of the Commission's Rules, 47 CFR 1.415, interested persons may file comments on or before November 30, 1983 and reply comments on or before December 30, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and the fact of the Commission's reliance on such information is noted in the Report and Order.

12. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

13. Concurrently, the Commission is terminating Docket No. 21229, and PR Docket No. 82-226 since they contain issues substantially overlapping the issues in the proceeding.

14. Points of contact on this matter are Eugene Thomson or Herb Zeiler (202) 634-2443.

Federal Communications Commission.
William J. Tricarico,
Secretary.

PART 90—[AMENDED]

Appendix A

Section 90.175 is republished below for purposes of commenting.

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (e) of this section, each application:

(1) For a new frequency assignment, or (2) for a change in existing facilities by increasing the authorized power, raising the authorized antenna height, or changing the authorized station location or the location of the antenna; or (3) for the addition of a base station within the licensee's existion area of operation; or (4) for a change to or the addition of F3Y (digital voice) or F9Y (digital data) emission, shall include a showing of frequency coordination as set forth in either paragraph (a) or (b) of this section.

(a) For frequencies below 470 MHz:

(1) A report based on a field study indicating the degree of probable interference to all existing co-channel stations within 120 km. (75 mi.) of the proposed stations, together with a statement that all such co-channel licensees have been notified of the applicant's intention to apply. In addition, for frequencies in the range 150–170 MHz, a report based on a field study indicating the degree of probable interference to existing stations located between 16 and 56 km. (10 and 35 mi.) (12 and 56 km. for taxicabs) from the proposed station, operating on a frequency 15 kHz removed, and a statement that the licensees of all such stations have been notified of the applicant's intention to apply. In no instance will an application be granted where the proposed station is located less than 10 miles from an adjacent channel station 15 KHz removed, or,

(2) A statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area. The Committee's recommendations may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. The Committee shall not recommend and adjacent channel frequency 15 KHz removed to existing stations which would result in a separation of less than 10 miles. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities in the service concerned in the area the committee purports to serve. The functions of such committees are purely advisory in character, and their recommendations cannot be considered as binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–170 MHz band, is 15 kHz removed from a frequency which is available to another radio service, and is assignable only after coordination, the committee's statement shall affirmatively show that coordination with a similar committee for the other service has been accomplished.

(b) For frequencies between 470 and 512 MHz:

(1) A report showing that the frequencies applied for are available for assignment in accordance with the applicable loading and separation standards, specified in § 90.303 and § 90.307, or:

(2) A statement from a frequency coordinating committee recommending specific frequencies which are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service involved.

(c) Any recommendation submitted in accordance with Subparagraphs (a)(2) or (b)(2) of this section is purely advisory in character and is not binding on either the applicant or the Commission. The recommendation may not contain statements implying that anyone other than the Commission has the power to grant or deny applications. Applicants are advised not to purchase radio equipment on specific frequencies until a valid authorization has been obtained.

(d) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. See § 1.955 ot this chapter.

(e) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications in the Police, Highway Maintenance, or Forestry Conservation Radio Services from States requesting frequencies available only in accordance with geographical assignment plan.

(2) Applications in the Special Emergency Radio Service, except as required by § 90.53 (b)(8) and § 90.267, and 90.175(g).

(3) Applications for a Federal Government frequency.

(4) [Reserved]

(5) Applications for a frequency in the 72–76 MHz band for operational fixed stations.

(6) Applications for a frequency in the band 216–220 MHz.

(7) Applications for a frequency below 25 MHz.

(8) [Reserved]

(9) Applications for a frequency allocated primarily for developmental operation.

(10) Applications in the Business Radio Service for a frequency below 450 MHz where both frequencies immediately adjacent (±20 or 30 kHz) are available for assignment in that service.

(11) Applications in the Special Industrial Radio Service or the Business Radio Service specifying an itinerant operation only.

(12) Application in the Radiolocation Radio Service.

(f) For frequencies in the bands 806–821 MHz and 851–866 MHz, see §§ 90.360(c) and 90.621(a).

(g) For frequencies in the 929–930 MHz band.

(1) A report based on a field study indicating the degree of probable interference to all existing co-channel stations within 120 km (75 mi.) of the proposed stations, together with a statement that all such co-channel licensees have been notified of the applicant's intention to apply; or

(2) A statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area. The Committee's recommendations may include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities, in the service concerned in the area the committee purports to serve. The functions of such committees are purely advisory in charater, and their recommendations are not binding upon either the applicant or the Commission.

[FR Doc. 83-20904 Filed 8-2-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Regulations for the Taking of Black Ducks in Virginia, New Jersey and Delaware

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements **Federal Register** Documents 48 FR 14700, published on April 5, 1983, and 48 FR 27799, published June 17, 1983, which notified the public that the U.S. Fish and Wildlife Service is proposing to establish more restrictive hunting regulations on black ducks in the 1983–84 hunting seasons. This rulemaking provides supplemental proposals for black duck hunting in Delaware, New Jersey, and Virginia, and replaces the proposals on black duck hunting made for these three States on June 17, 1983 (48 FR 27801–804).

DATE: Comments on these proposals will be accepted until August 19, 1983.

ADDRESS: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

The Service announced on September 17, 1982 (47 FR 41254), that a program to further restrict harvest of black ducks would be initiated in 1983, and that this program would be developed in cooperation with State, Provincial, and Federal wildlife agencies in both Canada and the United States. The procedures the Service is following in developing black duck hunting regulations for the 1983–84 season are described in **Federal Registers** 47 FR 41253, 48 FR 14707–08, and 48 FR 27801–04 with background information and reasons for the restrictions.

Special restrictive hunting regulations for the black duck have been in effect for many years. On June 17, 1983, the Fish and Wildlife Service published in the **Federal Register** (48 FR 27801–04) proposals for further restricting black duck harvest in the 1983–84 hunting season. These included proposals for both the Atlantic and Mississippi Flyways. In accordance with recommendations made by the Atlantic Flyway Council at its meeting in Kansas City on March 19, 1983, individual States of the Atlantic Flyway submitted recommendations regarding black duck hunting regulations for 1983 directly to the Service. These recommendations were reviewed and published with comments in the June 17, 1983 **Federal Register** (48 FR 27801–04). At that time it was noted that the proposed regulations for Virginia and New Jersey would not, in the judgement of the Service, achieve the desired reduction in the harvest of black ducks in these States. The States were requested to develop and submit new proposals. Additionally, on June 15, 1983, the Service received a letter from the Director of the Division of Fish and Wildlife of the Delaware Department of Natural Resources. The letter requested a change in the proposed regulations for

hunting black ducks in Delaware published on June 17, 1983 (48 FR 27801). The request arrived after the original proposal had been sent to the **Federal Register** for publication.

In a letter dated July 14, 1983, the Director, New Jersey Division of Fish, Game, and Wildlife, forwarded a new proposal to the Service for restricting black duck hunting in New Jersey during the 1983–84 season. This proposal is presented below. At this time no new proposal has been received from Virginia. Consequently, the Service has developed a proposal for restricting the hunting of black ducks in Virgina in the 1983–84 hunting season. The proposal is presented below.

Supplemental Proposals for Restricting Black Duck Hunting in Delaware, New Jersey, and Virginia.

Delaware: During a proposed 50-day duck season divided into three periods, the first period proposed is October 1–3 and the second period October 31-November 5. In both of these periods no hunting of black ducks will be permitted. The third period is proposed for November 24–January 3. During this period a daily bag limit of no more than one black duck will be permitted. In addition, the State of Delaware intends to keep a new regulation that essentially creates a refuge zone along the shoreline of Delaware Bay where black ducks congregate.

The Service believes that restrictions under this proposal will curtail the harvest of black ducks in Delaware to a greater degree than those described in the June 17, 1983 **Federal Register** [48 FR 27802] because fewer days of black duck hunting will be permitted and hunting in certain areas will be prohibited.

New Jersey: The black duck will have a point value of 100 throughout the duck season in the southern and coastal zones of the State. In the north zone the black duck will retain a point value of 70.

The Service believes this proposal will achieve the guideline of a 25 percent reduction in the harvest of black ducks in New Jersey when compared to harvests of recent years. An average of 26 percent of the harvest of black ducks in New Jersey has occurred since 1976 as second black ducks in bags containing two black ducks, and 95 percent of the harvest of black ducks occurs in the areas where the restriction will apply.

Virginia: During the period November 23-December 4 (including no less than 10 duck hunting days), no black ducks will be permitted in the daily bag.

The State of Virginia has in recent years split its duck season into three parts. The second season occurs during the period identified in the above proposal and 25 percent of the State's harvest of black ducks has occurred during this period.

Public Comment Invited

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate in the rulemaking process by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

NEPA Consideration

The Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54) was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, an environmental assessment, Proposed Hunting Regulations On Black Ducks, 1983, has been prepared and is available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical."

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migatory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated April 5, 1983 (48 FR 14700), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. On July 22, 1983 (48 FR 38489), the Service published a Memorandum of Law for the migratory bird hunting regulations. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504H.

Authorship

The primary author of this proposed rulemaking is Robert I. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

C.F. Layton,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-21023 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

Notice of Availability of Two Draft Environmental Assessments on Proposed Hunting Regulations on Canvasback Ducks and Black Ducks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule-related notice

SUMMARY: This notice advises the public that two draft Environmental Assessments on Proposed Hunting Regulations on Canvasback Ducks and

Black Ducks are available for public review, comments and suggestions. The titles of these documents are *Proposed Hunting Regulations on Canvasbacks 1983* (48 FR 27804; June 17, 1983) and *Proposed Hunting Regulations of Black Ducks 1983* (48 FR 27802; June 17, 1983).

DATE: Written comments are requested by August 15, 1983.

ADDRESS: Copies of these documents can be obtained by contacting the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, Washington, D.C. 20240 (phone 202–254–3207). Copies are available in Room 536, 1717 H Street NW., Washington, D.C. Comments should be addressed to: Dr. John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, (202) 254–3207.

Dated: July 29, 1983.

F. Eugene Hester,

Acting Director.

[FR Doc. 83–21022 Filed 8–2–83; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 48, No. 150
Wednesday, August 3, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council of Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that a panel of five members of the Council will meet on August 15 and 16, 1983, to consider the proposed construction of State Route 7 between Interstates 210 and 10, Los Angeles County, California. It has been determined that this undertaking, for which the Federal Highway Administration has been requested to provide funding assistance, will adversely affect properties eligible for inclusion in the National Register of Historic Places.

Pursuant to § 800.6(d)(2) of the Council's regulations, the Chairman of the Council decided on July 15, 1983, that a panel should consider this project in accordance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470f, as amended).

The Council was established by the National Historic Preservation Act to advise the President and Congress on Matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed underaking having effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretary of the Interior, the Architect of the Capitol, the Secretary of Agriculture, and the heads of four other Federal agencies appointed by the President, one Governor and one mayor appointed by the President, the President of the National Conference of State historic Preservation Officers, the Chairman of the National Trust for Historic Preservation, and seven private citizens appointed by the President.

The Council's regulations require that the panel be composed of five members, three from private sector (with one chairing) and two Federal members. This panel will be chaired by Mr. Alexander Aldrich of Saratoga Springs, New York, Council Chairman. The panel will meet at the McKinley Auditorium (Skills Center), 325 Oak Knoll, Pasadena, California. The panel meeting will begin at 8:30 a.m., August 15, 1983. Statements from members of the public are expected to begin about 3 p.m on the same date.

The panel will consider written and oral statements for concerned parties. Written statements should be submitted to the Executive Director of the Council by August 5, 1983. Persons wishing to make oral statements should notify the Executive Director by the same date. Additional information concerning the meeting or the submission of the statements is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, Room 430, NW., Washington, D.C. 20005, telephone (202) 254–3967.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-21266 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agency Forms Under Review by Office of Management and Budget

July 29, 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.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Marshall L. Dantzler, Acting Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250; (202) 447–6201.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Agricultural Stabilization and Conservation Service

No Nets Cost Tobacco Program
MP–79 (supplemental), MQ–40, MQ–40–1, MQ–40–2, MQ–40–3
Annually
Farms, businesses or other for profit: 340,000 responses; 18,650 hours; not applicable under 3504(h)
Harry Millner (202) 447–4281

- Forest Service

Disposal of Mineral Materials
On occasion, annually
Individuals or households, state or local governments, businesses or other for profit, Federal agencies or employees, nonprofit institutions, small businesses or organizations: 3,800 responses; 7,600 hours; not applicable under 3504(h)
Howard Banta (703) 235–8105

- Office of Operations

Solicitation/Award/Administration of Contracts for Procuring Goods and Services
On occasion
Individuals or households, state or local governments, businesses or other for profit, nonprofit institutions, small businesses or organizations: 1,486,000 responses; 13,880,000 hours; not applicable under 3504(h)

Larry Schreier (202) 447–8924

Revised

- Animal and Plant Health Inspection Service

Animal Welfare Reports
VS 18–3, 18–8, 18–11, 18–23
On occasion, annually
Businesses: 15,074 responses; 17,601 hours; not applicable under 3504(h)
Dr. R. Crawford (301) 436–7833

- Statistical Reporting Service

Acreage Surveys
On occasion
Farms: 579,480 responses; 126,474 hours; not applicable under 3504(h)
Lee Sandberg (202) 447–6820

Extension

- Foreign Agricultural Service

Request for Vessel Approval—Request for Vessel Approval (Cotton)
CCC–105, CCC–105(Cotton)
Businesses or other for profit, small businesses or organizations: 609 responses; 1,522 hours; not applicable under 3504(h)
Donald Pickett (202) 447–6711

Marshall L. Dantzler,

Acting Department Clearance Officer.

[FR Doc. 83–20986 Filed 8–2–83; 8:45 am]

BILLING CODE 3410–01–M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), U.S. Department of Agriculture announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 22–24, 1983

Time: 8:00 a.m.–5:00 p.m., August 22–24, 1983

Place: Hyatt Regency Oakland 1001 Broadway, Oakland, California 94607

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be assessing food and agricultural research and extension programs with primary emphasis on rangeland, human nutrition, and genetic engineering.

Contact person for agenda and more information: Barbara L. Fontana, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 351–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447–3684.

Done in Washington, D.C., this fifteenth day of July 1983.

Marvin E. Konyha,

Interim Executive Secretary, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 83–20987 Filed 8–2–83; 8:45 am]

BILLING CODE 3410–03–M

CIVIL AERONAUTICS BOARD

Application of Jet Express, Inc. for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Jet Express Fitness Investigation*, 83–7–98, Docket 41562.

SUMMARY: The Board is instituting an investigation to determine the fitness of Jet Express, Inc. to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATE: Persons wishing to intervene and/or proposing to request additional evidence in the *Jet Express Fitness Investigation* shall file their petitions in Docket 41562 by August 12, 1983.

ADDRESS: Requests for additional evidence and petitions to intervene should be filed in Docket 41562 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Ava Kleinman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5336.

SUPPLEMENTARY INFORMATION: The complete text of Order 83–7–98 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83–7–98 to that address.

By the Bureau of Domestic Aviation: July 26, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83–21069 Filed 8–2–83; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 41553]

Martinair Holland, N.V. Enforcement Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on August 12, 1983, at 10:00 a.m. (local time) in Room 1012, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 28, 1983.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 83–21058 Filed 8–2–83; 8:45 am]

BILLING CODE 6320–01–M

COMMISSION ON CIVIL RIGHTS

California 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 California Advisory Committee to the Commission will convene at 9:00 am and will end at 3:00 pm, on August 20, 1983, at the Best Western Anderson's Inn, 850 Palomar Airport Road, Carlsbad, California. The purposes of the meeting are to discuss ongoing projects in California; Los Angeles City reapportionment report; and plan future activities.

Persons desiring additional information or planning a presentation to the Committee, should contact the Acting Chairperson, Ms. Helen H. Snoddy, 1598 Beloit Avenue, Claremont, California 91711, (714) 624–5542; or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 798–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 27, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83–20922 Filed 8–2–83; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin 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 Wisconsin Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12 Noon, on August 24, 1983, at the University of Wisconsin-Milwaukee, Enderis Hall, Room 516, 2400 East Hartford Avenue, Milwaukee, Wisconsin. The purposes of this meeting are to review and approve hate group project concept; discuss followup on business incentives report; appoint subcommittees on future projects; and elect officers.

Persons desiring additional information or planning a presentation to the Committee, should contact the

Chairperson, Mr. Herbert M. Hill, 2127 Van Hise Avenue, Madison, Wisconsin 53705, (608) 263–1642; or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 28, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 20923 Filed 8–2–83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Minority Business Development Center (MBDC); Solicitation of Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning October 1, 1983, in the Houston, Texas, SMSA. The cost of the project is estimated to be $770,000. The maximum Federal participation amount is $654,500. The minimum amount required for non-Federal participation is $115,500. The award number will be 06–10–83018–01.

Applicants shall be required to contribute at least 15% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: August 17, 1983.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce, Room 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, telephone (214) 767–8001.

Dated: July 27, 1983.

Ruben Porras,

Acting Regional Director.

[FR Doc. 83-21058 Filed 8-2-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Taking of Marine Mammals; Issuance of General Permit

A general permit was issued on July 27, 1983, to the Atlantic Shelf Fisheries Company of Hampton, 544 Settlers Landing Road, Hampton, Virginia 23669, to take marine mammals incidental to commercial fishing operations under Category 1: Towed or Dragged Gear, pursuant to 50 CFR 216.24.

The general permit allows that the taking of not more than 10 cetaceans and 10 phocid seals annually by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Atlantic Ocean. The permit is valid until December 31, 1984.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Dated: July 27, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-21079 Filed 8-2-83; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals; Issuance of Permit

On May 9, 1983, Notice was published in the Federal Register (48 FR 20785), that an application had been filed with the National Marine Fisheries Service by the New York Aquarium, Boardwalk and West 8th Street, Brooklyn, New York 11224, for a permit to take six (6) Atlantic Bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on July 26, 1983, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to the New York Aquarium, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Peterburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Northeast Region 14, Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: July 26, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-21080 Filed 8-2-83; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: Dr. Roger Payne (P154A), Weston Road, Lincoln, Massachusetts 01773.

2. Type of Permit: Scientific research/Scientific purposes.

3. Name and Number of Animals: Humpback whales (*Megaptera novaeanglie*) unspecified number.

4. Type of Take: Potential harassment while conducting behavior studies.

5. Location of Activity: Central and eastern north Pacific ocean and Indian ocean.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 28, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-21081 Filed 8-2-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 631

July 28, 1983.

On July 26, 1983 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 631 (man-made fiber gloves). This request was made on the basis of the agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool, and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 631, produced or manufactured in Hong Kong and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. The Government of the United States also reserves the right to control imports of these categories at the established limit.

Any party wishing to comment or provide data or information regarding the treatment of Category 631 under the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement with the Government of Hong Kong or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matter which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-21029 Filed 8-2-83; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

Introducing Brokers and Associated Persons of Introducing Brokers; Authorization of National Futures Association To Perform Commission Registration Functions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order Authorizing the National Futures Association to perform portions of the Commission's registration functions applicable to introducing brokers and associated persons of introducing brokers.

SUMMARY: In order to permit the National Futures Association ("NFA") to further assist the Commission in performing, on behalf of the Commission, certain registration functions concerning introducing brokers and their associated persons, the Commission is authorizing NFA to grant registration to applicants in those two categories in accordance with the standards established by the Commodity Exchange Act ("Act") and has approved rules of NFA under which NFA would administer its registration functions. The Commission will not authorize NFA to grant conditional registration, to deny registration, or to take any other adverse action concerning such registrations until the Commission has adopted its own regulations and procedures to review such actions. NFA also is not authorized to accept or act upon requests for exemption from registration or for "no-action" interpretations of the applicable registration requirements.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On April 7, 1983, the Commission issued an order authorizing NFA, pursuant to section 8a(10) of the Act, to receive and process materials submitted to it in accordance with procedures established by the Commission to administer its "no-action" position respecting introducing brokers (IBs) and to commence processing new applications for registration as IBs or as associated persons (APs) of IBs.[1] In that Order the Commission noted that NFA intended to submit for Commission approval specific rules which, in accordance with applicable Commission requirements, would establish NFA procedures for processing registration applications, apply fitness standards to prospective registrants and adopt procedures to assure compliance with such standards, and establish notice and review procedures concerning denial of or other adverse action on registration applications. NFA subsequently submitted such rules[2] and requested authority to register IBs and their APs when the Commission's regulations for IBs become effective.[3] On June 21, 1983, the Commission approved in principle the authorization to NFA to grant such registration but deferred its formal order until NFA submitted certain revisions to its rule proposals.[4]

[1] 48 FR 15940 (April 13, 1983).

[2] Letter from NFA dated May 27, 1983.

[3] Letters from NFA dated April 6 and June 13, 1983. The Commission published notice of proposed rules to govern the qualification of, and procedures for, registration of IBs and their APs on April 6, 1983 (48 FR 14933). The Commission is scheduled to consider adoption of final rules on July 29, 1983.

[4] The revised rule proposals were submitted in a letter from NFA dated July 14, 1983.

Assumption of Registration Function

NFA's registration rules, which the Commission has approved concurrently with the issuance of this Order, apply to all persons required to be registered under the Act (and not otherwise exempt by Commission rule or order). In processing the applications for registration, Bylaw 305 and, in particular, section I(c) of schedule A to Bylaw 305 requires NFA to apply the same fitness standards to prospective registrants as would be applied by the Commission in the performance of these functions—in particular, the statutory disqualifications from registration set forth in section 8a (2), (3) and (4) of the Act as amended by the Futures Trading Act of 1982. In addition, NFA establishes in Bylaw 305, as approved by the Commission, that it may apply proficiency standards, including training, experience and proficiency testing, to applicants for Commission registration through NFA. The Commission has approved Bylaw 305, including the authority to apply proficiency standards, because it believes the application of such standards is consistent with NFA's obligations under sections 17(p)(1) and 17(q) of the Act and that the administration of such proficiency standards as one element of an applicant's fitness for registration is consistent with, and furthers the objectives of, section 4p of the Act as well.[5]

NFA has also incorporated by reference all the applicable requirements and procedures that, now or in the future, are contained in Part 3 of the Commission's regulations governing registrations (except 3.3 and 3.20);[6] however, all documents referred to in those regulations will be filed with, submitted to or given by NFA at its Chicago office instead of the Commission. NFA is not authorized to accept or act upon any request for exemption from registration or for a "no-action" interpretation of the applicable registration requirements. That authority remains with the Commission.

Furthermore, although the Commission has approved NFA's rules governing conditional registration as well as denial, suspension, restriction or revocation of registration—including rules establishing notice and review procedures—the Commission at this time is withholding such adverse actions from the scope of NFA's registration authority over IBs and APs of IBs. Before reconsidering any aspect of that limitation, the Commission will first adopt its own regulations and proecedures for Commission review of NFA determinations to deny or condition applications for (or take other adverse action concerning) Commission registration as provided under section 17(*o*) of the Act, as amended by the Futures Trading Act of 1982.

As noted previously, NFA proposed not to apply Commission regulation 3.20 in administering its registration denial procedures. In lieu of the procedures established in 3.20, NFA has adopted similar procedures for denial of Commission registration, and those procedures are set out in section I(d) of Schedule A to NFA Bylaw 305. While the Commission believes that the procedures set forth in that section are appropriate, the Commission has determined not to authorize NFA to deny or condition applications for registration at this time. Accordingly, these NFA procedures will remain ineffective until such time as the Commission authorizes NFA to deny or condition applications. The Commission notes that, in the absence of authority to deny or condition applications for registrations, it expects NFA to provide the Commission with recommendations for denial or conditioning of an application. At such time the Commission would consider initiating its own proceeding for the denial or conditioning of an application for registration.

Confidentiality Considerations

In performing Commission registration functions pursuant to Commission authorization, NFA will maintain a system of records relating to the registration function. As a condition of receiving authority from the Commission to perform various portions of the Commission's registration functions, NFA has agreed to the following undertakings which relate to maintaining the confidentiality of records.[7]

(1) NFA and its officers and employees will not disclose information contained in any system of records maintained by NFA in performing this registration function except

(a) Information concerning the registration status of any person or any applicant for registration;

(b) Information designated as publicly available when collected or provided; and

(c) Information concerning a particular applicant or registrant which is requested by any person with whom the applicant or registrant is or intends to be associated as an associated person or affiliated as a principal. In order to obtain this information, the person requesting the information must make an appropriate showing to NFA that the person requesting the information is the employer or prospective employer of the particular applicant or registrant.

(2) NFA will maintain an inventory of all information disclosed pursuant to paragraph 1(c) of this undertaking which will include the identity of the person requesting the information, a summary or description of the information disclosed and the date that the disclosure was made.

(3) All other requests for access to records furnished to, compiled and maintained by NFA in connection with its performance of the registration function, including requests by an individual for access to records pertaining to that individual, shall be forwarded to the Commission for its consideration pursuant to the applicable provisions of the Act and the Commission's rules, including Parts 145 and 146 of the Commission's regulations.

(4) NFA will hold all registration records in a secured area to assure that access to such materials is appropriately limited.

Conclusion and Order

In light of NFA's request for Commission authorization to assume responsibility for the registration of IBs and their APs under the Act, its representations and adoption of rules concerning the standards and procedures to be followed in

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[5] Section 4p as amended by the Futures Trading Act of 1982 reads, in pertinent part, as follows:

The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this Act. * * * may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examination. * * *

[6] Regulation 3.3 establishes a schedule of Commission registration fees. NFA has adopted (and the Commission has approved) a separate fee of $30 which will apply to all applications for registration of associated persons filed with NFA. Regulation 3.20 delegates to the Commission's Division of Trading and Markets the authority to deny registrations. NFA is establishing its own denial procedures, which are similar to those of regulation 3.20, as discussed *infra*.

[7] *See* letter to the Commission dated July 18, 1983 from Robert K. Wilmouth, President of NFA.

administering these functions, and the opportunity for the Commission to implement these functions in an efficient, cost-effective manner, the Commission has determined, in accordance with its authority under section 8a(10) of the Act, as added by § 224 of the Futures Trading Act of 1982, to authorize NFA to grant applications for registration of IBs and APs of IBs under sections 4d and 4k(1) of the Act, as amended by the Futures Trading Act of 1982, at such time as the Commission's regulations governing such registration are adopted and become effective.

Issued by the Commission on July 28, 1983, in Washington, D.C.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-21082 Filed 8-2-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Library Career Training Program

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for new projects under the Library Career Training Program for Fiscal Year 1984.

Authority for this program is contained in Sections 201 and 222 of the Higher Education Act of 1965 as amended by the Education Amendments of 1980.

(20 U.S.C. 1021 *et seq.*)

The Secretary may award a grant to an institution of higher education or library agency or organization. The purpose of these grants is to assist in training persons in librarianship.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by October 17, 1983.

Applications Delivered by Mail: Applications must be addressed to the Department of Education Application Control Center, Attention: (84.036) Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Each late applicant for a new project will be notified that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building, 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing day.

Program Information: Evaluation criteria and eligibility requirements for the Library Career Training program appear in the Code of Federal Regulations in 34 CFR Part 776. The Fiscal Year 1984 grant program will be governed by the provisions of the final regulations published on March 5, 1982, in the **Federal Register** (47 FR 9786).

Applications for grants will be evaluated independently according to academic levels. The Secretary anticipates making grants for fellowship projects only, if funds are appropriated for Fiscal Year 1984. The Secretary will not consider applications for institute or traineeship projects.

Available Funds: For Fiscal Year 1984 the Department of Education has not requested funds for the Library Career Training program. However, applications are invited for fellowship projects to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year, if funds are appropriated for the program. At the present time there are no multi-year projects under this program.

In Fiscal Year 1983, 33 grants were awarded totaling $640,000 which provided fellowships to 75 individuals. In Fiscal Year 1983, $450,800 was awarded for fellowships at the Master's level, $96,000 at the Doctoral level, $79,200 at the post-Master's level, and $14,000 at the Bachelor's level. If funds are appropriated for the program in Fiscal Year 1984, the Secretary would reserve funds for fellowships at the Master's, Doctoral, post-Master's, and Bachelor's levels.

The U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by August 26, 1983. They may be obtained by writing to the Library Education, Research and Resources Branch, Attn: II-B, U.S. Department of Education (Room 725, Brown Building, Mail Stop 30), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paper work, application content, reporting, or grantee performance requirement beyond those imposed under the statute or regulations. The Secretary urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Library Career Training Program (34 CFR Part 776).

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: For further information, contact, Mr. Frank A. Stevens, or Ms. Yvonne Carter, Library Education, Research and Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 725, Brown Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 254-5090. (U.S.C. 1021, *et seq.*)

(Catalog of Federal Domestic Assistance Program No. 84.036, Library Career Training Program)

Donald J. Senese,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 83-21067 Filed 8-2-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Civil Uses; International Atomic Energy Agreements; Proposed Subsequent Arrangement with European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following materials:

Contract Number WC-EU-248, to the Centre d'Etudes Nucleaires de Cadarache, France, 40 foils containing a total of 12.543 grams of uranium depleted in U-235, 20 foils containing a total of 4.7 grams of uranium enriched to 93% in U-235, 20 foils containing a total of 3.286 grams of plutonium-239, and three fission chambers containing 27 micrograms of uranium-235, 43 micrograms of plutonium-239, and 80 micrograms of uranium-238. These materials will be used for determination of U-238 capture to Pu-239 fission ratios. These materials will be returned to the U.S. upon completion of these studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-20933 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-EU-778, to the Euratom Transuranium Institute, Karlsruhe, the Federal Republic of Germany, 20 milligrams of plutonium-242 for use as a standard for isotopic dilution analysis by mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-20935 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-EU-776, to Kraftwerk Union AG, the Federal Republic of Germany, two grams of uranium-234, to be utilized in the manufacture of fission ionization chambers for power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-20936 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses; International Atomic Energy Agreements; Proposed Subsequent Arrangement with Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangment to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/EU(JA)-57, from Japan to Belgium, fuel rods containing 1,500 grams of uranium enriched to 3.40% in U-235 and containing gadolinium, for irradiation, post-irradiation examination, and ultimate disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-20937 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses; International Atomic Energy Agreements; Proposed Subsequent Arrangement With Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government

of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material:

Contract Number WC–JA–42, to Laboratory for High Energy Physics, Ibaraki-Ken, Japan, 60 kilograms of Zircaloy clad uranium blocks, depleted in the isotope U–235, for use as targets for a pulsed neutron source.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs

[FR Doc. 83–20938 Filed 8–2–83; 8:45 am]

BILLING CODE 6450–01–M

Civil Uses; International Atomic Energy Agreements; Proposed Subsequent Arrangement With Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material:

Contract Number WC–SD–16, to CERN, Switzerland, 10 grams of uranium depleted in the isotope U-235 for use in experiments to measure proton annihilation.

In accordance with section 131 of the Atomic Energy of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 28, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83–20939 Filed 8–2–83; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement With Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/SD (EU)–43, from Belgium to Switzerland, 40 grams of uranium as uranium-oxide, enriched to 8.26% in U–235, for use in a development program for isotope measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 28, 1983.

George J. Bradley, Jr.

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83–20934 Filed 8–2–83; 8:45 am]

BILLING CODE 6540–01–M

Economic Regulatory Administration

[Docket No. PP–54a]

Application To Amend Presidential Permit (Docket PP–54a); Edward T. Presley, D.V.M.

AGENCY: Economic Regulatory Administration (ERA), DOE.

ACTION: Notice of receipt of an application from Edward T. Presley, D.V.M., to amend the Presidential Permit in Docket PP–54a.

SUMMARY: On July 20, 1983, DOE received an aplication from Dr. Edward T. Presley to amend the Presidential Permit in Docket PP–54a which was issued to him on March 16, 1973 (Federal Power Commission Docket No. E–7745).

The applicant is proposing to tap into the 4.8 kilovolt (kV) distribution feeder which presently supplies his residence on Wellesley Island, New York, in order that electric service may be extended to two private residences on either side of the applicant's property. In addition the applicant proposes to change the supply transformer serving his facilities from one with a 25 kilowatt (KW) thermal rating to one with a rating of 50 KW.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Petroleum and Electricity Division (RG–44), Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–017, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–5883

Lise Courtney M. Howe, Office of Assistant General Counsel, International Trade and Emergency Preparedness (GC–11), Department of Energy, Forrestal Building, Mail Stop 6F–094, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On July 20, 1983, DOE received an application from Dr. Edward T. Presley to amend the Presidential Permit in Docket PP–54a which was issued to him on March 16, 1973. Docket PP–54a authorizes the applicant to obtain electric service from Ontario Hydro Electric Power Commission Canada via a 4.8 kV submarine cable which lies in the St. Lawrence River and extends from Bingham Island, Ontario, Canada, to the applicant's residence on Wellesley Island in the Town of Orleans, Jefferson County, New York.

The application requests permission to change the transformer presently supplying the applicant's residence from one with a 25 KW rating to one with a 50 KW rating. In addition, it is proposed that the existing 4.8 kV submarine supply cable be tapped at the applicant's facilities and extended to two new private residences, one on each side of the applicant's property. The extension will be made with submarine cable installed in the St. Lawrence River, within the territorial boundaries of the United States.

All work required to implement the proposed changes will be determined and performed by Ontario Hydro Electric Power Commission. Included in the subject application is a letter from Niagara Mohawk Power Corporation in which it waives all rights to provide electric service to Dr. Presley and the two additional residences which will be supplied by Ontario Hydro Electric Power Commission as a result of the proposed amendment to Docket PP-54a.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Petroleum and Electricity Division (RG-44), Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-017, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8 or 1.10).

Any such petitions or protests should be filed by 14 days from the issuance of this **Federal Register** Notice. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the Petroleum and Electricity Division (RG-44), Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA-017, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C. on July 28, 1983.

Robert Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20932 Filed 8-2-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

Correction

In FR Doc. 83-19949 beginning on page 33530 in the issue of Friday, July 22, 1983, make the following correction on that page: In the first column, in the table, the entry for Alabama under the column designated "Dollars per million Btu's" should read "3.83".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-391-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Request Under Blanket Authorization

July 28, 1983.

Take notice that on June 28, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisana 71151, filed in Docket No. CP83-391-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Arkla proposes to construct and operate a sales tap and related facilities on its jurisdictional Line 2-C-2 in Caddo County, Oklahoma, to permit direct sales of gas under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to construct and operate a sales tap and related facilities costing an estimated $21,750 to permit direct sales of gas to American Syn-Fuels, Inc., which would use up to 720 Mcf per day on a firm basis for boiler fuel use at a plant which produces ethanol from waste grain by a grain milling process. Arkla indicates that the customer would require about 180,000 Mcf annually. Arkla states that it would charge the rates under its State of Oklahoma industrial rate schedule which is on file with the Oklahoma Corporation Commission.

Arkla states that the gas would be delivered from its system supply which it claims is adequate to provide the service. Arkla also indicates that it does not project any curtailments except on spike peaks in the forseeable future, but that this customer's priority would be wherever it properly falls in Arkla's curtailment plan.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20924 Filed 8-2-83; 8:45 am]

BILLING CODE 6717-01-M

[EL83-23-000]

McBryde Sugar Company, Ltd.; Declaration of Intention

July 28, 1983.

Take notice that on May 19, 1983, McBryde Sugar Company, Ltd. (McBryde), P.O. Box 8, Eleele, Hawaii 96705 filed, pursuant to Section 23(b) of the Federal Power Act, 16 U.S.C. 817, a Declaration of its Intention to construct, operate, and maintain a small hydroelectric project, the Wainiha Hydroelectric Project, that would be located on the Wainiha River on the island of Kauai in the state of Hawaii. Applicant requests the Commission to find that the interests of foreign or interstate commerce would not be affected by the construction and operation of the proposed project and that a license under Part 1 of the Federal Power Act is not required for the proposed project. Correspondence should be directed to: David B. Robinson, Esq., Patton, Boggs & Blow, 2550 M St., N.W., Washington, D.C. 20037 and Carlo Y. Asai-Sato, Esq., Alexander & Baldwin, Inc., P.O. Box 3440, Honolulu, Hawaii 96801.

The proposed project will consist of a diversion wier, water conduit, power house, and transmission line. The project will be a run-of-river project and will not develop storage. The project will have an installed capacity of less than 5 megawatts, and the applicant expects to sell the entire output of the proposed project to the local utility, Kauai Electric Company, which will use the power to help meet its system load requirements.

Applicant states that the proposed project will not occupy any part of the public lands or reservations of the United States and will not use the surplus water or water power from a federal dam.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before August 31, 1983. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20925 Filed 8-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-405-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

July 28, 1983.

Take notice that on July 8, 1983, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP83-405-000 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 Florida Gas Transmission Company (Florida), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that Applicant and Florida have entered into gas transportation agreements wherein Applicant has agreed to receive up to 45,000 Mcf of natural gas per day (contract quantity) at Matagorda Island Area Block 527, offshore Texas (MAT 527), transport such gas onshore, and redeliver thermally equivalent volumes for Florida's account near Tivoli in Refugio County, Texas.

It is stated that the contract quantity would be transported by Applicant through its ownership interest in an existing offshore lateral from MAT 528 to MAT 527. There, it is asserted, the gas would be delivered for Florida's account for further transportation onshore by Seagull Pipeline Corporation and Houston Pipe Line Company (Houston) to the Houston Cavello Interconnect with Channel Industries' (Channel) 30-inch A-S line. It is further stated that the contract quantities would be transported by backhaul by Channel from the Cavello Interconnect to an interconnection with the Matagorda Offshore Pipeline System (MOPS). Applicant proposes to complete the transportation arrangement by transporting the contract quantities by backhaul in MOPS from the interconnection with Channel to an interconnection with Florida.

Applicant proposes to charge Florida 6.3 cents per Mcf under the offshore gas transportation agreement and 1.0 cent per Mcf under the onshore gas transportation agreement. Applicant states that the proposed transportation services would be for a term of eight years and from year to year thereafter until cancelled by either party.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 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. 83-20926 Filed 8-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7230-000, et al.]

Tenneco Oil Company, Operator, & Agent for Tema Oil Company, et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

July 28, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 15, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-7230-000, D, July 18, 1983	Tenneco Oil Company, Operator and Agent for Tenn Oil Company, P.O. Box 2511, Houston, Texas 77001.	Northern Natural Gas Company, Hugoton Field, Texas County, Oklahoma.	[1]	
CI63-1182-000, D, July 11, 1983	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Arkansas Louisiana Gas Company, North Cooper Field, Blaine County, Oklahoma.	[2]	
CI75-324-000, D, July 11, 1983	Sun Exploration and Production Company, P.O. Box 20, Dallas, Texas 75221.	Arkansas Louisiana Gas Company, Wilburton Field, Latimer County, Oklahoma.	[3]	
CI83-300-000, A, July 7, 1983	Diamond Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	Transco Gas Supply Company, Block A-376, High Island Area, East Addition, South Extension Offshore (Federal) Texas.	[4]	14.73
CI83-301-000, A, July 11, 1983	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Texas 79189.	Transcontinental Gas Pipe Line Corporation, Brazos Block A-7, Offshore Texas.	[5]	14.65
CI83-303-000, B, July 13, 1983	J & J Enterprises, Inc., 43 South Ninth Street, P.O. Box 697, Indiana, Pennsylvania 15701.	Columbia Gas Transmission Corporation (Successor-in-Interest to Cumberland and Allegheny Gas Company), Valley District, Barbour County and Union District, Upshur County, West Virginia.	[6]	
CI83-305-000, A, July 14, 1983	Texaco Inc., P.O. Box 60252, New Orleans, Louisiana 70160.	Bridgeline Gas Distribution Company, Vermilion Block 30 (OCS-G-4785), Vermilion Blocks 12 and 29 (OCS-G-5398) and certain portions of OCS-0310, Offshore Louisiana.	[7]	15.025
CI83-306-000, A, July 14, 1983	Texas Gas Exploration Corporation, 1100 Louisiana, Suite 3300, Houston, Texas 77002.	Texas Gas Transmission Corporation, East Cameron Block 226, Offshore Louisiana.	[8]	14.73
CI83-307-000, B, July 11, 1983	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	Natural Gas Pipeline Company of America, Normanna Area, Bee County, Texas.	[9]	
CI83-308-000, (CI79-529), B, July 13, 1983.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	United Gas Pipe Line Company, Lewisburg Field, Acadia Parish, Louisiana.	[10]	
CI83-309-000, A, July 18, 1983	ARCO Alaska, Inc., Subsidiary of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Pacific Alaska LNG Associates, Beluga River Field, Cook Inlet Area, Alaska.	[11]	14.73
CI83-310-000, B, July 18, 1983	NFC Petroleum Corporation	Transcontinental Gas Pipe Line Corporation, Section 12-10S-3E, Judice Field, Lafayette Parish, Louisiana.	[12]	
CI83-311-000, (G-4074), B, July 18, 1983.	Energy Reserves Group, Inc., P.O. Box 1201, 217 North Wastev Street, Wichita, Kansas 67201.	Tennessee Gas Pipeline Company, South Crowley Field, Acadia Parish, Louisiana.	[13]	
CI83-312-000, (CI69-721), B, June 30, 1983.	Sohio Petroleum Company, Sago Plaza One, 5151 San Felipe, P.O. Box 4587, Houston, Texas 77210.	Northern Natural Gas Company, Pony Creek, Rakenkamp #1 Well, Texas County, Oklahoma.	[14]	
CI83-313-000, (CI69-159), B, June 30, 1983.	do	Northern Natural Gas Company, Pony Creek, Reiswig B-1 Well, Texas County, Oklahoma.	[15]	
CI83-314-000, B, July 11, 1983	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	Texas Eastern Transmission Corporation, Wilcox Trend Area, Mineral Field, Bee County, Texas.	[16]	
CI83-315-000, B, July 18, 1983	Argonaut Energy Corporation, et al	Northern Natural Gas Company (Contract No. 31732), Chester Formation, Beaver County, Oklahoma (Hein #1) (S22-T5-R28).	[17]	
CI83-316-000, B, July 18, 1983	Argonaut Energy Corporation (formerly Argonaut Exploration Inc.).	Northern Natural Gas Company (Contract No. 31210), Chester Formation, Beaver County, Oklahoma (Hodges #1) (S21-T4-R24).	[18]	
CI83-317-000, A, July 19, 1983	Anadarko Production Company, P.O. Box 1330, Houston, Texas 77001.	Trunkline Gas Company, High Island Block A-365 and A-376 (OCS-G-2750 and OCS-G-2754), East Addition, South Extension, Offshore Texas.	[19]	14.73
CI83-318-000, A, July 19, 1983	do	Transco Gas Supply Company, High Island Block A-376 (OCS-G-2754), East Addition, South Extension, Offshore Texas.	[20]	14.73
CI83-319-000, (CI78-962-000), B, July 18, 1983.	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, Popcorn Bayou Field, Plaquemines Parish, Louisiana.	[21]	
CI83-320-000, A, July 19, 1983	Pennzoil Oil & Gas Inc., P.O. Box 2967, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Blocks A-351 and A-368, High Island Area, Offshore Texas.	[22]	14.65
CI83-321-000, A, July 19, 1983	Pennzoil Producing Company, P.O. Box 2967, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Blocks A-351 and A-368, High Island Area, Offshore Texas.	[23]	14.65
CI83-323-000, B, July 18, 1983	The Dow Chemical Company and John J. McNamara, Jr., P.O. Box 3387, Houston, Texas 77001.	Southern Natural Gas Company, Lake Campo Field, Plaquemine Parish, Louisiana.	[24]	
CI83-324-000, B, July 13, 1983	J & J Enterprises, Inc., 43 South Ninth Street, P.O. Box 697, Indiana, Pennsylvania 15701.	Columbia Gas Transmission Corp. (Successor-in-Interest to Cumberland and Allegheny Gas Co.), Union District, Upshur County, West Virginia.	[6]	
CI83-325-000, B, July 13, 1983	do	do	[6]	
CI83-326-000, B, July 13, 1983	do	do	[6]	
CI83-327-000, B, July 13, 1983	do	do	[6]	
CI83-328-000, B, July 13, 1983	do	do	[6]	
CI83-329-000, B, July 13, 1983	do	do	[6]	
CI83-330-000, B, July 13, 1983	do	Columbia Gas Transmission Corp. (Successor-in-Interest to Cumberland and Allegheny Co.), Valley District, Barbour County, and Union District, Upshur County, West Virginia.	[6]	
CI83-331-000, (CI61-1681), B, July 18, 1983.	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	United Gas Pipe Line Company, Magee Field, Simpson and Smith Counties, Mississippi.	[25]	
CI83-332-000, (CI66-230), B, July 18, 1983.	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	United Gas Pipe Line Company, Maurice Field, Lafayette and Vermilion Parishes, Louisiana.	[25]	
CI83-333-000, A, July 21, 1983	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, West Cameron Area Block 499 "B", Offshore Louisiana.	[26]	15.025
CI83-334-000, B, July 21, 1983	Chief Drilling Co., Inc., Suite 905, Century Plaza, Wichita, Kansas 67202.	Northwest Central Pipeline Corporation (Formerly Cities Service Gas Company), Shanka #1, C NW NW, Section 7, T31S-R12W, Barber County, Kansas.	[27]	
CI83-335-000, E, July 21, 1983	Multistate Oil Corporation (Successor-in-Interest to Shenandoah Oil Company), P.O. Box 2511, Houston, Texas 77001.	Phillips Petroleum Company, Panhandle West Field, Hutchinson County, Texas.	[28]	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI83-336-000, E, July 21, 1983	do	Phillips Petroleum Company, Panhandle West Field, Hutchinson County, Texas.	[18]	
G-6275-000, D, July 21, 1983	Getty Oil Company, Post Office Box 1404, Houston, Texas 77251.	El Paso Natural Gas Company, D. A. Williamson #2 (Tubb), Jalmat (Gas) Field, Lea County, New Mexico.	[19]	
CI72-762-000, D, July 21, 1983	do	Northern Natural Gas Company, D. A. Williamson #2, Eunice Plant, Lea County, New Mexico.	[20]	
CI72-771-000, D, July 21, 1983	do	El Paso Natural Gas Company, D. A. Williamson #1 (blinebry), Eunice Plant, Lea County, New Mexico.	[21]	
CI72-771-001, D, July 21, 1983	do	El Paso Natural Gas Company, D. A. Williamson #2 (blinebry), Eunice Plant, Lea County, New Mexico.	[22]	

[1] Release of gas for irrigation fuel.
[2] Depletion of reserves resulting in the assignment of the V. M. Chester Lease to Universal Oil Field Supply, Inc.
[3] Claude Wilson Unit No. 1 was plugged and abandoned October 22, 1982. Lease expired by its own terms.
[4] Applicant is filing under Gas Purchase Agreement dated June 22, 1983.
[5] Applicant is filing under Gas Purchase Agreement dated April 20, 1983.
[6] Necessary to commence drilling of new wells for sales to new purchaser.
[7] Applicant is filing under Gas Sales and Purchase Contract dated July 8, 1983.
[8] Applicant agrees to accept the rates set forth in Section 104 of Title I of the Natural Gas Policy Act and as more fully set forth in Subpart D of Part 271 of the Commission's Regulations under the Natural Gas Policy Act of 1978.
[9] All reserves are considered to be depleted.
[10] Leases have terminated due to lack of production.
[11] Applicant is filing under Gas Sale and Purchase Agreement dated June 30, 1977.
[12] Well was depleted, effective January 12, 1983, and no further production is planned.
[13] Last production well was plugged on October 29, 1990.
[14] The only well covered by this contract, the Rahenkamp #1, was depleted of its economically recoverable gas and has been plugged and abandoned.
[15] The only well covered by this contract, the Reiswig B-1, was depleted of its economically recoverable gas and has been plugged and abandoned.
[16] Rate Schedule 241 is obsolete as the March 25, 1980 rollover contract certificated under Rate Schedule 284 encompasses the gas well gas formerly dedicated under Rate Schedule 241.
[17] Depletion of reservoir—well plugged and abandoned December 7, 1981.
[18] Depletion of reservoir—well plugged and abandoned March 31, 1982.
[19] Applicant is filing under Gas Purchase Contract dated February 1, 1983.
[20] Applicant is filing under Gas Purchase Contract dated June 22, 1983.
[21] State Lease 6419 No. 1, an oil well, was dedicated under the referenced contract and only produced a nominal amount of casinghead gas which was either vented, flared or used in operations.
[22] Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.
[23] The Keller Oil Field Services Well No. 1, the only well producing from acreage subject to this contract, ceased production on July 7, 1981 and was plugged and abandoned on July 15, 1982.
[24] Gas Purchase Contract dated April 14, 1961, providing for the sale of oil well gas from the committed acreage, filed with the FPC at Docket No. CI61-1681 and assigned Rate Schedule No. 378, expired of its own terms on August 18, 1981.
[25] Shell assigned its right, title and interest in and to the Oil, Gas Mineral Leases under subject field contract to South Louisiana Oil Venture, a Texas General Partnership, effective October 1, 1982.
[26] Applicant is filing under Gas Purchase and Sales Agreement dated June 28, 1983.
[27] This well, which produces salt water with the gas, is below its economic limit due to depleted gas reserves and mechanical condition of the pumping unit and distribution line.
[28] Multistate Oil Properties, N.V. acquired this property as of March 21, 1979. Sales have previously been made under Shanandoah's small producer certificate.
[29] The D. A. Williamson #2 (Tubb) was reclassified from a gas well to an oil well effective January 1, 1982.
[30] The D. A. Williamson #2 (Blinebry) was reclassified from an oil well to a gas well effective December 7, 1982.
[31] The D. A. Williamson #1 (Blinebry) was reclassified from an oil well to a gas well effective December 7, 1982.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 83-20927 Filed 8-2-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP83-404-000 and CI83-299-000]

Texas Gas Transmission Corp. and Union Oil Co. of California; Application

July 28, 1983.

Take notice that on July 7, 1983, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, and Union Oil Company of California (Union Oil), 4635 Southwest Freeway, 900 Executive Plaza West, Houston, Texas 77027, filed in Docket Nos. CP83-404-000 and CI83-299-000, respectively, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange up to 15,000 Mcf of gas per month on an interruptible basis and the construction and operation by Texas Gas of facilities to modify existing measuring facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants indicate that gas and oil production have decreased from the Welsh Field, Jefferson Davis Parish, Louisiana, from which Texas Gas currently purchases gas from Union Oil under the terms of a March 10, 1966, gas purchase contract due to depletion of reserves and due to mechanical difficulties with Union Oil's field compression facilities. Union Oil indicates it requires additional gas to get its gas lift system in the field back in operation. Texas Gas states that it is willing to supply gas for Union Oil's gas lift operation. Union Oil and Texas Gas assert that they have entered in an exchange agreement dated June 23, 1983, providing that Texas Gas would deliver to Union Oil up to 15,000 Mcf of gas per month on an interruptible basis at or near Union Oil's Welsh meter station, Jefferson Davis Parish, Louisiana, with redeliveries of an equivalent quantity of gas to Texas Gas during the same month or as soon thereafter as possible at the inlet side of Texas Gas' measuring facilities in the same field, at the inlet side of Texas Gas' existing metering facilities located in Lake Pagie Field, Terrebonne Parish, Louisiana, or at another mutually agreeable location on Texas Gas' system where Union is currently delivering gas to Texas Gas.

Applicants state that no exchange charges are involved and that Texas Gas would modify the metering facilities in the Welsh Field at a cost of $6,750 to accommodate a two-way flow but would be reimbursed by Union Oil.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 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 unnessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20928 Filed 8-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL-83-15]

Union Electric Co.; Complaint

July 28, 1983.

Take notice that Casino Pier, Inc. (Complainant) on March 30, 1983 filed a complaint against the Licensee for the Osage Project FERC No. 459.

Correspondence with the Complainant should be directed to: Mr. Stainleigh R. Palmer, Box 85, Lake Ozark, Missouri 65049.

The Osage Project is located on the Osage River in Benton, Camden, Miller and Morgan Counties, Missouri. Complainant alleges that the Licensee for the Osage Project is in violation of the license issued for the project on April 9, 1981, by permitting the operation of a marina and project lands. The marina is operated by Loc Wood Boat and Motors, Inc., and is located between the South end of the project's Bagnell Dam and a marina operated by the Complainant.

Comments, Protests, or Motors To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before September 7, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20929 Filed 8-2-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[[OPP-180612A] PH-FRL #2410-1]

Pesticides; Denial of Emergency Exemption For Use of Ferriamicide; Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has denied a request from the Mississippi Department of Agriculture and Commerce (hereafter referred to as the Applicant") for a specific exemption for the use of Ferriamicide to control imported fire ant infestations.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716C, CM#2, 1922 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant, in accordance with 40 CFR 166, submitted information and requested the Administrator to issue a specific exemption to permit the use of Ferriamicide, which contains the active ingredient dodecachlorooctahydro-1,3,4-methano-2H-cyclobuta [cd] pentalene, commonly known as mirex, to control the imported fire ant. Notice of receipt of that request appeared in the **Federal Register** of March 8, 1983 (48 FR 9687).

The Applicant claimed that populations of the imported fire ant have increased over the years to the point where emergency conditions are now present. According to the Applicant, currently registered controls are too expensive, degrade too quickly to offer effective control, and/or cannot be applied easily to large areas of infested acreages.

After a careful review of the exemption request, comments received in response to the **Federal Register** notice, and other available information, the Agency determined that an emergency situation, which would justify granting the requested exemption, did not currently exist in Mississippi. This determination was made on the basis that a number of registered alternatives, including the broadcast products AMDRO and PRO-DRONE, are available to control the imported fire ant on all sites except cropland.

Furthermore, there are no adequate data which demonstrate that significant economic or health problems would occur without the use of Ferriamicide on cropland. Additionally, the Agency noted that mirex, the active ingredient in Ferriamicide, has been shown to cause cancer in laboratory animals, can damage the liver, and may have the potential to affect human reproduction adversely. The use of Ferriamicide would result in persistent residues of mirex and its toxic degradates in the environment and probable long-term contamination of human food. In addition, the use of Ferriamicide would be expected to contaminate, kill, or cause other adverse effects to species other than the fire ant, including damage to commercially important species. Thus, the potential risks to human

health and to the environment as a result of the proposed use of Ferriamicide would outweigh any benefit which might be derived from the use of Ferriamicide.

Therefore, the specific exemption request has been denied.

(7 U.S.C. 136p)

Dated: July 22, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-20982 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2410-1]

Water Pollution; Ohio Pretreatment Program Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of the National Pollutant Discharge Elimination System Pretreatment Program of the State of Ohio.

SUMMARY: On July 27, 1983 the Environmental Protection Agency approved the State of Ohio's National Pollutant Discharge Elimination System State Pretreatment Program. This action authorizes the State of Ohio to administer the National Pretreatment Program as it applies to municipalities and industries within the State.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-4793.

SUPPLEMENTARY INFORMATION:

Background

The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) Prevent introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. Local pretreatment programs will be the primary vehicle for administering, applying and enforcing pretreatment standards for industrial users of POTWs. To receive pretreatment program approval a State must submit to the EPA a modification to its NPDES program pursuant to the requirements and procedures of the General Pretreatment Regulation (40 CFR Part 403).

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	01/12/81
Hawaii	11/26/74	06/01/79	
Illinois	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74		
Maryland	09/05/74		
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	08/30/74	12/09/76	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	
Nevada	09/19/75	08/31/78	
New Jersey	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	
North Carolina	10/19/75		06/22/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/74		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		
West Virginia	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this action from the OMB review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Ohio NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: July 27, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20961 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-332; PH-FRL 2394-4]

Certain Companies; Pesticide and Feed Additive Petitions

Correction

In FR Doc. 83-18297 beginning on page 32076 in the issue of Wednesday, July 13, 1983, make the following corrections:

1. On page 32077, second column, under "B. Amended Petitions", in the second paragraph of the entry "1. *PP 4F1486.* Crown Zellerbach Corp.,", in the seventh line, "methyclarbamate" should read "methylcarbamate".

2. On the same page, third column, in the first paragraph of the entry "3. *PP 3F2815.* Diamond Shamrock Corp.", in the fourth line, "47 FR 42481" should read "47 FR 42741".

BILLING CODE 1505-01-M

[OPTS 00043A; ISH-FRL 2410-4]

Central Michigan Petition; Clarification of Title and Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Clarification.

SUMMARY: EPA issued its response to a citizen's petition filed by the Environmental Congress of Mid-Michigan and Foresight Society which was published in the **Federal Register** of July 25, 1983 (45 FR 33739). The title of the **Federal Register** notice and the statement of action referred to the response as a denial of the petition. That reference is misleading, since the denial applies only to a relatively minor portion of the petition requesting action under section 6(b) of the Toxic Substances Control Act (TSCA). In fact, that particular request was denied since the action being requested is essentially being pursued under other authorities. Overall, the Administrator's response to the petition is positive in that it outlines in some detail a large number of ongoing and planned activities which attempt to address the environmental problems mentioned in the petition. In addition, EPA has been working with the petitioners to develop a study plan to investigate their concerns. Interested persons are referred to the full text of the Administrator's response in the July 25 **Federal Register** notice for more details.

FOR FURTHER INFORMATION CONTACT: Alec McBride, Water Quality Analysis Branch (WH–553), Office of Water Regulations and Standards, Environmental Protection Agency, Room E–835, 401 M Street, SW., Washington, D.C. 20460, (202–382–7046).

Dated: July 26, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83–21130 Filed 8–2–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Ronald D. Murphy, Agency Clearance Officer, Federal Maritime Commission, 1100 L Street NW., Room 9305, Washington, D.C. 20573, telephone number (202) 523–5900. Comments may be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 531—Publishing, Posting and Filing of Tariffs in the Domestic Offshore Commerce (General Order 38)

General Order 38 is the Commission's regulation to enforce the tariff filing provisions of Section 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933. Common carriers by water in the domestic offshore trades are required to file with the Commission and keep open to public inspection tariffs showing all of their rates, charges, rules and regulations relating to such service.

Voluntary Form Letter to Manufacturers Who Are Members of the American Automobile Association

The voluntary form letter is sent to manufacturers who are members of the American Automobile Association requesting information on the cubic measurements and weights of new and used automobiles. Information gathered is used to compile a publication entitled "Automobile Manufacturers' Measurements" to assist carriers comply with 46 CFR 531.5(b)(8)(xiv).

The Commission estimates 307 annual respondents and 44,776 annual manhours for General Order 38, and 26 annual respondents and 26 annual manhours for the voluntary form letter. Total estimated annual cost to the Government for General Order 38 is $380,400, annual cost to the public is estimated at $485,000; total estimated annual cost to the Government for the voluntary form letter is estimated at $700, annual cost to the public is estimated at $400.

Francis C. Hurney,

Secretary.

[FR Doc. 83–20931 Filed 8–2–83; 8:45 am]

BILLING CODE 6730–01–M

Agreements Filed; Blue Star Line, et. al.

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C., Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of the Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 93–31.

Title: North Europe-United States Pacific Coast Freight Conference.

Parties: Blue Star Line; Campagnie Generale Maritime, Hapag-Lloyd AG, Intercontinental Transport (ICT) B. V., The East Asiatic Co., Ltd., Johnson Line AB.

Synopsis: The amendment proposes to modify Article 1 of the agreement to allow independent action by the parties 30 days after an initial request to the conference office with respect to the nomination of new service ports, inland points or matters pertaining to tariff rules and 5 days after their initial request to the conference office in regards to rates, charges, commodity packaging or description or any other tariff matters not otherwise defined herein.

Filing Agent: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, San Francisco, California 94111.

By Order of the Federal Maritime Commission.

Dated: July 29, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83–21027 Filed 8–2–83; 8:45 am]

BILLING CODE 6730–01–M

North Atlantic Westbound Freight Association; Termination of Contract Rate System

Filing Party: Howard A. Levy, Attorney At Law, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 5850–DR.

Summary: By letter dated July 21, 1983, the Commission received notice that the above-captioned conference is terminating its contract rate system effective September 30, 1983.

By Order of the Federal Martime Commission.

Dated: July 29, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83–21026 Filed 8–2–83; 8:45 am]

BILLING CODE 6730–01–M

Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Termination of Contract Rate System

Filing Party: Howard A. Levy, Attorney at Law, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No.: 9982–DR.

Summary: By letter dated July 19, 1983, the Commission received notice that the above-captioned conference is terminating its Contract Rate System effective September 29, 1983.

By Order of the Federal Maritime Commission.

Dated: July 29, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83–21025 Filed 8–2–83; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 83-31]

Volume Incentive Program—Possible Violations of the Shipping Act, 1916; Order of Investigation and Hearing and Notice of Rulemaking

On July 1, 1983, the members of Agreements Nos. 10107 and 10108 [1] instituted a novel marketing scheme which they have designated the "Volume Incentive Program" (VIP).[2] The salient feature of this arrangement is a refund to a shipper based upon the total freight dollars received by all agreement members during a twelve month contract period. The amount of the refund is determined by a sliding scale, which increases with the revenues received.[3] The VIP is open to "qualified shippers/consignees", which are defined as manufacturers, sellers or purchasers having a proprietary financial interest in the cargo. Affiliated companies of a qualified shipper may also participate in the VIP, by using the qualified shipper's enrollment number. Refunds are payable in U.S. dollars, within 60 days of the completion of an enrollment period. The refunds are to be made by the Agreement Chairman, though the source of these funds is not identified.

12 month total VIP freight dollars	Percentage of refund
$1.00 million to $2,499,999.99	5.0
$2.50 million to $4,999,999.99	7.5
$5.00 million and over	10.0

[1] The members of Agreement No. 10107 are: American President Lines, Ltd; Barber-Blue Sea Line J/S; The East Asiatic Company, Ltd.; Kawasaki Kisen Kaisha Ltd.; Korea Marine Transport Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Moller-Maersk Line, A.P.; Sea-Land Service, Inc.; United States Lines, Inc.; and the Trans Pacific Freight Conference (Hong Kong) (Agreement No. 14). They serve the trades between Hong Kong, Taiwan and Macao and United States Pacific Coast ports.

The members of Agreement No. 10108 are: Barber-Blue Sea Line J/S; Kawasaki Kisen Kaisha, Ltd.; Moller-Maersk Line, A.P.; United States Lines, Inc.; and the New York Freight Bureau (Agreement No. 5700). They serve the trades between Hong Kong, Taiwan and Macao and United States Atlantic and Gulf Coast ports.

[2] The VIP is set forth as Rule No. 150 in the following tariffs: (a) FMC Agreement No. 10107 Common Tariff No. 2-FMC-3;

(b) FMC Agreement No. 10107 Eastbound Intermodal Tariff No. 301;

(c) FMC Agreement No. 10107 Common Eastbound Intermodal Tariff No. 302;

(d) Trans Pacific Freight Conference Tariff No. 26-FMC-21;

(e) FMC Agreement No. 10108 Common Tariff No. 1-FMC-1; and

(f) New York Freight Bureau Tariff No. 27-FMC-14.

[3] Agreement No. 10107's refund is calculated on the following scale:

Agreement No. 10108's refund is calculated on the following scale

12 month total VIP freight dollars	Percentage of refund
$500,000.00 to $999,999.99	5.0
$1.00 million to $1,999,999.99	7.5
$2.00 million and over	10.0

Subsequent to the publication of the VIP in relevant tariffs, the Commission received protests from: Hasbro Industries, Inc., the Toy Manufacturers of America, Universal Transcontinental Corporation, Express Consolidation Systems Corporation, Boston Consolidation Service, Inc., C.S. Greene, and the International Association of NVOCCs. They contend that the VIP: (1) Discriminates against small shippers and consolidators; (2) may result in unlawful rebates; (3) can only be effectuated through pooling agreements which require Commission approval; and (4) is contrary to the Commission's time/volume rules, and request that the tariffs containing the VIP provisions be rejected.

Though the VIP is in some respects similar to time/volume ratemaking, it does not appear to be the type of ratemaking scheme envisioned by the Commission's time/volume rules (46 CFR 536.7). The most obvious difference is that time/volume rates are based upon a minimum *quantity of cargo* over a specified period of time, where the VIP results in a refund based on total *revenues* received. The Commission's tariff rules presently recognize no type of volume discount program other than the time/volume system.

A review of the VIP provisions filed with the Commission raises several areas of concern. Section 16 First of the Shipping Act makes it unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person or to subject any particular person to any undue or unreasonable prejudice or disadvantage (46 U.S.C. 815). Section 17 prohibits common carriers from charging any rate which is unjustly discriminatory as between shippers (46 U.S.C. 816). The levels of revenues necessary in order to participate in the VIP, together with the procedures for aggregating revenues from affiliated companies, may discriminate against small shippers or shippers of low value commodities to such a degree that sections 16 First and/or 17 are violated. In addition, the definition of qualified shipper, based as it is on a proprietary interest in the cargo, excludes certain categories of shippers from the VIP, including, but not necessarily limited to, non-vessel operating common carriers (NVOCCs), consolidators, deconsolidaters, warehousemen, and freight forwarders. This kind of discrimination may also violate sections 16 First and/or 17.

While the VIP tariff rules do not directly address the point, it seems apparent that members of the Agreements who receive revenues from enrollees qualifying for a refund must somehow remit a portion of those revenues to the Agreement Chairman so that the refunds can be made. The process by which these payments are gathered and allocated could result in an agreement among common carriers to pool or apportion earnings, which might require approval under section 15 of the Shipping Act (46 U.S.C. 814), unless otherwise authorized by an existing, approved agreement. In addition, the VIP itself might be considered a new ratemaking arrangement requiring separate section 15 approval. *See Persian Gulf Outward Freight Conference*, 10 F.M.C. 61, 65, (1966). The tariff raises the question whether these agreement members need or have section 15 authority to deny refunds to particular classes of persons.

In light of the above, the Commission is initiating an investigation and hearing to more fully examine the VIP or any similar arrangement whereby refunds are paid to certain shippers based upon total revenues received during a stated time period. Because the VIP may be found lawful either as presently employed or with some modification, the Commission will also direct that this investigation consider any appropriate amendments to its tariff filing rules to encompass such activity.

Therefore, it is ordered, That pursuant to sections 15, 16, 17, and 22 of the Shipping Act, 1916, (46 U.S.C. 814, 815, 816, and 821) an investigation shall be instituted to determine whether the practices of respondents named herein, as they relate to their Volume Incentive Programs, are in violation of sections 15, 16 First, or 17 of the Shipping Act, 1916. This investigation will address only material factual and legal issues, including those discussed above; and

It is further ordered, That as part of this investigation a determination shall be made as to whether the Commission's General Order 13 should be amended to include a rule governing volume incentive programs (refunds based on total freight revenues received.) If the record developed in this proceeding demonstrates that such a rule is needed, the initial decision shall propose the promulgation of an appropriate rule; and

It is further ordered, That the members of Agreements Nos. 10107 and 10108 are hereby made Respondents in this proceeding; and

It is further ordered, That in accordance with the Commission's Rules (46 CFR 502.42) the Bureau of Hearing Counsel is hereby made a party to this proceeding; and

It is further ordered, That this matter is assigned for hearing and decision to the Commission's Office of Administrative Law Judges, with a public hearing to be held at a date and place hereafter determined by the Presiding Administrative Law Judge but in no event later than the time limitation set forth in Rule 61 (46 CFR 502.61). This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Office only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that oral hearing and cross-examination are necessary to develop an adequate record; and

It is further ordered, That persons other than those named herein having an appropriate interest and desiring to participate in this proceeding may petition for leave to intervene pursuant to § 502.72 of the Commission's Rues (46 CFR 502.72); and

It is further ordered, That this order be published in the **Federal Register** and a copy served upon all parties of record; and

It is further ordered, That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-20868 Filed 8-2-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Wisconsin Bankshares, Inc.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire 80 percent of the voting shares or assets of The State Bank of Fall Creek, Fall Creek, Wisconsin. Comments on this application must be received not later than August 17, 1983.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Grand Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of Grand Bank Stemmons at Regal Row, N.A., Dallas, Texas. Comments on this application must be received not later than August 29, 1983.

2. *Grand Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of Grand Bank LBJ at Hillcrest, N.A., Dallas, Texas. Comments on this application must be received not later than August 29, 1983.

Board of Governors of the Federal Reserve System, July 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20951 Filed 8-2-83; 8:45 am]

BILLING CODE 6210-01-M

Citrus Banking Corp.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citrus Banking Corporation*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citrus Park Bank, Tampa, Florida. Comments on this application must be received not later than August 29, 1983.

2. *First National Jasper Corporation*, Jasper, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Jasper, Jasper, Alabama. Comments on this application must be received not later than August 29, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancshares, Inc.*, Centralia, Illinois, to become a bank holding company by acquiring 100 percent of the voting shares of The Old National Bank of Centralia, Centralia, Illinois, and at least 80 percent of the voting shares of Farmers & Merchants Bank of Carlyle, Carlyle, Illinois. Comments on this application must be received not later than August 29, 1983.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Blanchard Bancshares, Inc.*, Blanchard, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Blanchard, Oklahoma. Comments on this application must be received not later than August 29, 1983.

Board of Governors of the Federal Reserve System, July 28, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 20950 Filed 8-2-83; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review by OMB

July 28, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (202–452–3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503; (202–395–6880)

Request for Revision to an Existing Report

1. Report title: Regulation G Registration Statement; Deregistration Statement; Annual Report
Agency form number: FR G–1, FR G–2, FR G–4
Frequency: Occasional; annual
Reporters: Federal and State Credit Unions; insurance companies; savings and loan associations; commercial and consumer credit organizations; employee stock option plans; small business; etc.
SIC Code: 612, 614, 615, 631, 632, 633, 635, 636, 637
Small businesses are affected.
General description of report: Respondent's obligation to reply is mandatory
(15 U.S.C. 78g); a pledge of confidentiality is promised [5 U.S.C. 552(b)(4), (b)(6), and (b)(8)]

This group of reports is needed to elicit certain background and financial information about a lender (other than banks, brokers, or dealers) and the types and amount of credit activities engaged in with respect to stock market credit.

Board of Governors of the Federal Reserve System, July 28, 1983

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20074 Filed 8-2-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control

Work Group on Ansamycin LM427 Therapy of Mycobacterium Avium Intracellulare Disease; Open Meeting

On September 27 and 28, 1983, the Centers for Disease Control will convene an open meeting of a work group to review and refine a proposed protocol for the chemotherapy of *M. Avium-interacellulare* pulmonary disease with Ansamycin LM427. The meeting is open to the public, limited only by the space available.

The meeting is scheduled to convene at 9:00 a.m. at the Travelodge Tower Hotel, 2061 North Druid Hills Road, NE., Atlanta, Georgia.

Additional information may be obtained from: Richard J. O'Brien, M.D., Chief, Clinical Studies Section, Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236–2530, Commercial: 404/329–2530.

Dated: July 28, 1983.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 83-21087 Filed 8-2-83; 8:45 am]

BILLING CODE 4160-18-M

Press Operator Hand Movement Study; Open Meeting

The following tripartite review 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: August 10, 1983.

Time: 1:00 p.m. to 3:30 p.m.

Place: Meeting Room 220, Sheraton Inn at Greater Pittsburgh International Airport, 1160 Thorn Run Road Extension, Coraopolis, Pennsylvania 15108.

Purpose: To discuss the research protocol of a project which is to determine the safe distance between two-hand actuators and the point of operation on power presses. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information and copies of the research protocol may be obtained from: Tim Pizatella, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923–4454; Commercial: 304/291–4454.

Dated: July 28, 1983.

William H Foege,

Director, Centers for Disease Control.

[FR Doc. 83-21086 Filed 8-2-83; 8:45 am]

BILLING CODE 4160-19-M

Public Health Service

Michigan Foundation of Infectious Diseases; Intent To Grant Exclusive Patent License

The Government of the United States as represented by the Secretary of the Department of Health and Human Services is the assignee of an undivided half interest in an invention by A. Martin Lerner and Hilton B. Levy entitled "Low Molecular Weight Complex of Polyriboinosinic-Polyribocytidylic Acid and Method of Inducing Interferon," which is described and claimed in United States Patent No. 4,389,395, which issued on June 21, 1983. Pursuant to 45 CFR 6.3 and 41 CFR 101–

4, notice is hereby given of an intent to grant to the Michigan Foundation of Infectious Diseases an exclusive license to manufacture, use, and sell the invention.

The proposed license will have a duration of 10 years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with Department of Health and Human Services Patent Regulations. The Department will grant the license unless, within sixty (60) days of this notice, the Chief of the Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Westwood Building, Room 5A03, Bethesda, MD 20205, receives in writing any of the following, together with supporting documents:

1. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

2. An application for a nonexclusive license to manufacture or sell the invention in the United States is submitted in accordance with 41 CFR 101–4.104–2 and the applicant states that he has already brought the invention to the practical application or is likely to do so expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this notice.

(45 CFR 6.3 and 41 CFR 101–4)

Dated: July 27, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 83–20963 Filed 8–2–83; 8:45 am]

BILLING CODE 4160–17–M

National Center for Health Service Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of transcutaneous electrical nerve stimulation (TENS). Specifically we are interested in the medical indications of the treatment of acute pain for ambulatory patients with particular reference (or guidelines) to the effectiveness of TENS for treatment of traumatic pain and other acute pain treatment which is not clearly traumatic, and the length of TENS treatment ordinarily needed under these conditions.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than November 15, 1983 or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies and other information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this techology. Proprietary information is not being sought, but published commercial information may be submitted.

Written material should be submitted to: Dennis J. Cotter, National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, Stop #2, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available from Mr. Dennis J. Cotter, Health Science Analyst, at the above address or by telephone (301) 443–4990.

Joel H. Broida,

Acting Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83–20964 Filed 8–2–83; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–83–1272]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Substantial Equivalency Review Questionnaire
Office: Fair Housing Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State and Local Governments
Estimated Burden Hours: 100
Status: New
Contact: Steven J. Sacks, HUD, (202) 426–3500
Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 20, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-21059 Filed 8-2-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1273]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above.

Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monitoring and Technical Assistance Handbook for the Congregate Housing Services Program (CHSP)
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 1,434
Status: New
Contact: Jerold S. Nachison, HUD, (202) 426-7624 Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 22, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-21060 Filed 8-2-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Performance Review Board Membership.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of Interior Performance Review Boards. The publication of these appointments are required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub.L. 95-454, 5 U.S.C. 4314(c)(4)).

DATE: These appointments are effective August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street N.W., Washington, D.C. 20240, Telephone Number: 343-6761.

SUPPLEMENTARY INFORMATION:

Department of the Interior Performance Review Boards (PRB's) July 1983

Departmental PRB

J. J. Simmons, III, Chairperson
William Klostermeyer (Career)
David Brown (NC)
Emily DeRocco (NC)
Sidney L. Mills (Career)
F. Eugene Hester (Career)

Office of the Secretary PRB

William Horn (NC), Chairperson
Douglas P. Baldwin (NC)
Charlotte Spann (Career)
J. Lisle Reed (Career)
Ira J. Hutchison (Career)
Richard Montoya (NC)

Assistant Secretary—Indian Affairs PRB

Theodore Krenzke (Career), Chairperson
Richard Balsiger (NC)
Maurice Babby (Career, Field)
Harry Rainbolt (Career)
Richard Whitesell (Career, Field)

Solicitor PRB

Marian Horn (NC),
Maurice Ellsworth (NC)
John M. Allen (Career, Field)
Raymond F. Sanford (Career, Field)
Ruth G. VanCleve (Career)

Assistant Secretary—Policy, Budget and Administration PRB

Richard R. Hite (Career), Chairperson
Morris Simms (Career)
Kristine Marcy (Career)
Joseph Doddridge (Career)

Assistant Secretary for Fish and Wildlife and Parks PRB

Cleo F. Layton (Career), Chairperson
J. Craig Potter (NC)
Howard Larsen (Career, Field)
Robert Baker (Career, Field)
David Wright (Career)
Ronald Lambertson (Career)

Assistant Secretary—Energy and Minerals PRB

John T. Sullivan (NC), Chairperson
Doyle Frederick (Career)
Edmund Grant (Career)
Harry Nicolls (Career)
Dean K. Hunt (NC)
Thomas Gernhofer[1] (Career)

Assistant Secretary—Land and Water Resources PRB

David Houston (NC), Chairperson
Frank DuBois (NC)
Harold Furman (NC)
George Brown (Career)
James Flannery (Career)
Robert Olson (Career)

Dated: July 28, 1983

Richard R. Hite

Deputy Assistant Secretary—Policy, Budget and Administration

[FR Doc. 83-21000 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-01-M

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[1] Upon approval to SES position.

Bureau of Land Management

Wyoming; Notice of Field Test of Sodium Concessionary Leasing and Request for Comments

The Bureau of Land Management is seeking comments on a proposed field test of a sodium concessionary leasing process in the Rock Springs District, Sweetwater County, Wyoming. The concessionary leasing process is proposed as a means of improving competition for sodium leases (43 CFR 3521.25(b)), expanding the opportunities for participation in sodium lease sales and streamlining BLM procedures. An evaluation of the test will be conducted following lease offerings under the present Bureau system requiring tract delineation and fair market value determination and the concessionary approach which is designed to foster competition and allow the successful bidder to delineate the most efficiently designed tract at an administrative savings to the Bureau.

Present Bureau procedures require identification of areas suitable for leasing, tract delineation based on industry interest, and presale fair market value estimates based on resource information and economic analysis of the mining process and the market. These present procedures have certain limitations. Tracts identified by individual companies for competitive leasing may have limited industrywide interest; furthermore, the data upon which current procedures rely for fair market value determinations may be expensive to acquire.

In the concessionary leasing process, a geographic area (the concession) is defined to encompass more than one potential lease tract. A competitive auction is held to determine the winner of the concessionary rights. Concessionary rights include the right to explore the entire concession, to propose a lease tract within the concession, and upon a determination that the proposed lease tract is in conformance with the terms of the sale, to be awarded a lease. Areas within the concession which are not leased become available for future leasing or other uses.

The following is a description of the steps required to conduct a concessionary lease sale for sodium:

1. Land Use Planning—This step will identify areas acceptable for development of sodium as well as conditions and constraints to be applied. Planning is targeted on those areas identified by the Bureau and industry as valuable for sodium. This step has been completed in the Rock Springs District.

2. Delineation of Concession—The Bureau will delineate a concession based on criteria of resource recovery, environmental protection, multiple-use planning, and encouragement of participation and competition in sales. The concession is larger than the anticipated lease; it is designed to provide flexibility for the successful bidder to delineate a single custom lease within it.

3. Environmental Analysis—The area subject to leasing will be analyzed through the process prescribed by the National Environmental Policy Act. This requires analysis of both cumulative and site-specific impacts of leasing and development. The cumulative analysis has been completed in a regional environmental assessment for sodium development. Site-specific assessment will be completed prior to the sale on all areas to be included in the concession.

4. Specifications of Stipulations and Conditions—A report will be prepared and included in the Notice of Sale which describes stipulations and conditions for the concession area. Stipulations derived from the regional and site-specific environmental analysis, as well as planning documents, will specify requirements for protection of the environment and other resource values. Conditions respecting the delineation of a prospective lease shall specify requirements regarding compactness, boundaries, size, and general configuration. A general condition is that no prospective lease shall be delineated to the detriment of resource recovery and competitiveness of areas not included within the lease.

5. Sale of Concessionary Rights—Concessionary rights will be sold to the highest bidder at a sealed bid competitive sale on a dollar-per-acre bonus bid basis applied to the acreage to be leased. For this test, the size of the prospective lease is specified at 2,560 acres, more or less. Bidding is by sealed bid with only an entry-level bid to be announced in the sale notice. For the purpose of calculating chargeable acreage, the successful bidder will be charged with holding the size lease allowed by the certification of concessionary rights at the time of issuance of the certificate.

6. Certification of Concessionary Rights—Subject to the qualifications of 43 CFR Part 3502, the winner of concessionary rights will be issued a Certificate of Right which includes:

(a) The nonexclusive right to explore within the concession under an exploration plan submitted to and approved by the Bureau.

(b) The right, within 2 years of certification, to delineate a proposed lease within the concession period in accordance with conditions specified at the time of the sale.

(c) The right to be issued a lease containing appropriate stipulations as specified in the Notice of Sale, based on the proposed delineation, and subject to a finding by the BLM that the conditions of sale have been met.

7. Exploration within the Consignment Area—Upon certification of concessionary rights, the successful bidder will have a period of 2 years in which to explore within the concession. Exploration will be in accordance with a plan prepared by the successful bidder and approved or modified as necessary by the Bureau's authorized officer within 60 days of submission of the plan. All data collected by the successful bidder, including interpretations, will be submitted to the BLM and held in confidence, except that data collected on acreage not leased will be made available to the public once a lease has been issued.

8. Delineation of Proposed Lease Tract—Within 2 years of certification of concessionary rights, the successful bidder will submit a proposed lease tract delineated in accordance with conditions specified at the time of sale.

9. Evaluation of the Proposed Lease Tract—Within 90 days of submission, the BLM will evaluate the proposed lease tract for conformance with pertinent terms, stipulations, and conditions of the sale, and either issue a lease, ask for a redefinition of the lease tract, or solicit further information. Information dealing with prospective mining methods and recovery of the resource may be required.

10. Issuance of Lease—Upon approval of the redelineated tract, the BLM will prepare a lease incorporating those stipulations specified at the time of the sale pertaining to surface use and environmental protection. Lease issuance, rental, royalty, and operational requirements will be in accordance with regulations. Those lands within the concession which are not included in the lease will become available for future leasing.

11. Procedures for mine plan approval will be in accordance with State and Federal requirements.

The BLM will hold a public meeting in the Rock Springs District to explain the concessionary leasing process to the public and industry representatives. Notification of times and locations will be through the local media. The procedures outlined are subject to change based on the comments received. Final procedures will be specified in the Notice of Sale. Any

person wishing to submit comments or suggestions on the proposal should send them to the office listed below. Comments should be submitted by October 3, 1983.

For further information contact: Jim H. Taylor, Bureau of Land Management (924), P.O. Box 1828, Cheyenne, Wyoming 82003; (307) 772-2085 or FTS 328-2805.

Maxwell T. Lieurance,

State Director.

[FR Doc. 83-20983 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-84-M

[A-18453]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: 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:

Gila and Salt River Meridian, Arizona

T. 24 N., R. 15W.
Sec. 6, lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 18, lots 1-4, E½W½, and E½;
Sec. 20, all;
Sec. 30, lots 1-4, E½W½, and E½.
T. 24 N., R. 16 W.
Sec. 10, all;
Sec. 12, all;
Sec. 22, all;
Sec. 24, W½;
Sec. 26, E½;
Sec. 34, S½.
T. 25 N., R. 16 W.
Sec. 24, S½SW¼ and SE¼.

Comprising 5686.18 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from J. Leonard Neal of Kingman, Arizona:

Gila and Salt River Meridian, Arizona

T. 26 N., R. 14 W.
Sec. 19: NW¼.
T. 26 N., R. 15 W.
Sec. 1, lots 1-4, S½N½, and S½;
Sec. 5, lots 1, 3, and 4, S½N½, W½SW¼, NE¼SW¼, and SE¼;
Sec. 9, NW¼NE¼, S½NE¼, NW¼, and S½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 21, NW¼ and S½;
Sec. 23, N½;
Sec. 25, NW¼;
Sec. 27, all;
Sec. 35, NW¼.
T. 25 N., R. 14 W.
Sect. 23, all.

Comprising 6,762.48 acres, more or less.

The offered private lands described above as the NW¼ are acceptable parcel descriptions identifying 320 acres, more or less. In terms of a metes and bounds description, these parcels would be bounded on the southeast by a diagonal line extending between the southwest and northeast corners of that particular section.

The exchange involves only the surface estate of the private offered lands while the Public selected lands include all the minerals with the exception of the S½SW¼ and SE¼ of Section 24, T. 25 N., R. 16 W., G&SRM, where the leasable estate shall be reserved to the United States.

The purpose of the exchange is to acquire the non-federal lands which contain critical wildlife habitat and exhibit outstanding recreational opportunities within the Music Mountains northeast of Kingman, Arizona. The exchange is consistent with the Bureau's planning system and the public interest will be well served.

A final appraisal has been completed, as well as an evaluation of potential mineral value, and a determination has been made that the values of the offered lands to be acquired and Public lands and interests to be transferred are approximately equal.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945).

2. A reservation of all oil and gas to the United States with the right to prospect for, mine and remove such deposits within the S½SW¼ and SE¼ of Section 24, T. 25 N., R. 16 W., G&SRM.

3. Such rights for natural gas pipeline right-of-way A-17002 as provided under the authority of Section 28 of the Act of February 25, 1920, as amended (30 U.S.C. 185).

4. Such rights for natural gas pipeline right-of-way AR-034448 as provided under the authority of Section 28 of the Act of February 25, 1920, as amended (30 U.S.C. 185).

5. Subject to all valid existing rights and those applications on record as of the date of this notice.

6. A portion of the lands described herein are situated within the 100-year floodplain as identified by Federal Emergency Management Agency mapping. Developments will therefore be subject to County floodplain restrictions as adopted by the Mohave County Board of Supervisors on May 7, 1982.

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 61 of Deeds, page 591 and nullification of certain rights recorded in Book 88 of Deeds, page 275, Mohave County, Arizona.

2. An easement and such rights incident thereto for transmission line purposes as granted to Arizona Public Service Company as recorded in Docket 104, pages 15-22, Mohave County, Arizona.

3. An easement and such rights incident thereto for microwave purposes as granted to Arizona Public Service Company, by Lease Agreement dated May 10, 1967.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not the mining leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. 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.

Dated: July 26, 1983.

Harold H. Ramsbacher,

Acting District Manager.

[FR Doc. 83-21979 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32194]

Illinois Realty Action; Competitive Sale of Public Land in Ogle County

This will amend the Notice of Realty Action for public land sale ES-32194,

published in the June 10, 1983 Federal Register, which announced the proposed sale of ten Federally owned islands under Bureau of Land Management jurisdiction in Ogle County, Illinois, to state that the following documents prepared in advance of the proposed sale are available for review: an environmental assessment; a land report, including a summary of the wilderness inventory; and a minerals report.

The public comment period on the Notice of Realty Action for this sale has been extended to 4:00 p.m., Eastern Time, August 24, 1983.

Further details on the proposed sale are available from Robert Gausman, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 83-20976 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-84-M

[M-58075]

Montana; Realty Action—Land Exchange—Public and Private Lands in Prairie County, Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-58075, Land Exchange, Prairie County, Montana.

SUMMARY: The following public lands have been examined and found suitable for exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1716:

Principal Montana Meridian

T. 13 N., R. 49 E.
Sec. 7: Lots 3, 4, E½SW¼, SE¼
Sec. 15: All
Sec. 18: Lots 1, 2, E½NW¼
Sec. 22: All.

Aggregating approximately 1778.73 acres of public lands.

In exchange for the above public lands the United States will acquire the following deeded lands from Verlan and Alice Hines of Terry, Montana:

Principal Montana Meridian

T. 12 N., R. 49 E.
Sec. 11: All
T. 12 N., R. 50 E.
Sec. 17: All
Sec. 19: Lots 1–4, E½, E½W½
Sec. 22: Lots 5–8, W½W½, SE¼SW¼, SW¼SE¼
Sec. 27: Approximately 107.21 acres as described by metes and bounds description
Sec. 28: NE¼

Aggregating approximately 2520.92 acres of private lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be forwarded to the Montana 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 Notice of Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information relating to this exchange, including the land report and environmental assesssment, is available for review at the Miles City District Office.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the subject public lands 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 exchange will be subject to:

1. Limitation to surface estate only. All mineral ownerships will remain as is.

2. A reservation on the public lands for a right-of-way to the United States for ditches or canals in accordance with 43 U.S.C. 945.

3. All valid existing rights of record.

4. Exchange based on an equal value as determined by an appraisal for the fair market value of both the public and private lands involved.

This exchange is consistent with Bureau policies and planning. Prairie County Commissioners were consulted as of July 18, 1983, and all agreed there is no need for a public meeting or hearing concerning this proposed exchange. The public interest will be served by completion of this exchange.

Dated: July 27, 1983.

Robert A. Teegarden,

District Manager.

[FR Doc. 83-20975 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Proposed Change in Use of Water From Arthur V. Watkins (Willard) Reservoir, Weber Basin Project, Utah; Intent To Prepare Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement for the proposed change in use of approximately 20,000–40,000 acre-feet of irrigation water to municipal and industrial (M&I) water out of Willard Reservoir, a feature of the existing Weber Basin Project.

The Weber Basin Project was authorized for construction on August 29, 1949. Construction of all major project features was completed by 1969. The project consists of six reservoirs; two diversion dams; about 75 miles of tunnel, aqueduct and canal; two powerplants, eleven pumping plants, and three water treatment plants. In full operation, under the plan described in the 1959 Definite Plan Report, the project would provide an annual average of approximately 164,000 acre-feet of irrigation water, 50,000 acre-feet of municipal and industrial (M&I) water, and 11,000 acre-feet for fish and wildlife use. The Weber Basin Water Conservancy District, Layton, Utah, is responsible for operation, maintenance, and repayment of project costs.

Willard Reservoir is an offstream reservoir formed by an earthen dike averaging about 34 feet in height that isolates it from the Great Salt Lake. It is located about 12 miles northwest of the confluence of the Weber and Ogden Rivers. The designed active capacity of the reservoir was 198,000 acre-feet, however, since 1963, when work on the dike was completed, portions of the dike have settled so that the active capacity of the reservoir is now about 175,000 acre-feet. Under the original project plan, settlement of the dike was anticipated.

The 86,000 acre-foot average yield from Willard Reservoir, along with releases from Pineview Reservoir located upstream on the Ogden River, was intended to meet irrigation requirements in the lower project service area, provide water for exchange with upstream municipal needs on the Weber River, and provide flows to maintain the Ogden Bay Bird refuge. The average upstream exchange amounts to 43,600 acre-feet, yet on an annual basis has ranged from 37,100 to 55,000 acre-feet.

The environmental statement will analyze the specific impacts of the change in use of irrigation water to M&I water on the operation of Pineview and Willard Reservoirs and connecting waterways. Projected water sales will be correlated with population and development projections to provide a programmatic impact analysis. The environmental statement will serve as a yardstick for all future sales of project M&I water. The environmental

statement will also analyze the impacts of raising the dike to restore the designed yield of 196,000 acre-feet.

Scoping of the environmental statement will be carried out to receive public input into the impact analyses process from interested organizations and individuals. This process will aid in identifying and prioritizing significant issues. A scoping meeting will be held. The time and place of the meeting will be published at a later date. The environmental statement is scheduled for public review during mid-1984.

Anyone interested in this project and/or the draft environmental statement should contact Mr. Howard Pearson, Bureau of Reclamation, 160 North 200 West, Provo, Utah 84603, telephone No. (801) 379-1070.

Dated: July 28, 1983.

Jed. D. Christensen,

Acting Commissioner of Reclamation.

[FR Doc. 83-21078 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531, *et seq.*]:

PRT 2-10687
University of Michigan Museum of Zoology, Ann Arbor, MI

The applicant requests a permit to import 3 skeletons of hawksbill sea turtle (*Eretmochelys imbricata*) from Dr. Harry Hoogstraal, Cairo, Egypt, for scientific research.

PRT 2-6927
E. Stuart Mitchell, Portland, CT

The applicant requests an amendment to his permit to take bald eagles (*Haliaeetus leucocephalus*) for banding to include radio tagging in Connecticut for scientific research and enhancement of survival of the species.

PRT 2-10832
Dept. of Natural Resources, Saipan, Mariana Islands

The applicant requests a permit to take (capture, tag, release) micronesian megapodes (*Megapodius laperouse*) for scientific research and enhancement of survival of the species.

PRT 2-10712
Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import 8 female and 7 male lion-tailed macaques (*Macaca silenus*) from the Prince of Monaco for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 29, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-21029 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Mid-Atlantic Regional Advisory Committee; Meeting

AGENCY: National Park Service, Mid-Atlantic Region, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date and location for a periodic meeting of the Mid-Atlantic Regional Advisory Committee established by the Secretary of the Interior. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 24, 1983, 10:30 a.m.

ADDRESS: Independence National Historical Park, 313 Walnut Street, Philadelphia, Pa. 19106.

FOR FURTHER INFORMATION CONTACT: Arthur Miller, National Park Service, Mid-Atlantic Regional Office, 143 S. Third Street, Philadelphia, Pa. 19106; (215) 597-3679.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Regional Advisory Committee is one of nine advisory committees established by the Secretary of the Interior on August 11, 1982, in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

The purpose of the committee shall be to advise the regional director to programs, policies and such other matters as may be referred to it by the regional director. The committee shall also function to provide closer communication with the public on such matters.

Agenda items for the meeting shall include: status of regional land protection plans, possible land addition to Independence NHP; commercial use licenses; Eisenhower NHS General Management Plan; reorganization of the regional office; management efficiency efforts; NPS grant programs; Upper Delware NS&RR; and U.S. Route 209 through Delaware Water Gap NRA.

The meeting will be open to the public. Any member of the public may file with the advisory committee a written statement concerning agenda items. The statement should be addressed to the Mid-Atlantic Regional Advisory Committee, c/o National Park Service, Mid-Atlantic Regional Office, 143 S. Third Street, Philadelphia, Pa. 19106. Minutes of the meeting will be available for inspection four weeks after the meeting at the regional office.

Dated: July 25, 1983.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 83-21021 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through September 1983

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1261), the Department of the Interior must afford the affected public an opportunity to be aware of and to provide comments on water service and repayment contract negotiations being conducted by the Bureau of Reclamation. Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, and the Reclamation Reform Act, a tabulation is provided below of proposed contractual actions in each of the seven Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1983. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be

involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Some of the actions listed have been publicized in the **Federal Register** previously. When this is the case, the date of publication is given. Individual notice of intent to negotiate, and other appropriate announcements, will be made in the **Federal Register** for those actions found to have widespread public interest. In addition, a wide variety of local publicity resources are being used selectively to inform the public affected by a specific contract proposal.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(SOFAR) Southern Fork American River

Pacific Northwest Region: Bureau of Reclamation, 550 West Fork Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Boise Project Board of Control, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Columbia Irrigation District, Washington; SRPA loan repayment contract; $3,376,000 proposed obligation.

4. Douglas County Oregon; SRPA loan repayment contract; $11,605,000 proposed loan obligation. Loan application also includes a request for $14,395,000 in grant funds towards anadromous fish enhancement, recreation, fish and wildlife functions.

5. Northwest Land and Investment, Inc., Columbia Basin Project, Washington; Temporary water service contract for 40 acre-feet.

6. Okanogan ID, Okanogan Project, Washington; R&B loan repayment contract; $10,792,000 proposed obligation.

7. Miscellaneous Water Users, Pacific Northwest Region, Idaho-Oregon and Washington; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contract for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

8. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

9. City of Hillsboro, Tualatin Project, Oregon; Repayment contract to repay $368,000 estimated cost of channel improvement at Spring Hill Pumping Plant.

10. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.25 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

11. Granger ID, Yakima Project, Washington; R&B loan repayment contracts; $1,111,000 proposed obligation.

12. Sunnyside Valley Board of Control, Yakima Project, Washington; R&B loan repayment contract; $15,901,000 proposed obligation.

13. Washington Water Power Company, Inc., Columbia Basin Project, Washington; Industrial water service contract; 32,000 acre-feet of water per year from Franklin D. Roosevelt Lake for the proposed Creston Powerplant; FR Notice published December 11, 1982, Vol. 46, page 60658.

14. Cascade Reservoir Water Users, Boise Project, Idaho; Irrigation repayment contracts; 57,251 acre-feet of stored water in Cascade Reservoir.

15. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 5,000 acre-feet annually from stored water in Lucky Peak Reservoir.

16. Grandview ID, Yakima Project, Washington; R&B loan repayment contract; $1,054,000 proposed obligation.

Mid-Pacific Region: Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484–4680.

1. El Dorado ID and El Dorado County Water Agency, CVP, California; Coordinated CVP/SOFAR Project operations and water service contract; 12,400 acre-feet with construction of Auburn Dam.

2. El Dorado ID, CVP, California; Amendatory water service contract; 1,000 acre-feet municipal and industrial water supply for service from Folsom Lake to the El Dorado Hills area.

3. 4–E Water District, CVP, California; Water service contract; 80 acre-feet; FR notice published October 3, 1979, Vol. 44, page 56991.

4. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

5. Stockton-East Water District, CVP, California; Interim water service contract; 75,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982; Vol. 47, page 5473.

6. Central San Joaquin Water Conservation District, CVP, California; Water service contract; 49,000 acre-feet firm supply and 39,000 acre-feet interim supplies from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

7. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

8. Calaveras County Water District, CVP, California; Water service contract; 500 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

9. Solano ID, Solano Project, California; Amendatory loan contract providing reconveyance and M&I water supply delivery.

10. Miscellaneous Water Users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contract for terms up to 2 years.

11. State of California, Department of Water Resources, CVP, California; Interim water service contract for approximately 5000,000 acre-feet.

12. Madera ID, CVP, California; Agreement for conveyance of non-project water in Millerton Lake and the Madera Canal; Maximum of 50 cfs, Friant Unit.

13. Pacheco Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

14. City of Redding, CVP, California; Agreement for operation of the City of Redding's Lake Redding Power Project and resolution of potential impacts on Keswick Powerplant.

15. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and reservoir on the

Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

16. City of Santa Barbara, Cachuma Project, California; agreement for conveyance of non-project water through Lauro Reservoir, Maximum of 21 cfs.

17. Yuba County Water Agency, South County Irrigation Project, SRPA, California; Loan repayment contract; $21,600,000 proposed obligation.

18. County of San Benito, San Felipe Division, CVP, California; Repayment recreation agreement, will provide recreation facilities in an area that now has a deficit of recreation areas.

19. Santa Barbara County, Cachuma Project, California; Recreation Management Agreement will provide funds for recreation development to a project with heavy visitor use.

20. Broadview Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

21. The Westside Irrigation District, CVP, California; Amendment to existing water service contract to provide for transportation of District owned water rights through the Delta-Mendota Canal.

22. City of Avenal, CVP, California; Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities.

23. Colusa County Water District, CVP, California; Amendatory water service and repayment contract to provide for delivery of M&I water and to provide additional water.

24. Colusa Water District, CVP, California; Distribution System Loan repayment contract; $8,670,700 proposed obligation.

25. Oakdale Irrigation District, SRPA, California; Loan repayment contract; $17,845,000 proposed obligation.

26. Glide Water District, CVP California; Amendment to existing water service contract to provide additional water.

27. Glide Water District, CVP, California; Distribution System Loan repayment contract; $5,900,000 proposed obligation.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, (125 South State Street) Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years.

2. Ute Mountain Ute Tribe and Bureau of Indian Affairs, Dolores Project, Colorado; Repayment contract; 1,000 acre-feet per year for M&I use; 22,900 acre-feet per year for irrigation; FR notice published September 10, 1980, Vol. 45, No. 177, page 59642.

3. Fontenelle (Chevron) State of Wyoming, Seedskadee Project, Wyoming; Water sales contract for 22,500 acre-feet per year for industrial use. Environmental Impact Statement under preparation; approval pending outcome. FR notice published January 26, 1983, Vol. 48, No. 18, page 3662.

4. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico; Water service contract; 16,000 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

6. City of Farmington, Animas-La Plata Project, New Mexico; M&I water service contract; 19,700 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

7. City of Aztec, Animas-La Plata Project, New Mexico; M&I water service contact; 5,800 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

8. City of Bloomingfield, Animas-La Plata Project, New Mexico; M&I water service contract; 5,300 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

9. Preston-Whitney Irrigation Company, North Cache Water Development Project, Idaho; Small Reclamation Project Act, P.O. 84–984. Repayment contract for $26,000,000. Federal loan to convert open ditch system with individual pumps for sprinkler pressurization to a closed pipe gravity pressurized system.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427, (Nevada Highway and Park Street) Bounder City, NV 89005, telephone (702) 293–8536.

1. Lake Havasu IDD for Horizon Six and Ansazi Pueblo, Boulder Canyon Project, Arizona; M&I water service contracts for 170 and 131 acre-feet per year, respectively. Contract execution pending approval and/or request for negotiating sessions by Lake Havasu IDD and submission of subcontracts for Bureau approval.

2. City of Yuma, Boulder Canyon Project, Arizona; Supplemental and amendatory M&I water service contract; 3,613 acre-feet per year.

3. Agricultural and M&I water users, Central Arizona Project, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

4. Roosevelt Water Conservation District, Higley, Arizona; R&B loan contract; $7,474,424; FR notice published March 30, 1979, Vol. 44, page 19048.

5. Roosevelt ID, Buckeye, Arizona; SRPA loan contract; $10,560,000; FR notice published December 9, 1980, Vol. 45, page 81130.

6. Ramona Municipal Water District, Ramona, California; SRPA loan contract; $19,224,000.

7. Fallbrook Public Utility District, Fallbrook, California; SRPA loan contract; $12,445,400.

8. Rainbow Municipal Water District, Fallbrook, California; SRPA loan amendatory contract; $9,090,800 cost escalation adjustment; FR notice published May 24, 1979, Vol. 44, page 30173.

9. Agricultural and M&I water users, Central Arizona Project, Arizona; Contracts for repayment of Federal expenditures for construction of distribution systems.

10. Colorado River Commission of Nevada; Contract for delivery of 10,000 acre feet per year of Colorado River water for M&I purposes in the unincorporated community of Laughlin, Nevada.

11. Yuma Mesa Irrigation and Drainage District; D&MC contract for the installation of one additional 80 cubic feet per second pump in the Yuma Mesa Pump Plant, Gila Project, Arizona.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. City of Belen, San Juan-Chama Project, New Mexico; M&I water service contract for 500 acre-feet annually. FR notice published April 26, 1982, Vol. 47, page 1782.

2. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use; FR notice published August 13, 1981, Vol. 46, page 40940.

3. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work. Necessity of amendment is dependent upon outcome of pending Safety of Dams legislation, S. 956 and H.R. 3208.

4. Harlingen Irrigation District, Lower Rio Grande Valley, Texas; the existing Small Reclamation Projects Act loan

repayment contract will require an amendment to provide for the collection of an interest payment for M&I water deliveries by the district. Correction of this deficiency is a prerequisite for eligibility to receive additional benefits through a R&B loan sought by the district.

5. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

6. State of Oklahoma, McGee Creek Project, Oklahoma; Repayment contract for State's share of costs associated with development of recreation facilities and certain fish and wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act Pub. 89–72), as amended.

7. State of Colorado, Closed Basin Division, San Luis Valley Project; Repayment contract for State's share of costs associated with development of recreation facilities and certain fish and wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act (Pub. 89–72), as amended; FR notice published February 12, 1982, Vol. 47, page 6493.

8. San Angelo Water Supply Corporation, San Angelo, Texas; amendment of existing repayment contract is necessary to reinstate an earlier contractual provision whereby the contractor is granted a credit against its annual payment for costs incurred related to the O&M of nonreimbursable project purposes such as flood control and fish and wildlife.

Upper Missouri Region: Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Miscellaneous Water Users, Upper Missouri Region, Montana, Wyoming, Northe Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

2. Individual Irrigators, Canyon Ferry Unit, P–SMBP, Montana; Irrigation water service contracts not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

3. Crook County ID (formerly Belle Fourche-Wyoming Water Association), Keyhole Unit, P–SMBP, Wyoming; Repayment contract for irrigation storage; 10 percent (presently 18,500 acre-feet) of Keyhole Reservoir storage space as provided by Belle Fourche River Compact; FR notice published August 21, 1980, Vol. 45, page 55842.

4. Montana Power Company, Yellowtail Unit, P–SMBP, Montana; Industrial water service contract; 6,000 acre-feet or water annually for Colstrip Power Complex; FR notice published February 3, 1981, Vol. 46, page 10544.

5. Deaver ID, Shoshone Project, Wyoming; R&B loan repayment contract; Up to $1.6 million; FR notice published April 21, 1982, Vol. 47, page 17118.

6. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, page 19472.

7. State of Wyoming, Buffalo Bill Dam Modifications, P–SMBP, Wyoming; Contract with State of Wyoming for division of additional water impounded, sharing of revenues, and sharing of costs to construct, operate, and maintain modification of the existing Buffalo Bill Dam and Reservoir.

8. WEB Rural Water Development Project, South Dakota; Grant and loan program for rural water facilities; To bring water to approximately 30,000 people and 50 rural communities.

9. Helena Valley ID, P–SMBP, Montana; R&B loan repayment contract; Up to $2.2 million.

10. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

11. Individual Irrigators, Heart Butte Unit, Pick-Sloan Missouri Basin Program, North Dakota; Irrigation water service contracts; Water supply to be furnished from Heart Butte Reservoir (Lake Tschida) totaling up to 2 acre-feet per acre annually for application on up to 320 acres per individual contractor for irrigation purposes; Contract term up to 20 years.

12. East Bench Gravity Company, Dillion, Montana; Small Reclamation Projects Act loan repayment contract; Loan amount up to $4.383 million; Loan purpose to convert existing open ditch lateral to closed pipe system and provide gravity pressure to operate sprinkler systems.

13. Glasgow Irrigation District, Milk River Project, Montana; Rehabilitation and Betterment Act loan repayment contract; Loan amount up to $2.2 million.

14. Irrigation Districts and Similar Water User Entities in Montana, North Dakota, South Dakota, and Wyoming; Amendatory repayment and water service contracts; Purpose to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293); Up to 50 amendatory contracts are expected by April 1987.

15. City of Huron, James Diversion Dam, P–SMBP, South Dakota; Agreement for continued use of James Diversion Dam and Reservoir facilities and operation and maintenance arrangements; Contract term 40 years.

16. Shoshone Irrigation District, Shoshone Project, Wyoming; Cost escalation Loan under Small Reclamation Projects Act of 1956 to provide funds to complete Garland Canal Power Project; Loan amount $214,000; Contract term 40 years.

Lower Missouri Region: Bureau of Reclamation, P.O. Box 25247 (Building 20, Denver Federal Center), Denver, Colorado 80225, telephone (303) 234–3327.

1. H&RW ID, Frenchman-Cambridge Unit, P–SMBP, Nebraska; Amendatory water service contract; $1,200,000 outstanding; FR notice published February 5, 1982, Vol. 47, Page 5472.

2. Central Nebraska Public Power and ID, Glendo Unit, P–SMBP, Nebraska; Irrigation water service contract; 8,000 acre-feet; FR notice published February 7, 1980, Vol. 45, Page 8364.

3. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Repayment contract for extension of the development period and revision of the repayment determination methodology; FR notice published September 28, 1982, Vol. 47, page 42642.

4. Frenchman-Cambridge ID, Frenchman-Cambridge Division, P–SMBP, Nebraska; Amendatory R&B contract; Increases current R&B program obligation of $4.4 million to $5.5 million; FR notice published November 10, 1982, Vol. 47, page 51009.

5. Casper-Alcova ID, Kendrick Project, Wyoming; Amendatory contract to provide water service to subdivided district lands; FR notice published November 24, 1980, Vol. 45.

6. Corn Creek ID, Mitchell ID, Earl Michael, Glendo Unit, Wyoming and Nebraska; Irrigation water service contracts. FR notice published January 26, 1983, Vol. 48, page 3662.

7. Town of Breckenridge, Colorado-Big Thompson Project, Colorado; Storage in Green Mountain Reservoir. FR notice published January 26, 1983, Vol. 48, page 3662.

8. Pueblo West Metropolitan District, Fryingpan-Arkansas Project, Colorado; Use of municipal outlet of Pueblo Dam for conveyance service; FR notice published January 26, 1983, page 3662.

9. Miscellaneous water users, Lower

Missouri Region, Southeastern Wyoming, Colorado, Nebraska and northern Kansas; Temporary (interim) water service contracts for surplus project water, maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years: FR notice published January 26, 1983, Vol. 48, page 3663.

10. Ruedi Reservoir, Fryingpan-Arkansas Project; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

11. Northern Colorado Water Conservancy District and Central Colorado Water Conservancy District, Narrows Unit, Colorado; Water service contracts for repayment of costs.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) All meetings or negotiating sessions scheduled by the Bureau with a potential contractor for the purpose of discussing terms and conditions of a proposed contract will be open to the general public for observation. Only those people with authority to act on behalf of the appropriate public entities may negotiate the terms and conditions of a specific contract proposal. Advance notice of such meetings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau.

(2) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(3) Written comments on a proposed contract must be submitted to the appropriate Bureau officials at locations and within time limits set forth in advance public notices or as otherwise established by Bureau officials. Such written comments received and testimony presented at any public hearing will be reviewed and summarized by regional staff for use by the appropriate contract approving authority; i.e., a Regional Director, the Commissioner of Reclamation, or the Secretary of the Interior.

Dated: July 28, 1983.

Jed D. Christensen,

Acting Commissioner of Reclamation.

[FR Doc. 83-21077 Filed 8-2-83; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted For OMB Review

AGENCY: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection: The proposed information collection is a generic clearance for use by the Commission in connection with the following types of investigations: countervailing duty, antidumping, escape clause, escape clause review, market disruption and "interference with programs of the USDA."

Summary of Proposal:

(1) Number of forms submitted: three

(2) Title of forms: Sample Producer's, Sample Importer's and Sample Purchaser's questionnaires

(3) Type of request: extension

(4) Frequency of use: on occasion

(5) Description of respondents: Businesses or farms that produce, import and/or purchase products under investigation

(6) Estimated annual number of respondents: 4,600

(7) Estimated total annual number of hours to complete the forms: 75,000

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed forms and supporting documents may by obtained from Charles Ervin, the USITC agency clearance officer (tel. no. 202-523-4463). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs of the OMB, Attention: Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on the proposal but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW. Washington, D.C. 20436).

Issued: July 29, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21045 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

Certain Apparatus for Flow Injection Analysis and Components Thereof; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Particia Ray, Esq., of the Unfair Import Investigations division will be the Commission investigative attorney in the above-cited investigation instead of Ralph Elsas-Patrick, Esq.

The Secretary is requestd to publishh this Notice in the **Federal Register.**

Dated: July 28, 1983.

David I. Wilson,

Chief Unfair Import Investigations Divisions.

[FR Doc. 83-21055 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-139]

Certain Caulking Guns; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Handy Dan Home Improvement Centers, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was sereved upon the parties on July 28, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are 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., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E

Street, NW., Washington, D.C. 20436, no later then 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: July 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–21053 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–141]

Certain Copper-Clad Stainless Steel Cookware; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: The May Department Stores Company d/b/a Venture Stores, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 28, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are 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., Washington, D.C. 20436, telephone 202–523–0161.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: July 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–21052 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-154]

Certain DOT Matrix Line Printers and Components Thereof; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: July 27, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–21041 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–142]

Certain Electronic Chromatogram Analyzers; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Wilhelm Zeitler, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Ralph Elsas-Patrick, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: July 28, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83–21047 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–137]

Certain Heavy-Duty Staple Gun Tacker; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey Neeley, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Ralph Elsas-Patrick, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: July 28, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83–21046 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–155]

Certain Liquid Crystal Display Watches With Rocker Switches; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: July 28, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–21056 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–153]

Certain Microprocessors, Related Parts and Systems; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: July 21, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–21050 Filed 8–2–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-156]

Certain Minutiae-Based Automated Fingerprint Identification Systems; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on June 22, 1983, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of De La Rue Printrak Inc., 2121 South Manchester Avenue, Anaheim, Calif. 92801. The complaint alleges unfair methods of competition and unfair acts in the imporation of certain minutiae-based automated fingerprint identification systems into the United States, or in their sale, by reason of alleged: (1) Direct, induced, and contributory infringement of at least claims 1, 2, 8, 12–13 and 20 of U.S. Letters Patent 4,047,154; and (2) direct induced, and contributory infringement of at least claims 1–11 of U.S. Letters Patent 4,135,147. 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 that the Commission institute an investigation, conduct expedited temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and a temporary cease and desist order. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

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 July 20, 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 minutiae-based automated fingerprint identification systems into the United States, or in their sale, by reason of alleged: (1) Direct, induced, or contributory infringement of claims 1, 2, 8, 12–13 and 20 of U.S. Letters Patent 4,047,154; and (2) direct, induced, or contributory infringement of claims 1–11 of U.S. Letters Patent 4,135,147, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e)(1) of the Commission's rules (19 CFR 210.24(e)(1), the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed with the complaint, shall be forwarded to the presiding officer for an initial determination pursuant to section 210.53(b) of the rules (19 CFR 210.53(b)).

(3) 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—De La Rue Printrak Inc., 2121 South Manchester Avenue, Anaheim, Calif. 92801.

(b) The resondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

NEC Corporation, Shiba Go-chome, Minato-ku, Tokyo 108, Japan.
NEC Systems Laboratory, Inc., 5 Militia Drive, Lexington, Mass. 02173.
United States Trading Co., 1605 New Hampshire Avenue, NW., Washington, D.C. 20009.
Applied Systems Technology, Inc., 7934 La Capela Place, Carlsbad, Calif. 92008.

(c) Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20346, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure (19 CFR 210.24(e)), the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

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. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief 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 compaint 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: Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1272.

Issued: July 26, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21048 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-156]

Certain Minutiae-Based Automated Fingerprinter Identification Systems; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: July 28, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-21042 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-148]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Commission Decision Not to Review Initial Determination Adding Respondent

AGENCY: U.S International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 4) to amend the complaint and notice of investigation in the above-captioned investigation to add Hygrade Food Products Corporation as a party respondent. Accordingly, the initial determination has become the Commission's determination with respect to this matter.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 9242, March 4, 1983; to be codified at 19 CFR 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On June 22, 1983, Hygrade Food Products Corporation filed a motion (Motion No. 148-1) to amend the complaint and notice of investigation to add itself as a non-party intervenor. The motion was amended at the preliminary conference held on June 24, 1983, to request participation as a party respondent. The presiding officer issued an initial determination (Order No. 4) granting this motion on June 30, 1983.

The deadline for petitions for review and comments from other government agencies was July 14, 1983, and no submissions were received. Pursuant to rule 210.53(h)(2), an initial determination of the presiding officer under rule 210.53(c) becomes the determination of the Commission unless the Commission orders review of the initial determination within thirty (30) days after the date of filing of the initial determination.

Copies of the presiding officer's initial determination and all other non-confidential documents filed in connection with this investigation are 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., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Gracia M. Berg, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

Issued: July 29, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21040 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-150]

Certain Self Stripping Electrical Tap Connectors; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey Neeley, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Ralph Elsas-Patrick, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: July 28, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-21037 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-133]

Certain Vertical Milling Machines and Parts, Attachments and Accessories Thereto; Notice of Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Equipment Importers, Inc., d/b/a Jet Equipment & Tools.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 28, 1983.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are 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. Washington, D.C. 20436, telephone 202-523-0161.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary of the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commision will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: July 28, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21051 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-202 (Preliminary)]

Coton Shop Towels From Pakistan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: July 27, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary countervailing duty investigation under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(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 from Pakistan of shop towels of cotton, provided for in item 366.2740 of the Tariff Schdeules of the United States Annotated, upon which bounties or grants are alleged to be paid.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 202–523–5703.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted in response to a petition filed on July 27, 1983, by counsel for Milliken and Company, a domestic manufacturer of cotton shop towels. The Commission must make its determination in the investigation within 45 days after the date of the filing of the petition, or by September 12, 1983 (19 CFR 207.17).

Participation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) 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 notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in the investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of the nonconfidential version of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before August 18, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on August 16, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator, Ms. Vera Libeau (202–523–0368), not later than August 12, 1983, to arrange for their appearance. Parties in support of the imposition of countervailing duties in the investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and 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, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 33682, Aug 4, 1982), and part 201, subpart A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug 4, 1982). Further information concerning the conduct of the conference will be provided by Ms. Libeau.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: July 29, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21044 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-96 (Final)]

Nitrocellulose From France

Determination

On the basis of the record [1] developed in the subject investigation the Commission determines,[2] pursuant to section 735(b)(1) of the Traffic Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports of nitrocellulose [3] which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 10, 1983, following a final determination by the Department of Commerce that imports of nitrocellulose from France are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public hearing 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 May 25, 1983 (48 FR 23490). The hearing was held in Washington, D.C., on June 27, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commisson transmitted its report on the investigation to the Secretary of Commerce on July 25, 1983. A public version of the Commission's report, Nitrocellulose from France (investigation No. 731–TA–96 (Final), USITC Publication 1409, 1983) contains the views of the Commission and information developed during the investigation.

Issued: July 25, 1983.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21046 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

[731-TA-44 (Final)]

Sorbitol From France; Institution of Antidumping Investigation on Remand

AGENCY: International Trade Commission.

ACTION: Institution of antidumping duty investigation.

SUMMARY: On July 18, 1983, the Court of International Trade remanded this investigation for a new determination within sixty days from the date of entry of the order. *Roquette Freres v. United States*, Court No. 82–5–00636, Slip Op.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern dissenting.

[3] For purposes of this investigation, nitrocellulose is provided for in item 445.25 of the Tariff Schedules of the United States.

83-71. Accordingly, the United States International Trade Commission (hereinafter "the Commission") hereby gives notice of the institution of investigation No. 731-TA-44 (Final) 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 provided for in item 493.68 of the Tariff Schedules of the United States (TSUS). This investigation will be conducted according to the provisions of Part 207 of the Commission's Rules of Practice and Procedure, Subparts B and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982).

EFFECTIVE DATE: July 18, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, U.S. International Trade Commission, room 344, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523-1369.

SUPPLEMENTARY INFORMATION: On March 23, 1982, the Commission determined on the basis of the information developed during the course of investigation No. 731-TA-44 (Final), that an industry in the United States was materially injured by reason of imports of sorbitol from France, provided for in TSUS item 493.68 which the Department of Commerce had determined was being sold or was likely to be sold at less than fair value. This determination was subsequently appealed to the Court of International Trade in *Roquette Freres v. United States*, Court No. 82-5-00636. On July 18, 1983, the Court of International Trade remanded the investigation for a new determination, and ordered the Commission to consider all relevant information presently in its possession or which thereafter may be presented to the Commission as to whether an industry was materially injured by reason of imported sorbitol from France being sold at less than fair value.

Written Submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, in accordance with § 201.8 of the Commission's rules (19 CFR 201.8) on or before August 19, 1983. 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. 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.).

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 requirement of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation 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 33882, August 4, 1982).

This notice is published pursuant to 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

Issued: July 29, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-21043 Filed 8-2-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier 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 named in the **Federal Register** publication no latert than the 15th calendar day aftet 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 Carrier of Property

Notice No. F-280

The following applications were filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 169050 (Sub-II-1TA, filed July 12, 1983. Applicant: DAVID GEISLER AND SUSAN GEISLER, d.b.a. D & S GEISLER TRUCKING, 125 Phillips Lane, McKees Rocks, PA 15136. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Contract, irregular: *Food and related products (except commodities in bulk)*, between Pittsburgh, PA, on the one hand, and, on the other, Dunellen, Neptune, Livingston, Teterboro, Secaucus and West Berlin, NJ; Amhearst, Endicott, Latham, Henrietta, Montgomery, Mt. Vernon, New Hyde Park, Oakdale, Olean, Pleasantville, Ridgewood and Syracuse, NY; Bellaire, Youngstown, Hamilton, Columbus, Macedonia and Toledo, OH; and Landover, Baltimore and Williamsport, MD, under continuing contract(s) with Nabisco Brands, U.S.A. An underlying ETA seeks 120 days authority. Supporting shipper(s): Nabisco Brands, USA, River Rd., East Hanover, NJ 07936.

MC 145235 (Sub-II-6TA) filed July 11, 1983. Applicant: DUTCH MAID PRODUCE INC., Route 2, Willard, OH 44890. Representative: J. L. Nedrich, 20821 Oak Trail, Strongsville, OH 44136. *General commodities* (except Classes A or B explosive, household goods and commodities in bulk) between points in and east of MN, IA, NE, KS, OK, and TX for 270 days. Supporting shipper(s): Westvaco Corp. Covington, VA 24426;

Displayco Midwest Inc., 401 W. Shoreline, Sandusky, OH; J.A. Tucker Company, 209 Harvard Ave., Westville, NJ 08093; West Coast Shippers Assn., Inc., 2000 South 71st St., Phila., PA 19142.

MC 168855 (Sub-II-1TA), filed July 7, 1983. Applicant: GREGORY S. EDWARDS, R.D. 1, Box 73, West Finley, PA 15377. Representative: David W. Donley, 601 Smithfield St., Suite 400, Pittsburgh, PA 15222. *Sand, gravel and aggregates,* between points in Belmont County, OH, on the one hand, and, on the other, points in Washington County, PA. Supporting shipper(s): Judson Wiley & Sons, Inc., 404 Main St., Washington, PA 15301; Century Concrete Co., 98 W. Maiden St., Washington, PA 15301.

MC 115391 (Sub-II-4TA), filed July 8, 1983. Applicant: GENSIMORE TRUCKING, INC., P.O. Box 1, RT. 144 North, Pleasant Gap, PA 16823. Representative: Barry L. Gensimore (same address as applicant). *Coke, ground fuels, ores and minerals,* between points in and East of MN, IA, MO, AR and LA, on the one hand, and, on the other, points in Beaver County, PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): St. Joe Lead Co., 7733 Forsyth Blvd., Clayton, MO 63105.

MC 164112 (Sub-2-2TA), filed July 13, 1983. Applicant: GOLDEN EAGLE EXPRESS, INC., Wye Switches, Duncansville, PA 16635. Representative: Carl E. Munson, 469 Fischer Building, P.O. Box 796, Dubuque, IA 52001. (1) *Paper and paper products,* from points in LIcking County, OH, to Blair County, PA, and from points in Blair County, PA, to points in Jefferson County, WV; (2) *Paper, paper products and printed matter,* from Chicago and Genoa, IL, to East Rutherford, NJ, Long Island and New York, NY; and (3) *Pit and quarry equipment parts (mining equipment parts),* from at or near Hollidaysburg, PA, to points in IL, IN, KY, MD, MI, NJ, NY, NC, OH, SC, TN, VA and WV. Supporting shippers: North American Envelope Corp., P.O.B. 39, Duncansville, PA 16639; Gotham Envelope, 1 Madison St., E. Rutherford, NJ 07073; McLanahan Corp., 200 Wall St., Hollidaysburg, PA 16648.

MC 169110 (Sub-II-1TA), filed July 11, 1983. Applicant: THOMAS P. HUGHES, JR. and ROBERT L. WHEATLEY, t.d.b.a. HUGHES LIMOUSINE SERVICE, 150 John St., Kingston, PA 18704. Representative: Frederick W. Alcaro, 628 United Penn Bank Bldg., Wilkes-Barre, PA 18701. *Passengers and their baggage, in special operations,* between points in Luzern County, PA, on the one hand, and, on the other, points in NJ, DE, MD, OH, NY, DC, CT, MA, for 270 days. Supporting shipper: Jewelcor Travel, Gateway Shopping Center, Edwardsville, PA 18704.

MC 91449 (Sub-II-1TA), filed July 12, 1983. Applicant: LINDEMAN MOVING CO., INC., 2010 Greenwood St., Harrisburg, PA 17104. Representative: James D. Campbell, Jr., 130 State St., P.O. Box 1000, Harrisburg, PA 17108. *General commodities (except Classes A & B explosives, commodities in bulk, and household goods as defined by the Commission),* between points in AL, CT, DE, DC, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, OH, NH, NJ, NY, NC, PA, RI, SC, TN, VA, VT, WV and WI. Supporting shipper(s): Ollie's Bargain Outlet, 6040 Carlisle Pike, Mechanicsburg, PA 17055; RTA Furniture Distributors, same address as above.

MC 154758 (Sub-II-3TA), filed July 13, 1983. Applicant: MILLER'S TRUCKING SERVICE, INC., R. D. #4, Box 467, Williamsport, PA 17701. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. *Coal and coal products,* between points in Northumberland, Lycoming, Schuylkill, Centre, Clearfield, Cameron, Jefferson and Indiana Counties, PA, on the one hand, and, on the other, points in NY. Supporting shipper: Miller's Fuel Service, Inc., Williamsport, PA 17701.

MC 157657 (Sub-II-3TA), filed July 11, 1983. Applicant: RIVERSIDE TRANSPORTATION, INC., Tredegar St., P.O. Box 2218, Richmond, VA 23217. Representative: J. Aiden Connors, 325 E. 201st St., New York, NY 10458. Contract, irregular: *pulp, paper, and paper products and scrap paper and machinery used in the production of paper products,* between Groveton, NH and Palmer, MA, on the one hand, and, on the other, points in the U.S. (except AK & HI), under a continuing contract(s) with Groveton Paperboard, Inc., Div. of Diamond International. An underlying ETA seeks 120 days authority. Supporting shipper(s): Groveton Paperboard Inc., Div of Diamond International, Groveton, NH 03582.

MC 153918 (Sub-II-5TA), filed July 14, 1983. Applicant: TRANSPORTATION & CONSOLIDATION CENTERS, INC., P.O. Box 1524, Harrisburg, PA 17105. Representative: Ernest A. Jones, Jr., P.O. Box 4168, Cherry Hill, NJ 08034. Contract, irregular: *General Commodities, (except class A and B explosives, commodities in bulk, household goods, and articles of unusual or excessive value),* between points in the U.S. (except AK and HI), under continuing contract(s) with Foster Transportation Services. Supporting shipper: Foster Transportation Services, Industrial Park Bldg. 33, Harrisburg International Airport, Middletown, PA 17057.

MC 168223 (Sub-II-1TA), filed July 11, 1983. Applicant: WASHINGTON MOTOR COACH COMPANY, INC., 2390 Mill Rd., Alexandria, VA 22314. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., #1203, Alexandria, VA 22304. Common, regular: *Passengers.* (1) Between Quantico, VA and Washington, DC, from Quantico over VA Hwy 619 to US Hwy 1, then over US Hwy 1 to Washington, and return; and (2) between Triangle, VA and Washington, DC, from Triangle over VA Hwy 619 to Interstate Hwy 95, then over Interstate Hwy 95 to Interstate Hwy 395, then over Interstate Hwy 395 to Washington, and return, serving all intermediate points, and serving Dale City, Woodbridge, Lake Ridge and Occoquan, VA, as off-route points in conjunction with Route 2. An underlying ETA seeks 120 days authority. Supporting shipper(s): Rindy D. Lawson, Baltimore, MD; Billie C. Powell, Falls Church, VA; Sharon A. Lederer, Manassa, VA, James L. Byrd, Manassa, VA.

MC 146421 (Sub-II-3TA), filed July 14, 1983. Applicant: WYATT TRANSFER, INC., 716 E. 7th St., Richmond, VA 23224. Representative: Charles C. Chewning, Jr. (same address as applicant). Contract, irregular: *General commodities (except Classes A & B explosives, motor vehicles, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between Norfolk, VA, on the one hand, and, on the other, Chattanooga, TN. Supporting shipper(s): A. H. Robins Co., Inc., 1407 Cummings Dr., Richmond, VA 23230.

The following applications were filed in region 4. Send protests to: Interstate Commerce Commission, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 15735 (Sub-4-130TA), filed July 19, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods,* between points in the U.S. (Except AK & HI), under continuing contract(s) with Dart & Kraft, Inc., and its subsidiaries. Supporting Shipper: Dart & Kraft, Inc., 2211 Sanders Rd., Northbrook, IL 60062.

MC 15735 (Sub-4-131TA), filed July 19, 1983. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Joseph P. Tuohy, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household Goods,*

between points in the U.S. (Except AK & HI), under continuing contract(s) with Caterpillar Tractor Co., and its subsidiaries. Supporting Shipper: Caterpillar Tractor Co., 100 N.E. Adams Street, Peoria, IL 61629.

MC 28089 (Sub-4–1TA), filed July 19, 1983. Applicant: SALM TRUCKING, INC., R.R. 1, Martinton, IL 60951. Representative: Edward D. McNamara, Jr., Attorney at Law, 907 South Fourth, P.O. Box 5039, Springfield, IL 62705. *Stone, sand, gravel, and agricultural limestone*, between Newton, Warren & Fountain Counties, IN, on the one hand, and Kankakee, Iroquois, Vermilion, Edgar, Douglas, Champaign, Piatt, Ford, Livingston, and Macon Counties, IL, on the other hand. An underlying ETA seeks 180 days' authority. Supporting shippers: Newton County Stone, P.O. Box 147, Kentland, IN 47951; Interstate Sand & Gravel Company, P.O. Box 38, Covington, IN 47932; Neal Gravel Company, P.O. Box 38, Covington, IN 47932.

MC 153064 (Sub-4–2TA), filed July 20, 1983. Applicant: HAAS CARRIAGE, INC., 625 Utica Street, Sellersburg, IN 47172. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contracts Irregular: Such commodities as are dealt in or used by grocery and food business houses, including store equipment and supplies*, between the facilities of Haas Cabinet, Inc. at or near Sellersburg, IN on the one hand, and on the other, points in AR, GA, IL, KY, MI, MO, OH, PA, SC, TN, TX, WV, and VA. under continuing contracts with the Kroger Company. Supporting shipper: The Kroger Co; 1014 Vine St., Cincinnati, OH 45201.

MC 158651 (Sub-4–11TA), filed July 20, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Avenue, Wausau, WI 54401. Representative: John E. Koci (address same as Applicant). *Contract:* irregular: *Household Goods, as defined by the Commission*, Between all points in the U.S., under continuing contract(s) with Gulf + Western Manufacturing Company, Southfield, MI. Supporting Shipper: Gulf + Western Manufacturing Company, 26261 Evergreen Road, Southfield, MI 48037.

MC 168780 (Sub-4–1TA), filed July 20, 1983. Applicant: HARRY SPANGLER, d.b.a. SPANGLER TRUCKING SERVICE, 406 South Fifth Street, Box 156, Mount Horeb, WI 53572. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Contract:* irregular: *Food and related products*, from Rochester, MN to points in WI and IA, restricted to transportation performed under continuing contract(s) with Marigold Foods, Inc. Supporting Shipper: Marigold Foods, Inc., Box 309, Rochester, MN 55903.

MC 169331 (Sub-4–1–TA) filed July 19, 1983. Applicant: GILBRALTAR VAN & STORAGE, INC., 28175 Fort Street, Trenton, MI 48183. Representative: Robert J. Gallagher, Esq., 1435 G Street NW., Suite 848, Washington, DC 20005. *Household Goods, as defined by the Commission*, between points in the U.S. Supporting Shippers: (1) BASF Wyandotte Corporation of Parsippany, NJ (2) Diversey Wyandotte Corporation of Wyandotte, MI, (3) K-mart Corporation of Troy, MI.

MC 15728 (Sub-4–2TA) filed July 18, 1983. Applicant: AUTO PRODUCTS TRANSPORT, INC., 28000 Southfiled Road, Lathrup Village, MI 48076. Representative: WIlliam B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, (616) 941–5313. *Contract:* irregular: *Paper and paper products*, from Toledo, OH to points in IN, restricted to traffic originating at the facilities of Great Lakes Corrugated Corp. Supporting Shipper: Great Lakes Corrugated Corp., 1400 Matzinger Rd., Toledo, OH 43695.

MC 12354 (Sub-4–1TA), filed July 18, 1983. Applicant: LLOYD LEMMENS, d.b.a. LLOYD LEMMENES TRUCKING COMPANY, 121 North Eagle Street, Oshkosh, WI 53901. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, P.O. Box 5086, Madison, WI 53705–0086. *Carbonated beverages*, from Oshkosh, WI to Cedar Rapids and Des Moines, IA; Kansas City, MO; and Omaha, NE and points in their Respective commercial zones. Supporting Shipper: Royal Crown Bottling Company of Des Moines, 1901 Bell Ave., Des Moines, IA 50315.

MC 123499 (Sub-4–2TA), filed July 18, 1983. Applicant: LOWELL L. TREFFERT, INC., 3323 Rodney Lane, Racine, WI 53406. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. *Malt beverages*, from points in the St. Paul, MN Commercial Zone, to Kenosha, Racine, and Wisconsin Rapids, WI; and return of *empty malt beverage containers*. An underlying E.T.A. seeks 120 days authority. Supporting shippers: Badger Wholesale Company, 5620–19th Avenue, Kenosha, WI 53140, Domanik Sales Company, 1414 Albert Street, Racine, WI 53406, and Beverage Bottlers, Inc., Jefferson Street, Wisconsin Rapids, WI 54494.

MC 123640 (Sub-4–5TA), filed 14, 1983. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Avenue, Fort Wayne, Indiana 46803. Representative: Irving Klein, Esq., 1205 Franklin Avenue, Suite 7, Garden City, New York 11530. *Contract:* Irregular: *Food and food products, and materials and supplies used in the preparation and sale thereof*, between points and places in the U.S. (except AK and HI). Supporting shipper: Naas Foods, Inc., P.O. Box 1029, Portland, IN 47371.

MC 138575 (Sub-4–4 TA), filed July 18, 1983. Applicant: GWINNER OIL CO., INC., P.O. Box 38, Gwinner, ND 58040. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Contract*, Irregular: *Agricultural equipment*, between points in Cass County, ND, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Concord, Inc., 2800–7th Ave. N., Fargo, ND 58102.

MC 141318 (Sub-4–6TA), filed July 18, 1983. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., 129 North Main St., Box Ltd., Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th Street, Minneapolis, MN 55402. *Contract:* Irregular: *General Commodities (except Classes A & B explosives, household goods, and commodities in bulk)* between points in the U.S. (except AK and HI) under a continuing contract with Signode Corporation, Glenview, IL. Supporting shipper: Signode Corporation, 3610 W. Lake Ave., Glenview, IL 60025.

MC 145246 (Sub-4–12TA), filed July 14, 1983. Applicant: A. E. SCHULTZ CORPORATION, 901 Lyndale Avenue, Neenah, WI 54956. Representative: Frank M. Coyne, 25 West Main Street, Madison, WI 53703. *Feed for Fur Bearing Animals*, from New Holstein, WI to points in IL, IN, MI, OH, PA, IA, MN, ND, SD, NE, MO, CO, UT, MT, and WY. Supporting shipper: Milk Specialties Co., P.O. Box 119, New Holstein, WI 53061.

MC 145974 (Sub-4–10TA), filed July 14, 1983. Applicant: HIDATCO, INC., P.O. Box 849, New Town, ND 58763. Representative: Richard P. Anderson, P.O. Box 2581, Fargo, ND 58108. *Asphalt and road oil* from Douglas County, WI, and the Minneapolis-St. Paul, MN Commercial Zone to points in ND. Supporting shipper(s): North Dakota State Highway Department, 600 East Boulevard Ave., Bismarck, ND 58505; and, Border States Paving, Hwy. 20, P.O. Box 3162, Fargo, ND 58102.

MC 151151 (Sub-4–3TA), filed July 14, 1983. Applicant: JAHN TRANSFER, INC., 417 Hokah Street, Caledonia, MN 55921. Representative: Joseph E. Ludden, 2707 South Ave., P.O. Box 1567, La Crosse, WI 54601, (608) 788–2000.

General commodities except houshold goods, Class A & B explosives and commodities in bulk, between La Crosse County, WI and Houston County, MN on the one hand, and, on the other, points in IA, MI, OH, IN, IL, MO, WI. Supporting shippers: There are seven supporting shippers.

MC 158651 (Sub-4–10TA), filed July 18, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Avenue, Wausau, WI 54401. Representative: John E. Koci (address same as applicant). *Contract,* irregular: *Household Goods, as defined by the Commission,* Between all points in the U.S., under continuing contract(s) with Allis-Chalmers Corporation, West Allis, WI. Supporting shipper: Allis-Chalmers Corporation, 1126 South 70th Street, West Allis, WI 53214.

MC 159736 (Sub-4–3TA), filed July 18, 1983. Applicant: DTX, INC., 500 Hogsback Rd., Mason, MI 48854. Representative: John R. Frederick, c/o DTX, INC., 500 Hogsback Rd., Mason, MI 48854. *Contract* irregular: *General commodities,* (except classes A and B explosives, household goods, and commodities in bulk), between Knoxville, TN and points in the United States (except Hawaii and Alaska), under continuing contract(s) with Foam-Lite Plastics, Inc. of Knoxville, TN. Supporting shipper: Foam-Lite Plastics, Inc., P.O. Box 5, Alcoa Highway, Knoxville, TN 37901.

MC 169267 (Sub-4–1TA), filed July 14, 1983. Applicant: ZIM'S CHEESE, INC., P.O. Box 96, Blanchardville, WI 53516. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract* Irregular: *Food and related products and paper products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Domino's Pizza Distribution Corporation. Supporting shipper: Domino's Pizza Distribution Corporation, P.O. Box 997, Ann Arbor, MI 48106.

MC 169292 (Sub-4–1TA), filed July 18, 1983. Applicant: NORMAN V. BALL, d.b.a. BALL MOVING AND STORAGE, 400 Sheridan, Sault Ste. Marie, MI 49783. Representative: Norman V. Ball (address same as applicant), 906–635–5436. *Contract* irregular: *Used household goods for the U.S. Government,* between points in Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft Counties, MI and Ashland, Florence, Forest, Iron, Marinette, Oneida, Prince and Vilas Counties, WI, which transportation is incidental to a pack and crate service on behalf of the U.S. Department of Defense. Supporting shipper: Department of Defense, U.S. Army Legal Services Agency, 5611 Columbia Pike, Falls Church, VA 22041.

MC 169294 (Sub-4–1TA), filed July 18, 1983. Applicant: VANDERBILT FLOUR CO., INC., 4401 W. 123rd St., Chicago, IL 60658. Representative: Wayne Pozniak, 611 North Route 83, Bensenville, IL 60106. *Contract* irregular: *Food and related products,* between points in IL, IN, KY, MN, MI, WI, MO, IA, OH, PA and NY under continuing contracts with International Multifoods, Con Agra, Inc. and P V O International, Inc. Supporting shippers: International Multifoods, Multifoods Tower, Box 2942, Minneapolis, MN 55402; Con Agra, Inc., One Central Park Plaza, Omaha, NE 68102; and P V O International, Inc., 3400 North Wharf, St. Louis, MO 63147.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 59531 (Sub-5–1TA), filed July 22, 1983. Applicant: AUTO CONVOY CO., 12200 Park Central Drive, Dallas, TX 75240. Representative: Eugene C. Ewald, 100 W. Long Lake Road—Suite 102, Bloomfield Hills, MI 48013. *Motor vehicles* between points in Clay County, MO and St. Louis County, MO, on the one hand, and, on the other, points in OH. Supporting shipper: Ford Motor Company, Dearborn, MI.

MC 85811 (Sub-5–1TA), filed July 18, 1983. Applicant: AMSCO TRANSPORTATION, INC., P.O. Box 33280, Houston, TX 77033. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Lumber and plywood,* between points in AR, LA, OK and TX. Supporting shipper(s): Cimarron Lumber & Supply Co., Kansas City, MO.

MC 128087 (Sub-5–8TA), filed July 21, 1983. Applicant: JOHN N. JOHN III, INC., 1000 W. Second St., Crowley, LA 70526. Representative: William M. John (same as above). *Chemicals and related products,* between points in LA and MS on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Hercules, Inc., Wilmington, DE.

MC 148564 (Sub-5–5TA), filed May 22, 1983. Applicant: G. KAY, INC., 142 South 8th Street, Geneva, NE 68361. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Paper and paper products,* from the facilities of Packaging Corporation of America at or near Tama, IA, to the facilities of Packaging Corporation of America at or near Denver, CO, Salt Lake City, UT and Rittman, OH. Supporting shipper: Packaging Corporation of America, Evanston, IL.

MC 150530 (Sub-5–4TA), filed July 22, 1983. Applicant: RICHARD HEATHERLY, d.b.a. TANK TRANSPORT 2909 Hooper Street, Newport, AR 72112. Representative: Warren A. Goff, 109 Madison Avenue, Memphis, TN 38103. *Ground limestone, in bulk,* from Dalton, GA to Memphis, TN, destined to the facilities of Owens Corning Fiberglas Company, located at or near Memphis, TN. Supporting shipper: Owens Corning Fiberglas Company.

MC 153137 (Sub-3–5TA), filed July 21, 1983. Applicant: G & H TRANSPORTATION, INC., P.O. Box 24040, Houston, TX 77229. Representative: Lillian I. Grindstaff, (same as above). *General Commodities (except Class A & B explosives and HHG's)* between points in TX, LA, OK, AR, MS, TN, AL, NC, SC, GA, and FL. Supporting shipper(s): 6.

MC 154759 (Sub-5–2TA), filed July 21, 1983. Applicant: WEAVER TRUCKING, INC., Route 1, Box 441, West Helena, AR 72390. Representative: Thomas B. Staley, 1500 Tower Building, Little Rock, AR 72201. Contract irregular *Wood products,* between West Memphis, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI) under continuing contract(s) with West Memphis Plywood Corporation of West Memphis, AR. Supporting shipper: West Memphis Plywood Corp., West Memphis, AR.

MC 156328 (Sub-5–8TA), filed July 19, 1983. Applicant: U.S. TRANSPORTATION, LTD., 334 Northwest Greenwood, Ankeny, IA 50021. Representative: James R. Snyder (same as above). Contract, Irregular: *General Commodities (except Class A & B explosives and HHG's* between points in the U.S. (except AK and HI). Supporting shipper: Load Locators, Des Moines, IA.

MC 160463 (Sub-5–1TA), filed July 19, 1983. Applicant: McDANIEL WELDING, INC. P.O. Box 579, Cameron, LA 70631. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Mercer commodities* between points in Calcasieu, Cameron, and Lafourche Parishes, and New Orleans, LA, and points in its commercial zone, on the one hand, and, on the other, points in Mobile County, AL; Woodruff County, AR; San Diego County, CA; LaSalle County, IL; Shawnee County, KS; Adams and Jones counties, MS; Gallatin County, MT; Canadian, Cleveland, Kay, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Stephens, and Tulsa Counties,

OK; ND; TX; and, Santa Barbara, CA; Denver, CO; Atlanta, GA; Baltimore, MD; and Jackson, MS, and points in their commercial zones. Supporting shippers: Aminoil USA, Inc., Grand Chenier, LA, Conoco, Inc., Lake Charles, LA, Halliburton Services, a div. of Halliburton Co., Lake Charles, LA, Mobil Oil E. & P. Southeast, Inc., Cameron, LA.

MC 160663 (Sub-5–4TA), filed July 7, 1983. Applicant: ALL-WAYS INTERSTATE TRUCKING CO., P.O. Box 2564, Iowa City, IA 52244. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Food and Related Products*, Between points in CO, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper, Skyland Foods Corporation.

MC 161693 (Sub-5–3TA), filed July 18, 1983. Applicant: CLINTON LITSEY, d.b.a. STUCKY FEEDERS SUPPLY, Rt. 1, box 99, Sedgwick, KS 67135. Representative: Clinton Litsey (same as above). *Steel Buildings and Components Thereof*, between points in Harvey, Reno, and Sedgwick Counties, KS on the one hand, and, on the other points in GA, IL, IN, MD, and MO. Supporting shipper: Farmland Industries, Hutchinson, KS.

MC 161693 (Sub-5–4TA), filed July 19, 1983. Applicant: CLINTON LITSEY, d.b.a. STUCKY FEEDERS SUPPLY, RR 1, Box 99, Sedgwick, KS 67135. Representative: Clinton Litsey (same as above). *Motorcycles, mopeds, and components and parts thereof* between points in Harvey, Reno, and Sedgwick Counties, KS on the one hand, and on the other, points in CA, IL, LA, MO, NE, and TX. Supporting shipper: Al's Inc., S. Hutchinson, KS.

MC 165658 (Sub-5–3TA), filed July 21, 1983. Applicant: COMMERCIAL ENTERPRISES, LTD., 11128 John Galt Blvd., Suite 510, Omaha, NE 68137. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114. *Such commodities as are dealt in or distributed by hardware, farm supply, sporting goods, and clothing stores*, from points in the U.S. (except AK and HI) to Chico, Gridley, Marysville, Modesto, Oakland, Oroville, Petaluma, Red Bluff, Sacramento, San Francisco, and Yuba City, CA (and points in their respective commercial zones). Supporting shipper: Peavey Marts, Incorporated, P.V. Ranch & Home, Yuba City, CA.

MC 166123 (Sub-5–2TA), filed July 18, 1983. Applicant: TEXAS EXPRESS, INC., P.O. Box 26186, El Paso, TX 79915. Representative: William J. Prince (same as applicant). *General Commodities (except Class A and B Explosives, Commodities, in bulk and Household Goods)* between points in AZ, NM and points in TX, located on and west of U.S. Hwy 83. Supporting shippers: 8. Applicant intends to interline.

MC 169234 (Sub-5–1TA), filed July 18, 1983. Applicant: ROBERT L. GREEN, d.b.a. GREEN'S FARM, P.O. Box 126, Pierce City, MO 65723. Representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105–1961. *Urea, fertilizer, feed and feed ingredients* between points in the States of AR, IA, IL, KS, MO, NE, NM, OK and TX. Supporting shipper(s): 6.

MC 169398 (Sub-5–1TA), filed July 22, 1983. Applicant: PYRAMID BUILDERS, INC., Atlantic, IA 50022. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. (1) *Metal products*, between Omaha, NE, on the one hand, and, on the other, points in CO, IN, MT, NE, SD, and WY; and (2) *Lumber*, between points in IA, on the one hand, and, on the other, points in AL, AR, CA, CO, ID, LA, MS, MT, OR, SD, TX, UT, WA, and WY. Supporting shippers: (1) American Building Components Co., Inc., Omaha, NE and (2) Crawford Sales Co., Des Moines, IA.

MC 169400 (Sub-5–1TA), filed July 22, 1983. Applicant: HI-WAY TRANSPORT, INC., 97 First St., P.O. Box 3, Gretna, LA 70053. Representative: Joseph Ribaul, Jr. (same as above). *Metal products and building materials* between points in LA on the one hand, and, points in AL, AR, FL, GA, MS, OK, TN, and TX., on the other. Supporting shipper(s): 5.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–20743 Filed 8–2–83; 8:45 am]

BILLING CODE 7035–01–M

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.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed withinin 20 days from the date of this publication. Replies must be filed with 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.

Please direct status inquiries to Team 3, (202) 275–5223.

Volume No. OP3–FC–361

MC–FC–81571. By decision of July 26, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, members Parker, Joyce, and Krock, approved the transfer to STUMPS REFRIGERATED EXPRESS, INC., of Tiro, OH, of Certificate No. MC–105774 Sub 15, issued December 21, 1981, to JOHNSON TRUCK LINE, INC., of Osborne, KS, authorizing the transportation of *such commodities* as are dealt in by building materials and home improvement stores, between the facilities of Payless Cashways, Inc., on the one hand, and, on the other, points in the U.S. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–FC–485.

MC–FC–81351. By decision of July 26, 1983, issued under 49 U.S.C. 10926 and the Commission's transfer rules at 49 C.F.R. 1181, the Review Board, members Carleton, Parker, and Williams, approved the transfer to CPO Express, Inc., Berwyn, IL, of Certificate No. MC–123407 Sub 668X(in part), issued September 7, 1982, and Sub 674, issued on June 29, 1981, to Sawyer Transport, Inc. (Nathan Yorke, Trustee in

Bankruptcy), Chicago, IL, authorizing the transportation of chemicals and related products, between (a) points in Wayne County, MI, on the one hand, and, on the other, points in MN, WI, NE, ND and SD, (b) points in Dakota County, MN, on the one hand, and, on the other, points in SD, ND and WY, (c) points in Hennepin county, MN, Douglas County, KS, Jackson County and St. Louis, MO, Onodaga County, NY, Mason and Midland Counties, MI, on the one hand, and, on the other, points in ND, SD, MT and WY, (d) points in San Bernadino County, CA, on the one hand, and, on the other, points in the U.S. in and east of MT, ND, SD, CO and NM, (e) points in WI, on the one hand, and, on the other, points in MT, ND and SD, (f) points in Guilford County, NC, on the one hand, and, on the other, points in AL, AR, GA, IA, KS, MA, MO, OH, OK, PA and TX, (g) points in Kenosha County, WI, on the one hand, and, on the other, points in the U.S., (h) points in Vanderburgh County, IN, Edwards and Vermillion Counties and Chicago, IL, Tulsa County, OK, Wyandotte County, KS, Orleans Parish, LA, on the one hand, and, on the other, points in the U.S. in and west of MN, IA, MO, AR and MS, (i) points in Cook County, IL, on the one hand, and, on the other, points in the Upper Peninsula of MI, MN, NE, SD and WI, and (j) points in Vigo County, IN, on the one hand, and, on the other, points in the U.S., An application for temporary authority has been filed. Representative: Stephen J. Kalish, 1750 Pennsylvania Ave., NW, Washington, DC 20006.

[FR Doc. 83-20956 Filed 8-2-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property-that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier-that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker-that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

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 inquires about the following to Team Four at (202) 275-7669.

Volume No. OP4-482

Decided: July 27, 1983.

By the Commission, Review Board, Members: Joyce, Williams, and Dowell.

MC 113676 (Sub-2), filed July 13, 1983. Applicant: ROTHERY STORAGE & VAN CO., 1525 Chase Ave., P.O. Box 987, Elk Grove Village, IL 60007. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. As a (A) *broker of general commodities* (except household goods), between points in the U.S., and (B) *broker of household goods,* between points in the U.S.

Note.— Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part (A) will be published in VOL #482. Part (B) will be published in VOL #483.

MC 148556 (Sub-6), filed July 20, 1983. Applicant: KEEBLER COMPANY (a Delaware Corporation), One Hollow Tree Lane Elmhurst, IL 60126.

Representative: John M. Sanderson, Jr. (same address as applicant), (312) 833–2900. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Amurol Products Company, of Naperville, IL.

MC 159297 (Sub-1), filed July 20, 1983. Applicant: WHEEL SERVICE TRANSPORT, INC., 1609 99th Lane N.E., Blaine, MN 55344. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd. Suite 307 Minneapolis, MN 55424 (612) 927–8855. Transporting (1) *metal articles*, between points in the U.S. (except AK and HI); (2) *machinery*, between points in MN, ND, SD, IA, WI and the Upper Peninsula of MI; and (3) *chemicals and related products*, between Minneapolis, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169297, filed July 18, 1983. Applicant: C. M. KIDD, d.b.a. KIDD's WESTERN XPRESS, Lakewood, CO 80215. Representative: Robert W. Wright, Jr. 5711 Ammons St., Arvada, CO 80002. 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 169307 filed July 18, 1983. Applicant: OMNI FREIGHT BROKERS, INC., 29 S. Lasalle St., Suite 350 Chicago, IL 60603. Representative: Anthony E. Young (same address as applicant), (312) 782–8880. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–484

Decided: July 23, 1983.

By the Commission, Review Board, Members: Dowell, Parker, and Joyce.

MC 169257, filed July 15, 1983. Applicant: KEN J. LEE, d.b.a. KEN J. LEE & SONS TRUCKING, 221 NE 37th, Hillsboro, OR 97123. Representative: Ken J. Lee (same address as applicant) (503) 648–7585. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR, Permapost Products Company, of Hillsboro, OR, Dant & Russell, Inc., of North Plains, OR, Clayton-Ward Co., of Salem, OR, Far West Fibres, Inc., d/b/a E-Z Recycling, of Portland, OR, and Escondido Juice Co., Inc., of Escondido, CA.

Volume No. OP4–486

Decided: July 19, 1983.

By the Commission, Review Board, Members: Joyce, Carleton, and Parker.

MC 165696, filed July 11, 1983. Applicant: BALISON TRUCKING, INC., 815 Church St., Sandpoint, ID 83864. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841, (617) 657–6071. Transporting (1) *building materials, and other utility poles*, between points in the U.S. (except AK and HI), under continuing contract(s) with B. J. Carney Industries, Inc., of Spokane, WA, and (2) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and soil conditioners* by the owner of the motor vehicle in such vehicles, between points in the U.S. (except AK and HI).

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part (1) will be published in VOL #486, and (2) part (2) will be published in Vol #487. (B) Persons wishing to oppose part (2) of this application may do so only on the grounds that applicant is not fit, willing, and, able to provide the transportation service or to comply with appropriate statutes and Commission regulations.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–307

Decided: July 27, 1983.

By the Commission, Review Board Members Krock, Parker, and Joyce.

MC 123640 (Sub-43), filed July 21, 1983. Applicant: SUMMIT CITY ENTERPRISES, INC., 3200 Maumee Ave., Fort Wayne, IN 46803. Representative: Irving Klein, 1205 Franklin Ave., Garden City, NY 11530 (506) 748–3050. Transporting *food and related products*, between points in the U.S. (except AK and IH), under continuing contract(s) with NAAS FOODS, INC., of Portland, IN.

MC 143051 (Sub-1), filed July 21, 1983. Applicant: SANDAU CORPORATION, 4240 Rider Trail, Earth City, MO 63045. Representative: Joseph R. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63103, (314) 421–0845. Transporting *such commodities* as are dealt in by retail department stores, between point in the U.S. (except AK and HI), under continuing contract(s) with persons who are engaged in the business of operating retail department stores.

MC 158651 (Sub-18), filed July 20, 1983. Applicant: GRABEL VAN LINES, INC., 719 North Third Ave., Wausau, WI 54401. Representative: John E. Koci (same address as applicant), (715) 675–9481. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Gulf + Western Manufacturing Company, of Southfield, MI.

MC 162840 (Sub-1), filed July 22, 1983. Applicant: ARLINGTON SHAKE CO., INC., P.O. Box 42, Arlington, VA 98223. Representative: Jim Pitzer, P.O. Box 895, Renton, WA 98057, (206) 235–1111. Transporting *Lumber and wood products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Pugsley Cedar Products, Inc., of Lake Stevens, WA, United States Shippers, Inc., of Seattle, WA, Darrington Shingle Co., of Darrington, WA, Frontier Cedar Sales, Inc., of Eugene, OR, and National Piggyback Services, Inc., of Bellevue, WA.

MC 169321, filed July 19, 1983. Applicant: F. M. Scott, Route 3, Box 11, Warsaw, VA 22572. Representative: James T. Darby, 1021 Irving Avenue, Colonial Beach, VA 22443, (804) 224–0773. Transporting *Lumber and wood products*, between points in VA, on the one hand, and, on the other, points in MD, PA, NJ, NY, TN, NC, SC, GA, OH, IN and WV.

MC 169351, filed July 20, 1983. Applicant: FOX MIDWEST TRANSPORT, INC., Swan Lake Village, Saddle Ridge #632, Portage, WI 53901. Representative: Charles E. Dye (same address as applicant), (608) 472–3579. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MS, MI, MN, MO, NE, NC, OH, SC, TN, and WI.

MC 169391, filed July 21, 1983. Applicant: AG–HAULERS, INC., 104 Florida Avenue, Sylvania, GA 30467. Representative: Kim G. Meyer, Suite 1006 South Tower, 225 Peachtree St., N.E., Atlanta, GA 30303, (404) 513–1717. Transportating *building materials*, between points in GA, FL, SC, and NC.

Volume No. OP–1–309

Decided: July 26, 1983.

By the Commission, Review Board Members Dowell, Carleton, and Krock.

MC 14321 (Sub-18), filed July 14, 1983. Applicant: ENGEL VAN LINES, INC., 901 Julia St., Elizabeth, NJ 07201. Representative: Joseph W. Engel (same address as applicant), (201) 354–7800. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Curtiss Wright Flight Systems, Inc., of Fairfield, NJ.

MC 141871 (Sub-31), filed July 15, 1983. Applicant: WNI, INC., 8560 S. W. Salish Lane, Wilsonville, OR 97070.

Representative: Thomas E. Vandenberg, P.O. Box 2545, Green Bay, WI 54306, (414) 498–7689. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of food and related products.

MC 148971 (Sub-6), filed July 20, 1983. Applicant: YOUNG'S EXPRESS, INC., 1501 North Warwick Ave., Baltimore, MD 21216. Representative: Brian S. Stern, North Springfield Professional Centre II, 5411–D Backlick Road, Springfield, VA 22151, (703) 941–8200. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of chemicals and related products, between those points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 153610 (Sub-5), filed July 19, 1983. Applicant: LEASEWAY TRUCKING, INC., 1101 31st St., Downers Grove, IL 60515. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *paints, enamels, lacquers, shellacs and varnishes,* between points in the U.S., under continuing contract(s) with Pittsburgh Paint & Glass, of Oak Creek, WI.

MC 162460 (Sub-3), filed July 18, 1983. Applicant: B.J. XPRESS, INC., P.O. Box 4106, Spencer, IA 51301. Representative: William L. Fairbank, 1300 United Central Bank Bldg., Des Moines, IA 50309, (515) 288–6041. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 168471, filed July 15, 1983. Applicant: WILFRED L. COOK, d.b.a. W. L. COOK, Box 3, Onarga, IL 60955. Representative: Edward D. McNamara, Jr., 907 South Fourth St., P.O. Box 5039, Springfield, IL 62705, (217) 528–8476 Transporting *fertilizer and agricultural limestone,* between points in Iroquois County, IL, on the one hand, and, on the other, points in IN.

Volume No. OP–1–311

Decided: July 26, 1983.

By the Commission, Review Board Members Carleton, Dowell, and Williams.

MC 52861 (Sub-96), filed July 18, 1983. Applicant: WILLS TRUCKING, INC., 3185 Columbia Rd. Richfield, OH 44286. Representative: James W. Moore (same address as applicant), (216) 659–9381. Transporting *rubber and plastic products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Cooper Tire and Rubber Company, of Findlay, OH.

MC 126821 (Sub-1), filed July 15, 1983. Applicant: ARLINGTON EXPRESS, INC., 101 Essex St., Harrison, NJ 07029. Representative: Morton E. Kiel, 475 South Main St., Suite 2B, P.O. Box 489, New City, NY 10956, (914) 638–4007. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NJ, NY, PA and CT.

MC 142680 (Sub-18), filed July 18, 1983. Applicant: SUMTER TIMBER CO., INC., P.O. Box 104, Cuba, AL 36907. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, (205)–254–3880. Transporting (1) *forest products,* (2) *metal products,* (3) *lumber and wood products,* and (4) *building materials,* between those points in and east of ND, SD, KS, OK and TX.

MC 157760 (Sub-2), filed July 15, 1983. Applicant: PROFESSIONAL COACH DELIVERIES, INC., Box 18, Carrington, ND 58421. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701, (608)–257–9521. Transporting *buses,* between Cheasapeake, VA, and points in Marin County, CA on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158651 (Sub-17), filed July 18, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Ave., Wausau, WI, 54401. Representative: John E. Koci (same address as applicant), (715)–675–9481. Transporting *household goods,* between points in the U.S., under continuing contract(s) with Allis-Chalmers Corporation, of West Allis, WI.

MC 161210 (Sub-4), filed June 28, 1983, and previously noticed in **Federal Register** issue of July 15, 1983. Applicant: J–R TRANSPORTATION SERVICES, INC., R.D. No. 6, Box 385, Hammonton, NJ 08037. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *food and related products, textile mill products, lumber and wood products, furniture and fixtures, pulp, paper and related products, chemicals and related products, petroleum and coal products, rubber and plastic products, leather and leather products, clay, concrete, glass or stone products, metal products, machinery, transportation equipment, waste or scrap materials not identified by industry producing, and such commodities as are dealt in by retail lumber and hardware stores,* between points in the U.S. (except AK and HI), under continuing contract(s) with persons as defined in section 10923 of the Motor Carrier Act of 1980 who are engaged in business as manufacturers, distributors, or receivers in the industries set for the above.

Note—This republication clarifies the commodity description.

MC 168350, filed July 15, 1983. Applicant: CLIFFORD SMOTHERS, d.b.a. SMOTHERS FARMS, Rural Route, North English, IA 52316. Representative: Richard D. Howe, 600 Hubbell Bldg. Des Moines, IA 50309, (515)–244–2329. Transporting *farm machinery or equipment,* between points in Iowa County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169041, filed July 5, 1983. Applicant: W. K. TRANSFER COMPANY, 2918 South 67th East Ave., Tulsa, OK 74129. Representative: W. K. Spence (same address as applicant), (918)–627–0603. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OK, AR, MO, TX, KS, LA, NE, CO, NM and TN.

MC 169310, fild July 18, 1983. Applicant: RJ TRANSPORTATION, INC., 1430 S. Utica (P.O. Box 4409), Tulsa, OK 74159. Representative: Francine A. Parker (same address as applicant), (918)–582–2063. Transporting *petroleum and petroleum products* and *empty containers,* between points in OK, AR, DS, CO, MO, LA and TX.

MC 169360, filed July 20, 1983. Applicant: PERRY TRUCKING, LTD., 8280 Ross St., Vancouver, British Columbia, Canada V5X46. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421, (206)–383–3998. 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 Evergreen Press Limited, of Vancouver, British Columbia, Canada.

[FR Doc. 83–20958 Filed 8–2–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160.

Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

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 in for a named shipper "under contract."

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223

Volume No. OP3–347

Decided: July 22, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 163194 (Sub-1), filed July 12, 1983. Applicant: TRANSPORT MANAGEMENT SERVICES, INC., 9600 Northwest 25th St., Suite 2A, Miami, FL 33172. Representative: Phillip V. London (same address as applicant) (305) 591–3344. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 169015, filed July 1, 1983. Applicant: CANADIAN NATIONAL RAILWAY COMPANY, d.b.a. ROADCRUISER SERVICE, 935 de La Gauchetiere Street, West, Montreal, Quebec, Canada H3c 3N4. Representative: Vern W. Hill, Suite 200, 1090 Vermont Avenue NW., Washington, DC 20005 (202) 783–8131. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

Volume No. OP3–349

Decided: July 26, 1983.

By the Commission, Review Board Members Carleton, Parker, and Williams.

MC 168935, filed June 27, 1983. Applicant: SUNRISE BUSLINE INC., 1108 Adams St., P.O. Box 191, Anthony, NM 88021. Representative: Jesus R. Barriga, 3160 Hector Dr., El Paso, TX 79935, (915) 598–0698. Transporting *passengers*, in charter operations, beginning and ending at points in TX and extending to points in NM.

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 168935(a), filed June 27, 1983. Applicant: SUNRISE BUSLINE INC., 1108 Adams St., P.O. Box 191, Anthony, NM 88021. Representative: Jesus R. Barriga, 3160 Hector Dr., El Paso, TX 79935, (915) 598–0698. 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 169144, filed July 11, 1983. Applicant: PROTEUS MANAGEMENT COMPANY, INC., Rafael No. Executive Park, 175 No. Redwood Dr., San Rafael, CA 94903. Representative: Raymond D. Keiser (same address as applicant), (415) 492–2249. As a *broker of general commodities* (except household goods), between points in the U.S.

Please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–306

Decided: July 27, 1983.

By the Commission, Review Board Members Krock, Parker, and Joyce.

MC 150880 (Sub-2), filed July 22, 1983. Applicant: DIPERT COACHES, INC., Box 580, Arlington, TX 76017. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. 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 151150 (Sub-1), filed July 19, 1983. Applicant: BOPST BUS SERVICE, INC. 10234 Liberty Road, Randallstown, MD 21133. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Rd., Atlanta, GA 30326, (404) 262–9488. 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.

Volume No. OP–1–308

Decided: July 26, 1983.

By the Commission, Review Board Members Dowell, Carleton, and Krock.

MC 169230, filed July 14, 1983. Applicant: ROBERT E. REED, SR., d.b.a. ROBERT E. REED, SR. BUSES, 1852

Albert Rill Road, Hampstead, MD 21074. Representative: Robert E. Reed, Sr. (same address as applicant), (301) 374–2066. 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 169291, filed July 18, 1983. Applicant: TRANS BROKERAGE, INC., 3110 Mike Collins Drive, St. Paul, MN 55121. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Minneapolis, MN 55424, (612) 927–8855. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except HI).

Volume No. OP–1–310

Decided: July 26, 1983.

By the Commission, Review Board Members Carleton, Dowell, and Williams.

MC 169341, filed July 18, 1983. Applicant: G.A. BECNEL, 2203 Stoney Brook Dr., Houston, TX 77063. Representative: Gerard Arthur Becnel (same address as applicant), (713) 785–0925. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Please direct status inquiries about the following to Team Four at (202) 275–7669.

Volume No. OP4–483

Decided: July 27, 1983.

By the Commission, Review Board, Members: Joyce, Williams, and Dowell.

MC 113676 (Sub-2), filed July 13, 1983. Applicant: ROTHERY STORAGE & VAN CO., 1525 Chase Ave., P.O. Box 987, Elk Grove Village, IL 60007. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. As a (A) *broker* of *general commodities* (except household goods), between points in the U.S., and (B) *broker of household goods*, between points in the U.S.

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part (A) will be published in VOL #482. Part (B) will be published in VOL #483.

MC 153206 (Sub-4), filed July 20, 1983. Applicant: WORTH TRANSPORT COMPANY, 3100 N. Summit St., P.O. Box 5006, Toledo, OH 43611. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215, (614) 224–3161. Transport, 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.

MC 164187, filed July 18, 1983. Applicant: LAN NGUYEN CHU AND TED NGUYEN, d.b.a. LUCKY RENO TOURS, 2250 Mission St., San Francisco, CA 94110. Representative: Lan Nguyen Chu (same address as applicant), (415) 864–2545. 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 169296, filed July 18, 1983. Applicant: TRANSPORTATION AUDIT AND SERVICES, 7170 East Main St., Reynoldsburg, OH 43068. Representative: James D. Hickey, 8170 Durham Dr., Reynoldsburg, OH 43068, (614) 861–6936. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No.OP4–87

Decided: July 19, 1983.

By the Commission Review Board, Members: Joyce, Carleton, and Parker.

MC 165696, filed July 11, 1983. Applicant: BALISON TRUCKING, INC., 815 Church St., Sandpoint, ID 83864. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841, (617) 657–6071. Transporting (1) *building materials, and utility poles*, between points in the U.S. (except AK and HI), under continuing contract(s) with B. J. Carney Industries, Inc., of Spokane, WA, and (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, between points in the U.S. (except AK and HI).

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part (1) will be published in VOL #486, and (2) Part (2) will be published in VOL #487. (B) Persons wishing to oppose part (2) of this application may do so only on the grounds that applicant is not fit, willing, and, able to provide the transportation service or to comply with appropriate statutes and Commission regulations.

[FR Doc. 83-20959 Filed 8-2-83; 8:45 am]

BILLING CODE 7035-01-M

[OP3-362]

Motor Carriers: Notice of 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-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 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 petitions for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: July 28, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[No. MC–F–15357]

Coastal Industries, Inc.—Continuance in Control Exemption—Coastal Tank Lines, Inc. and Ja-Marc Transport, Inc.

Coastal Industries, Inc., a non-carrier, seeks an exemption from the section 11343 requirement of prior regulatory approval for its continuance in control of Coastal Tank Lines, Inc. (No. MC–102616) and JA–MARC Transport, Inc. (No. MC–167034), both motor common carriers.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423. and

(2) Petitioner's representative: Carl L. Steiner, Axlerod, Goodman, Steiner, and Bazelon, 135 South LaSalle Street, Suite 2106, Chicago, IL 60603.

Comments should refer to: No. MC–F–15326.

[FR Doc. 83-20587 Filed 8-2-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office

named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-281

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 169278 (Sub-1–1TA), filed July 18, 1983. Applicant: DOUG BURBRIDGE, d.b.a. BURBRIDGE TRUCKING, 22 Cedarwood Drive, Ballaston Lake, NY 12019. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. *Contract carrier:* irregular routes: *Auto parts* between points in NY and MI, under continuing contract(s) with Standard Products Company, Campbell Plastics Division, of Schenectady, NY 12306. Suppporting shipper: Standard Products Company, Campbell Plastics Div., 2900 Campbell Avenue, Schenectady, NY 12306.

MC 156537 (Sub-1–2TA), filed July 20, 1983. Applicant: CARBEC, INC., 108 Montcalm N., Candiac, Quebec, CD J5R 3L8. Representative: Ronald I. Shapss, 450 7th Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Paper and paper products* between points in NY on the U.S./CD Boundary, on the one hand, and, on the other, points in OH, MI, VA, ME, NH, and RI, under continuing contract(s) with Domtar Pulp & Paper Products of Montreal, Quebec. Supporting shipper: Domtar Pulp & Paper Products, 395 de Maisoneuve W., Montreal, Quebec, CD.

MC 156537 (Sub-1–3TA), filed July 21, 1983. Applicant: CARBEC, INC., 108 Montcalm N., Candiac, Quebec, CD J5R 3L8. Representative: Ronald I. Shapss, 450 7th Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Asbestos* between points in NY on U.S./CD Boundary Line on the one hand, and, on the other, points in FL, GA, KY, MI, NC, OH, SC, TN, and TX, under continuing contract(s) with Johns Manville, Canada Inc. of Quebec, CD. Supporting shipper: Johns Manville, Canada Inc., 234 Cote, Quebec, CD.

MC 128427 (Sub-1–1TA), filed July 18, 1983. Applicant: COOK MOVING SYSTEMS, INC., 1845 Dale Road, Buffalo, NY 14225. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. *Contract carrier:* irregular routes: *Data processing machines, Systems or devices, Word Processing Machines, Datamaster Display Writers, Personal computers, Central Processing Units, Printers, Displays, Keyboards, Robotics, Instruction Material and parts thereof* between Buffalo, NY, on the one hand, and, on the other, points in Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Wayne and Wyoming Counties, NY, under continuing contract(s) with International Business Machines Corporation, Armonk, NY. Supporting shipper: International Business Machines Corporation, Old Orchard Road, Armonk, NY 10504.

MC 141516 (Sub-1–5TA), filed July 18, 1983. Applicant: RICHARD L. HODGES, INC., Route 220, P.O. Box 141, Unity, ME 04988. Representative: Jon C Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *Paper products and plastic products* from Bangor, Waterville, Lewiston, and Portland, ME to points in the U.S. (except AK and HI) under continuing contract(s) with Keyes Fiber Corporation of Waterville, ME. Supporting shipper: Keyes Fiber Corporation, College Avenue, Waterville, ME 04901.

MC 169299 (Sub-1–1TA), filed July 19, 1983. Applicant: MacDONALD & McNAMARA TRANSPORTATION INC., 371 Payne Road, Scarborough, ME 04074. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *Paper products* from Augusta and Porland, ME to points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MO, NH, NJ, NY, OH, NC, PA, RI, SC, TN, TX, VA, WV, and Washington, D.C., under continuing contract(s) with Statler Tissue Co. of Medford, MA. Supporting shipper: Statler Tissue Company, 300 Middlesex Avenue, Medford, MA 02155.

MC 31024 (Sub-1–2TA), filed July 21, 1983. Applicant: NEPTUNE WORLD WIDE MOVING, INC., 55 Weyman Avenue, New Rochelle, NY 10802–05. Representative: Luz Maria Moreno, Esq. (same as applicant). *Contract carrier:* irregular routes: *Business and office machines, Electronic manufacturing systems and parts thereof* between New Rochelle, NY on the one hand, and, on the other, points in CT and NY, under continuing contract(s) with International Business Machine Corporation, Armonk, NY. Supporting shipper: International Business Machiness Corporation, P.O. Box 10, Princeton, NJ 08540.

MC 169373 (Sub-1–1TA), filed July 21, 1983. Applicant: POLSINELLO FUELS, INC., 41 Riverside Avenue, Rensselaer, NY 12144. Representative: Joseph V. Polsinello, 26 James Road, Hanover, MA 02331. *Petroleum products and other fuels, packaged and in bulk,* between points in CT, MA, NH, NJ, NY, RI, and VT. Supporting shipper: Getty Marketing and Refining Company, 49 Riverside Ave., Rensselaer, NY 12144.

MC 169302 (Sub-1–1TA), filed July 19, 1983. Applicant: JAISHRI SINGH, d.b.a. SHARP AIRFREIGHT SERVICE, 7 Gearty Street, Wilmington, MA 01887. Representative: Jack L. Schiller, 111–56 76th Drive, Forest Hills, NY 11375. *(1) Medical devices* from Billerica, MA to points in the U.S. (except AK ad HI); *(2) Radio transmitting and receiving equipment* from Burlington, MA to points in the U.S. (except AK and HI). Supporting shipper(s): Bard Implants-Div. of C. R. Bard, Inc., 129 Concord Road, Billerica, MA 01821; M/A-Com Microwave Video Systems, 63 Third Avenue, Burlington, MA 01803; and USCI-Div. of C.R. Bard, Inc. P.O. Box 566, 129 Concord Road, Billerica, MA 01821.

MC 18684 (Sub-1–1TA), filed July 19, 1983. Applicant: WILSON MOVING & STORAGE CO., INC., 885 Bailey Avenue, Buffalo, NY 14206. Representative: Charles J. Wilson, Jr., (same as applicant). *General commodities (except Classes A and B explosives, household goods, and commodities in bulk)* between the western NY counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, and

Orleans on the one hand, and, on the other, the Port of New York and NJ counties of Bergen, Burlington, Essex, Morris, Passaic, Somerset, Sussex, and Union. Supporting shipper(s): There are eighteen statements of support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 169266 (Sub-3–1TA), filed July 18, 1983. Applicant: J & O TRUCKING COMPANY, Post Office Box 755, William St., Citronelle, AL 36522. Representative: Joseph P. Craft (same as address of applicant). *Forest Products, Lumber and Wood Products; pulp, paper, and related products; Building Materials,* between points in AL, LA, FL, MS. Supporting shipper: Scott Paper Company, Mobile River Sawmill Division, 100 Military Road, Mt. Vernon, AL 36560.

MC 169071 (Sub-3–1TA), filed July 18, 1983. Applicant: GEORGIA-FLORIDA COMPANY, 1117 Redan Trail, Stone Mountain, GA 30088. Representative: Stephen M. Pavuk, 927 Montreal Road, Clarkston, GA 30021. *Contract carrier:* irregular: *Welding bars, rods, or wire (electrodes), iron or steel,* between points in AL, FL, GA, LA, MS, NC and SC. Supporting shipper: Dealers Wholesale Welding Supply, Inc., 6035 Boatrock Boulevard, Atlanta, GA 30336.

MC 169265 (Sub-3–1TA), filed July 18, 1983. Applicant: JIM DOWNEY CORPORATION, 4888 Allen Circle, Acworth, GA 30103. Representative: Macklyn A. Smith, Sr., 1385 Iris Drive, Conyers, GA 30208. *General Commodities, except A and B explosives,* throughout the continental U.S. Supporting shipper: United Trucker's Services, Inc., 1385 Iris Drive, Conyers, GA 30208.

MC 168756 (Sub-3–1TA), filed July 19, 1983. Applicant: D & M TRUCKING, Larry T. Morrison, Route 1, Box 96A, Skipperville, AL 36374. Representative: Jan W. Morrison (same address as above). *Contract* Carrier: irregular: *Lumber, plywood and wood products* between various points in AL, GA, FL, TN, KY, MS, LA, and TX. Supporting shipper: St. Regis Paper Co., Allied Operations, P.O. Box 249, Abbeville, AL 36310. Slawson Lumber Co., Inc., P.O. Box 25, Louisville, AL 36048. Southeast Wood Treating Inc., P.O. Box 25, Louisville, AL 36048.

MC 2934 (Sub-3–84TA), filed July 19, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *Household goods and personal effects,* between points in the U.S. (excluding AK and HI), under continuing contracts with W. B. Johnson Properties, Inc., 2175 Parklake Drive, Atlanta, GA 30345. Sopporting shipper: W. B. Johnson Properties, Inc., 2175 Parklake Drive, Atlanta, GA 30345.

MC 136051 (Sub-3–1TA), filed July 19, 1983. Applicant: RPD, INC., 3600 NW., 82 Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract;* irregular, *condiments* from Atlanta, GA to points in the States of AL, FL, LA, TN, AR, DE, IL, IN, KY, MD, MA, MS, NJ, NC, SC, OH, TX, VA, and WV under continuing contract(s) with McCormick & Company, Inc. Supporting shipper: McCormick & Company, Inc., 6654 Jimmy Carter Blvd., Norcross, GA 30071.

MC 169303 (Sub-3–1TA), filed July 19, 1983. Applicant: WILCOX TRUCKING CO., INC., P.O. Box 128, Camden, AL 36726. Representative: Calvin R. Turner, Jr., P.O. Box 517, Evergreen, AL 36401. *Lumber and Wood Products, Building Materials and Metal Articles,* between Clark, Dallas, Monroe and Wilcox Counties, AL, on the one hand, and, on the other, points in GA, MS, and TN. Supporting shippers: Chapman Hardwoods, Inc., P.O. Drawer "G", Camden, AL 36726; Stallworth & Majors, P.O. Box 5, Minter, AL 36761; Browder Veneer Co., P.O. Box 310, Camden, AL 36726.

MC 160030 (Sub-3–/TA), Filed July 20, 1983. Applicant: A. T. GOULD, d.b.a. GOULD TRUCKING, 528 N. Union St., Canton, MS 39046. Representative: A. T. Gould (same address as applicant). *Food and related products* between points in the U.S., (except AK and HI). Supporting shipper: Chef Pierre, Inc., P.O. Box 1009, Travers City, MI 49684.

MC 2934 (Sub-3–85TA) Filed July 20, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as above). *Contract*: Irregular: *Computer Equipment,* between points in the U.S. (excluding AK and HI), under continuing contracts with Economic Computer Sales, Inc., 845 Crossover Lane, Memphis, TN 38117. Supporting Shipper: Economic Computer Sales, Inc., 845 Crossover Lane, Memphis, TN 31117.

MC 128372 (Sub-3–3TA), Filed July 20, 1983. Applicant: PHILPOT CONTRACTING COMPANY, INC., P.O. Box 44004, Atlanta, GA 30336. Representative: Raymond F. Philpot, P.O. Box 44004, Atlanta, GA 30336. *Scrap metal telephone parts, equipment and cable, reels and supplies,* between Norcross, GA on the one hand, and, on the other, points in the U.S., (Except AK and HI). Supporting shipper: Southern Bell Telephone & Telegraph Co., 100 Perimeter Center Place, Atlanta, GA 30346.

MC 167865 (Sub-3–/TA), Filed July 20, 1983. Applicant: GURTZ TRUCKING COMPANY, Route 3, Box 117, Depauw, IN 47115. Representative: James F. Gurtz (same address as applicant). *Salt and Salt Products* from Clarksville, IN to points in TN and KY. Supporting shipper: Cargill, Inc., P.O. Box 5621, Minneapolis, MN 55440.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 158037 (Sub-6–3TA), filed July 18, 1983. Applicant: ALMAC OF ARIZONA, INC., 2831 West Indian School Rd., Phoenix, AZ 85017. Representative: Stanford E. Lerch, 650 North Second Ave., Phoenix, AZ 85003. *Contract carrier,* irregular route, *Contents of retail supermarket stores (food, sundries, housewares, etc.),* between points in WA, OR, CA, ID, NV, MT, WY, UT, CO, NM, ND, SD, NE, KS, OK, TX and AZ for 270 days. Supporting shippers: Smitty's Super Value, Inc., 2626 South 7th St., Phoenix, AZ 85034.

MC 52793 (Sub-6–31TA), filed July 18, 1983. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant). *Contract* irregular: *Household Goods* between points in the U.S., except AK and HI for 270 days. Restricted to traffic moving under continuing contract with Pitney Bowes Inc. Supporting shipper: Pitney Bowes Inc. of Stamford, CT.

MC 141302 (Sub-6–1TA), filed July 18, 1983. Applicant: BERRY & SMITH TRUCKING LTD., 301 Warren Ave. East, Penticton, V2A 3M1 B.C., CD. Representative: Stuart J. Berry (same address as applicant). *Lumber and wood products,* between points in Okanogan County, WA and points located on the U.S.A./CD International Boundary in WA for 270 days. Supporting shippers: Lignum Sales Ltd., 1500–1090 W. Georgia St., Vancouver, B.C. V6E3X6.

MC 41098 (Sub-6–39TA), filed July 18, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K. St., NW., Washington, D.C. 20006. *Contract,* irregular; *Household goods,* between points in the U.S. under continuing

contract(s) with Dart & Kraft, Inc. of Northbrook, IL and its subsidiaries, for 270 days. Supporting shipper: Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062.

MC 169028 (Sub-6-1TA), filed July 15, 1983. Applicant: GORDON E. JENSSEN, JANSSEN'S CHARTER & TOURS, 5887 Wynn Jones Rd. E., Port Orchard, WA 98366. Representative: Gordon E. Janssen (same as applicant). *Passengers,* in special and charter operations, between points in WA, OR, CA, and NV for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 shippers. Their statements may be examined in the office listed.

MC 147458 (Sub-6-1TA), filed July 18, 1983. Applicant: NELSON BROS. TRUCKING CO., P.O. Box 8, Cambell, CA 95008. Representative: Ellis Ross Anderson, 100 Bush St., Suite 410, San Francisco, CA 94104. *Contact carrier,* irregular routes: *Clay, concrete, glass or stone products* between Dallas County, TX and Atoka County, OK, for 270 days. Supporting shipper: Spiniello Construction Co., P. O. Box 447, Atoka, OK 74525.

MC 169355 (Sub-6-1TA), filed July 18, 1983. Applicant: G. E. REED TRANSPORT, 228 SW. 28th Dr. #70, Pendleton, OR 97801. Representative: Gary E. Reed (same as applicant). (1) *Transporting Equipment,* between points in WA, OR, ID, UT, MT, and WY, and return, 270 days. Supporting shipper(s): Fleetwood Travel Trailers of Oregon, P.O. Box 1247, Pendleton, OR 97801; Fleetwood Travel Trailers of Oregon, P.O. Box 1067, La Grande, OR 97850.

MC 169354 (Sub-6-1TA), filed July 20, 1983. Applicant: C. L. STUCKI & SONS, 2817 Colanthe, Las Vegas, NV 89102. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Alcoholic beverages, beer, wine and spirits,* between points in CA on the one hand, and Clark County, NV on the other hand, for 270 days. Supporting shippers: McKesson Wine & Spirits, 3855 W. Harmon Ave., Las Vegas, NV 89109, and Mon Village Wine & Spirits Corp., 3342 Ayita Circle, Las Vegas, NV 89105.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20960 Filed 8-2-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30150]

Rail Carriers; St. Louis Southwestern Railway Co.-Merger-St. Louis Southwestern Railway Co. of Texas

AGENCY: Interstate Commerce Commission.

ACTION: Minor transaction authorized.

SUMMARY: The Interstate Commerce Commission authorizes filing of minor transaction application.

DATES: The decision is effective August 2, 1983. Petitions for reconsideration must be filed by August 22, 1983; petitions for stay must be filed by August 12, 1983.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245,

or

Gerald E. Proger, (202) 275-7957.

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.

Decided: July 27, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20955 Filed 8-2-83; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482, ASLBP No. 81-453-03 OL]

Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1); Amended Notice of Hearing

I. Dates, Times, and Plans of Hearing

In paragraph 2 of our Prehearing Conference Order of March 18, 1983, we outlined the dates of hearing with an indication that we would subsequently specify the precise location of the hearing.

A. The hearing will commence at 10:00 a.m. on Tuesday, September 20, 1983 in Coffey County Courthouse, Basement Room, Sixth and Neosho Street, Burlington, Kansas 66839. The hearing will continue at that location through Saturday, September 24, 1983. As noted in Part II of this Amended Notice of Hearing, limited appearance statements may be presented orally to the Board beginning at 2:00 p.m. on Tuesday, September 20 and again at 9:30 a.m. on Saturday, September 24, 1983.

B. Beginning on Monday, September 26, 1983 at 9:00 a.m., the hearing will resume at Emporia State University, Memorial Union Center, Messenger Room, 1200 Commercial Street, Emporia, Kansas 66801. The hearing will continue at that location through Thursday, September 29, 1983.

C. The hearing will resume on Tuesday, October 18, 1983 at 9:30 a.m. in the Coffey County Courthouse, Basement Room, as specified above.

D. Beginning on Wednesday, October 19 through Friday, October 21, 1983, the hearing will be held beginning at 9:00 a.m. each day at the Holiday Inn, Flint Hill Room, 2700 West 18th Street, Emporia, Kansas 66801.

E. On Saturday, October 22, 1983, the hearing will be held in the Coffey County Courthouse, Basement Room, as specified above.

F. Beginning on Monday, October 24, 1983 and continuing through Thursday, October 27, 1983, the hearing will be held in the Holiday Inn, Flint Hill Room, as specified above.

In all other aspects, the Prehearing Conference Order is unchanged.

II. Limited Appearance Statements

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene, may request in writing permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's Rules of Practice. Limited appearances will be permitted in this proceeding at the discretion of the Board, at times, within such limits and on such conditions as may be determined by the Board. Persons desiring to make a limited appearance are requested to inform in writing the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555. A person permitted to make a limited appearance does not become a party but may state his or her position on the record. A member of the public does not have a right to participate in this evidentiary hearing unless granted the right to intervene as a party or the right of limited appearance.

Written limited appearance statements may be submitted to the Board at any time prior to closing the record of the proceeding. Oral statements will only be received at times designated by the Board in order not to interfere with the taking of evidence in this adjudicatory proceeding. Oral limited appearance statements may be made at the Coffey County Courthouse, Basement Room, Sixth and Neosho Streets, Burlington, Kansas 66839 beginning at 2:00 p.m. on Tuesday, September 20, 1983 and at the same location beginning at 9:30 a.m. on

Saturday, September 24, 1983. Both oral and written statements will be made a part of the official record of this proceeding.

July 28, 1983, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

James A. Laurenson,

Chairman, Administrative Law Judge.

[FR Doc. 83-21064 Filed 8-2-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-24 and DPR-60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 located in Godhue County, Minnesota.

The amendments would change the limit of the core local heat flux ratio F^N_Q from 2.21 to 2.32, allowing a localized linear heat generation rate increase from 14.31 to 15.02 kw/ft which includes a 1.02 factor for power uncertainty. In addition the definition of F^N_Q would be changed from a neutron flux comparison to heat flux comparison derived from measured neutron flux and fuel enrichment. The amendments would not consider the increase in peak fuel pellet exposure from 51 to 55 GWD/MTU. This matter will be the subject of a separate notice.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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.

A new analysis performed by the fuel vendor (Exxon Nuclear Company Report No. XN-NF 83-38) for the licensee shows that the change in the limit of the local heat flux ratio (F^N_Q) from 2.21 to 2.32 will not result in an increase in the consequences of a previously analyzed accident. Under accident conditions, the new analysis shows that more margin exists to the 2200°F peak clad temperature limit than was previously analyzed. The results of the new analysis at an F^N_Q of 2.32 gives 2142°F as the peak clad temperature while a temperature of 2192°F at an F^N_Q of 2.21 is given by the previous analysis.

The change in definition of the local heat flux ratio (F^N_Q) does not change the value of the ratio nor the way in which the ratio is applied in calculating core subcriticality levels, core power distribution or the potential reactivity insertion caused by the hypothetical control rod ejection. The proposed change in definition of F^N_Q does however make the definition more consistent with that given in the current model standard technical specification.

Based on the above, the staff proposes to determine that the above changes do 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. On this basis the staff proposes to determine that the amendment request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By September 2, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to invervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. Charnoff, Esq., Shaw, Pittman, Potts, & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 28th day of July 1983.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-21085 Filed 8-2-83; 8:45 am]

BILLING CODE 7590-01-M

NUREG-0800; "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants"; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to Section 8.2, "Offsite Power System" of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision consists of SRP Section 8.2, Rev. 3; and an appendix to this Section; Appendix A, Rev. 0. This revision incorporates the resolution of generic issues B-53, Load Break Switch. The guidelines incorporated into Appendix A, Rev. 0 are not new requirements, they are a formalization of existing criteria that were previously reviewed and approved in NUREG-0442, "Safety Evaluation Report for McGuire Nuclear Station, Units 1 and 2," dated March 1978. All changes to SRP Section 8.2 resulting from the resolution of this generic issue and a few editorial changes are identified by a line in the margin of the revised SRP section.

The revised SRP section is effective immediately. A copy is expected to be available in the Public Document Room within 2 weeks.

Copies of the revised SRP Section or the complete Standard Review Plan NUREG-0800, Accession No. PD-81-920199, are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Bethesda, Maryland, this 28th day of July 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-21086 Filed 8-2-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13401; (812-5593)]

Aetna Life Insurance and Annuity Co., et al.; Filing of An Application

July 22, 1983.

Notice is hereby given that Aetna Income Shares, Inc., Aetna Variable Encore Fund, Inc., and Aetna Variable Fund, Inc. (the "Funds"), Aetna Life Insurance and Annuity Company, the investment adviser of the Funds ("Adviser"), and Aetna Financial Services Inc., the principal underwriter of the Funds ("Underwriter") (collectively, "Applicants"), 151 Farmington Avenue, Hartford, Connecticut 06115, filing an application on July 6, 1983 and an amendment thereto on July 14, 1983 for an order under Section 6(c) of the Investment Company Act of 1940 ("Act") declaring that Dr. Corine T. Norgaard, a director of the Funds, will not be considered an "interested person" of the Funds, the Underwriter, or the Advisor, as that term is defined in Section 2(a)(19) of the Act, solely by reason of the fact that in August 1983 she is expected to be elected a director of the Advest Group, Inc., the parent corporation of Advest, Inc. ("Advest"), a broker-dealer registered as such under the Securities Exchange Act of 1934. 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 are referred to the Act for a statement of the relevent statutory provisions.

Applicants state that as a director of Advest Group, Inc., Dr. Norgaard could be considered a controlling person and consequently an "affiliated person" of Advest under Section 2(a)(3)(C) of the Act. As an affiliated person of Advest, she also would be considered an "interested person" of the Funds, the Underwriter, and the Adviser under Section 2(a)(19) (A)(v) and (B)(v) of the Act and would be counted as such in computing the composition requirements for the board of directors of the Funds

prescribed by Sections 10 (a) and (b)(2) of the Act.

Applicants represent that Advest does not currently engage and does not intend to engage in securities transactions on behalf of the Funds, the Underwriter, or the Adviser and that shares of the Funds currently are available only to purchasers of variable annuity contracts offered by the Adviser. Applicants also warrent that so long as Dr. Norgaard remains a director, the Funds will not knowingly purchase any securities from or through, or sell and securities to or through, Advest or any subsidiary of Advest, and neither Advest nor any subsidiary of Advest will be permitted to participate in the distribution of shares of the Funds. Further, Applicants have been informed that Dr. Norgaard will not participate in the day to day operations of Advest.

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 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 August 12, 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 shall be served personally or by mail on 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 notice and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders the 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. 83-20995 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23010; (70-6887)]

Alabama Power Co.; Proposed Issuance and Sale of Preferred Stock

June 27, 1983.

Alabama Power Company ("Alabama"), (600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder.

Alabama proposes to issue and sell up to $50 million of its Class A Preferred Stock, in one or more series from time to time not later than March 31, 1984, at competitive bidding using alternative procedures authorized in HCAR No. 22623 (September 2, 1982). The denomination will be not more that $100 a share nor less that $1 a share with rights and preferences related to the denomination. It is stated that Alabama may request by amendment that the above sale be excepted from the competitive bidding requirements of Rule 50.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 18, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued. After said date, the appplication-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20996 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13404; (812-5221)]

Allied Capital Corp., and Allied Investment Corp.; Application for an Order

July 27, 1983.

Notice is hereby given that Allied Capital Corporation ("ACC"), 1625 Eye Street, N.W., Washington, DC 2006, a closed-end, internally-managed investment company registered under the Investment Company Act of 1940 ("Act"), and its wholly-owned subsidiary, Allied Investment Corporation ("AIC"), a closed-end, internally-managed investment company licensed as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 (together, the "Applicants"), filed an application on June 22, 1982, and amendments thereto on November 4 and 24, 1982, and on May 31 and June 23, 1983, for an order, pursuant to Sections 6(c) and 17(d) of the Act, and Rule 17d-1 thereunder, to authorize certain joint transactions. 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 further information as to the provisions to which the exemption applies.

AIC's principal business consists of seeking out, structuring, and effecting venture capital investments in the United States. Investments developed by AIC generally include loans with equity features to small business concerns as defined in the Small Business Investment Act of 1958 and the regulations of the Small Business Administration.

Alcap Limited ("Alcap"), an affiliate of Applicants under Section 2(a)(3)(A) of the Act, together with its own affiliates (collectively referred to as the "Affiliate"), frequently participates in the Applicants' venture capital investments in the United States. In most instances the Affiliate effects most of its investments in the United States through Affiliate entities organized and engaged in business totally outside the United States. Generally, however, Three Cities Research, Inc. ("Three Cities"), the Affiliate's entity organized and engaging in business in the United States, identifies, structures, negotiates, closes, and follows up on the investments. For these services, Three Cities expects to negotiate for itself an appropriate fee. In addition, in any transaction where AIC and the Affiliate

participate together, AIC expects to share in fees as a function of its contribution to identifying, structuring, negotiating, closing, or following up on the investment.

Of ACC's outstanding capital stock, 237,000 shares (17.7%) are held by Alcap, a British Virgin Islands corporation and a wholly-owned subsidiary of Teribe, S.A. ("Teribe"). Teribe, a Panamanian corporation, is a second-tier subsidiary of Enterprise Quilmes, S.A. ("EQ"). Mr. William F. P. de Vogel, an officer of Three Cities, a New York affiliate of EQ, serves as a director on ACC's and AIC's boards of directors. As a matter of practice, ACC elects all members of its own board of directors to constitute AIC's board of directors. Under an agreement dated October 30, 1980, pursuant to which Alcap acquired its investment in ACC, Alcap has the right to nominate two persons for election to ACC's board of directors, but to date has chosen to nominate only one person, Mr. de Vogel.

Applicants' relationship with the Affiliate developed, at least in part, because of the Affiliate's experience in effecting venture capital investments. Because they operate in different markets, their relationship expands their access to other markets. Mr. de Vogel serves as the executive of Three Cities principally charged with servicing the Affiliate's venture capital investments in the United States. All members of ACC's and AIC's boards of directors, including Mr. de Vogel, consider themselves obligated, and ACC and AIC expect them, to call to the attention of the ACC–AIC management and boards of directors such investment opportunities that may come to their attention which may be suitable for investment by AIC. ACC and AIC are under no obligation to participate in any investment opportunity so called to their attention, and are entirely free to pursue such opportunity in accordance with the exclusive judgments of their managements and directors. AIC may, but is not obligated to, call to the attention of the Affiliate any investment opportunity developed by AIC which may also be of interest to the Affiliate, it being understood that the Affiliate would be precluded from competing for an opportunity which came to its attention solely by reason of Mr. de Vogel's presence upon ACC's and AIC's boards.

The Affiliate has represented to Applicant that no part of the compensation of Mr. de Vogel or of any other executive of the Affiliate's organization consists of commissions or is otherwise directly or indirectly based upon or measured by transaction origination or placement. It may, of course, be assumed that his overall level of compensation, like that of the officers of ACC or AIC or of any other executive, may be influenced by the overall success of the activity for which he is responsible, and that such compensation may include interests in the nature of incentive stock options or stock appreciation rights. Mr. de Vogel does not own any securities issued by either the Affiliate or ACC, nor is he permitted by the Affiliate to participate personally in any specific venture capital transaction undertaken by the Affiliate, irrespective of whether AIC also participates therein. Applicants contend, therefore, that Mr. de Vogel does not have any personal financial interest in any specific investment opportunity developed by the Affiliate which he might call to the attention of AIC or developed by AIC which it might call to the attention of the Affiliate.

Similarly, the other directors and the executives of ACC and AIC cannot have any personal financial interest in any investment made by AIC, other than through their ownership of securities issued by ACC (the directors of ACC own 23.1% of its outstanding shares). As an exception to this general rule, directors and officers of ACC and AIC may own securities in which there exists a public trading market. ACC and AIC have adopted internal ethics rules requiring directors and officers to accord to the Appliants priority in effecting any purchases or sales of any such securities in which Applicants also have an interest.

Investment opportunities the Affiliate might call to AIC's attention are generally not originated by the Affiliate, but rather are called to the attention of the Affiliate by other financial institutions wholly independent of either the Affiliate or AIC. In these situations, the decision to permit participation by AIC is not wholly within the Affiliate's control. A separate application for a Commission order is frequently impractical for various reasons including the fact that negotiations concerning the details of the transaction frequently continue until the time of closing. Moreover, a separate application is impractical because participants might include reporting persons for whom premature or incomplete disclosure could create problems under the anti-manipulation and anti-fraud provisions of the securities laws. Alternatives to a separate application would involve additional exemptive relief, might allow some participants an unfair "free second look", and could needlessly circumscribe the negotiations accompanying these transactions.

Investment opportunities that AIC might call to the Affiliate's attention are generally originated by AIC but involve transactions of a size beyond AIC's capacity to undertake on its own or which have other characteristics leading AIC's management and board of directors to seek to limit AIC's exposure. As an SBIC, AIC may not commit to any single risk an amount in excess of 20% of its net worth, and under AIC's investment policies it may not invest more than 25% of its assets in any one industry or in the securities of any one issuer. As a matter of prudence, AIC's board of directors rarely approves a commitment of more than about $500,000 in a single transaction. As a result, AIC invites the participation of other venture capital, institutional investors in any transaction originated by it which exceeds its legal or self-imposed limits, and would be precluded from going forward with such transaction unless such participation were obtained. The Affiliate might be among the venture capital, institutional investors whose participation would be invited.

Where AIC develops an investment opportunity and invites the Affiliate's participation, Applicants assert that a separate application for a Commission order is frequently impractical, for many of the reasons previously discussed. Moreover, an underwriting by AIC of the Affiliate's participation pending a Commission order is not an option, because the very reason for inviting the Affiliate's participation would have been AIC's capacity limitations.

As one of the conditions to the requested relief, Applicants agree that AIC will exercise any warrants, conversion privilege, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, acquired by AIC and the Affiliate in a transaction authorized by the requested order, only at the same time as the Affiliate and in amounts proportionate to their respective holdings of such rights. By definition there exists no public trading market for the equity securities of issuers who are parties to transactions this application relates to, at least at the time of the transaction's inception. As a result, dispositions must often be made in private transactions or in initial public offerings. As another condition to the requested relief, Applicants agree that, as a general rule, AIC and the Affiliate will dispose of securities of a class held by AIC and the Affiliate as a result of a transaction authorized by the requested order only at the same times, for the same unit consideration, and in amounts proportionate to their respective holdings of such securities.

Occasionally, however, a public trading market in an issuer's securities will develop, as a result of an initial public offering or otherwise, subsequent to a transaction's inception but before the participants have had the opportunity to dispose of any or all of the issuer's securities. At that point, the continued retention or disposition of equity securities for which there exists a public trading market becomes a question of portfolio management, and Applicants contend it would be contrary to the policies and purposes of Section 17(d) of the Act to subject AIC's portfolio management policies to the dictates of the possibly quite different policies of the Affiliate. Accordingly, the Applicants propose an exception to the condition governing dispositions for any sales by either AIC or the Affiliate in a public trading market of securities for which a public trading market then exists.

Applicants assert that the proposed transactions meet the standards of Rule 17d–1 because they are consistent with the provisions, policies, and purposes of the Act and because AIC would participate in these transactions on an identical basis to the Affiliate's participation. Applicants contend that the payment to AIC or the Affiliate of a financing fee as a function of services rendered by them, respectively, in structuring and negotiating any specific transaction does not make the basis of AIC's participation more or less advantageous than that of any other participant. Applicants state that neither of the parties has the economic power or other influence to overreach the other party.

Applicants also seek relief from Section 6(c) of the Act because relief from Section 17(d) involves only individual, prospective transactions and Applicants seek exemption for a class of transactions. Applicants contend that the requested relief meets the standards of Section 6(c) because it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. To the extent that the requested relief facilitates the flow of venture capital under the direction of qualified professionals, reduces transaction costs, and saves scarce administrative resources, Applicants argue that the requested relief is appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the Act.

Applicants agree that any order authorizing the investment by AIC in the securities of any issuer in which EQ or any affiliate thereof (the "Affiliate") is also about to invest, and any disposition of such securities in a transaction where the Affiliate participates, be subject to the following conditions:

1. The transaction has, prior to its consummation, been approved by a majority of AIC's board of directors and a majority of AIC's directors who are not interested persons of ACC or AIC.

2. Such approval is based on findings by such directors that: (a) the terms of the proposed transaction, including the consideration to be paid and received, and including specifically any fees to be paid by an participant to any other participant in the transaction, are reasonable and fair to the shareholders of ACC and do not involve overreaching of AIC, ACC or its shareholders on the part of any person concerned; and (b) the proposed transaction is consistent with the interests of the shareholders of ACC and is consistent with the policy of ACC and AIC as recited in filings made by them with the Commission under the Securities Act of 1933 or the Investment Company Act of 1940, the registration statements and reports filed by them under the Securities Exchange Act of 1934, and their reports to shareholders.

The directors will record in their minutes and preserve in their records, for such periods as records are required to be maintained under Section 31(a) of the Act, a description of such transactions, their findings, the information and materials on which their findings are based, and the basis therefor.

3. The directors will similarly record in their minutes and preserve in their records their decision, and the information and materials on which it is based, (a) in the case of a transaction developed, called to AIC's attention, and in which AIC's participation is invited by the Affiliate, as to the amount of AIC's participation (it being understood that, as between AIC and the Affiliate, AIC shall have the right to purchase at least an equal amount of securities of each class of securities proposed to be purchased by the Affiliate) or, alternatively, as to AIC's non-participation therein; and (b) in the case of a transaction developed by AIC and where the Affiliate's participation is invited, as to the amount of AIC's participation (it being understood that AIC shall have the right to participate to the extent of any amount which the directors consider desirable) and as to the amount of the participation offered to the Affiliate.

4. No member of ACC's or AIC's board of directors shall be a party to or have a financial interest in the transaction other than as an owner of securities issued by ACC. A director, officer, or employee of ACC, AIC, or the Affiliate who receives his usual and ordinary compensation for usual and customary services as a director, officer, employee, or professional consultant of any such entity shall not be deemed by Applicants to have a financial interest or to participate in the transaction solely by reason of his receipt of such compensation.

5. The proposed transaction involves an investment by AIC and the Affiliate in "eligible securities". For this purpose, "eligible securities" are securities: (a) Which are debt securities, such as notes, debentures, bonds, or similar instruments, of the issuer which are either convertible into, or are accompanied by warrants or rights to purchase, or are purchased in connection with, equity securities of the issuer or an affiliate of the issuer; (b) the issuer of which, and such affiliate, if any, does or do not have outstanding, at the time the transaction is first entered into, any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit pursuant to rules and regulations adopted by the Board of Governors of the Federal Reserve System under Section 7 of the Securities Exchange Act of 1934; (c) the issuer of which, and such affiliate, if any, is or are, at the time the transaction is first entered into, a "small business concern" as defined in regulations issued by the Small Business Administration; and (d) which are purchased simultaneously by AIC and the Affiliate directly from the issuer in a transaction not involving a public offering.

6. The basis as to time of investment and unit prices on which AIC participates in the proposed transaction is identical to the Affiliate's basis of participation. For this purpose, the payment to the Affiliate or AIC by any participant in the transaction other than the Affiliate, ACC, or AIC of any fee, which has been found in accordance with condition 2(a) to be reasonable and fair, shall not be considered as differentiating the basis of AIC's participation from that of the Affiliate's.

7. AIC will exercise any warrants, conversion privilege, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by both AIC and the Affiliate in a transaction authorized by the requested order, only at the same time as the Affiliate and in amounts proportionate to their respective holdings of such rights.

8. AIC will sell, exchange, or otherwise dispose of an interest in any security of a class held by both AIC and the Affiliate as a result of a transaction authorized by the requested order only at the same times and for the same unit consideration as the Affiliate and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by AIC or the Affiliate is made in such market.

9. The expenses, if any, of the distribution of any securities registered under the Securities Act of 1933 and sold by AIC and the Affiliate at the same time will be shared by AIC and the Affiliate in proportion to the respective amounts they are selling.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 22, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues 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. 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. 83-20991 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 27, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Applied Data Research, Inc.
Class B Common Stock, $.25 Par Value (File No. 7-6863)

ATI, Inc.
Common Stock, $.08 Par Value (File No. 7-6864)

Anglo Energy, Ltd.
Class A Common Stock, $.48 Par Value (File No. 7-6865)

Bowne & Co., Inc.
Common Stock, $1 Par Value (File No. 7-6866)

CMI Corp.
Common Stock, $.10 Par Value (File No. 7-6867)

Central Securities Corp.
Common Stock, $1 Par Value (File No. 7-6868)

Flightsafety International, Inc.
Common Stock, $1 Par Value (File No. 7-6869)

Kentucky Utilities Co.
Common Stock, $10 Par Value (File No. 7-6870)

Kerr Glass Manufacturing Corp.
Common Stock, $.50 Par Value (File No. 7-6871)

Keystone International, Inc.
Common Stock, $1 Par Value (File No. 7-6872)

Kroehler Manufacturing Co.
Common Stock, $5 Par Value (File No. 7-6873)

Lanier Business Products, Inc.
Common Stock, $1 Par Value (File No. 7-6874)

Lear Petroleum Corp.
Common Stock, $.10 Par Value (File No. 7-6875)

Lomas & Nettleton Financial Corp.
Common Stock, $2 Par Value (File No. 7-6876)

Lowenstein (M) Corp.
Common Stock, $1 Par Value (File No. 7-6877)

Lowe's Companies, Inc.
Common Stock, $.50 Par Value (File No. 7-6878)

Overnite Transportation Co.
Common Stock, $1 Par Value (File No. 7-6879)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading priviledges pursuant to such applications are consistent with the maintenence of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20996 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13402; (812-5475)]

Equitable Variable Life Insurance Co., et al.; Filing of Application

July 26, 1983.

Notice is hereby given that Equitable Variable Life Insurance Company ("EVLICO"), 1285 Avenue of the Americas, New York, New York 10019, a stock life insurance company, Separate Accounts I and II of EVLICO (the "Accounts"), registered under the Investment Company Act of 1940 (the "Act") as open-end management investment companies, and The Equitable Life Assurance Society of the United States ("Equitable"), a mutual life insurance company and the parent of EVLICO (collectively "Applicants"), filed an application on March 4, 1983, and an amendment thereto on July 13, 1983, pursuant to Section 6 (c) of the Act for an order of exemption from the above-captioned provisions in connection with the issuance and funding of certain single premium variable life insurance policies (the "Policies"). 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 rules and thereunder for a statement of the relevant statutory provisions.

Applicants presently are offering certain periodic premium variable life insurance policies ("periodic premium policies"), which are subject to a front-end sales load, in reliance on Rule 6e-2 under the Act (the "Rule"). Applicants now propose to offer the Policies, which will have many features similar to those of the periodic premium policies. However, the Policies will differ in a number of respects, including the fact that in early years a Policy's cash surrender value is structured in a manner that may involve the imposition of a "surrender charge" in a form that is the functional equivalent of a "contingent deferred sales load" ("sales load" or "surrender charge"). Although Applicants do not necessarily believe that exemptive relief is necessary or appropriate, they acknowledge that it is arguable that certain of the relief provided by the Rule may not extend to the Policies and request relief in order to

eliminate any doubt regarding full compliance with the Act and the rules thereunder.

Applicants state that the sales load arises as follows: A Policy's cash surrender value, assuming that the Accounts continuously earn at an annual rate of 4%, will at all times equal the net single premium for the total death benefit, based on the 1958 Commissioners' Standard Ordinary Motality Table with an assumed interest rate of 5% for the first ten years and 4% per year thereafter. Account value will be based on the same assumption and Table except that the net single premium for the total death benefit will be based on 4% interest for each year. Thus, cash surrender value will be less than account value during the first ten Policy years. To the extent that Policyholders redeem Policies or convert them into fixed-benefit policies during the first ten Policy years, the difference between cash surrender and account value could be considered to constitute a sales load. Although they will vary by issue age and sex, the amount of any sales load, which will diminish to 0% over the first ten Policy years, will never exceed 9% of the single premium.

In establishing that the requested relief meets the standards of Section 6(c) of the Act, Applicants assert the following general legal and policy grounds: (1) Both the language and history of the Rule indicate that the Commission anticipated variable life insurance policies with surrender charges and to the extend the Rule contemplates these charges the Policies are consistent with the provisions of the Rule; (2) the Policies represent a combination of two precedents with which the Commission is familiar, *i.e.*, single premium variable life insurance and surrender charges, and represent the type of evolutionary change in the insurance industry that has been recognized by the courts and the Commission; (3) the Policies will afford benefits to the public because, among other things, they are less expensive to distribute than periodic premium policies generally, they will result in lower mortality charges to Policyholders, they will provide higher cash values beyond the early durations, they will permit a higher percentage of premiums to go to work for Policyholders, and they will not penalize persisting Policyholders for losses caused by early surrenders.

In addition, Applicants make the following specific arguments in support of the requested relief: (1) Regarding Section 2(a)(35) and Rule 6e-2(c)(4), Applicants assert that the fact that the timing of the imposition of the surrender charge may not fall precisely within the literal terms of the Act and the Rule does not change its essential nature as a sales load; (2) regarding Sections 2(a)(32) and 27(c)(1), Applicants assert that although these provisions do not contemplate the imposition of a sales load upon redemption, such a charge is not necessarily inconsistent with the concepts of "redeemable" security and "proportionate share" and, indeed, is analogous to the "redemption" charge authorized by Section 10(d)(4) of the Act; (3) regarding Section 22(c) and Rule 22c-1, Applicants assert that the surrender charge will not dilute the interests of Policyholders or lead to unfair speculative trading practices, two problems that these provisions are intended to prohibit, because, respectively, a Policyholder upon redemption will receive no more than an amount equal to the cash surrender value determined after receipt of his redemption request in accordance with the formula set out in his Policy and variable life insurance policies by their nature do not lend themselves to the kind of speculative trading intended to be prohibitied by these provision; (4) regarding Section 22(d) and Rule 6e-2(b)(12)(ii), Applicants submit that the Rule expressly contemplates separate accounts funding more than one "class or series" of policies, that any variation in the offering price of the Policies falls within the category of a variation in the "premium rate structure" or the "particular benefit afforded by the contract," which are specifically exempted by the Rule, and that any such "variation" is, in accordance with the Rule, reasonable, fair and not discriminatory to the interest of Policyholders of the same class or series.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 17, 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 shall be served personnally or by mail on 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. 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. 83-20960 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-13400; (812-5353)]

First Midwest Corp., et al., Filing of Application

July 25, 1983.

Notice is hereby given that First Midwest Corporation ("First Midwest"), First Midwest Capital Corporation ("FMCC"), 1010 Plymouth Building, 12 South Sixth Street, Minneapolis, Minnesota 55402, Closed-end, non-diversified, management investment companies registered under the Investment Company Act of 1940 ("Act"), and First Midwest Ventures I, a proposed venture capital limited partnership to be formed by First Midwest, filed an application on October 25, 1982, and amendments thereto on May 4, June 9, and June 17, 1983 pursuant to Sections 6(c)and 17(b) of the Act requesting an order of the Commission amending the conditions of an order dated October 15, 1970, Investment Company Act Release No. 6213 (the "1970 Order"), incorporated herein by reference, and granting exemptions from the provisions of Sections 2(a) (3), 8(b), 12(d)(1)(A), 12(d)(1)(C), 17(a), 18(a), 18(c), 19(b), 30(a) and 30(d) of the Act and approving certain proposed transactions and arrangements among the Applicants pursuant to Section 17(d) of the Act, and Rule 17d-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 text of provisions relevant to this application.

According to the application, First Midwest was incorporated in Minnesota on February 13, 1959, under the name of First Midwest Small Business Investment Company, and was licensed in March of that year by the Small Business Administration ("SBA") as a small business investment company ("SBIC"). Applicants state that by reason of a reorganization effected in October of 1970, First Midwest split into a two-tier investment company with FMCC being its wholly-owned subsidiary licensed by the SBA as an SBIC. In connection with the reorganization, the 1970 Order exempted First Midwest from Sections 12(e), 17(a)

and 17(d) of the Act and Rule 17d–1 thereunder, to the extent necessary to permit it to acquire all of the issued and outstanding stock of FMCC and to permit First Midwest to engage in certain affiliated and joint transactions, subject to conditions. The 1970 Order prohibited First Midwest and FMCC from issuing any senior securities except that, subject to First Midwest individually, and First Midwest and FMCC on a consolidated basis, having the asset coverage required by Section 18(a) of the Act immediately after the issuance or sale of any senior securities, (1) First Midwest could borrow from either banks or insurance companies, but not both, on the basis of unsecured promissory notes or other unsecured evidences of indebtedness, (2) FMCC could borrow only from the SBA, which borrowing, with limited exception, could not be guaranteed by First Midwest, and (3) FMCC could borrow from First Midwest. The present application seeks, among other things, to modify the 1970 Order with respect to FMCC.

Applicants state that, as an SBIC FMCC is restricted in the types of investment it may make. Over the past few years the management of First Midwest has considered the formation of a venture capital limited partnership. First Midwest now proposes to organize such a limited partnership to be known as First Midwest Ventures I ("Partnership"), in which First Midwest will be the sole general partner, certain sophisticated investors and wealthy individuals will be Class A Limited Partners, purchasing their interests in a sale not involving a public offering, and certain directors, officers and/or employees of First Midwest or FMCC will be Class B Limited Partners. Applicants state that the boards of directors of First Midwest and FMCC have approved the proposal to form the Partnership in order to allow First Midwest: (a) To participate in investments which cannot be made by an SBIC, either because of the nature or size of the company proposed to be financed, the amount of financing required or the structure of the investment, (b) to allow First Midwest to share with the Partnership the higher risk of first stage investments, so that FMCC retains greater legal capacity to make second and later stage investments that often involve lower risk, (c) to increase the availability of funds, on a basis favorable to First Midwest and its shareholders, to utilize in making venture capital investments, particularly in view of the possible reduction of SBA-guaranteed loan financing and the increased cost to FMCC of such financing, (d) to increase the capacity of FMCC to make the second and later stage companies which are often expected of first stage investors, and (e) to provide significant financial incentives to First Midwest and FMCC management for the purpose of attracting and retaining highly capable and experienced venture capital executives, in each case under arrangements considered by the board of directors to provide substantial benefits to First Midwest's shareholders.

First Midwest proposes to invest $150,000 in the Partnership (which would have a minimum capitalization of $10 million and a maximum of $25 million) in exchange for the general partnership interest, which would entitle it to receive 15 percent of the cumulative profits and losses. Applicants state that all Class B Limited Partners will purchase their partnership interests on the same cost basis as First Midwest, namely $10,000 for each one percent interest in the Partnership, and that this basis permits both First Midwest and the Class B Limited Partners to pay less than the Class A Limited Partners for their Partnership interests. Since the Class B Limited Partners are to pay less for their interests in the Partnership than the Class A Limited Partners, Applicants state that if First Midwest and FMCC elect to be treated in the future as business development companies, as defined in the Act, the Class B Limited Partners will not be permitted to participate in a stock option plan of First Midwest, should one be enacted, without the prior approval of the Commission. Applicants state that directors, officers and employees of First Midwest and FMCC will be compensated on substantially the same basis as is now the case, and that the compensation of Class B Limited Partners will be determined by a majority of the board of directors of First Midwest who are neither interested persons of First Midwest nor partners in the Partnership (hereinafter referred to as "disinterested" members of the board). Applicants further state that no Class B Limited Partners will receive any compensation directly from the Partnership for services performed for the Partnership, as any such services will be performed solely in their capacity as officers and employees of First Midwest and FMCC. Under the proposed partnership arrangement, which contemplates that the Partnership will not be subject to regulation as an investment company nor be required to register as an investment adviser, the Partnership will be operated so as to meet the definition of a business development company under the Investment Advisers Act of 1940. Under the terms of the partnership agreement, First Midwest will not be liable to the Partnership or any limited partner for any act or omission performed or omitted in good faith pursuant to its authority under the partnership agreement, but only for willful malfeasance or fraud. Also, the Partnership would indemnify First Midwest for any loss or damage incurred by it on behalf of or in furtherance of the interests of the Partnership, except for liability arising from willful malfeasance or fraud. However, this right of indemnification is modified by a representation made by Applicants that there would be no indemnification if payment would be in violation of Section 17(h) of the Act, if applicable, and the rules thereunder.

According to the application, the partnership agreement grants sole discretion of First Midwest to determine whether any investment opportunity is appropriate for FMCC or the Partnership. Applicants represent that determinations as to which entities will participate, and the amount of participation by each entity, in investment opportunities will be made by a majority of disinterested members of the board of directors of First Midwest. In addition, Applicants represent that the allocation of and participation in investments will be subject to the undertakings and conditions described herein with respect to the Applicants' requests for exemption from Sections 17(a) and 17(d) of the Act, and Rule 17d–1 thereunder.

Applicants state that it is not contemplated that the Partnership will obtain any debt financing, but would raise its funds solely through the issuance of Partnership interests. Applicants further state, however, it is possible in circumstances now unforeseen that the Partnership might obtain debt financing such as short-term advances from non-affiliated banks or other debt financing. Such debt financing could be deemed to be borrowing by First Midwest by virtue of Section 48(a) of the Act since First Midwest would, as sole general partner of the Partnership, be liable for any debt of the Partnership not satisfied out of the assets of the Partnership. Applicants have requested an order of the Commission pursuant to Section 6(c) of the Act exempting First Midwest from Section 18(a) of the Act regarding, among other things, the issuance of debt securities by the Partnership. As a condition to such relief, however, such

securities must be issued without recourse to First Midwest.

As proposed, the partnership interests have limited rights of transferability. Class B Limited Partners, in general, may not transfer their partnership interests without the consent of First Midwest. However, when an employee leaves First Midwest or FMCC without the consent of First Midwest, or is terminated, First Midwest has an option to repurchase the partnership interest for a price equal to such partner's capital contribution commitment. In the event of death, retirement or disability, the Class B Limited Partner or his estate has the option to continue as a partner or sell his partnership interest to First Midwest for an amount equal to such partner's capital contribution commitment. If the estate or such partner elects to continue as a partner, First Midwest has the option of repurchasing the unvested portion of his interest. Under Section 2(a)(3) of the Act, the members of each class of partner of the Partnership may be deemed to be affiliated persons of the Partnership and of the other partners of the Partnership. As a result, the Class A Limited Partners would be subject to the provisions of Sections 17(a) and 17(d) of the Act solely on the basis of their investment in the Partnership. Accordingly, absent exemptive relief, Class A Limited Partners could not sell their partnership interests to First Midwest or any affiliate of First Midwest, nor could they make an investment in an enterprise in which the Partnership were investing or otherwise take action that could be deemed to be a joint transaction with First Midwest. Thus, Applicants have requested an order of the Commission, pursuant to Section 6(c), exempting each Class A Limited Partner from being deemed an affiliated person of the Partnership or any other partner of the Partnership by reason of his ownership of a partnership interest, provided that each Class A Limited Partner contributes less than ten percent of the total capital contributions to the Partnership. In addition, Applicants have requested such an order exempting the Class B Limited Partners from Section 2(a)(3), solely by reason of their owning an interest in the Partnership, provided that the total percentage interest of all Class B Limited Partners will not exceed five percent of the total capital contributions.

Applicants state that the contemplated repurchases by First Midwest of partnership interests from Class B Limited Partners, all of which must be authorized and approved by a majority of the Disinterested members of First Midwest's board of directors, as well as the initial sale of partnership interests to such partners, would be prohibited by Section 17(a) of the Act. The Applicants therefore request an order pursuant to Section 17(b) of the Act granting exemptive relief from the section. In addition, Applicants request an order pursuant to Section 17(b) of the Act, and Rule 17d-1 thereunder, to permit the joint investments of First Midwest and the Class B Limited Partners in the Partnership which, as stated earlier, would be on the same cost basis.

Applicants also request an order pursuant to Section 6(c) of the Act to effectuate, notwithstanding Sections 17(a) and 17(b), their proposals with respect to the allocation of investment opportunities and to permit any person in which investments are made by Applicants, and which may thereby become an affiliated person of the Applicants, to borrow from or sell securities issued by it to the Applicants. Should such order be granted, it would be a departure from precedent involving arrangements similar to those presented in this application since the partnership here would be permitted to make investments in small business concerns together with the SBIC subsidiary, FMCC, and the parent of the SBIC, First Midwest.

In order to deal with potential conflicts of interest inherent in the proposed arrangement for the allocation of investments, Applicants have agreed that their order shall be subject to the following conditions:

1. All investments in straight debt instruments issued by SBIC-eligible "small business concerns" will be first allocated to FMCC until it reaches its SBA investment limit for a particular issuer of 20 percent of FMCC's paid-in capital and paid-in surplus.

2. All investments in strictly equity instruments (whether common or preferred stock or otherwise) or in debt instruments that are convertible to equity, or which have equity rights or features attached or related thereto, and which in each case are issued by SBIC-eligible "small business concerns", will be allocated to FMCC until the investments by FMCC in the particular issuer have reached an amount equal to 10 percent of FMCC's paid-in capital and paid-in surplus.

3. To the extent that the Partnership proposes to purchase securities of an issuer in an amount in excess of that allocated to FMCC pursuant to subparagraphs 1 and 2, and in the circumstances described in said subparagraphs, FMCC shall be offered the opportunity to participate with the Partnership in such excess amount by purchasing a portion of such excess equal to the portion of the excess being purchased by the Partnership. To the extent FMCC would not be able to purchase its full share of such excess amount because of its SBA investment limits, the remainder of FMCC's share will be offered as an investment to First Midwest. In the event FMCC and/or First Midwest determine not to purchase their share of securities offered to them pursuant to this subparagraph 3, or determine to purchase a different type of security than that being offered, the reasons for such determination shall be set forth in writing and kept as permanent records of such Applicants.

4. In the event the Partnership proposes to purchase additional securities of an issuer in which the Partnership and FMCC already have an investment, FMCC shall be offered the opportunity to participate with the Partnership in such additional securities by purchasing a portion of said additional securities equal to that of the Partnership. To the extent FMCC would not be able to purchase its full share of said additional securities because of its SBA investment limit, the remainder of FMCC's share shall be offered as an investment to First Midwest. In the event FMCC and/or First Midwest determine not to purchase their share of securities offered to them pursuant to this subparagraph 4, or determine to purchase a different type of security than that being offered, the reasons for such determination shall be set forth in writing and kept as permanent records of such Applicants.

In the event the Partnership proposes to purchase securities of an issuer which are not eligible to be purchased by FMCC because of limitations imposed on SBICs, First Midwest shall be offered the opportunity to participate with the Partnership by purchasing a portion of said securities equal to that of the Partnership. In the event First Midwest determines not to purchase its share of securities offered pursuant to this subparagraph 5, or determines to purchase a different type of security than that being offered, the reasons for such determination shall set forth in writing and kept as permanent records of First Midwest.

6. In the event FMCC and/or First Midwest propose to purchase additional securities of an issuer in which FMCC and/or First Midwest and the Partnership already have an investment, and in the event the Partnership will not be purchasing additional securities of such issuer, the reasons for FMCC and/

or First Midwest purchasing the additional securities, and for the Partnership not purchasing additional securities, of such issuer shall be set forth in writing by First Midwest and FMCC and kept as permanent records of such Applicants.

7. In the event the Partnership and FMCC and/or First Midwest have purchased securities of the same issuer which are debt instruments that are convertible to equity, or are instruments which have equity rights or features attached or related thereto, (hereinafter jointly referred to as "equity rights"), and in the event one of said Applicants exercises said rights in a lesser proportionate amount of its total equity rights than another Applicant at the time of an exercise of said equity rights by an Applicant, the reasons for determining to exercise a lesser proportionate amount of its equity rights shall be set forth in writing by said Applicant and kept as permanent records of said Applicant.

8. In the event the Partnership and FMCC and/or First Midwest have purchased securities of the same issuer, and in the event one of said Applicants sells, exchanges or otherwise disposes of a lesser proportionate amount of the total securities of said issuer held by it than another Applicant at the time of a sale, exchange or other disposition of said securities by an Applicant, the reasons for determining to sell, exchange or otherwise dispose of a lesser proportionate amount of said securities shall be set forth in writing by said Applicant and kept as a permanent record of said Applicant.

9. In the event the Partnership and the FMCC and/or First Midwest purchase securities of the same issuer, the unit price for the same type of securities shall be the same for the Partnership, FMCC and/or First Midwest.

10. The limitations on allocations of investments with respect to FMCC contained in subparagraphs 1 and 2 above shall apply only if (a) the SBA is willing to quarantee, under its leverage guarantee program, borrowings by FMCC of the funds used to make the investment in question, and (b) such borrowed funds are reasonably available to FMCC to make the investment and, therefore, FMCC is reasonably able to make the investment which is otherwise required to be allocated to it.

11. All determinations by FMCC, First Midwest and/or the Partnership of whether or not to purchase or sell securities, or to exercise equity rights, as described in subparagraphs 1 through 8 above shall be made by a majority of the disinterested members of the board of directors of First Midwest.

Applicant further consents to the condition that in the event an Applicant makes an investment pursuant to the above exemption, the terms of the transaction will be the same for the Applicant as for the other participants in the transaction and the basis for determining the fair value of the securities which make up the investment shall be set forth in writing by the Applicant and kept as a permanent record of the Applicant. Applicants state that it is also relevant to note that, to avoid overreaching, First Midwest and FMCC each are represented by independent legal counsel, and that it is contemplated that certified public accountants independent of any firm retained by First Midwest and FMCC will be retained by the Partnership.

Applicants assert that their situation is distinguishable from the applicable precedent, where it was represented by the parent investment company ("Parent") (similar to the situation here of First Midwest) that to protect its SBIC subsidiary's access to investments, the venture capital partnership would not invest in companies eligible as investment opportunities for its subsidiary and that, to avoid conflicts of interest in the allocation of investments, no parallel investments would be made; Applicants submit that because of the nature of the differences in size and operations between First Midwest and Parent, such an absolute restriction would be unreasonably burdensome on the Partnership. For one thing, Applicants assert, because the First Midwest group is much smaller than that in the previous situation, FMCC's investment limit as an SBIC is smaller so that there will be many instances in the first or subsequent rounds of financing a small business concern that FMCC will reach its investment limit while further investment opportunity remains. In such circumstances, Applicants argue, it is appropriate to permit the Partnership to make parallel investments. In addition, Applicants state that unlike the entities in the prior application, which were oriented towardleverage buy-outs, the First Midwest group is oriented toward start-up and emerging company investments. Applicants assert that due to their more traditional venture capital orientation, the majority of investment opportunities presented to them will be "small business concerns", and therefore it would be impractical to exclude the Partnership from investing in them together with FMCC and First Midwest. Indeed, Applicants represent that a major reason for the Partnership is to allow First Midwest to make investments which cannot be made by FMCC because of the amount of financing required.

Applicants state that it should also be emphasized the First Midwest and FMCC are often expected to make second and third round investments, and the perceived ability to make such later stage investments is sometimes important to being permitted to join the initial investor group. Applicants submit that because of FMCC's smaller size, and lower investment limit, compared to the precedential application, it is appropriate for FMCC to share investment opportunities with the Partnership, so that FMCC retains the capacity to make later stage investments. Applicants further submit that since investments in start-up and emerging companies more often call for further investments in the same entity, it is more appropriate to allow parallel investments in the instant case. Applicants also state that later stage investments are less risky than the initial stage investment; Applicants submit that permitting the Partnership to invest together with FMCC and First Midwest in the initial stage permits FMCC and First Midwest to spread some of this greater risk to the Partnership. At the same time, by undertaking to permit FMCC to invest up to half of its investment limit on each investment in a "small business concern", subject to available financing, before the Partnership can invest in such concern, FMCC's access to investments is protected.

Applicants have also requested exemptive relief pursuant to Section 6(c) of the Act from Section 17 of the Act to permit any small business or other concern in which investments are made by First Midwest, FMCC or the Partnership, and which may become an affiliated person of Applicants because of such investments, to continue to borrow from or sell securities to the Applicants. Applicants agree as a condition to their order, however, to effect such a transaction only where it meets the requirements of Rules 17a-6 and 17d-1(d)(5) under the Act, except to the extent that it fails to meet the requirements of said rules solely because another Applicant, or a Class B Limited Partner solely because of his limited partnership interest, is also a party to the transaction or a participant in the joint enterprise, or has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in the small business or other portfolio concerns or in any person who

is, was or will be a participant in the joint enterprise; provided, however, that the limitations contained in paragraph (d)(5)(ii) of Rule 17d–1 shall not apply to the Partnership. Applicants support their request for this relief by stating, as discussed above, that the types of entities in which investments are made by the First Midwest group often call for further investments in the same entity.

The present application seeks exemptive relief from the 1970 Order and from Sections 8(b), 30(a) and 30(d) of the Act, and Rules 8b–16, 30a–1 and 30d–1 thereunder, to permit First Midwest and FMCC to file amendments to registration statements and financial statements on a consolidated basis, annual reports on Form N–1R, or appropriate successor form, on a consolidated basis, along with a copy of the financial report of FMCC filed with the SBA on SBA Form 468, to permit First Midwest Midwest to transmit reports and statements to shareholders on a consolidated basis, and to permit Applicants to consolidate financial information of the Partnership with that of First Midwest by reflecting the assets of the Partnership on an equity basis in conformance with generally accepted accounting principles. Applicants agree to the following conditions in any order granting this relief: (1) Amendments under Section 8(b) and reports under Sections 30(a) and 30(d) will consolidate information only with respect to First Midwest, FMCC and "insignificant subsidiaries" of First Midwest, and will only be consolidated during the time that at least 90 percent of First Midwest's assets are represented by investments in: (i) Securities of FMCC, or (ii) securities of portfolio companies of FMCC which have been distributed to First Midwest, provided that the investments in said portfolio companies have been made in the ordinary course of business of FMCC and not for the sole purpose of making a distribution to First Midwest to satisfy such 90 percent test, and (2) with respect to the exemptive relief from Sections 30(a) and 30(d) concerning the Partnership, such relief will be in effect only so long as the assets of the Partnership reflected in the accounts of First Midwest on an equity basis do not exceed 10 percent of the total assets of First Midwest and FMCC consolidated as of the end of the most recently completed fiscal year, and that if such 10 percent figure is exceeded, separate financial statements for the Partnership will be filed with the Commission and sent to the shareholders of First Midwest. Applicants submit that generally accepted accounting principles do not require separate financial statements for FMCC and First Midwest. Applicants assert that separate filings for each of the Applicants is costly and burdensome and there is doubt as to whether multiple filings provide a meaningful and convenient source of information to investors. Applicants further assert that First Midwest and FMCC will operate essentially as a single economic unit and consolidated financial statements will present the most meaningful financial information for financial reporting purposes and will not lessen investors' understanding of the financial position or operation of the Applicants. The undertaking with respect to the Partnership is designed to ensure that, in view of the potential for the Partnership to engage in operations different from First Midwest or FMCC, if the Partnership constitutes a significant portion of the assets of First Midwest, First Miswest's shareholders and the Commission will receive adequate information concerning the Partnership and its activities.

Applicants concede that the Partnership is an investment company for purposes of Section 12(d) of the Act, and that since First Midwest will be the only general partner, entitling it to 15 percent of the Partnership's profits, and will have exclusive authority to manage the Partnership, its interest in the Partnership will represent ownership of all of the outstanding "voting securities" of the Partnership. Accordingly, Applicants request an order exempting them from Section 12(d)(1) to permit First Midwest to acquire the general partner's interest in the Partnership on the terms described in the application. In addition, Applicants seek exemptive relief from Section 12(d)(1) to permit future acquisitions by First Midwest of the common stock of FMCC which purchases will cause First Midwest's investment therein, taken at cost, to exceed five percent of its total assets at the time of any such purchase. Further, Applicants seek exemptive relief from the section to permit First Midwest, banks, insurance companies and other financial institutions to acquire notes or other evidences of indebtedness issued by FMCC. Similarly, Applicants seek relief from the 1970 Order through deletion of paragraph 1 of said order under which First Midwest may not make any further investment in FMCC if such investment would exceed 25 percent of the value of First Midwest's total assets on a corporate basis. This latter relief is requested, Applicants state, so that First Midwest can increase the capitalization of FMCC, thereby increasing the maximum size of financing that may be made by FMCC in small business concerns under applicable SBA regulations, enabling it to make more economical, profitable, and practical financing transactions.

Applicants request an exemption from Section 18(a) of the Act and modification of the 1970 Order to: (1) Permit First Midwest and FMCC to borrow from banks, insurance companies, and other financial institutions on a secured or unsecured basis, provided: (a) Such notes or evidences of indebtedness are not intended to be publicly distributed, (b) such notes or evidences of indebtedness are not convertible into, exchangeable for or accompanied by options to acquire any equity security, and (c) First Midwest on a consolidated basis, and First Midwest and FMCC separately, shall have the asset coverage required by Section 18(a) of the Act immediately after the issuance or sale of any such notes or evidences of indebtedness by any of them, except that, in determining whether First Midwest on a consolidated basis has the asset coverage required by Section 18(a), any borrowings by the Partnership which are not obligations or liabilities of First Midwest shall not be considered senior securities and, for purposes of the definition of "asset coverage" in Section 18(h), shall be treated as indebtedness not represented by senior securities, and the value of assets equal to such borrowings will be excluded from the test; (2) permit FMCC to borrow from the SBA on such basis as the SBA from time to time may land to SBICs; (3) permit FMCC to sell its obligations which are guaranteed by the SBA, (4) permit First Midwest to guarantee the borrowings of FMCC to the SBA and to guarantee other borrowings of FMCC, which guarantees will not be deemed to be "senior securities" within the meaning of Section 18 of the Act only during the time that at least 90 percent of First Midwest's assets are represented by investments in: (a) Securities of FMCC or (b) securities of portfolio companies of FMCC which have been distributed to First Midwest, provided that the investment in said portfolio securities has been made in the ordinary course of business of FMCC and not for the purpose of making a distribution to First Midwest to satisfy the 90 percent test; and (5) to exclude borrowings by the Partnership, and assets equal to such borrowings, from the asset coverage test when applying the asset coverage test on a consolidated basis, provided that First Midwest does not have any direct or indirect obligation or liability with

respect to such securities. Further, Applicants request exemption from Section 18(c) of the Act and the 1970 Order to permit First Midwest and FMCC to have outstanding more than one class of senior securities representing indebtedness. Finally, Applicants request a determination that any borrowings by FMCC, including borrowings by FMCC from the SBA or which are guaranteed by the SBA, are not subject to the Section 18(a) asset coverage test by reason of Section 18(k) of the Act, provided that the value of assets equal to such borrowings will be excluded in applying the asset coverage test on a consolidated basis. As a condition to the requested order, Applicants agree that, except as described above, First Midwest will not itself, and will not cause or permit FMCC, to issue any security or sell any security or sell any senior security of which First Midwest or FMCC is the issuer.

In support of their exemptive request, Applicants state that requiring First Midwest to borrow and then reloan such funds to its subsidiaries involves considerable duplication of effort. Applicants further state that restricting First Midwest to borrow only from banks or insurance companies, but not both, and only on an unsecured basis effectively limits the sources of credit available to First Midwest and its subsidiaries and hinders it from seeking or obtaining credit on competitive terms. Applicants state that permitting direct borrowings by the Applicants will be consistent with the purposes and protections of the Act since First Midwest individually, and First Midwest and its subsidiaries on a consolidated basis, as adjusted for the borrowings of the Partnership, will still have to meet the 300 percent asset coverage requirement of Section 18(a), subject to the above noted exclusions. Applicants state that by excluding an amount of assets equal to the borrowings of the Partnership for purposes of calculating the asset coverage required by Section 18(a), investors are protected from the adverse effects of leveraging. Finally, Applicants contend that the exclusion from the asset coverage requirements of Section 18(a) of borrowings by the Partnership for which First Midwest is not liable and First Midwest's guarantee of FMCC's borrowings does not impair the protections of Section 18 since neither type of senior security (as defined in the Act) increases the aggregate indebtedness incurred by First Midwest and FMCC.

Finally, Applicants seek an exemption from Section 19(b) of the Act to permit FMCC to distribute long-term capital gains to First Midwest more than once each taxable year. Applicants state that FMCC is under the control of First Midwest, its sole shareholder, and the facts and circumstances surrounding such distributions will be known to and controlled by First Midwest. Applicants state that, therefore, such distributions are a purely internal manner.

As further conditions to granting the relief requested, Applicants agree that:

1. At all times First Midwest will own and hold, beneficially and of record, all of the outstanding capital stock of FMCC;

2. First Midwest will not cause or permit FMCC to change any of its fundamental investment policies, or take any other action referred to in Section 13(a) of the Act, unless such action shall have been authorized by First Midwest after approval of such action by a vote of a majority (as defined in the Act) of the outstanding voting securities of First Midwest;

3. First Midwest will not cause or permit FMCC to enter into, renew or perform any investment advisory or underwriting contract or agreement, written or oral, as contemplated by Section 15 of the Act, unless the terms of such contracts or agreements and any renewal thereof shall have been approved in compliance with Section 15; and where any vote of the stockholders of FMCC would be required by Section 15, unless the stockholders of First Midwest also shall have approved the same by vote by a majority (as defined in the Act) of the outstanding voting securities of First Midwest, or where any action of the directors of FMCC would be required by Section 15, unless the board of directors of First Midwest, including a majority of those directors who are not parties to any such contract or agreement or interested persons of any such party, also shall have approved the same; and

4. First Midwest will cause to be elected as directors of FMCC only persons who are directors of First Midwest elected in compliance with Section 16(a) of the Act, and at all times officers of First Midwest will also be officers of FMCC.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 19, 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. 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. 83-20994 Filed 8-2-83; 8:45 am]

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[Release No. 13405; 2 (812-5545)]

University Patents, Inc.; Application for an order

July 27, 1983

Notice is hereby given that University Patents, Inc. ("Applicant"), 537 Newtown Avenue, Norwalk, Connecticut 06852, a Delaware corporation, filed an application on May 17, 1983, and an amendment thereto on July 8, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. In addition, Applicant requests that, if such order is not issued before August 7, 1983, the Commission order that all exemptions granted to Applicant on August 7, 1981 (Investment Company Act Release No. 11897) (the "Prior Order"), be extended until the earlier of November 6, 1983, or the date of an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant represents that it is engaged in the business of licensing and administering patents and patent applications for new technology and the commercialization of ideas and other intangible properties. Applicant states that it regularly files annual and quarterly reports on Form 10-K and 10-Q and proxy statements pursuant to Regulation 14A. Applicant further states that it has, in the past, filed registration statements on Form S-1 under the Securities Act of 1933.

The Prior Order provides Applicant a temporary exemption from all provisions of the Act other than Sections 9, 17 (a) through (e) (subject to specified exceptions), 36(a) and 37.

Applicant states that it has operated under the present limited exemption since August, 1981. It further states that, during that time, it has established a deferred compensation plan for key employees using utility company preferred stock to provide maximum benefits to participants, a organized wholly-owned contact lens company utilizing a new technology in the production process, and expanded its operations, through a majority-owned subsidiary, in the field of genetic engineering.

Applicant states that its balance sheet assets consist mostly of preferred stock of utility companies used entirely to fund the deferred compensation plan, and marketable securities, now in the form of Government securities, used entirely to fund its business. It is asserted that the preferred stock, while held as an asset, is held for the benefit of the participants in the employee deferred compensation plan and that the other securities are held solely to fund the current costs of its present business and to provide a reserve for future expansion into related businesses and against financial exigencies of such businesses. Applicant further states that, in addition to expanding activities as an operating business, its new developments have, and are anticipated to continue to have, the effect of decreasing the porportion of Applicant's total assets which are held in securities of issuers which are not wholly-owned subsidiaries (other than assets held for the benefit of employees under Applicant's deferred compensation plan). According to the application, as of the last fiscal year ended previous to the filing of the application for the Prior Order of August 7, 1981, over 90% of Applicant's total assets were held in securities, namely, U.S. Government securities, of other than majority-owned subsidiaries. The application states that, as of April 30, 1983, Applicant's balance sheet, adjusted to reflect the market value of its holdings of its majority-owned subsidiary and the cost of Applicant's investment in its contact lens company, shows that approximately 39% of the Applicant's total assets were in securities of other than majority-owned subsidiaries. The application also states that the holdings of public utility preferred stocks used to fund Applicant's deferred compensation plan are treated off-balance sheet because these securities are pledged as collateral to secure the liabilities of the plan but, if these holdings were included, the percentage of total assets in securities of other than majority-owned subsidiaries as of April 30, 1983, would be approximately 45%. Applicant contends that these holdings of public utility preferred shares should not be deemed to be part of Applicant's assets or holdings because they are held for the benefit of key employees and may not be utilized for company operations or distributions to stockholders. Applicant further states that its commitments of its financial resources to these expanded areas of operations can also be appraised by noting that the expenses of the optical products subsidiary for the nine months ended April 30, 1983, involved an outlay of approximately $800,000 and was by far the principal factor in the increase in Applicant's expenses over the same nine month period in 1982 of approximately $1,000,000.

Applicant claims that the present partial exemption from the Act is burdensome to its operations, engenders undue expense, and inhibits Applicant from efficiently carrying out its corporate functions and purposes. In addition, Applicant claims that the present exemption imposes restrictions on Applicant which will interfere with its future ability to creatively structure its involvement in development and commercialization of ideas and to utilize fully its directors and executive personnel to best take advantage of their talents and associations.

On the basis of the foregoing, Applicant contends that the relief sought in the application is necessary for Applicant to carry on its business properly and economically and is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 18, 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. 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. 83-20989 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13403 (812-5587)]

Washington National Insurance Co., et al.; Application for Order

July 26, 1983.

Notice is hereby given that Washington National Insurance Company ("Washington National"), 1630 Chicago Avenue, Evanston, Illinois 60201, an Illinois stock life insurance company, Separate Account I of Washington National ("Separate Account I"), registered under the Investment Company Act of 1940 (the "Act") as a series-type, open-end, diversified management investment company, and Washington National Equity Company ("Equity") (collectively "Applicants"), a broker-dealer registered under the Securities Exchange Act of 1934 and the principal underwriter of Separate Account I, filed an application on July 1, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants 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 the Money Market Sub-Account of Separate Account I to compute its net asset value using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions from which an exemption is being sought.

Applicants represent that Washington National established Separate Account I on November 5, 1962, pursuant to the provisions of Illinois law, as a separate account through which Washington National could set aside and invest assets attributatble to certain individual and group variable annuity contracts (the "Contracts"). According to the application, Separate Account I consists of three sub-accounts: the Stock Sub-Account, the Bond Sub-Account and the Money Market Sub-Account ("MMS").

Applicants state that the purchaser of a Contract ("Contract Owner".) may allocate the purchase payments to Washington National's Fixed Account (the "Fixed Account"), which consists of all the general assets of Washington National other than assets in segregated

asset accounts, or to any one or more of the sub-accounts of Separate Account I or to a combination of the Fixed Account and sub-accounts. It is stated that a Contract owner will be credited with accumulation units in the Fixed Account and in sub-accounts of Separate Account I on the basis of such allocation of purchase payments.

Applicants state that MMS has as its objective to obtain a high level of current income consistent with liquidity and preservation of capital. Applicants state further that to realize this objective the assets of MMS will be invested in various types of U.S. dollar denominated money market instruments which mature in twelve months or less, including: obligations of the U.S. government, its agencies and instrumentalities; certificates of deposit; bankers' acceptances; commercial paper; corporate bonds, notes and other debt instruments; variable amount demand master notes and repurchase agreements.

According to Applicants, the Commission has expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicants represent that the net asset value of MMS will vary as various charges and deductions are imposed and income and losses are credited and debited. Thus, the value of each accumulation unit in MMS will also vary. Applicants assert that the amortized cost method of valuation is, nevertheless, appropriate since an annuity contract is a long-term retirement vehicle. While MMS hopes to enable Contract Owners to participate in high short-term interest rates, it does not anticipate that Contract Owners will move quickly into and out of MMS as is the case with most other money market funds.

Applicants assert that Separate Account I has established a separate internal accounting system that lends itself to easy monitoring of any potential deviation attributable to the use of the amortized cost method. Applicants state further that, under this separate accounting system, the assets of MMS are treated as a separate portfolio having a constant $1.00 fictional net asset value per share. Applicants maintain that it will be assumed that the purchase payments which Contract Owners have allocated to MMS will be invested by Separate Account I in shares of MMS having a constant purchase and redemption price of $1.00. This constant fictional $1.00 price per share will be maintained by declaring daily, as a fictional dividend to share holders, the total net income of MMS which will include: (1) All accrued interest income and discounts earned on its portfolio assets, minus (2) amortized premiums, plus or minus (3) all realized gains and losses on its portfolio assets, and minus (4) all charges imposed against the assets. Such fictional dividends are deemded to be reinvested daily in full and fractional $1.00 shares of MMS.

Applicants believe that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes faily intended by the policy and provisions of the Act. Applicants consent to the exemptions requested being made subject to the following conditions:

1. In supervising MMS's operations and delegating special responsibilities involving management of the MMS portfolio to the investment manager of Separate Account I, the Board of Directors of Separate Account I undertakes—as a particular responsibility within the overall duty of care owed to the Contract Owners and annuitants of Separate Account I—to establish precedures reasonably designed, taking into account current market conditions and MMS's investment objective, to stabilize MMS's net asset value per share at $1.00 per share.

2. Includes within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of the MMS as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenace of records of such review. To fulfill this condition, Applicants intend to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include, *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.

(b) In the event such deviation from the $1.00 amortized cost price per share of the MMS exceeds ½ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes that the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to Contract Owners, 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: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten MMS's average portfolio maturity, withholding investment income or utilizing a net asset value per share as determined by using available market quotations.

3. Applicants will cause MMS to maintain a dollar-weighted average portfolio maturity appropriate to its objective provided, however, that MMS will not: (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicants will invest MMS's 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.

4. Applicants 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 Applicants will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicants will limit the portfolio investments of MMS, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Directors determines present minimal credit risks and which

are of high quality as determined by any major rating service, or, in the case of an instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. Applicants will include in each quarterly report, as an attachment to form N-10, a statement as to whether any action pursuant to condition 2(c) above 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 further given that any interested person wishing to request a hearing on the application may, not later than August 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues 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. 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. 83-20992 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20007, File No. SR-CBOE-83-22]

Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.

July 26, 1983.

I. Introduction

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on July 15, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to move the Standard & Poor's 100 ("S&P 100")[1] index options from a March/June/September/December cycle to a February/May/August/November cycle.

The S&P 100 index options contract is one of four stock index options contracts currently trading. On March 11, 1983, CBOE began trading options on the S&P 100 index on the March cycle. On April 29, 1983, the American Stock Exchange, Inc. ("Amex") began trading options on the Amex Major Market Index on the January cycle. On July 1, 1983, CBOE began trading options on the Standard & Poor's 500 ("S&P 500") in the March cycle. On July 8, 1983, Amex began trading options on the Amex Market Value Index on the March cycle. In addition, the New York Stock Exchange, Inc. ("NYSE") has indicated that it wishes to begin trading options on the NYSE Composite Index on the February cycle.[2]

II. CBOE Statements of Purpose, Basis and Burdens on Competition

In its filing with the Commission, the self-regulatory organization included the following statements contained in this Part II concerning the purpose of and basis for the proposed rule change, as well as its effect on burden on competition.

CBOE proposes to make this change for two reasons. First, it responds to the apparent desire of the investing public for near-term broad-based index options. This is illustrated by the volume and open interest in the S&P 100 in the weeks before and after the June expiration. In the week prior to expiration 291,929 contracts were traded and the open interest was 181,752. In the week after expiration 100,913 contracts were traded and the open interest was 78,958. We expect that as we move towards September open interest in September options will increase.

Second, the change in expiration cycle will protect CBOE's competitive position vis-a-vis the other options exchanges who are trading or intend to trade broad-based index options. The New York Stock Exchange ("NYSE") plans to trade the NYSE Composite Index on the February cycle and the American Stock Exchange ("Amex") currently trades the Major Market Index on the January cycle and the Amex Market Value Index on the March cycle. Thus, three options, of which two are CBOE's S&P 100 and S&P 500, are trading in the March cycle. If the S&P 100 is moved, then CBOE and Amex will each have broad-based index options trading in two expiration cycles.

The statutory basis for the proposed rule change is Section 6(b)(4) under the Act. The rule changes will permit CBOE to list index options in various expiration cycles that will serve the purposes of various customers and will enhance competition among the options exchanges.

The change proposed in this filing is consistent with the Commission's position to permit free market competition to govern the development of non-equity options. In this connection, it should be noted that the options are based on two different indices. Although the indices are similar in that both are designed to be representative of the market as a whole and have index values that are numerically close together, the indices are sufficiently different so that options based thereon constitute different options. Thus, CBOE is not requesting permission to trade an option class in more than one expiration cycle; CBOE is requesting permission to trade two option classes in different expiration cycles. Therefore, this proposal is consistent with the Commission position concerning multiple trading of stock indices that are substantially similar. *See* Multiple Trading of Non-Equity Options, Securities Exchange Act Release No. 12897, December 2, 1981. The position was reaffirmed in the Order Approving Proposed Rule Change, Securities Exchange Act Release No. 19254, November 27, 1983.

III. Discussion

As a general regulatory matter in reviewing the CBOE proposed rule change, the Commission believes that the determination of the expiration cycle of an option contract, including an index option contract, is a matter properly left to the business judgment of the exchange trading the contract. Because of the limited experience which the Commission and the exchanges have had in options on products other than equity securities, however, the Commission has generally required that all the significant terms of such contracts, including the cycle in which the contract is to be traded, be filed with the Commission and noticed for public comment.[3] Accordingly, the Commission is soliciting comment on the CBOE's proposal to shift the S&P 100 options contract from the March to the February cycle.

In addition to publishing the CBOE notice for comment, there are several issues upon which the Commission invites specific comment.

A. Multiple Cycle

The S&P 100 and the S&P 500 are similar broad-based indices that move together with a high degrees of correlation. Accordingly, if the S&P 100 and S&P 500 index options were traded in different cycles, an argument could be

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[1] The S&P 100 index was originally designated as the CBOE-100.

[2] *See* File No. SR-NYSE-83-26. NYSE's original filing authorized it to trade options on the NYSE composite index on the March cycle. See SR-NYSE-82-2.

[3] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), Part II.B., 47 FR 53978 (November 30, 1982) ("November Approval Order").

made that CBOE was trading virtually identical instruments in different cycles—resulting effectively in the same instrument being traded 8 months of the year rather than 4 months. This may be a desirable development for exchanges in connection with index options because of the "near-month" emphasis that has been experienced by the Amex and CBOE in the trading experience to date. Whereas normally options volume in the near month of an option represents approximately 50 to 85 percent of total volume, the figure for index options has consistently been over 90 percent or higher. Therefore, because order flow is attached to the near month, each exchange might wish to trade options on the near month as frequently as possible, possibly even trading substantially identical indices in different cycles.

In the November Approval Order approving index options proposed rule changes by the Amex, CBOE and NYSE, the Commission indicated, in the multiple trading context, that the market rather than the Commission should make allocation decisions regarding stock index options. The November Approval Order also stated that "the Commission does not believe that it should be engaged in the process of determining when a stock index product is sufficiently different from existing products so as to raise a multiple trading issue." [4] A similar issue is presented here. In the present context of reviewing stock index options, the Commission is inclined, if possible, to avoid having to determine whether a specific index is sufficiently different from another index traded on the same exchange, but the Commission also recognizes that exchanges might develop several virtually identical indices, with the intent that each exchange would have an index option trading in the near month.

The Commission is concerned about possible customer confusion or firm operational problems that may result if each exchange is trading closely related indices on separate expiration cycles. The Commission therefore solicits comment on whether it should re-examine its determination not to scrutinize indices for substantial similarity to existing indices already traded by the same exchange. If so, what standards should be imposed and what regulatory purposes would be served by the process?

B. Monthly Expiration Cycles

Since the advent of exchange-traded options in 1973, the terms of all listed options have been standardized so that options contracts on any underlying security expire once every three months. In this regard, it has been felt by the exchanges that the investment needs of options trades can be satisfied by quarterly expirations. The concentration of near-month trading in index options indicates that the persons using index options may be pursuing strategies different from those commonly associated with equity options. Persons commenting on this matter should include an assessment of the utility of permitting broad-based index options to expire each month against the effect on market fragmentation and liquidity of increasing the number of series outstanding that would result from monthly expirations. Commentators also should consider whether it would continue to be appropriate to provide for options with expirations nine months from the date of listing if expirations are provided monthly in response to investor interest in near-term contracts.[5]

Publication of the submission is expected to be made in the **Federal Register** during the week of August 1, 1983. 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 from 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 Fifth Street, Washington, D.C. 20549. Reference should be made to File No. SR–CBOE–83–22.

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. 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. 83-20871 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[4] See November Approval Order at p. 8.

[5] If options no longer would be made available with nine month expirations, commentators should discuss the effect that it would produce on investors with long term hedging needs and on the effect on transaction costs of needing to roll over index option positions to remain hedged.

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 27, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Ampal-American Israel Corporation
Class A Common Stock, $1 Par Value (File No. 7–6839)
Bergen Brunswig Corporation
Class A Common Stock, $1.50 Par Value (File No. 7–6840)
Countrywide Credit Industries, Inc.
Common Stock, $.05 Par Value (File No. 7–6841)
Felmont Oil Corporation
Capital Stock, $1 Par Value (File No. 7–6842)
Forest Laboratories, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–6843)
Hipotronics, Inc.
Common Stock, $.10 Par Value (File No. 7–6844)
Intertec Data Systems Corp.
Common Stock, $.02 Par Value (File No. 7–6845)
Knogo Corporation
Common Stock, $.01 Par Value (File No. 7–6846)
Juria (L.) & Son
Common Stock, $.01 Par Value (File No. 7 6847)
MCO Holdings, Inc.
Common Stock, $.50 Par Value (File No. 7–6848)
Mountain Medical Equipment, Inc.
Common Stock, $.10 Par Value (File No. 7–6849)
Technical Tape Inc.
Common Stock, $1 Par Value (File No. 7–6850)
Alexander & Alexander Services Inc.
Common Stock, $1 Par Value (File No. 7–6851)
AMR Corporation
Warrants (File No. 7–6852)
Anixter Bros., Inc.
Common Stock, $1 Par Value (File No. 7–6853)
Armstrong World Industries, Inc.
Common Stock, $1 Par Value (File No. 7–6854)

Avnet, Inc.
Common Stock, $1 Par Value (File No. 7-6855)
Beverly Enterprises
Common Stock, $.10 Par Value (File No. 7-6856)
Bucyrus-Erie Company
Common Stock, $5 Par Value (File No. 7-6857)
Commodore International Limited
Common Stock, $1 Par Value (File No. 7-6858)
Newpark Resources
Common Stock, $2 Par Value (File No. 7-6859)
Reading & Bates Corporation
Common Stock, $.20 Par Value (File No. 7-6860)
Tiger International, Inc.
Common Stock, $1 Par Value (File No. 7-6861)
Zapata Corporation
Common Stock, $.25 Par Value (File No. 7-6862)
Automatic Data Processing, Inc.
Common Stock, $.10 Par Value (File No. 7-6880)
Blue Bell, Inc.
Common Stock, $3.33 1/3 Par Value (File No. 7-6881)
Capital Cities Communications, Inc.
Common Stock, $1 Par Value (File No. 7-6882)
Charter Company (The)
Common Stock, $1 Par Value (File No. 7-6883)
Community Psychiatric Centers
Common Stock, $1 Par Value (File No. 7-6884)
Data General Corporation
Common Stock, $1 Par Value (File No. 7-6885)
Denny's Inc.
Common Stock, $1 Par Value (File No. 7-6886)
Edwards (A.G.) & Sons, Inc.
Common Stock, $1 Par Value (File No. 7-6887)
E.—Systems, Inc.
Common Stock, $1 Par Value (File No. 7-6888)
Fleetwood Enterprises, Inc.
Common Stock, $1 Par Value (File No. 7-6889)
GCA Corporation
Common Stock, $.60 Par Value (File No. 7-6890)
GEO International Corporation
Common Stock, $.10 Par Value (File No. 7-6891)
Kaneb Services, Inc.
Common Stock, No Par Value (File No. 7-6892)
Lifemark Corporation
Common Stock, $.01 Par Value (File No. 7-6893)
Louisiana-Pacific Corporation
Common Stock, $1 Par Value (File No. 7-6894)
Mohawk Data Sciences Corp.
Common Stock, $.10 Par Value (File No. 7-6895)
National Medical Enterprises, Inc.
Common Stock, $.02½ Par Value (File No. 7-6896)
Novo Industri A/S
American Depositary Shares, Krone, 100 Par Value (File No. 7-6897)
Parker Drilling Company
Common Stock, $.16⅔ Par Value (File No. 7-6898)
Raychem Corporation
Common Stock, No Par Value (File No. 7-6899)
Sabine Corporation
Common Stock, No Par Value (File No. 7-6900)
SEDCO, Inc.
Common Stock, $1 Par Value (File No. 7-6901)
Southland Royalty Company
Common Stock, $.12½ Par Value (File No. 7-6902)
Storer Communications Inc.
Common Stock, $1 Par Value (File No. 7-6903)
Tektronix, Inc.
Common Stock, No Par Value (File No. 7-6904)
Tri-Continental Corp.
Common Stock, $.50 Par Value (File No. 7-6905)
Viacom International Inc.
Common Stock, $1 Par Value (File No. 7-6906)
Whittaker Corporation
Common Stock, $1 Par Value (File No. 7-6907)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20997 Filed 8-2-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 20009; (SR-NASD-83-15)]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change; National Association of Securities Dealers, Inc.

July 27, 1983.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on July 8, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Part VII of Schedule C of the NASD's By-Laws to extend to December 6, 1983, the date by which SECO broker-dealers can apply for NASD membership under liberalized membership standards agreed upon by the Commission and NASD ("Conversion Agreement"). The Conversion Agreement originally was designed to facilitate the voluntary conversion of SECO broker-dealers to NASD membership in light of then-pending legislation to eliminate the SECO program. The Conversion Agreement allows firms registered as SECO before February 1, 1983, to have their NASD initial membership and associated person registration fees waived. The agreement also permits certain associated persons to be grandfathered into the appropriate NASD representative or principal category without having to pass an exam.

The Conversion Agreement currently applies to firms converting to NASD membership or before July 31, 1983. On June 6, 1983, legislation was enacted to eliminate the SECO program and require all broker-dealers engaged in an over-the-counter securities business, except for certain exchange members, to join the NASD. The legislation becomes effective on December 6, 1983. Due to the enactment of the legislation eliminating the SECO program, the NASD has agreed to make the terms of the Conversion Agreement available until the December 6 deadline. Although the deadline for applying for NASD membership under the standards has been extended to December 6, the NASD has informed the Commission that SECO broker-dealers should submit a complete membership application by September 15, 1983, in order to be assured that their applications will be processed by December 6.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from 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 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-83-15.

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. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change immediately in order that the Conversion Agreement's terms, which provide significant relief for SECO firms converting to NASD membership can be available to SECO broker-dealers until December 6, 1983. The Commission believes that the rule change will benefit many broker-dealers in the SECO program and facilitate compliance with the legislative mandate that all firms engaged in an over-the-counter securities business on or after December 6, 1983, be members of the NASD.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20969 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20006; File No. SR-NYSE-82-19]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1), notice is hereby given that on November 12, 1982, the New York Stock Exchange, Inc. 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

Exchange Rule 96 currently prohibits a member registered as a Competitive Trader or Registered Competitive Market Maker ("RCMM") from initiating, while on the Floor of the Exchange, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position, or in which he knows his firm has an option position. Rule 96 currently applies to all options, including those traded on a national securities exchange ("listed options"). The proposed rule change would remove the prohibition in Rule 96 as to listed options.

II. A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit a Competitive Trader or RCMM to initiate, while on the Floor of the Exchange, a purchase or sale of stock for his own account, or his member organization's account, where he has a listed option position in that stock, or where he knows that his member organization has a listed option position in that stock.

The Exchange believes that the proposed rule change is appropriate for three reasons:

(1) By removing a restraint on members' initiating transactions on the Floor, the proposed rule change can be expected to add to the depth and liquidity of the Exchange market.

(2) Listed options are substantially different from the over-the-counter options which were the only options in existence at the time Rule 96 was originally adopted in the 1930's, and which were the kind of options Rule 96 was intended to regulate. Any regulatory concerns that might arise as to listed options can be addressed by monitoring and surveillance of revised Rule 96.

(3) The proposed rule change will remove a competitive barrier to fair competition, since no other professionals are subject to comparable restrictions.

The statutory bases for the proposed rule change are Sections 6(b)(5), 6(b)(8), and 11A(a)(1)(C)(ii) of the Securities Exchange Act. By removing the prohibition on Competitive Traders and RCMMs initiating proprietary transactions on the Floor of the Exchange in a stock where they have a listed option position in such stock, and thereby permitting them to add to the depth and liquidity of the Exchange market in situations where they may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will "perfect the mechanism of a free and open market", as called for in Section 6(b)(5).

To the extent that the proposed rule change permits Floor professionals to initiate transactions on a more equal regulatory footing with other securities professionals, the proposed rule change is designated to eliminate unfair competition between brokers or dealers, as called for in Section 6(b)(5), to remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as called for in Section 6(b)(8), and to promote fair competition among brokers and dealers, as called for insection 11A(a)(1)(C)(ii).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate to further the purposes of the Act. In fact, the proposed rule change will enhance competition by permitting Floor professionals to initiate proprietary transactions on a more equal regulatory plane with all other securities professionals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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, 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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 45 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1983.

George A. Fitzsimmons,

Secretary.

Exhibit A

Rule 98 Limitation on Members' Trading Because of Options.

Deletions [bracketed]; Additions *italicized.*

No member while on the Floor shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person in such organization is directly or indirectly interested, of any stock in which he holds or has granted any put, call, straddle or *other* option, or in which he has knowledge that his member organization or any of the above mentioned accounts holds or has granted any put, call, straddle or *other* option [.], *except that the provisions of this rule shall not apply in the case of any such options that are listed or traded on a national securities exchange. The exchange may at any time, and from time to time, require reports relating to transactions in options effected by a member or member organization.*

[FR Doc. 83-20973 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20005; File No. SR-NYSE-83-14]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1983, the New York Stock Exchange, Inc. 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 is a complete rewrite of present Rule 420. The new rule streamlines the reporting requirements for capital borrowings and loans between members, allied members and member organizations. Requirements which no longer serve a valid regulatory purpose are eliminated along with much outdated material. In addition, the new rule clearly sets forth the approval conditions for subordinated loans and secured demand notes to qualify as net capital under Rule 325.

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

Present Rule 420 requires members, allied members and member organizations to report all capital borrowings to the Exchange. The proposed rule limits the reporting of capital borrowings to general partners only. The current rule is only applicable to capital contributed to a member organization under Exchange Rule 325. The proposed rule would expand the reporting requirement to cover capital borrowings by general partners in a specialist firm which are to be included as capital under Exchange Rule 104.20.

The requirement for reporting of loans between members, allied members and member organizations has been eliminated because it is believed enforcement of this provision is impracticable and has questionable value for monitoring possible financial overextension.

The new rule clarifies the requirement that a note or agreement covering a personal capital borrowing must have a duration of at least 12 months.

Finally, the revisions contain housekeeping changes such as deleting the posting and approval requirements for subordinated lenders, since this is no longer done.

Statutory Basis for the Proposed Rule Change

Retaining and extending to specialist firms the general partner capital borrowing reporting requirement is consistent with Section 6(b)(5) of the Act in that it is generally designed to protect investors and the public interest.

The new rule is also consistent with SEC Rule 15c3-1, Appendix D in that it states that the requirements set forth therein relating to subordinated loans and secured demand notes shall be met.

Eliminating the reporting requirement for loans, between members, allied members and member organization will not affect the ability of the Exchange to insure the protection of investors and the public interest under Section 6(b)(5) and the financial viability of members under SEC Rule 15c3-1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii)

as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change shold be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Secton, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, purusant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20972 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20010; File No. SR-Phlx-82-4]

Filing of Amendment to Proposed Rule Change by Philadelphia Stock Exchange, Inc.

July 27, 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 July 22, 1983, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission Amendment No. 1 to a proposed rule change (SR-Phlx-82-4) as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Phlx states in Amendment No. 1 that the proposed rule change to which this amendment relates (SR-Phlx-82-4) contains pending by-law and rule changes which will define and standardize the methods by which title to memberships (seats) may be held; which will implement a program for the leasing of memberships and clarify the use of ABC agreements relating to memberships; and which will achieve certain objectives relating to the use of memberships and the satisfaction of members' debts. The changes in this Amendment No. 1 are related to temporary Phlx Rules 933 and 941 which provide for sale and subordination agreements relating respectively to memberships held under leases or under ABC agreements.[1]

The changes proposed in Amendment No. 1, many of which are clarifying or technical in nature, apply to the following section of the Phlx's certificate of incorporation, by-laws and rules:

(i) Certificate of Incorporation Section Seventeenth (b);

(ii) By-Laws 1-1(f); 1-1(h); 1-1(n); 12-5; 12-6; 12-8; 15-1; 15-3; 15-14;

(iii) Rules 13, 14, 15, 17, 18, 19, 20, 930, 931.

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, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-82-4.

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, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying 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. 83-20970 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission approved adoption of Rule 933 for a one year period on December 21, 1981 (Securities Exchange Act Release No. 18356, December 21, 1981; 46 FR 63434, December 31, 1981). The Commission approved the adoption of temporary Rule 941 on October 21, 1982 (Securities Exchange Act Release No. 19335, October 21, 1982; 47 FR 49503, November 1, 1982). Most recently the Commission approved the extension of both rules through August 31, 1983 (Securities Exchange Act Release No. 19967, July 13, 1983).

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Revision

Form BDW.

No. 270-17.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance proposed revisions of Form BDW (17 CFR 249.501) under the Securities Exchange Act of 1934. Form BDW is necessary for the Commission to determine whether it is in the public interest to permit a broker-dealer to withdraw its registration. The revisions of Form BDW will make the Commission's form more uniform and compatible for use by the states. The potential respondents are all registered securities broker-dealers. Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

July 28, 1983.

[FR Doc. 83-21035 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kennth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Revision

Form BD.

No. 270-19.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance proposed revisions of Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934. Form BD is necessary for the Commission to determine whether registration as a broker-dealer should be granted. The proposed revisions to Form BD are designed to make the Commission's Form BD more uniform, *i.e.*, to amend Form BD so that states and self-regulatory organizations also are able to use Form BD. The potential respondents are all registered brokers and dealers. Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

July 28, 1983.

[FR Doc. 83-21032 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13410; (812-5574)]

APT Housing Partners Limited Partnership John M. Curry and American Development Team, Inc.; Filing of Application for an Order

July 28, 1983.

Notice is hereby given, That APT Housing Partners Limited Partnership (the "Partnership"), a Massachusetts limited partnership, formed to invest in other limited partnerships ("Local Limited Partnerships") which will own and operate apartment complexes primarily for low and moderate income persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974), together with the Partnership's general partners, John M. Curry and American Development Team, Inc., 10 Tremont Street, Boston, Massachusetts 02108, (the "General Partners" and together with the Partnership, "Applicants"), filed an application on June 15, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement for a the representations contained therein, which are summarized below.

Applicants represent that any subscriptions for units of limited partnership interest ("Units") must be approved by the General Partners, which approval shall be conditioned upon representations as to the suitability of the investment for each subscriber. The application states that the form of Subscription Agreement for Units provides that each subscriber will represent, among other things, that either: (1) He has a net worth (exclusive of home, furnishings and automobiles) of at least $50,000 and he estimates that (without regard to investment in the Partnership) some part of his income for the current year and the three succeeding years will be subject to federal income tax at the rate of 39% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least $200,000, or that he is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2).

Applicants assert that the Agreement of limited Partnership of the Partnership (the "Partnership Agreement") and the Partnership's preliminary prospectus ("Prospectus") contain numerous provisions designed to insure fair dealing by the General Partners with the purchasers of Units of the Partnership (the "Limited Partners"). Applicants represent that all types of compensation and reimbursement to be paid to the General Partners and their affiliates are specified in the Partnership Agreement and Prospectus and no type of compensation will be payable to the General Partners or any of their affiliates except as so specified. Applicants maintain that, although of necessity such compensation has not been negotiated by independent parties at arm's length, all such compensation is believed to be fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties.

Applicants assert that the contemplated arrangement of the Partnership is not susceptible to abuses of the sort the Act was designed to remedy. Applicants further assert that the suitability standards providing that the Units will be sold only to relatively sophisticated investors who have special qualifications, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed in each Local Limited Partnership by various government agencies, provide protection to investors in the Units comparable to, and in some respects greater than, that provided by the Act. Applicants submit that exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the Act.

Notice is further given, That any interested person wishing to request a hearing on the application may, not later than August 19, 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, Washinghton, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated abeve. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. 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. 83-21031 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23013; (70-6889)]

The Southern Co.; 64 Perimeter Center East, Atlanta, Georgia 30346, Proposed Guaranty of Subsidary's Lease of Office Building

July 28, 1983.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346 a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Southern proposes to act as guarantor of the obligations of its subsidiariary company, Southern Company Service, Inc. ("SCSI"), which intends to enter into a lease agreement with Perimeter Center Properties for the lease of a sixteen story office building, 58 Perimeter Center East ("Building 58"), to be constructed in Atlanta, Georgia on a 5.4 acre site contiguous to 64 Perimeter Center East ("Building 64"), a building already leased and wholly occupied by SCSI. Building 58 will have approximately 370,500 leased square feet and will be connected to Building 64 by a bridge. Neither the lessor nor any of the entities to be involved in construction of Building 58 are affiliated with Southern or any of its subsidairies. The lease will run for a term of

approximately twenty years commencing on or about April 1, 1985, and terminating on February 28, 2006, with SCSI having the right to extend the term for five-years. The base annual rental will be $13.00 per leased square foot per annum (approximately $6,335,550 per annum, assuming 370,500 leased square feet) plus an additional rental component. As a condition to entering into the transaction, the lesssor is requiring the guaranty by Southern of the rental obligations of SCSI.

It is stated that SCSI personnel in Atlanta are currently spread thoughout nine different office buildings and that the purpose of leasing Building 58 will be to consolidate these employees into two interconnecting buildings and to provide sufficient space to accommodate levels of projected growth in SCSI staff.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 23, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued. After said date, the declaration, as amended, or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Georgia A. Fitzsimmons,

Secretary.

[FR Doc. 83-21036 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20008; Filed Nos. SR-CBOE-83-14, SR-CBOE-83-15, SR-CBOE-83-16, SR-CBOE-83-17, SR-CBOE-83-18]

Self-Regulatory Organizations; Proposed Rule Changes; Chicago Board Options Exchange, Inc.; Relating to Single-Industry-Based Stock Index Options

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 June 9, 1983, with amendments on June 30 and July 14, 1983, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission five proposed rule changes as described in Items I, II and III below, which Items have been prepared from materials filed by the self/regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interest persons.

I. Text of Proposed Rule Change

See Item II(A).

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in items IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change. The purpose of the proposed rule changes is to permit CBOE to list and trade standardized put and call options on the following five stock indices published by Standard & Poor's Corporation ("S&P"):

1. The Office and Business Equipment Industry Index, based on the prices of twelve stock, listed below:

		Market value[1]	Percent of group
BGH	Burroughs Corp	1925.160	2.2
CDA	Control Data	1755.290	2.0
DGN	Data General	681.752	.8
DPT	Datapoint	457.866	.5
DEC	Digital Equipment	6905.162	7.9
IBM	International Bus. Mach	61096.805	70.2
NCR	NCR Corp	2935.154	3.4
PBI	Pitney-Bowes	965.141	1.1
SY	Sperry Corp	1679.689	1.9
STK	Storage Technology	719.270	.8
WANB	Wang Labs	4064.842	4.7
XRX	Xerox Corp	3859.832	4.4

[1] As of March 31, 1983.

2. The Oil (Integrated Domestic) Industry Index, based on the prices of nine stocks, listed below:

		Market value[1]	Percent of group[1]
ARC	Atlantic Richfield	10364.712	15.6
GET	Getty Oil	4733.937	7.1
OXY	Occidental Petroleum	1869.752	2.8
P	Phillips Petroleum	5091.207	7.6
SUD	Shell Oil	11857.683	17.8
SN	Standard Oil of Indiana	12727.447	19.1
SOH	Standard Oil of Ohio	10328.640	15.5
UCL	Union Oil of California	5795.202	8.7

[1] As of March 31, 1983.

3. The Oil (Integrated International) Industry Index, based on the prices of six stocks, listed below.

		Market value[1]	Percent of group[1]
XON	Exxon Corp	26623.813	34.7
GO	Gulf Oil	5610.272	7.3
MOB	Mobil Oil	11785.631	15.4
RD	Royal Dutch Petroleum	10869.044	14.2
SO	Standard Oil of California	13128.439	7.1
TX	Texaco Inc	8614.223	11.2

[1] As of March 31, 1983.

4. The Electronics Industry Index, based on the prices of five stocks, listed below:

		Market value[1]	Percent of group[1]
AMP	AMP Inc	3013.416	21.8
INTC	Intel Corp	2188.716	15.8
MOT	Motorola Inc	4042.519	29.2
NSM	National Semiconductor	722.748	5.2
TXN	Texas Instruments	3884.841	28.0

[1] As of March 31, 1983.

5. The Brokerage Firm Industry, based on the prices of five stocks, listed below:

		Market value[1]	Percent of group[1]
DLJ	Donaldson Lufkin Jenrette	265.640	4.9
AGE	Edwards (A.G.)	438.443	8.1
EFH	Hutton (E.F.)	834.577	15.4
MER	Merrill Lynch	3214.176	59.3
PWJ	Paine Webber	671.850	12.4

[1] As of March 31, 1983.

CBOE expects shortly to obtain a license from Standard & Poor's Corporation to use S&P Indexes as underlying stock indexes for securities options trading. Options on the indexes will be traded within the general framework of Exchange rules for trading index options which were approved by the Commission in various Securities Exchange Act Releases.

Presently the Office and Business Equipment Industry Index is disseminated in various S&P publications. Before trading begins, CBOE will assure the index value is disseminated by various securities information vendors throughout the day. The final index value reported by S&P will be the closing index value as defined in Rule 24.1(g). The Exchange will designate S&P as the reporting authority as that term is defined in Rule 24.1(h). The Index multiplier, defined in CBOE Rule 24.1(f), will be 100.

The CBOE, Philadelphia Stock Exchange and Pacific Stock Exchange

have commented upon issues raised by narrow-based index options. (File No. SR–AMEX–82–22). If the Commission resolves the issues, determining that trading in narrow-based index options is consistent with the Securities Exchange Act of 1934, then CBOE requests premission to list and trade the options proposed in this filing.

The statutory basis for the proposed rule changes is Section 6(b)(5) of the Exchange Act in that these options will serve the public investors by enabling investors to hedge against risk associated with a particular industry. For example, an investor may believe that a particular stock will out perform its industry but is concerned that the price of that stock could decline as a result of factors affecting the industry as a whole. The investor could hedge against the industry component of risk by buying a put option on that industry group. On the other hand, the Exchanges named above have raised a number of issues which should be resolved before trading is permitted to begin.

(B) T3Self-Regulatory Organization's Statement on Burden on Competition. As set forth in CBOE's letter of May 31, 1983 from Walter E. Auch, Chairman and Chie: Executive Officer of the CBOE to George Fitzsimmons, Secretary, Securities and Exchange Commission (File No. SR–AMEX–82–22, Amendment No. 3), CBOE believes that narrow-based index options may materially affect existing markets for equity securities and individual stock options. Nevertheless, if another exchange is approved to trade narrow-based index options, CBOE feels compelled to protect its competitive position by also listing them for trading.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.* Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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: July 26, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc.83-21030 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20018; File No. SR–MCC–83-3]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the Midwest Clearing Corp.

July 27, 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 July 15, 1983, the Midwest Clearing Corporation ("MCC") 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.

The proposed rule change, filed at the request of the Division of Market Regulation, set forth the formula MCC has used and will continue to use to determine the value of each participant's minimum required contribution to the Participants Fund. According to the formula, which is calculated quarterly, each participant should contribute the sum of: (i) 2% of the Daily Average Short Value Position for all accounts maintained by the participant, plus (ii) ½% of the Daily Average Long Value Position, plus (iii) ½% of the Daily Average Loan Value Position. The formula does not limit MCC's right under MCC Rule 14 to require additional contributions from a participant.

MCC believes the proposed rule change is consistent with Section 17A of the Act because it applies to all participants on a uniform non-discriminatory basis, and it is designed to help assure the safeguarding of securities and funds which are in MCC's custody or control or for which it is responsible.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act 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 Act.

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 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–MCC–83–3.

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 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For Commission, by the Division of Market Regulation pursuant to to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-21034 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20019; (File No. SR-MSTC-83-12)]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By Midwest Securities Trust Company

July 27, 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 July 15, 1983, the Midwest Securities Trust Company ("MSTC") 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.

The proposed rule change, filed at the request of the Division of Market Regulation, sets forth the formula MSTC has used and will continue to use to determine the value of each participant's minimum required contribution to the Participants Fund. According to the formula, which is calculated quarterly, each participant should contribute 3% of the Daily Average Settlement Figure for all accounts maintained by the participant. The formula does not limit MSTC's right under MSTC Rule 8 to require additional contributions from a participant.

MSTC believes the proposed rule change is consistent with Section 17A of the Act because it applies to all participants on a uniform, non-discriminatory basis, and it is designed to help assure the safeguarding of securities and funds which are in MSTC's custody or control or for which it is responsible.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act 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 Act.

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 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSTC-83-12.

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 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying 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. 83-21033 Filed 8-2-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 875]

Claims Against Iran

The Department of State wishes to inform claimants before the Iran-United States Claims Tribunal at The Hague of the appointment of Professor Willem Riphagen to replace Judge Pierre Bellet. This notice supplements information provided in Public Notice 870 (48 FR 30817, July 5, 1983) and prior notices. For further information, contact David P. Stewart, Administrator for Iranian Claims, Office of the Legal Adviser, Department of State, Washington, D.C. 20520. Telephone 202/632-5040.

On July 13, 1983, Mr. Ch. M. J. A. Moons, the designated appointing authority for the Tribunal, announced the appointment of Professor Riphagen of The Netherlands to succeed Judge Bellet. Judge Bellet's resignation from the Tribunal becomes effective August 1, 1983. Professor Riphagen will succeed Judge Bellet as chairman of Chamber 2 at the Tribunal.

Professor Riphagen has extensive experience in the field of international law. He has served as an *ad hoc* judge on the International Court of Justice for the *Case Concerning Barcelona Traction Power and Light Co., Ltd. (Belgium* v. *Spain)*, as president of the arbitration tribunal in the *Case Concerning the Air Services Agreement of 27 March 1946 (U.S.* v. *France)* and as Special Rapporteur for the International Law Commission's Studies on State Responsibility. As legal adviser to The Netherlands Ministry of Foreign Affairs, Professor Riphagen has represented The Netherlands at a number of international conferences, including the Law of the Sea Conference from 1974-1977. Since 1960, he has been a professor of international law at the University of Rotterdam. Professor Riphagen is also a member of the Permanent Court of Arbitration.

David P. Stewart,

Administrator for Iranian Claims.

July 22, 1983.

[FR Doc. 83-20982 Filed 8-2-83; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 83-159]

Reimbursable Services; Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 7, 1983.

Installation	Biweekly excess cost
Montreal, Canada	$19,162
Toronto, Canada	31,690
Kindley Field, Bermuda	9,481
Nassau, Bahama Islands	19,631
Vancouver, Canada	12,223
Winnipeg, Canada	5,665
Freeport, Bahama Islands	8,315
Calgary, Canada	11,771
Edmonton , Canada	6,034

William H. Russell,

Comptroller.

[FR Doc. 83-21085 Filed 8-2-83; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition: Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is modifying a notice found at 45 FR 70936 (October 27, 1980) regarding immunity from judicial seizure for the paintings of Edvard Munch, on loan to the National Gallery, by changing the final date of return of the paintings to Oslo, Norway from October, 1985 to April, 1989.

EFFECTIVE DATE: The modification is effective August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Office of General Counsel, United States Information Agency, 400 "C" Street, SW., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying a notice published at 45 FR 70936 (October 27, 1980). The notice rendered immune from judicial process the paintings by the Norwegian Artist, Edvard Munch, on loan to the National Gallery. The exchanges of paintings with the Munch Museum, Oslo, was originally scheduled to terminate October 1985. However, the last painting is now scheduled to return to Oslo in April 1989. Therefore, the determination published in the **Federal Register** is modified to reflect the change in dates.

Dated: July 28, 1983.

Jonathan W. Sloat,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 83-20984 Filed 8-2-83; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Meeting

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 47 national voluntary organizations and four associate national voluntary organizations, will be held at the Baltimore Hilton Hotel, 101 West Fayette Street, Baltimore, Maryland on October 21 through 23, 1983.

Registration of the conferees and orientation of new committee members will be held beginning at 12:30 pm on October 21, 1983. The committee will officially convene with an Opening Session at 9:00 am, October 22, in the Francis Scott Key Room of the hotel and will conclude at 12:00 noon on October 23, 1983.

The purposes of the meeting are to instruct committee members and organizational officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program.

Dated: July 26, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-21078 Filed 8-2-83; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration Wage Committee for calendar year 1982 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations: Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC. 20540; and Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue, NW., Washington, DC. 20420

Dated: July 25, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-21075 Filed 8-2-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 150
Wednesday, August 3, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 33798, July 25, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 1, 1983.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of CCC Board Meeting on April 27, 1983.
2. Memorandum re: Alcohol Demonstration Project.
3. Memorandum re: Report on No Net Cost Tobacco Program.
4. Ratification re: Ratification of Repurchase Offer on Credit Guarantees for Sudan.
5. Ratification re: CZ–266, Resolution No. 20, Amendment 1, Commodities Available for Pub. L. 480 During Fiscal Year 1983.
6. Memorandum re: Information Memorandum Concerning Updated Estimates of Commodities Under Pub. L. 480 for Fiscal Year 1983 (CZ–266, Resolution No. 20).

CONTACT PERSON FOR MORE INFORMATION: Ray F. Voelkel, Secretary, Commodity Credit Corporation, P.O. Box 2415, Room 3090, South Building, U.S. Department of Agriculture, Washington, DC 20013; telephone (202) 447–3451.

[S–1114–83 Filed 8–1–83; 3:48 pm]

BILLING CODE 3410–05–M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 34394, July 28, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., August 3, 1983.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Fifty-Mile Container Rules.

[S–1112–83 Filed 8–1–83; 12:45 pm]

BILLING CODE 6730–01–M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–83–16]

TIME AND DATE: 10 a.m., Wednesday, August 10, 1983.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave. SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Briefing* by the Federal Highway Administration on traffic barrier systems.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382–6525.

August 1, 1983.

[S–1111–83 Filed 8–1–83; 12:45 pm]

BILLING CODE 4910–58–M

4

PAROLE COMMISSION

National Commissioners (the Commissioners) presently maintaining offices at Chevy Chase, Maryland (Headquarters)

TIME AND DATE: 10 a.m., Wednesday, August 3, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from regional Commissioners of approximately 7 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S–1113–83 Filed 8–1–83; 3:45 pm]

BILLING CODE 4410–01–M

5

RAILROAD RETIREMENT BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 34572, Friday, July 29, 1983.

TIME AND DATE: 10 a.m., August 4, 1983.

PLACE: Board's meeting room, eighth floor, Headquarters Building, 844 Rush Street, Chicago, Illinois 60611.

CHANGE IN THE MEETING: The meeting scheduled for 10 a.m., August 4, is hereby cancelled.

CONTACT PERSON FOR MORE INFORMATION: Beatrice Exerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S–1110–83 Filed 8–1–83; 11:21 am]

BILLING CODE 7905–01–M

federal register

Wednesday
August 3, 1983

Part II

Federal Communications Commission

Personal Radio Services; General Mobile Radio Service (GMRS) Rules; Update and Codification

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 82-84; RM-2943; RM-2972; FCC 83-332]

Personal Radio Services; Update and Codification of the General Mobile Radio Service (GMRS) Rules

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This Report and Order amends Part 95, Subpart A of the Commission's Rules in order to update and codify the rules in the General Mobile Radio Service (GMRS). This action is necessary because the rules governing the GMRS, which have remained virtually unchanged since 1958, have been made obsolete by advances in technology.

EFFECTIVE DATE: October 16, 1983.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

List of Subjects in 47 CFR Part 95

Radio.

Report and Order

In the matter of update and codification of the General Mobile Radio Service (GMRS) Rules; PR Docket No. 82-84, RM-2943, RM-2972.

Adopted: July 14, 1983.
Released: July 28, 1983.

By the Commission.

Introduction

1. The Commission is adopting this *Report and Order* to update and codify the General Mobile Radio Service (GMRS) Rules, Part 95, Subpart A.[1]

Background

2. The rules governing the General Mobile Radio Service have remained virtually unchanged since 1958. During these 25 years, advances in technology have made many of these rules obsolete. For instance, GMRS systems using mobile relay stations have not been adequately provided for in the rules. Such systems have been licensed pursuant to policy decisions and staff interpretations of broadly-worded rules. These types of licensing procedures have become unwieldy with the continued growth of the General Mobile Radio Service. During 1982, over 2,200 new licenses were issued, over 600 licenses were modified and 200 licenses were renewed.

3. Because of the need to update the rules and to incorporate into them the policies and interpretations pursuant to which GMRS systems are presently licensed, we adopted a *Notice of Proposed Rule Making*, 47 FR 14178 (April 2, 1982), instituting this proceeding.

Comments

4. We received more than 35 comments and reply comments in this proceeding. Among others, commenters included Corwin D. Moore, Jr. (Moore), Uniden Corporation of America (Uniden), the American Telephone and Telegraph Company (AT&T), P. Randall Knowles, Motorola, Inc., National Capital REACT Incorporated and REACT International.

5. AT&T, Motorola, Uniden and Randolph B. Smith generally supported the proposal. By and large, most of the other commenters were in agreement that some sort of GMRS codification was necessary, but disagreed with various matters of substance or form with regard to this particular proposal.

Discussion

Organization and Format

6. The recodified rules were divided into five major segments, each addressed to the particular interest of those persons needing to know them.

The major divisions were:

a. General Provisions (for all interested parties);

b. Considerations when planning a GMRS system (for system designers);

c. Applying for a GMRS license (for applicants);

d. Managing a GMRS system (for licensees); and

e. Operating a GMRS station (for station operators).

7. Basic phrases were identified and defined and were used consistently throughout the proposed rules. This eliminated the confusion that can result from using words like "operate", "control", "transmit" and "communicate" in different contexts and with various nuances.

8. To further enhance their usability, the rules were organized into more, but smaller, rule sections. This type of format was designed to minimize the number of rules that are cast in long, complex and multilayered subsections. Also, it facilitates the finding of a particular requirement because of the expanded Table of Contents.

9. Additionally, on the subjects of construction on environmentally or historically important land, antenna height restrictions, and transfers of control, we have rewritten the rules to more closely correspond with existing rules or policies and practices and to eliminate any possible contradictions between the rules.

System Concept

10. We license GMRS "systems" composed of at least one station operator and one mobile station. Various types of land stations (base stations, mobile relay stations, control stations and fixed stations) could, but need not be, part of a system. The use of voice-only paging receivers is also permitted in a GMRS system.

11. Some comments questioned whether the system concept was an appropriate licensing mechanism for the GMRS, indicating that the between-licensee communications typical in he GMRS militate against its use. In the case of these proposed rules, "system" is a convenient term used to minimize the number of licenses issued for stations and to bring a wide array of often separately licensed facilities under the umbrella of one license for the person seeking to operate them. The term "system", as used in these rules, does not prohibit inter-license communications or relegate them to secondary status.

12. Our present policy neither requires a base station for a system nor requires that a base station limit its communications to mobile station units in the same GMRS system. We have codified this policy in the final rules.

Procedural Objections

13. The majority of commenters indicated that they felt that this proceeding proposed substantive changes to the GMRS rules without adequate identification, discussion or justification. As we have already discussed, the purpose of initiating this proceeding was to codify the GMRS rules and the evolving interpretations and policies relating to these rules as they developed since 1958. The present rules are very broadly worded and often partially or wholly inapplicable to state-of-the-art technology. This has prevented a common understanding of the nature of the GMRS, the method of applying for a GMRS license, and the operating rules in the GMRS.

14. The fact that many commenters singled out various of the proposed rules as substantive changes confirms that our existing GMRS rules, having been subject to decades of interpretation and often stretched to accommodate new technology, were overbroad and not

[1] The GMRS is a Part 95 Personal Radio Service. Formerly known as Class A Citizens Band, it is a land mobile service that utilizes UHF and is available to the general public for personal or business communications.

completely applicable to the nature of the GMRS as it exists today.[2] The proposal codifies the rules in a manner generally consistent with the policies and the interpretations we have applied to the existing rules over time.

40 Mile Limit

15. In an effort to recodify present § 95.57(b), limiting a single applicant in a given area to one frequency unless the applicant can demonstrate need for a second frequency, we proposed to define the "given area" as a circle, 40 miles in diameter, centered upon a point. The comments generally objected to limiting the definition of "given area," previously undefined, to specified parameters.

16. We are therefore adopting a more straightforward rule directly accomplishing our objective: to encourage sharing of a limited number of GMRS frequencies by allowing an entity to have only one GMRS system in a given area with base or mobile relay stations capable of affecting many GMRS licensees by using higher power or greater range. The rule we are adopting will prohibit an entity from having a base station or a mobile relay station in one GMRS system within 64.4 kilometers (40 miles) of a base station or a mobile relay station in another GMRS system licensed to the same entity.

Multi-frequency Systems

17. Present rules limit frequency assignment to a single frequency for a single applicant in a given area, but permit assignment of an additional frequency if it is conclusively demonstrated that it is essential to the operation proposed. We proposed to continue to limit channel assignment to a single channel or channel pair per system, but to require an applicant to obtain a waiver of this standard for assignment of a second channel or channel pair. AT&T and Moore favored retention of our rules in their present form. We estimate that ten to fifteen percent of all GMRS licensees have more than one channel or channel pair in a system. A waiver standard would be inappropriate for such a volume of license grants. Therefore based upon the comments, we will retain rules allowing an applicant to obtain a second channel or channel pair in a GMRS system upon a satisfactory showing that the applicant requires it for operation of the system.

[2] For example, many comments indicated that the power measurement requirements proposed constituted dramatically increased burdens over what is presently required. In fact, without spelling out measurement methods, our present rules, in different form, have exactly the same requirements. See, e.g., 47 CFR 95.55(b)(1).

Points of Communication

18. The recodified rules prohibit communications between base stations, retain restrictions on fixed stations in or near large urban areas, and retain restrictions on the operation of control stations in large urban areas. Many of the commenters wanted the ability to engage in base-to-base communications. Moore opposed such communications as antithetical to an essentially mobile service.

19. The recodified rules also updated the existing list of large urban areas by referencing the 1980 census rather than the 1960 census. Some comments opposed this, because it resulted in an increase in the number of large urban areas under the proposed rules.

20. We are retaining the 200,000 population cutoff for large urban areas as a reasonable indication of the availability of other point-to-point services. We are also retaining use of updated 1980 census statistics as essential to making an unambiguous determination of which areas of population constitute large urban areas. Finally, we are retaining the prohibition on base-to-base communications.

Control

21. In proposed § 95.173(b) we attempted to codify control of a GMRS station in terms of starting transmissions, listening to communications, and stopping transmissions upon their completion or upon the likelihood of a rule violation. Some commenters felt that a broader definition of control was needed in order to cover a variety of possible circumstances. We are therefore including certain language advanced by Moore in this subparagraph.

Identification.

22. We proposed to relax station identification requirements in the GMRS by permitting a station that is transmitting to identify with any call sign in the same system, rather than with only its assigned call sign, in order to facilitate use of a system call sign for each station within the system. In response to comments the rules have been modified to allow a station to identify with only its own assigned call sign or the call sign of its GMRS system.

23. Other comments indicated that we had imposed new identification requirements by failure to include the provisions of present § 95.71(c)(1), allowing a mobile relay station not to identify its transmissions if it automatically retransmits another station which identifies properly. Deletion of this exemption was inadvertent; it will be added as new § 95.119(e).

24. Finally, some comments pointed out that since any number of mobile units could make up a mobile station under the proposed rules, a requirement that a mobile station identify might not be construed as a requirement that each mobile unit identify when transmitting communications. Our intention was to require every unit to identify when transmitting communications, and the rules we are herein adopting have been revised to make this clear.

Subaudible Tones

25. In response to two petitions for rule making, RM-2943 from Randolph B. Smith and RM-2972 from the California Mobile Radio Association [now the National Mobile Radio Association], we proposed designating 250 Hertz (instead of the current 150 Hertz) as the upper frequency limit of a subaudible tone. In response to comments that urged us to accommodate industry standards, we are adopting rules that include an upper frequency limit of 300 Hz for subaudible tones.

Simplex and Duplex Operation

26. The recodified rules permit simplex, duplex, or combination simplex-duplex systems. As proposed, the recodified rules, prohibited cross-channel communications in the GMRS. The comments indicated that this would prohibit an existing practice whereby users authorized only one frequency have been able to communicate with other users in the GMRS authorized on another frequency by using each of their transmitters in combination with receivers monitoring the other station's transmissions, in what the comments characterized as a split-simplex mode of operation.

27. Communications of this nature are necessarily between two separate channels. It is our view that such operation is a type of simplex operation and does not require creation of a new mode of operation in the codified rules. We are deleting the proposed cross-channel prohibitions to permit this type of simplex operation.

28. Existing rules in the GMRS (specifically §§ 95.61(c) and 95.101(a)(3)) authorize cross-service communications between GMRS stations and stations in other radio services except for amateur radio stations, unlicensed stations, and foreign stations. We proposed to prohibit all cross-service GMRS communication. However, in response to comments, we are retaining rules, permitting GMRS stations to engage in cross-service communications with

stations in other radio services except for amateur radio stations, unlicensed stations and foreign stations.

Transient Use

29. We are adopting proposed rules that prohibit one GMRS licensee from contacting another GMRS licensee through the use of a third GMRS licensee's mobile relay station, even if the licensee of the GMRS mobile relay station were to give oral permission to do so. Some comments indicate that this is a common practice in the service today and should not be prohibited. Nonetheless, we have never interpreted § 95.65 to allow a licensee of a mobile relay station in the GMRS the authority to make such a station available for general use by others in the service with only oral permission.

Unnecessary or Burdensome Rules

30. We proposed to eliminate the requirement in Section 95.67(a) specifying that there must be a written agreement between the licensee and a telephone answering service if a transmitter is to be installed on the premises of a telephone answering service. That arrangement, we indicated, could be worked out by the parties themselves.

31. We also proposed to delete the notice requirements of Section 95.73(b) (Mobile operation area change exceeding 7 days) and Section 95.77(c) (use of the station for civil defense communications). These proposed changes were intended to relieve GMRS licensees from requirements which served no real purpose. We have retained these proposed changes in the final rules.

32. In addition, we proposed to delete certain rule sections relating to defective applications, amendment and dismissal of applications, and grants of applications in part because they deal with procedural matters adequately covered in Part 1 of the Commission's Rules. However, many of the commenters were of the view that the mechanism of a grant of an application in part should be explained within the GMRS rules. Thus, while deleting the other procedural rules mentioned above, we are reinstating a rule relating to grants of applications in part as new § 95.71(d).

One-Way Communications

33. Recodified § 95.185(a)(13) in the *Notice* generally prohibited one-way communications with certain limited exceptions. By and large the comments stated that such a blanket prohibition conflicted with allowing any sort of paging and might be construed as potentially conflicting with other sorts of communications (such as split simplex/half-duplex). We have decided to drop this general prohibition of one-way communications in the final rules, and, instead, to specifically list a limited number of impermissible one-way communications (e.g., tone-only paging, public address systems, broadcast, and continuous (undirected) communications).

Frequencies

34. Certain GMRS stations operating on frequencies other than those listed in § 95.29 of the appended final rules have been grandfathered into the existing rules and were not provided for in the proposed rules. Accordingly, present § 95.55(b)(2) has been added to the final rules as new § 95.29(d).

Shared Use

35. Present GMRS rules provide for the non-profit cooperative shared use of a GMRS radio station. Additionally, for the past ten years or so we have been issuing licenses for GMRS systems sharing common transmitting equipment. Although, the present rules do not prohibit the sharing of common transmitting equipment by more than one GMRS system, neither do they address the validity of the practice, which is called "multiple licensing."

36. It is for this reason that we are adopting codified rules recognizing both current types of sharing in the GMRS, namely: (1) Non-profit cooperative shared use of a radio station in the GMRS, and (2) multiple licensing of radio transmitting equipment in the GMRS. The rules we are adopting codify current policy and practice with regard to the licensing of cooperatively shared GMRS systems and the multiple licensing of radio transmitting equipment in the GMRS.

Access to Transmitting Equipment

37. The rules we are adopting require that a licensee have access to all transmitting equipment. They also include such a requirement for multiply-licensed transmitters. Concern was expressed that in the case of multiply-licensed transmitters each licensee would be required to have a key to the building on which an antenna was mounted and to the rooftop location of the antenna on the building. This is not the intent of the rule. In a fashion analogous to the sharing of an antenna structure in the private land mobile services for which each licensee has lighting and maintenance responsibility, we will permit the licensees in a GMRS multiple licensing arrangement to select one of their number to have primary access responsibility (c.f. § 94.441). *See, e.g., Report and Order*, Docket No. 18921, 47 FR 19527, 19536 (May 6, 1982).

Interconnection

38. We emphasize that the general rule in the GMRS is that interconnection to the public switched telephone network is prohibited.[3] The only exception to this rule had been some interconnection arrangements made before October 16, 1978. Authorization for these grandfathered interconnection arrangements was valid only for the balance of the license terms of their respective systems. The last of these licenses will have expired on or before October 16, 1983.

Interference

39. The comment indicated that the proposed rules did not adequately incorporate certain existing provisions designed to minimize interference. For this reason, we have added a portion of new § 95.131(c) to correspond to existing § 95.115; a portion of new § 95.119(d)(2) to correspond to existing § 95.71(d)(4); and portions of new § 95.7 and § 95.173(b).

Proposals Outside the Scope of This Proceeding

40. Certain proposals were made by various commenters suggesting changes in the existing rules and policies for the GMRS. Issues of this nature include: (1) Whether the present nature of the service (for both personal and business communications) should be changed to permit only personal or only business communications; (2) whether licensing fees should be introduced in the GMRS; (3) More's proposal to delineate all 462 MHz frequencies as primary, and to reserve all 467 MHz frequencies for mobile relay station access and control; (4) Uniden's inclusion in its comments of other petitions for rule making that it has submitted; (5) Motorola's and AT&T's proposals to relax prohibitions on non-voice communications in the GMRS; and (6) Motorola's proposal that we permit tone-only paging in the GMRS.

41. Our purpose here is to codify the existing rules as interpreted over the last twenty-five years in the GMRS. Proposals by commenters suggesting various substantive changes in the nature of the GMRS have not been considered and are not properly considered in the context of this

[3] We do not view remote control of a transmitter by wireline control link as such an interconnection. See, e.g., 47 CFR 90.7 (definition of interconnection). Remote control of a transmitter by wireline control link is permitted.

proceeding. All such issues are beyond the scope of this proceeding.

Conclusion

42. For all of the reasons stated above, we consider that it is necessary to codify the rules in the General Mobile Radio Service to reflect long-standing policies and interpretations of existing rules in order to promote a common understanding of the existing GMRS rules by licensees, prospective licensees, the general public and Commission personnel. Accordingly, we are adopting codified GMRS rules as shown in the Appendix attached hereto.

Regulatory Flexibility

43. We certified in the *Notice of Proposed Rule Making* in this proceeding that the rules we are adopting would not have a significant economic impact on a substantial number of small entities. The actions taken in this proceeding merely update present rule provisions, codify existing policies by incorporating them into the rules, and make compliance with requirements less burdensome for users. The Chief Counsel for Advocacy of the Small Business Administration has been notified.

Ordering Clauses

44. Accordingly, it is ordered, effective October 16, 1983, that 47 CFR Part 95 is amended as shown in the Appendix attached hereto (in the interest of clarity, we have set forth new Subpart A of Part 95 in the Appendix in its entirely). The authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

45. It is further ordered that this proceeding is terminated.

46. For further information concerning this document, contact John J. Borkowski (202) 632-4964.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 95—PERSONAL RADIO SERVICES

Subpart A of Part 95 of the Commission's Rules, 47 CFR Part 95, Subpart A, is revised to read as follows:

Subpart A—General Mobile Radio Service (GMRS)

General Provisions

Considerations When Planning a GMRS System

Applying for a GMRS System License

Managing a GMRS System

Operating a GMRS Station

Appendixes

Subpart A—General Mobile Radio Service (GMRS)

General Provisions

§ 95.1 The General Mobile Radio Service (GMRS).

The *GMRS* is a land mobile radio service available to eligibles and intended primarily for short-distance two-way personal and business communications. Each licensee manages a system consisting of one or more stations. Individual licensees and members of their families (see § 95.179) may use the system to exchange personal and business communications. All other licensees may use the system to exchange business communications only.

§ 95.3 License required.

(a) An entity must obtain a *license* (a written authorization from the FCC for a GMRS system or for a station in a GMRS system) before transmitting on any stations in the GMRS at any *point* (a geographic location) within or over the territorial limits of any area where radio services are regulated by the FCC.

(b) An entity may obtain a license for a station in the GMRS only if the station is part of the entity's GMRS system.

(c) Before an individual may be a station operator in a GMRS system, that individual must either:

(1) Hold the license for the GMRS system; *or*

(2) Have permission to be a station operator from the licensee of the GMRS system. (Only certain individuals may receive such permission from the licensee (see § 95.179).)

§ 95.5 License eligibility.

(a) An *entity* is eligible to obtain a license if:

(1) The entity is:	(2) And the entity is not:
(i) An individual 18 years of age or older;	(i) A foreign government.
(ii) A partnership, and each partner is 18 years of age or older.	(ii) A representative of a foreign government; *or*.
(iii) A corporation;	(iii) A Federal Government agency.
(iv) An association	
(v) A State, territorial or local governmental unit; *or*.	
(vi) Other legal entity	

(b) An agency such as a civil defense agency authorized by a state, territorial or local government unit is eligible to obtain a GMRS license.

(c) A corporate division or subsidiary is eligible for its own license only if it is separately incorporated.

§ 95.7 Channel sharing.

(a) Channels or channel pairs assigned to GMRS systems are available only on a shared basis and will not be assigned for the exclusive use of any licensee. All applicants and licensees shall cooperate in the selection and use of channels and channel pairs in order to reduce interference and to make the most effective use of the authorized facilities.

(b) Licensees of GMRS systems suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the FCC may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the FCC, its use in that location is not in the public interest; the use of any channel or channel pair may be restricted as to specified geographical areas, maximum power, or other operating conditions (see § 95.71(d)).

Considerations When Planning a GMRS System

§ 95.21 GMRS system description.

(a) *A GMRS system* is one or more transmitting units used by station operators to communicate messages. A GMRS system is comprised of:

(1) One or more station operators;

(2) One mobile station consisting of one or more mobile units (see § 95.23);

(3) One or more land stations (optional); *and*

(4) Paging receivers (optional).

(b) In certain areas, point-to-point GMRS systems may be comprised of fixed stations only (see § 95.47, § 95.49 and § 95.61).

(c) A GMRS system may be operated in:

(1) *Simplex mode.* (Only one station operator can speak at a time.)

(2) *Duplex mode.* (Two station operators can speak at the same time. One or more stations transmit on one channel. The other station(s) transmit(s) on the channel pair counterpart.)

(3) *A combined simplex-duplex mode.* (E.g., a mobile relay system with mobile units operating in simplex mode on a channel pair.)

§ 95.23 Mobile station description.

(a) A *mobile station* is one or more units which transmit while moving or during temporary stops at unspecified points.

(b) A mobile station unit may transmit from any point within or over any areas where radio services are regulated by the FCC *except* where additional restrictions apply.

(c) A mobile station unit may transmit from an aircraft or ship, with the captain's permission, which is:

(1) Within or over any area where radio services are regulated by the FCC *except* where additional restrictions apply; *and*

(2) On or over international waters, if the unit is transmitting from an aircraft or ship of United States registry.

(d) A mobile station unit must not transmit from points within or over the territorial limits of any area where radio services are regulated only by:

(1) A foreign government; *or*

(2) A United States government agency other than the FCC.

§ 95.25 Land station description.

(a) A *land station* is a unit which transmits only from:

(1) An exact point as shown on the license; *or*

(2) An unspecified point within an *operating area* (an area within a circle centered on a point chosen by the applicant) as shown on the license, for a *temporary period* (one year or less).

(b) The point from which every land station transmits must be within an area where radio services are regulated by the FCC.

(c) Each land station is classified according to its *communications points* (the other stations or paging receivers to which the station operator communicates messages). There are four *land station classes:*

(1) Base station (see § 95.55);

(2) Mobile relay station (see § 95.57);

(3) Control station (see § 95.59); *and*

(4) Fixed station (see § 95.61).

(d) A *small control station* is any control station which:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted (see § 95.51); *and*

(2) Is:

(i) South of Line A or west of Line C (see § 95.37); *or*

(ii) North of Line A or east of Line C, and the station transmits with less than 5 watts effective radiated power.

(e) A land station may be licensed to transmit as more than one station class. (Example: A land station is licensed as both a base station and a control staton. When it is transmitting as a base station its communication points are those of a base station (see § 95.55). When it is transmitting as a control station its communication points are those of a control station (see § 95.59).)

§ 95.27 Paging receiver description.

A *paging receiver* is a unit capable of receiving the radio signals from a base station for the bearer to hear a *page* (someone's name or other identifier said in order to find, summon or notify him/her) spoken by the base station operator.

§ 95.29 Channels available.

(a) The applicant for a GMRS system must select the channel or channel pair for the stations in the proposed system (see § 95.75(c)) from the following lists.

(1) For a base station, mobile relay station, fixed station, or mobile station: 462 MHz (Megahertz) channels: 462.550, 462.575, 462.600, 462.625, 462.650, 462.675, 462.700, 462.725.

(2) For a mobile station, control station, or fixed station in a duplex system: 467 MHz (Megahertz) channels: 467.550, 467.575, 467.600, 467.625, 467.650, 467.675, 467.700, 467.725.

(b) The FCC will normally assign only one channel or one *channel pair* (one 462 MHz channel and its counterpart 467 MHz channel, spaced 5 megahertz apart) to stations in a GMRS system intended for simplex operation. An additional channel will be considered only upon a satisfactory showing that the applicant requires if for operation of the system.

(c) The FCC will normally assign only one channel pair to stations in a GMRS system intended for duplex operation. (An example of a channel pair is channel 462.600 MHz and channel 467.600 MHz.) An additional channel pair will be considered only upon a satisfactory showing that the applicant requires it for operation of the system.

(d) Fixed stations authorized before March 18, 1968, located 100 or more miles from the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 50 which are authorized to operate

on frequencies other than those listed in paragraph (a) of this section may continue to operate on the originally assigned frequencies provided that they cause no interference to the operation of stations in any of the Part 90 private land mobile radio services.

§ 95.31 Overlap of GMRS systems.

An entity may not have a base station or a mobile relay station for that entity's GMRS system within 64.4 kilometers (40 miles) of a base station or a mobile relay station for another GMRS system licensed to the same entity.

§ 95.33 Cooperative use of radio stations in the GMRS.

(a) *Licensees* (a licensee is the entity to which the license is issued) of radio stations in the GMRS may share the use of their stations with other entities eligible in the GMRS, subject to the following conditions and limitations.

(1) The station to be shared must be individually owned by the licensee, jointly owned by the participants and the licensee, leased individually by the licensee, or leased jointly by the participants and the licensee.

(2) The licensee must maintain access to and control over all stations authorized under its license.

(3) A station may be shared only:

(i) Without charge;

(ii) On a non-profit basis, with contributions to capital and operating expenses including the cost of mobile stations and paging receivers prorated equitably among all participants; *or*

(iii) On a reciprocal basis, i.e., use of one licensee's stations for the use of another licensee's stations without charge for either capital or operating expenses.

(4) All sharing arrangements must be conducted in accordance with a written agreement to be kept as part of the station records.

(b) Participants in a cooperatively shared GMRS mobile relay or base station may obtain a license for their own mobile station(s), provided that the licensee of the shared GMRS station consents in writing to the issuance of such authorization.

§ 95.35 Multiple licensing of radio transmitting equipment in the GMRS.

Two or more persons licensed in the GMRS may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in §§ 95.171 through 95.181 of the rules; *and*

(b) Each licensee must have access to the transmitter for which the licensee is authorized.

§ 95.37 Considerations near the Canadian border.

The United States and the Government of Canada coordinate channel assignments to certain radio stations in areas along their common borders north of Line A and east of Line C. (See § 1.955 of the FCC Rules.)

§ 95.39 Considerations near FCC monitoring stations.

The FCC may impose additional restrictions on a land station in a GMRS system if it is at a point within 4.8 kilometers (3 miles) of an FCC monitoring station and the station's transmissions degrade, obstruct or repeatedly interrupt the operation of the monitoring station. (Before applying for a license to put a land station at such a point, or before applying to change anything in a station already licensed for such a point, the FCC should be consulted (see § 95.117(c).)

§ 95.41 Considerations in the National Radio Quiet Zone.

(a) The FCC may impose additional restrictions on a land station in a proposed GMRS system, or on one in a GMRS system proposed for modification, if the station is proposed for or located at a point within the *National Radio Quiet Zone* (an area within the States of Maryland, Virginia and West Virginia). The Zone is the area bounded by:

(1) 39°15′ N. on the North;

(2) 78°30′ W. on the East;

(3) 37°30′ N. on the South; *and*

(4) 80°30′ W. on the West.

(b) When applying for a license to put a land station at a point in the National Radio Quiet Zone, or when applying to change certain details in a station already licensed for such a point, the applicant must send a notice to the National Radio Astronomy Observatory (see § 95.79).

(c) Restrictions may be imposed if the National Radio Astronomy Observatory files an objection with the FCC within 20 days after the application is filed with the FCC.

§ 95.43 Considerations on environmentally or historically important land.

An application for a GMRS system which includes a land station at a point on *environmentally or historically important land* (land located in areas specified in § 1.1305(a)(6) of the FCC Rules or land significant in American history, architecture or culture) constitutes a major action as defined in § 1.1305 of the Commission's rules, and must be accompanied by specified statements (see § 95.81).

§ 95.45 Considerations on Department of Defense land.

The Department of Defense may impose additional restrictions on a station transmitting on its land. (Before applying to place or modify a station at such a point, an applicant should consult with the commanding officer in charge of the land.)

§ 95.47 Considerations in large urban areas.

(a) No fixed station may be at any point within a large urban area.

(b) A control station at a point within a large urban area must have:

(1) A directional antenna (at least 15 decibel front-to-back ratio); *and*

(2) No more transmitter power than determined by a *control station power test* (a test to determine the appropriate transmitter power (see Appendix A)).

(c) Where these Rules use the term *large urban area*, it means a circular region extending out 121 kilometers (75 miles) in all directions around the geographic center of certain cities.

(d) The large urban areas and their geographic centers are shown in Appendix B.

(e) Control stations and fixed stations authorized before October 16, 1983 located beyond 121 kilometers (75 miles) of the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, table 23, page 50, are not subject to the restrictions of this rule section.

§ 95.49 Considerations near large urban areas.

(a) A fixed station at a point near a large urban area must have:

(1) A directional antenna (at least 15 decibel front-to-back ratio); *and*

(2) No more than 15 watts transmitter power output.

(b) Where these Rules use the term *near a large urban area*, it means the region within a circular band around a large urban area. The band is 40 kilometers (25 miles) wide. It begins at the rim of the large urban area, and extends out 161 kilometers (100 miles) around the geographic center of the city.

(c) Fixed stations authorized before October 16, 1983 located beyond 161 kilometers (100 miles) of the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, table 23, page 50, are not subject to the restrictions of this rule section.

§ 95.51 Antenna height.

(a) A land station *antenna* (the land station's radiating structure (for transmitting, receiving or both),

including the tower, mast or pole supporting it and everything attached to the structure) must not be a hazard to aircraft. The licensee of a GMRS system must get FCC permission (see § 95.83) before the uppermost tip of an antenna may be higher than normally allowed in paragraphs (b), (c) and (d) of this rule section.

(b) Regardless of any other requirement of this rule section, an antenna may always be at least:

(1) 6.1 meters (20 feet) above the ground or above the building or tree upon which the antenna is mounted; *or*

(2) equal to the height of an existing antenna to which the land station antenna is attached.

(c) The antenna may be as high as 61 meters (200 feet) above the ground, unless it will be within 6.1 kilometers (20,000 feet) of an airport or heliport.

(d) If the antenna is near an airport or heliport listed in the FAA's (Federal Aviation Administration's) Airport Facilities Directory, or near an airport or heliport operated by the Department of Defense, it must not be higher than:

(1) One meter higher than the airport elevation for every 100 meters from the nearest runway if the runway is longer than one kilometer (3,281 feet), and is within 6.1 kilometers (20,000 feet) of the antenna; *or*

(2) Two meters higher than the airport elevation for every 100 meters from the nearest runway if the runway is no longer than one kilometer (3,281 feet), and is within 3.1 kilometers (10,000 feet) of the antenna; *or*

(3) Four meters higher than the heliport elevation for every 100 meters from the nearest landing pad if the pad is within 1.5 kilometers (5,000 feet) of the antenna.

(e) If the FCC grants permission to put an antenna higher than normally allowed in paragraphs (b), (c) and (d) of this rule section, the licensee may have to mark the antenna with bright paint and light it up at night (see Part 17 of the FCC Rules).

(f) A small control station antenna must not be more than 6.1 meters (20 feet) above the ground or above the building or tree upon which it is mounted.

§ 95.53 Mobile station communication points.

(a) A mobile station unit may transmit communications *directly* (not through a mobile relay station) to:

(1) Other mobile station units in the same GMRS system;

(2) Mobile station units in any other GMRS System;

(3) A base station in the same GMRS system; *and*

(4) A base station in any other GMRS system;

(b) A mobile station unit may transmit communications through a mobile relay station in the same GMRS system to:

(1) Other mobile station units in the same GMRS system;

(2) Control stations in the same GMRS system; *and*

(3) Mobile station units in any other GMRS system.

(c) A mobile station unit may transmit communications through a mobile relay station in another GMRS system assigned the same channel to:

(1) Mobile station units in the other GMRS system; *and*

(2) Control stations in the other GMRS system.

(d) A mobile station unit may transmit communications as a radio control link (See § 95.127) to a remotely controlled station.

(e) A mobile station unit must not transmit communications to:

(1) Any fixed station;

(2) Any control station, directly;

(3) Any station in the Amateur Radio Service;

(4) Any unauthorized station; *or*

(5) Any foreign station.

(f) A mobile station unit must not transmit communications through a mobile relay station in another GMRS system, for retransmission to:

(1) Other mobile station units in its own GMRS system;

(2) A control station in its own GMRS system; *or*

(3) Any station in any GMRS system other than the system which includes the mobile relay station.

§ 95.55 Base station communication points.

(a) A base station may transmit communications directly to:

(1) Mobile station units in the same GMRS system;

(2) Mobile station units in any other GMRS system; *and*

(3) Paging receivers in the same GMRS system.

(b) A base station must not transmit communications to:

(1) Any mobile relay station;

(2) Any base station;

(3) Any paging receiver not in the same GMRS system;

(4) Any fixed station;

(5) Any control station;

(6) Any station in the Amateur Radio Service;

(7) Any unauthorized station; *or*

(8) Any foreign station.

§ 95.57 Mobile relay station communication points.

(a) A mobile relay station in a GMRS system may *automatically* (without immediate thought or action by the station operator) retransmit communications between:

(1) A mobile station unit in the same GMRS system *and*:

(i) Another mobile station unit in the same GMRS system; *or*

(ii) A control station in the same GMRS system.

(2) A mobile station unit in any other GMRS system *and*:

(i) Another mobile station unit in the same GMRS system as the mobile relay station; *or*

(ii) A control station in the same GMRS system as the mobile relay station.

(b) A mobile relay station in a GMRS system must not automatically retransmit communications between:

(1) A mobile station unit in any other GMRS system *and* another unit of the same mobile station;

(2) Any control station *and* any other control station;

(3) Any other mobile relay station *and* any station;

(4) Any base station *and* any station; *or*

(5) Any fixed station *and* any station.

§ 95.59 Control station communication points.

(a) A control station may transmit communications as a radio control link (See § 95.127) to a remotely controlled station.

(b) A control station may transmit communications through a mobile relay station to:

(1) Mobile station units in the same GMRS system as the control station; *and*

(2) Mobile station units in any other GMRS system.

(c) A control station must not transmit communications to any other station.

§ 95.61 Fixed station communication points.

(a) A fixed station may transmit communications from the point authorized for it on the license to another fixed station in the same GMRS system at the point authorized for it on the license.

(b) A fixed station must not transmit communications to any other station.

Applying for a GMRS System License

§ 95.71 Applying for a new or modified license.

(a) An entity (See § 95.5(a)) applies for a license for a new GMRS system by filling out an application form, attaching

all additional information required, and sending it to the FCC. A licensee applies to modify a license for an existing GMRS system using the same forms and in the same manner as applying for a new GMRS system. All applications must be sent to:

Federal Communications Commission
Attention: GMRS
Gettysburg, Pennsylvania 17325

(b) An applicant for a General Mobile Radio Service system license, sharing a multiply-licensed mobile relay station, may operate the system for a period of 180 days, under a Temporary Permit, evidenced by a properly-executed certification made on FCC Form 574–T, after mailing FCC Form 574 to the Commission.

(c) The application will be returned to the applicant if it is defective. An application is *defective* if:

(1) The form is not completely filled out;

(2) All necessary additional information is not included; *or*

(3) All necessary certifications have not been made (see, e.g., §§ 95.75 (g)(2), (o) and (p)).

(d) The Commission may, without a hearing, grant an application in part or subject to terms or conditions or with privileges other than those requested. Such an action is presumed to be a grant of the application unless the applicant files a written rejection of the grant as made within 30 days from the date of the grant or the effective date of the grant, whichever is later. If the Commission receives rejection of such a grant, the Commission will vacate its original action and will set the application for hearing.

§ 95.73 System Licensing.

(a) Application for a license for a new GMRS system or application to modify a licensed GMRS system is made on Form 574. The applicant must follow the *Instructions for Completion of FCC Form 574* (available at FCC Field Offices).

(b) One set of forms must be used for each system the applicant wants the FCC to license.

(c) One form must be used to apply for the following stations in a GMRS system:

(1) The mobile stations;

(2) All small control stations (See § 95.25(d)); *and*

(3) No more than six land stations which:

(i) Are north of Line A or east of Line C (see § 95.37); *or*

(ii) Have antennas more than 6.1 meters (20 feet) high (see § 95.51).

(d) An additional form must be used to apply for every six land stations in a GMRS system that cannot be listed in the preceding form.

(e) Form 574–T, Temporary Permit for a General Mobile Radio Service System, should be used if applicant is eligible and desires to operate the station pending the processing of the application. (See also § 95.71(b).)

§ 95.75 Basic information.

The following information is required in all applications for a license for a new or modified GMRS system:

(a) Applicant's name (see § 95.5);

(b) Applicant's *mailing address* (an address in the United States where mail from the FCC can be received);

(c) Transmitting channel or channel pair requested (see § 95.29);

(d) Station class;

(e) Number of transmitter units in a mobile station (see § 95.23);

(f) Number of land stations in each class (see § 95.25);

(g) Transmitter power as follows:

(1) For a small control station north of Line A or east of Line C (see § 95.25), less than 5 watts effective radiated power (ERP) (see § 95.135(c));

(2) For other control stations at a point within a large urban area, a certification that the output power will be adjusted (see § 95.135(b));

(3) For all other stations, output power in watts;

(h) Each land station point (except small control stations):

(1) Latitude and longitude within one second; *and*

(2) Street address (if none, local directions to the station);

(i) Each control point for each remotely controlled land station (see §95.127), including small control stations:

(1) Street address (if none, local directions to the control point); *or*

(2) Call sign of any control station already licensed to the applicant for that point;

(j) Antenna height (see § 95.51) for each land station (except small control stations), and antenna ground elevation for each land station;

(k) Communication services (see § 95.101(c)) the proposed GMRS system would provide to, or receive from, any other individual or entity;

(l) Age eligibility statement (where required—see § 95.5);

(m) Area of operation;

(n) Emission designator;

(o) Foreign government certification, if applicable (see § 95.5);

(p) Frequency claim waiver certification, if applicable; *and*

(q) Applicant's signature (see § 95.87).

§ 95.77 Additional information for GMRS systems with four or more land stations.

(a) An application for a license for a new or modified GMRS system having four or more land stations (other than small control stations) must include a functional system diagram.

(b) A *functional system diagram* is a drawing showing details of a GMRS system.

(c) A copy of the functional system diagram must be kept as part of the GMRS system records (§ 95.113).

§ 95.79 Additional information for stations in the National Radio Quiet Zone.

An application for a license for a new or modified GMRS system having a land station at a point within the National Radio Quite Zone (see § 95.41) must:

(a) Send a notice to:

Director, National Radio Astronomy Observatory
P.O. Box 2
Green Bank, West Virginia 24944

(b) Provide the following details about the proposed station in the notice:

(1) Antenna point (latitude and longitude);

(2) Antenna height;

(3) Antenna directivity;

(4) Transmitting channel(s);

(5) Emission; *and*

(6) Transmitter output.

(c) Include in the application to the FCC the date the notice was sent to the Observatory.

§ 95.81 Additional information for stations on environmentally or historically important land.

An application for a license for a new or modified GMRS system having a land station at a point on environmentally or historically important land (see § 95.43) may constitute a major action and must be accompanied by specified statements. The applicant must refer to Subpart I of Part 1 of the FCC Rules to determine what additional information must be included with the application.

§ 95.83 Additional information for stations with antennas higher than normally allowed.

(a) An applicant for a license for a new or modified GMRS system seeking permission to have a land station antenna higher than normally allowed (see § 95.51) must:

(1) Request (on FCC Form 574) an antenna height greater than normally allowed; *and*

(2) Notify the Federal Aviation Administration (on FAA Form 7460–1) that the antenna would be higher than normally allowed.

(b) The FCC will not grant permission for a small control station to have an antenna higher than 6.1 meters (20 feet). (See §§ 95.25(d) and 95.51(f).) Control stations with antenna heights of greater than 20 feet must be separately identified on Form 574.

§ 95.85 Additional information for stations near United States borders.

An application for a license for a new or modified GMRS system having a land station at a point north of line A, east of line C, or close to any United States border must include additional data on FCC Form 574–B if the land station:

(a) Does not have vertical polarization;

(b) Does not have an omnidirectional azimuth;

(c) Has an associated control station with other than a directional antenna having its azimuth of maximum radiation directed towards the land station;

(d) Has an associated control station with other than 20 degrees beamwidth;

(e) Does not have 24 hours per day as its regular hours of operation; *or*

(f) Is part of a GMRS system that includes stations or units intended for communication with stations or units in other GMRS systems or in other radio services.

§ 95.87 Signature.

(a) If the applicant is an individual, he/she must sign the application.

(b) If the applicant is any other entity, the following individual must sign the application:

If the entity is:	The individual who signs is:
(1) A partnership	A partner;
(2) A corporation	An officer, director or employee;
(3) An association	An officer;
(4) A governmental unit	An official.

§ 95.89 Renewing a license.

(a) The licensee of a GMRS system may apply to the FCC to renew the license for another term (see § 95.105) by filling out FCC Form 405–A (or Form 574–R when the licensee has received that Form in the mail from the Commission) and sending it to the FCC (See § 95.117(b)(2)), providing that the license has not expired and that any changes are limited to the mailing address and/or the name (same entity (see § 95.103(c)(2)).

(b) If the renewal application is sent to the FCC before the existing license term expires, the renewal application is timely filed and the stations in the GMRS system may continue to transmit under the expired license until the FCC acts on the renewal application. (A copy of the renewal application sent to the FCC must be kept in the GMRS system records (see § 95.113) until the renewed license, or notification of other FCC action, is received.)

Managing a GMRS System

§ 95.101 What the license authorizes.

(a) A license authorizes the licensee to manage the GMRS system only as:

(1) The Rules require;

(2) The license specifies;

(3) Proposed by the entity in the license application; *and*

(4) Shown on the functional system diagram (where applicable).

(b) The license does not authorize operation as a common carrier or communication of messages for pay.

(c) If the licensee is a corporation and the license so indicates, it may use its GMRS system to furnish non-profit radio communication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary. Such use is not subject to the cooperative use provisions of § 95.33.

§ 95.103 Licensee duties.

(a) The licensee is responsible for the proper operation of the GMRS system at all times.

(b) The licensee must have access to the station equipment and be able to disable it. A licensee using multiple licensed transmitting equipment may satisfy this requirement by entering an arrangement with other licensees using the same equipment to select one of their number to have primary access responsibility.

(c) When the information about the licensee stated on the license changes, the licensee must take the following step(s):

(1) The licensee must notify the FCC in writing in the event of a name or mailing address change (see § 95.117(b)). The notice must show the name and mailing address as they appear on the license, the station call sign(s), and the new name or new mailing address. A copy of the notice must be kept as part of the GMRS system records (see § 95.113). (FCC Forms 405–A or 574–R may be used for this purpose.)

(2) If the licensee's status as an entity (see § 95.5) changes (e.g., a corporation is dissolved and a new corporation stands in its place, or a partnership becomes a corporation, etc.), the licensee must:

(i) Send the license to the FCC (see § 95.117(b)) for cancellation; *and*

(ii) Apply for a new license for the system in the name of the new entity. The former licensee may not operate until the FCC has aproved a license for the system in the name of the new entity.

§ 95.105 License term.

A license for a GMRS system is usually issued for a 5-year term. (FCC prints the expiration date on the license.)

§ 95.107 Keeping the license.

(a) The licensee must keep the license document until:

(1) The license expires; *or*

(2) The license is terminated by the FCC; *or*

(3) The licensee obtains a different license for the GMRS system.

(b) The license must be kept as part of the GMRS system records (see § 95.113).

(c) The license may be photocopied for any lawful purpose.

(d) If the license is lost, the licensee must request a duplicate document from the FCC (see § 95.117(b)(3)).

(e) If the license is no longer desired, it must be sent to the FCC (see § 95.117(b)(6)) with a written request that it be cancelled. (Forms 405–A or 574–R may be used for this purpose.)

§ 95.109 License not transferable.

(a) The licensee must not transfer, assign, sell or give the license for a GMRS system to any other entity except in accordance with the provisions of § 95.111.

(b) If the licensee sells or gives away the GMRS system equipment, the new owner must obtain a new license before using it (see § 95.71), unless the new owner intends to use the equipment with an already licensed GMRS system.

§ 95.111 Transfer of control of a corporation.

If the licensee of a GMRS system is a corporation, and there is a change in the control of the corporation, the licensee must request consent for the change of control from the FCC on Form 703 (see § 95.117(b)(5)). The FCC document granting such consent must be kept as part of the GMRS system records (see § 95.113).

§ 95.113 System records.

(a) The licensee must keep records for the GMRS system for the license term (see § 95.105), except that the licensee need not keep authorizations which have expired.

(b) GMRS *system records* include the following documents (where applicable):

(1) The license (see § 95.107);

(2) A current list of station operators given prior approval by the FCC (see § 95.179 (d) and (e));

(3) Copies of letters from the licensee to the FCC concerning name or mailing address changes (see § 95.103);

(4) Copies of answers to discrepancy notices;

(5) An STA or waiver of these Rules;

(6) A copy of any renewal application submitted to the FCC and not yet acted upon (see § 95.89(b));

(7) A copy of the measurements and calculations (see Appendix A) made during a control station power test (see § 95.47);

(8) A copy of a functional system diagram (see § 95.77);

(9) A copy of the agreement under which any station in the GMRS system is cooperatively shared (see § 95.33);

(10) A copy of the FCC consent to a licensee corporation's change in its corporate control (see § 95.111); *and*

(11) A temporary permit.

§ 95.115 Station inspection.

If an authorized FCC representative requests to inspect any station in a GMRS system, the licensee or station operator must make the station available. If an authorized FCC representative requests to inspect the GMRS system records (see § 95.113), the licensee must make them available.

§ 95.117 Where to contact the FCC.

(a) Write to:

The nearest FCC Field Office

(1) For application forms (see § 95.73 and § 95.87);

(2) For instruction forms (see § 95.73);

(3) To complain about interference; *or*

(4) To find out if the FCC has type-accepted a certain transmitter for use in the GMRS (see § 95.129).

(b) Write to:

Federal Communications Commission
Attention: GMRS
Gettysburg, Pennsylvania 17325

(1) To ask a question about an application or about these Rules;

(2) To file an application (see § 95.71 and § 95.89);

(3) To request a duplicate license (see § 95.107);

(4) To notify the FCC of a new name or mailing address (see § 95.103);

(5) To request consent to the change in the control of a licensee corporation (see § 95.111);

(6) To return a license to the FCC for cancellation (see § 95.103 and § 95.107); *or*

(7) To file a request for an STA or waiver of these rules.

(c) Write to:

Chief, Field Operations Bureau
Federal Communications Commission
Washington, D.C. 20554

(If consultation with the FCC is desired about putting a land station at a point within 4.8 kilometers (3 miles) of an FCC monitoring station (see § 95.39).

§ 95.119 Station identification.

(a) Except as provided in paragraph (e) of this section, every station in a GMRS system and every mobile station unit must transmit a station identification:

(1) Following the transmission of communications or a series of communications; *and*

(2) Every 15 minutes during a long transmission.

(b) The station identification is the call sign assigned to:

(1) The GMRS system; *or*

(2) The station in the GMRS system transmitting communications.

(c)A unit number may be included after the call sign in the identification.

(d) The station identification must be clearly transmitted in:

(1) Voice in the English language, with each letter and digit separately and distinctly transmitted (letters may be said using a phonetic alphabet); *or*

(2) International Morse code telegraphy with a keyed tone (400 to 2,000 Hertz) between 8.34 and 20.85 baud (ten to twenty-five words per minute). The transmitted frequency deviation must be between 1,500 and 2,500 Hertz. Should delayed or periodic activation of automatic Morse Code identification equipment interrupt the communications of another co-channel licensee, the Commission may require the use of equipment which will inhibit automatic station identification when co-channel communications are in progress.

(e) A station need not identify its transmissions if it automatically retransmits communications from another station which are properly identified.

§ 95.121 Transmitting channel.

Each station in a GMRS system must transmit only on the channel(s) or channel pair(s) (see §§ 95.7 and 95.29) printed on the license for that station.

§ 95.123 Sharing a station or sharing equipment.

Every station in a GMRS system which is cooperatively shared (see § 95.33) must be managed by the licensee in accordance with the written agreement and in accordance with the provisions of § 95.33. Licensees sharing multiply licensed equipment must do so in accordance with the provisions of § 95.35.

§ 95.125 Station control point.

(a) Each station in a GMRS system must have a *control point* (where the station operator can perform the required duties (see § 95.173)).

(b) The control point for each station must be at that station, unless the license authorizes the station to be controlled from a remote point.

§ 95.127 Controlling a station from a remote point.

(a) A station operator in a GMRS system may control the station from a remote point through a *control link* (a connection between the remote control point and the remotely controlled station). The control link must be either:

(1) A wireline control link solely for purposes of transmitter control (see § 95.181(i)(13)); *or*

(2) A radio control link.

(b) The remotely controlled station must not make unauthorized transmissions.

(c) The station operator must perform the required duties (see § 95.173) when controlling the station from a remote point the same as when controlling it locally at the station point. Should the control link fail to function so that the station operator cannot perform the required duties, the remotely controlled station must not transmit.

(d) The FCC does not consider a station in a GMRS system as being remotely controlled if the connection is a wireline or mechanical control link, and the station and its control point are both:

(1) On the same vehicle; *or*

(2) At the same street address, or within 152 meters (500 feet) of each other.

(e) Any device used to establish a wireline control link which is attached to the public switched telephone network after April 1, 1976 must be registered with the FCC and must comply with the standards incorporated in a registration program to protect the public switched telephone network from harm (see Part 68 of the FCC Rules).

§ 95.129 Station equipment.

(a) Every station in a GMRS system must use transmitters the FCC has type-accepted for use in the GMRS. Write to any FCC Field Office to find out if a particular transmitter has been type-accepted for the GMRS. All station equipment in a GMRS system must comply with the technical rules in Part 95, Subpart E of these rules.

(b) No transmitter may be used at a station in a GMRS system which:

(1) Is not FCC type-accepted for use in the GMRS;

(2) Has been internally modified to make it different from the FCC type-accepted model (see § 95.133); *or*

(3) Has been internally adjusted or repaired by anyone, except a person:

(i) FCC-licensed as a General Radiotelephone Operator; *or*

(ii) Supervised by an FCC-licensed General Radiotelephone Operator.

(c) A land station in a GMRS system must use a directional antenna if it is a:

(1) Control station at a point within a large urban area (see § 95.47); *or*

(2) Fixed station at a point near a large urban area (see § 95.49).

(d) Every small control station must use an antenna no more than 6.1 meters (20 feet) high (see § 95.25(d)).

§ 95.131 Servicing station transmitters.

(a) Each internal repair and each internal adjustment to a transmitter used in a station in a GMRS system must be made by a person:

(1) FCC-licensed as a General Radiotelephone Operator; *or*

(2) Supervised by an FCC-licensed General Radiotelephone Operator.

(b) Except as provided in paragraph (c) of this section, test signals during internal adjustments to a station transmitter must be made using a non-radiating simulated antenna.

(c) Brief test signals using a radiating antenna may be transmitted to adjust the antenna to the station transmitter or to detect or measure spurious radiation. These test transmissions must not be longer than one minute during any five minute period. These test transmissions shall not interfere with communications already in progress on the operating frequency, and shall be properly identified as required, but may be otherwise unmodulated as appropriate.

§ 95.133 Modification to station transmitters.

(a) No internal changes may be made in a transmitter used in a station in a GMRS system to make the transmitter different from the FCC type-accepted model (see § 95.129).

(b) One FCC type-accepted model may be converted to another FCC type-accepted model if the conversion is done:

(1) By the original manufacturer of the transmitter; *or*

(2) In accordance with the original manufacturer's instructions by a person holding an FCC General Radiotelephone Operator License.

§ 95.135 Transmitter power limits.

(a) No station may transmit with more than 50 watts output power.

(b) A control station at a point within a large urban area must not transmit with more output power than the licensee determines by a test (see § 95.47 and Appendix A). The licensee must keep a copy of the measurements and calculations made during this test as part of the GMRS system records (see § 95.113).

(c) A small control station at a point north of Line A or east of Line C must transmit with less than 5 watts effective radiated power (see § 95.25(d)(2)(ii)).

(d) A fixed station at a point near a large urban area must transmit with no more than 15 watts output power (see § 95.49).

§ 95.137 Moving a small control station.

(a) A small control (see § 95.25(d)) in a GMRS system may be moved from the point specified on the license to any other point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) to show the new point within 30 days after the small control station is moved.

§ 95.139 Adding a small control station.

(a) If a GMRS system is licensed under the system licensing procedure (see § 95.73), one or more small control stations may be added to the GMRS system at any point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) within 30 days after each small control station is added.

(c) If a GMRS system is not licensed under the system licensing procedure, the licensee must obtain a license for the modified GMRS system before adding a small control station.

§ 95.141 Interconnection.

No station in a GMRS system may be interconnected to the public switched telephone network.

§ 95.143 Managing a GMRS system in an emergency.

(a) The stations in a GMRS system must cease transmitting when the station operator of any station on the same channel is communicating an *emergency message* (concerning the immediate protection of property or the safety of someone's life).

(b) If necessary to communicate an emergency message from a station in a GMRS system, the licensee may permit:

(1) Anyone to be the station operator (see § 95.179); *and*

(2) The station operator to communicate the emergency message to any radio station.

Operating a GMRS Station

§ 95.171 Station operator at control point.

When a station in a GMRS system is transmitting, it must have a station operator. The station operator must be at the control point (see § 95.125) for that station. The same person may be the operator for more than one station at the same time.

§ 95.173 Station operator duties.

The *station operator*:

(a) Communicates messages (see § 95.181);

(b) *Controls* the station by:

(1) Causing it to transmit and to cease transmitting;

(2) Taking all necessary and reasonable precautions to assure that unauthorized or improper operations do not occur;

(3) Refraining from making any transmissions that may have the reasonably anticipated effect of causing improper operation of others' equipment; *and*

(4) In cases of recurrent interference, obeying any Commission-imposed additional requirements or restrictions.

§ 95.175 Cooperation in sharing the assigned channel.

The station operator must cooperate in *sharing* the assigned channel with station operators of other stations by:

(a) Monitoring the channel before initiating transmissions;

(b) Waiting until ongoing communications are completed before initiating transmissions;

(c) Engaging in only permissible communications (see § 95.181); *and*

(d) Limiting transmissions to the minimum practicable transmission time.

§ 95.177 Responsibility for station operator's communications.

The licensee is responsible for all communications made by station operators in the GMRS system. (The licensee should be certain every station operator understands and complies with these Rules.)

§ 95.179 Individuals eligible to be station operators.

(a) An individual GMRS system licensee may permit his/her immediate family members living in the same household to be station operators in his/her GMRS system. They may communicate messages about the licensee's personal activities and about the licensee's business activities. *Immediate family members* are the:

(1) Licensee;

(2) Licensee's spouse;

(3) Licensee's children, grandchildren, stepchildren;

(4) Licensee's parents, grandparents, stepparents;

(5) Licensee's brothers, sisters;

(6) Licensee's aunts, uncles, nieces, nephews; *and*

(7) Licensee's in-laws.

(b) These licensee may permit certain other individuals to be station operators. The individuals may only communicate messages about the licensee's business activities. Employees of the licensee may also communicate any messages while acting within the scope of their employment.

If the GMRS system licensee is:	These individuals maybe station operators:
(1) An individual	Licensee's employees;
(2) A partnership	Licensee's partners and employees;
(3) A corporation	Licensee's officers, directors and employees;
(4) An association	Licensee's members and employees;
(5) A governmental unit	Licensee's employees.

(c) The licensee may permit a telephone answering service employee to be a station operator if:

(1) That employee only communicates messages received for the licensee to the licensee;

(2) The station equipment at the telephone answering point is not shared in any other GMRS system; *and*

(3) The station at the telephone answering service point is not interconnected to the public switched telephone network.

(d) Except for emergency communications (see § 95.143), no other person may be a station operator unless the FCC has given prior approval. FCC approval may be requested when the application for license is filed or, if the licensee already has a license, by letter. The FCC approval must be kept with the system records (see § 95.113). It will state either the persons permitted to operate or unnamed persons for specific purposes. The request for approval must show:

(1) The nature of the proposed use;

(2) That the use relates to an activity of the licensee;

(3) How the licensee intends to maintain control over the station(s)/transmitter(s); *and*

(4) Why it is not appropriate for the other persons to obtain licenses in their own names.

(e) The licensee must keep a list of every person given prior approval by the FCC to be a station operator as part of the GMRS system records (see § 95.113).

(f) Any individual not listed in paragraphs (a) through (e) of this section may not be a station operator.

§ 95.181 Permissible communications.

(a) A station operator for an individual who is licensed in the GMRS (other than an employee of that individual) may communicate two-way voice messages concerning the licensee's personal or business activities (see § 95.179).

(b) An employee of an individual who is licensed in the GMRS may, as a station operator, communicate two-way voice messages while acting within the scope of his/her employment.

(c) A station operator for any entity other than an individual licensed in the GMRS may communicate two-way voice messages concerning the licensee's business activities (see § 95.179). An employee for an entity other than an individual licensed in the GMRS may, as a station operator, communicate two-way voice messages while acting within the scope of his/her employment.

(d) A station operator for any GMRS licensee may communicate two-way voice messages concerning:

(1) Emergencies (see § 95.143);

(2) Rendering assistance to a motorist; *and*

(3) Civil defense drills, if the responsible agency requests assistance.

(e) All messages must be in *plain language* (without codes or hidden meanings). They may be in a foreign language, except for call signs (see § 95.119).

(f) A station operator may communicate tone messages for purposes of identification or transmitter control in a control link (see § 95.127). (The FCC treats a control tone as voice in this case.)

(g) A station operator may communicate a *selective calling tone* or tone operated squelch (a tone message to call a particular station). (The FCC treats such tones as voice.) If the tone is *subaudible* (300 Hertz or less), it may be communicated during the entire voice message. If the tone is audible, it may be communicated for no more than 15 seconds at a time.

(h) A station operator may communicate a one-way voice page to a paging receiver. A *tone-only page* (tones communicated in order to find, summon or notify someone) must not be communicated.

(i) A station operator must not communicate:

(1) Messages for hire, whether the remuneration received is direct or indirect;

(2) Messages in connection with any activity which is against Federal, State or local law;

(3) False or deceptive messages;

(4) Coded messages or messages with hidden meanings ("10-codes" are permitted);

(5) Intentional interference;

(6) Music, whistling, sound effects or material to amuse or entertain;

(7) Sounds only to attract attention;

(8) Obscene, profane or indecent words, language or meaning;

(9) Advertisements or offers for the sale of goods or services;

(10) Advertisements for a political candidate or political campaign (messages about the campaign business may be communicated);

(11) International distress signals, such as the word "Mayday" (except when on a ship, aircraft or other vehicle in immediate danger to ask for help);

(12) Programs (live or delayed) intended for radio or television station broadcast (messages about news items or program preparation may be communicated);

(13) Messages which are both conveyed by a wireline control link and transmitted by a GMRS station (see § 95.127);

(14) Messages (except emergency messages) to any station in the Amateur Radio Service, to any unauthorized station, or to any foreign station;

(15) Continuous or uninterrupted transmissions, except for communications involving the immediate safety of life or property; *or*

(16) Messages for public address systems.

(j) A station operator in a GMRS system licensed to a telephone answering service must not transmit any communications to customers of the telephone answering service.

Appendixes

Appendix A—Making a Control Station Power Test

(a) A unit of the mobile station is brought to the control station *or* to a point within 402 meters (¼ mile) of the control station.

(b) The strength of the signal (in microvolts) received at the terminals of the feedline to the antenna of the remotely controlled station produced by transmissions of the unit of your mobile station must be measured.

(c) The directional antenna of the control station must be aimed so that transmissions from it produce the greatest signal strength at the terminals of the feedline to the antenna of the remotely controlled station.

(d) The transmitter output power of the control station must be adjusted (see § 95.135) so that the signal strength produced at the terminals of the feedline to the antenna of the remotely controlled station is no more than 6 decibels more than that produced by the unit of the mobile station. The maximum transmitter output power permitted any GMRS station must not be exceeded (see § 95.141).

(e) A record must be made of each control station power test and kept as part of the GMRS system records.

Appendix B—Where the Large Urban Areas Are Located.

City	North Latitude	West Longitude
	° ′ ″	° ′ ″
Akron, Ohio	41 05 00	81 30 44
Albany, Schenectady, and Troy, N.Y.	42 39 01	73 45 01
Albuquerque, N. Mexico	35 05 01	106 39 05
Allentown-Bethlehem-Easton Pa.-N.J.	40 36 11	75 28 06
Ann Arbor, Mich	42 16 59	83 44 52
Atlanta, Ga	33 45 10	84 23 37
Augusta, Ga.-S.C.	33 28 20	81 58 00
Austin, Tex	30 16 09	97 44 37
Bakersfield, Calif.	35 22 31	119 01 16
Baltimore, Md	39 17 26	76 36 45
Baton Rouge, La	30 26 58	91 11 00
Birmingham, Ala	33 31 01	86 48 36
Boston, Mass	42 21 24	71 03 25
Bridgeport, Conn	41 10 49	73 11 22
Buffalo, N.Y.	42 52 52	78 52 21
Canton, Ohio	40 47 50	81 22 37
Charleston, S.C.	32 46 35	79 55 53
Charlotte, N.C.	35 13 44	80 50 45
Chattanooga, Tenn.-Ga	35 02 41	85 18 32
Chicago, Ill.-Northwestern Ind	41 52 28	87 38 22
Cincinnati, Ohio-Ky	39 06 07	84 30 35
Cleveland, Ohio	41 29 51	81 41 50
Colorado Springs, Colo	38 50 07	104 49 16
Columbia, S.C.	34 00 02	81 02 00
Columbus, Ga.-Ala	32 28 07	84 59 24
Columbus, Ohio	39 57 47	83 00 17
Corpus Christi, Tex	27 47 51	97 23 45
Dallas-Fort Worth, Tex	32 47 09	96 47 37
Davenport-Rock Island-Moline, Iowa-Ill.	41 31 00	90 35 00
Dayton, Ohio	39 45 32	84 11 43
Denver, Colo	39 44 58	104 59 22
Des Moines, Iowa	41 35 14	93 37 00
Detroit, Mich	42 19 48	83 02 57
El Paso, Tex	31 45 36	106 29 11
Fayetteville, N.C.	35 03 00	78 53 00
Flint, Mich	43 00 50	83 41 33
Fort Lauderdale-Hollywood, Fla	26 07 00	80 09 00
Fort Wayne, Ind	41 04 21	85 08 26
Fresno, Calif.	36 44 12	119 47 11
Grand Rapids, Mich	42 58 03	85 40 13
Greenville, S.C.	34 50 50	82 24 01
Harrisburg, Pa	40 15 43	76 52 59
Hartford, Conn	41 46 12	72 40 49
Honolulu, Hawaii	21 19 00	157 52 00
Houston, Tex	29 45 26	95 21 37
Indianapolis, Ind	39 46 07	86 09 46
Jackson, Miss	32 17 56	90 11 06
Jacksonville, Fla	30 19 44	81 39 42
Kansas City, Mo.-Kans	39 04 56	94 35 20
Knoxville, Tenn	35 57 39	83 55 07
Lansing, Mich	42 44 01	84 33 15
Las Vegas Nev	36 10 20	115 08 37
Lawrence-Haverhill, Mass.-N.H	42 42 16	71 10 06
Little Rock-North Little Rock, Ark	34 44 42	92 16 37
Lorain-Elyria, Ohio	41 28 00	82 11 00
Los Angeles-Long Beach, Calif.	34 03 15	118 14 28
Louisville, Ky.-Ind	38 14 47	85 45 49
Madison, Wis	43 04 23	89 22 55
Melbourne-Cocoa, Fla	28 05 00	80 36 00
Memphis, Tenn.-Ark.-Miss	35 08 46	90 03 13
Miami, Fla	25 46 37	80 11 32
Milwaukee, Wis	43 02 19	87 54 15
Minneapolis-St. Paul, Minn	44 58 57	93 15 43
Mobile, Ala	30 41 36	88 02 33
Nashville-Davidson, Tenn	36 09 33	86 46 55
New Haven, Conn	41 18 25	72 55 30
New Orleans, La	29 56 53	90 04 10
Newport News-Hampton, Va	36 59 30	76 26 00
New York, N.Y.-Northerstern New Jersey	40 45 06	73 59 39
Norfolk-Portsmouth, Va	36 51 10	76 17 21
Ogden, Utah	41 13 31	111 58 21
Oklahoma City, Okla	35 28 26	97 31 04
Omaha, Nebr.-Iowa	41 15 42	95 56 14
Orlando, Fla	28 32 42	81 22 38
Oxnard-Ventura-Thousand Oaks, Calif.	34 12 00	119 11 00
Pensacola, Fla	30 24 51	87 12 56
Peoria, Ill.	40 41 42	89 35 33
Philadelphia, Pa.-N.J	39 56 58	75 09 21
Phoenix, Ariz	33 27 12	112 04 28
Pittsburgh, Pa	40 26 19	80 00 00
Portland, Oreg.-Wash	45 31 06	122 40 35
Providence-Pawtucket-Warwick, R.I.-Mass	41 49 32	71 24 41
Raleigh, N.C.	35 46 38	78 38 21
Richmond, Va	37 32 15	77 26 09
Rochester, NY	43 09 41	77 36 21
Rockford, Ill.	42 16 07	89 05 46
Sacramento, Calif.	38 34 57	121 29 41
St. Louis, Mo.-Ill.	38 37 45	90 12 22
St. Petersburg, Fla	27 46 18	82 38 19
Salt Lake City, Utah	40 45 23	111 53 26
San Antonio, Tex	29 25 37	98 29 06
San Bernardino-Riverside, Calif.	34 06 30	117 17 28
San Diego, Calif.	32 42 53	117 09 21
San Francisco-Oakland, Calif.	37 46 39	122 24 40
San Jose, Calif.	37 20 16	121 53 24
Sarasota-Bradenton, Fla	27 20 05	82 32 20
Scranton-Wilkes-Barre Pa	41 24 32	75 39 46
Seattle-Everett, Wash	47 36 32	122 20 12
Shreveport, La	32 30 46	93 44 56
South Bend, Ind.-Mich	41 40 33	86 15 01
Spokane, Wash	47 39 32	117 25 33
Springfield-Chicopee-Holyoke, Mass.-Conn	42 06 21	72 35 32
Syracuse, N.Y.	43 03 04	76 09 14
Tacoma, Wash	47 14 59	122 26 15
Tampa, Fla	27 56 58	82 27 25
Toledo, Ohio-Mich	41 39 14	83 32 39
Trenton, N.J.-Pa	40 13 30	74 45 00
Tucson, Ariz	32 13 15	110 58 06
Tulsa, Okla	36 09 12	95 59 34
Washington, DC-Md.-Va	38 53 51	77 00 33
West Palm Beach, Fla	26 42 36	80 03 07
Wichita, Kans	37 41 30	97 20 16
Wilmington, Del.-N.J.-Md	39 44 46	75 32 51
Worcester, Mass	42 15 37	71 48 17
Youngstown,-Warren, Ohio	41 05 57	80 39 02
San Juan, P.R.	18 28 00	66 07 00

Note 1.—This Appendix lists the urbanized areas of 200,000 or more people as shown in the Bureau of Census News Release of July 27 1981: "Provisional Population of Urbanized Areas, 1980." The geographical coordinates given are from the Department of Commerce publication of 1947: "Air-Line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned in the urbanized area as the center of the urbanized area.

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federal register

Wednesday
August 3, 1983

Part III

Commodity Futures Trading Commission

Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Final Rules on Registration and Other Regulatory Requirements and Notice of Qualification for "No-Action" Position Regarding Introducing Brokers

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 10, 15, 17, 18, 21, 33, 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: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules which establish registration requirements and procedures for introducing brokers and the associated persons ("APs") of introducing brokers, commodity trading advisors, and commodity pool operators. These rules, which implement pertinent portions of the Futures Trading Act of 1982, also establish minimum financial, reporting, and recordkeeping requirements for introducing brokers, create numerous exemptions from registration, establish limitations on the ability of APs to be simultaneously associated with different sponsors, and set forth a framework for participation in the Commission's option pilot program by introducing brokers.

The Commission has adopted a minimum adjusted net capital requirement of $20,000 for introducing brokers, as well as an alternative capital requirement for introducing brokers which have entered into a "guarantee agreement" with a futures commission merchant ("FCM") which will allow those introducing brokers to operate without raising their own capital. The Commission has also exempted introducing brokers from a portion of the Commission's financial "early warning" system so that those introducing brokers who are not operating pursuant to a guarantee agreement will not be required to file a notice and monthly financial reports when their capital level falls below 150 percent of the $20,000 minimum.

The final rules now being adopted by the Commission will exclude virtually all commodity trading advisors ("CTAs") and commodity pool operators ("CPOs") from the definition of introducing broker; as a result, most CTAs and CPOs will not be required to register as introducing brokers. In addition, introducing brokers will be exempt from registration as commodity trading advisors if their advisory activities are solely in connection with their business as introducing brokers. Furthermore, APs generally will be permitted to be simultaneously associated with more than one CTA or CPO under certain circumstances. The rules do, however, restrict the ability of an AP to be simultaneously associated with an FCM and with an introducing broker and similarly restrict the association of an AP with both an FCM or introducing broker and with a CTA or CPO.

In a **Federal Register** notice which is being separately published, the Commission has announced that it has revised the fees it charges for all categories of registrant and has established fees for the APs of CTAs and CPOs. The fees for introducing brokers and the associated persons of introducing brokers will be established by the National Futures Association.

EFFECTIVE DATE: August 3, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, or Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Futures Trading Act of 1982 [1] amended the Commodity Exchange Act ("Act") to require, *inter alia*, the registration of introducing brokers and the associated persons of introducing brokers, commodity trading advisors and commodity pool operators. On April 6, 1983, the Commission proposed rules and rule amendments to establish registration requirements and procedures for these new categories of registrant, prescribe minimum financial, reporting, and recordkeeping requirements for introducing brokers, create certain exemptions from registration, increase the fees charged for registration with the Commission, and specify appropriate regulatory responsibilities for these new categories of registrant. 48 FR 14933.

In particular, the Commission proposed to extend to all categories of associated persons the AP "sponsorship" and fingerprinting requirements that had previously been established for APs of futures commission merchants. While the Commission's proposal would have established certain exemptions from AP registration, it also would have prohibited an AP from being simultaneously associated with more than one FCM, more than one introducing broker, more than one CTA, or more than one CPO. In addition, the Commission proposed to require any person (other than an FCM, a floor broker, or an AP of an FCM or introducing broker) who was compensated on a per-trade basis or for the referral of customers to register as an introducing broker. The Commission's proposal would have further specified that an introducing broker that either directed or guided a client's commodity interest account must register as a commodity trading advisor. The Commission acknowledged that its proposal would, if adopted, cause many persons who had been operating as "agents" of FCMs to register not only as introducing brokers but also as CTAs and, in addition, would require some CTAs either to change the manner in which they were compensated or to register as introducing brokers. The Commission explained, however, that it believed that each of these proposals was fully consistent with the intent of Congress and the Commission's interpretation of the requirements of the Act. 48 FR at 14933-36.

In accordance with the Commission's mandate to establish such financial standards for introducing brokers as are necessary "to guarantee [the] accountability and responsible conduct" of introducing brokers,[2] the Commission proposed to establish a minimum adjusted net capital requirement for introducing brokers of $25,000 (or $50,000, where the introducing broker is not a member of a designated self-regulatory organization such as NFA). The Commission further proposed to include introducing brokers in the Commission's "early warning" system, so that an introducing broker whose capital was less than 150 percent of the minimum required amount (*i.e.*, $37,500 or $75,000, respectively) would have to file a notice at that time and thereafter file monthly unaudited financial statements until three successive months had elapsed during which the firm's adjusted net capital at all times equaled or exceeded the 150 percent level.

Over 100 persons commented on these items and on other aspects of the Commission's proposal. The commentators included the National Futures Association ("NFA"), industry trade associations, contract markets, FCMs, CTAs, CPOs, law firms, and

[1] Pub. L. No. 97-444, 96 Stat. 2294 (January 11, 1983).

[2] S. Rep No. 384, 97th Cong., 2d Sess. 41 (1982).

persons who identified themselves as "agents" of FCMs. The Commission has carefully reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting rules which it believes are not only responsive to the concerns of the commentators but are also fully consistent with the Commission's regulatory objectives in this rulemaking proceeding.

Shortly after the proposed rules were published in the Federal Register, the Commission transmitted to all registered FCMs a letter in which they were advised that in view of the effective date of the requirements for the registration of introducing brokers and the APs of introducing brokers created by the Futures Trading Act of 1982,[3] each FCM and agent of an FCM must determine whether those agents and their associated persons were to continue in business as introducing brokers and APs of introducing brokers or, alternatively, as APs of an FCM on and after May 11, 1983. 48 FR 15890 (April 13, 1983). That letter, which established procedures by which approximately 650 agents of FCMs and 4,500 APs have obtained a "no-action" position from the Commission with respect to those registration requirements, also instructed agents to submit their applications and related documentation to the NFA which, the Commission explained, had been authorized to process these materials on behalf of the Commission.[4] Finally, applicants for the Commission's "no-action" position were advised that they would have up to ninety days after the Commission adopted minimum financial requirements for introducing brokers to demonstrate their compliance with those requirements.

The Commission adopted a similar "no-action" position for the APs of CTAs and CPOs. 48 FR 16879 (April 20, 1983). As with the introducing broker "no-action" position, CTAs, and CPOs were required to submit a Certification in which they represented that they would be fully responsible for the conduct of their APs as though each such individual had been registered as an associated person of the sponsoring CTA or CPO in accordance with the Commission's registration regulations.

B. Summary of the Final Rules

The rules which the Commission is now adopting reflect the Commission's evaluation of the comments, its experience in the administration of the above-described "no-action" positions, and the Commission's further evaluation of its regulatory objectives in this rulemaking proceeding. The Commission has carefully weighed the concerns expressed by the commentators and, where possible, has modified its rule proposal to eliminate unnecessary regulatory burdens and any potential impediments to competition and to provide these new registrants with various options for the conduct of their businesses and with "substantial flexibility as to the manner and classification of registration."[5] The Commission is nevertheless mindful of its paramount obligation, which is to assure, to the extent reasonably possible, the fitness of every registrant.

Financial Requirements. As noted above, the Commission proposed to require introducing brokers to maintain a minimum adjusted net capital level of at least $25,000. Although some of the commentators supported the Commission's proposal, the preponderance of the commentators maintained that such a requirement, when read in conjunction with the proposed "early warning" requirements (and, as some of these commentators further noted, the total exclusion of an introducing broker's security or guarantee deposit with an FCM from the introducing broker's computation of net capital), would make introducing broker's continued operation considerably more difficult. Some of these commentators suggested that the Commission instead allow an introducing broker to operate without any fixed dollar amount of net capital if its obligations were guaranteed by a futures commission merchant.

As described in greater detail below, the Commission has reduced the minimum net capital requirement for introducing brokers to $20,000 and has eliminated that portion of the proposed "early warning" requirement for introducing brokers whereby an introducing broker whose capital was less than 150 percent of the minimum would have had to file monthly financial reports. Taken together, these changes effectively reduce the required capital level for introducing brokers by nearly 45 percent. The Commission has also determined to allow introducing brokers to credit towards their capital 50 percent of the value of the guarantee or security deposits which they maintain with an FCM which carries accounts for the introducing broker's customers.

Furthermore, and at the suggestion of some of the commentators, the Commission has adopted a rule which will allow any introducing broker which is a party to a "guarantee agreement" (as defined in § 1.3(nn) and reprinted at the end of this Federal Register notice) to satisfy its capital requirement solely by entering into such an agreement. In essence, the guarantee agreement provides that the FCM which is a party to the agreement will guarantee performance by the introducing broker of its obligations under the Act and the rules, regulations, and order thereunder. As such, the guarantee agreement is an alternative means for an introducing broker to satisfy the Commission's standards of financial responsibility for its activities as an introducing broker.

Confusion Concerning "Monthly Audits". An introducing broker which is not operating pursuant to a guarantee agreement will have to submit a certified financial report with its application for registration and, once registered, a certified year-end financial report. (These requirements are the same as those applicable to FCMs.) Introducing brokers who are operating pursuant to a guarantee agreement will not need to file annual certified or quarterly unaudited financial reports. Special provisions have also been made for those introducing brokers which are country elevators. Monthly audits were not proposed for introducing brokers; in addition, no monthly financial reports of any kind will be required for any introducing broker because the financial "early-warning" provision relating to a "non-guaranteed" introducing broker's capital which falls below 150 percent of the $20,000 minimum is being omitted.

Request for Short Form 1-FR. Introducing brokers using the alternative capital requirement will only need to complete the guarantee agreement. Furthermore, completion of the Form 1-FR has been simplified for "non-guaranteed" introducing brokers as a result of the limitation on the carrying of noncustomer accounts. Even though FCMs and introducing brokers will use the same Form 1-FR, those items not applicable to introducing brokers have been clearly identified.

Introducing Broker Definition. The commentators generally maintained that the introducing broker definition (*see* proposed § 1.57) was to broad. The Commission is excluding from that definition FCMs, floor brokers, APs (including exempt APs), CTAs which solely manage discretionary accounts or which do *not* receive per-trade compensation, and CPOs which solely operate commodity pools (§ 1.3 (mm)).

[3] Pub. L. No. 97-444, section 207, 208, 212, 96 Stat. 2302, 2303-04 (*amending* 7 U.S.C. 6d, 6f, 6k).

[4] 48 FR 15940 (April 13, 1983); *see* Section 8a(10) of the Act (7 U.S.C. 12a(10)). Pub L. No. 97-444, section 224(6), 96 Stat. 2315.

[5] H.R. Rep. No. 964, 97th Cong., 2d Sess. 41 (1982) (Conference Committee).

Flexibility and Time to Transfer in Accordance with Final Rules. The Commission is adopting a temporary regulation (§ 3.12a–(T)) allowing an AP one "free transfer" to a different registration category (to or from an FCM or introducing broker) within six months of the date of adoption of the final rule; deferring for 90 days the effective date of the capital requirement for introducing brokers operating pursuant to the Commission's "no-action" position; providing those persons who formerly operated as agents several alternatives (*i.e.*, branch office, AP, introducing broker with minimum capital requirement, and introducing broker with alternative capital requirement); and allowing those persons who did not qualify for the Commission's introducing broker "no-action" position and who now must register as introducing brokers because of the form in which they are compensated until October 31, 1983 in which to apply for registration. All of these provisions are intended to permit affected individuals and firms adequate time in which to determine the most suitable method of operation.

Multiple Associations. Some commentators supported the Commission's proposal (which would have prohibited an individual from being associated with more than one sponsor in each category of registration) because of concerns relating to identifying each firm's responsibility for an AP and potential conflicts of interest. Most of the other commentators, however, objected to the Commission's proposal, particularly because it would have created certain practical problems with respect to the APs of CPOs and CTAs. The Commission has developed several rules to address the commentators' concerns:

(a) An AP may not be simultaneously associated with more than one FCM or introducing broker (§ 3.12(f));

(b) An AP may not be simultaneously associated with both an FCM and with an introducing broker (§ 3.12(f));

(c) An AP of an FCM or introducing broker may not register as an AP of a CPO or CTA if that FCM or introducing broker carriers or introduces the discretionary or pool account which has been solicited or accepted by that AP (§ 3.12(f));

(d) An individual soliciting pool participants for a pool with more than one general partner would, absent an exemption, necessarily be associated with more than one CPO, which would have been prohibited by proposed § 3.12(f). An exception has now been provided for this situation (§ 3.16(a)(6)); and

(e) An AP may be simultaneously associated with more than one CPO or CTA subject to other rules, including sponsorship, the assumption of joint and several liability by the CPOs and/or CTAs for common customers, and the periodic fingerprinting of all APs of CTAs and CPOs with multiple associations (§ 3.16(e)).

Registration Fees. Fees (which are now the subject of a separate Federal Register notice) have been adjusted to reflect actual costs to the Commission. The Commission is not adopting a fee for principals. Furthermore, there will be no additional fee for simultaneous applications for registration as an AP in more than one capacity or for multiple AP associations reported on Form 3–R. Fees for introducing brokers and the APs of introducing brokers will be established by the National Futures Association.

Options. The final rules provide that it is unlawful for any person to solicit or accept orders for a commodity option transaction, or to supervise any person so engaged, unless such person is (1) an FCM which is either a member of the exchange on which the option is traded or a member of a self-regulatory organization (such as NFA) which regulates the option-related activities of its FCM members pursuant to Commission-approved rules; (2) an introducing broker which is either a member of self-regulatory organization which regulates the option-related activities of its introducing broker members pursuant to Commission-approved rules or is operating pursuant to a guarantee agreement with an FCM, and that FCM is a member of a self-regulatory organization which regulates the option-related activities of the introducing broker in a manner equivalent to that required of contract markets with respect to their member FCMs; or (3) an AP of an FCM or introducing broker which meets the above requirements.

II. Registration

A. Introducing Brokers

The Commission's proposal generally would have required those persons who were compensated on a per-trade basis or for the referral of customers to an FCM to register under the Act as an introducing broker. The Commission stated that its proposal was "intended to effectuate the Congressional intent that persons who were formerly agents [of FCMs] must now register as introducing brokers or as associated persons of a futures commission merchant."[6] The Commission explained that:

> 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. 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. . . . Generally, the agent was compensated by the FCM on a per-trade basis—*i.e.*, the agent would in some manner be allocated to 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 . . . The Commission is further proposing . . . 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 of acceptance of their orders for referral to an FCM for the institution of a trading relationship and the execution of those orders. 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 rquire 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.[7]

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[6] 48 FR 14933, 14935 (April 6, 1983).

[7] *Id.* at 14935–36 (footnotes omitted).

Although the Commission's proposal to define the persons who must register as introducing brokers received some support, the majority of the commentators who addressed the issue opposed that definition on the grounds that it would impose unnecessary requirements on CTAs and CPOs. Specifically, those commentators noted that requiring the re-registration of a CTA or CPO as an introducing broker would have the effect of duplicating the fitness checks that were made when the CTA or CPO was first registered with the Commission. These commentators further noted that the Commission's rules already require CPOs or CTAs to disclose the form and manner of compensation to prospective pool participants and clients[8] and to disclose any conflicts of interest that might arise between a CPO or CTA and an introducing broker.[9] Finally, the commentators suggested that inasmuch as the Commission's proposal would have the effect of establishing a capital requirement for certain CTAs and CPOs (but not those CTAs and CPOs which receive incentive or performance compensation), the Commission should separately propose such a rule for all trading advisors and pool operators pursuant to the authority contained in Section 4n of the Act (7 U.S.C. 6n) if it believed such a requirement to be necessary.

The Commission has carefully considered these comments and has reconsidered its objectives in light of those comments. The Commission's proposal, which was consistent with earlier staff interpretations of pertinent provisions of the Act, was intended primarily to preclude those persons who were formerly designated as agents of FCMs and who would now be required to register as introducing brokers from circumventing the newly-established statutory and regulatory requirements (including the proposed net capital requirement) by registering in some other capacity.[10] The Commission believes, however, that its objectives can be as well met by revising the final rules to eliminate the form and manner of compensation as the principal measure of whether registration as an introducing broker would be required. Thus, the Commission has decided to exclude from the definition of introducing broker any CTA which, acting in its capacity as a trading advisor, either manages discretionary accounts pursuant to a power of attorney *or* which is not compensated on a per-trade basis. The definition of introducing broker would similarly exclude any CPO which, acting in its capacity as a pool operator, solely operates commodity pools. Finally, the Commission's proposal would have exempted FCMs, floor brokers, and APs of FCMs and introducing brokers from registration as an introducing broker (proposed § 1.57(b)); these persons, as well as the APs of CTAs and CPOs, are now explicitly excluded from the definition of "introducing broker" if they are acting in their capacities as FCMs, floor brokers, or APs. Section 1.3(mm).

As a result of these exemptions, an AP who, acting in his capacity as an AP, solicits or accepts customers' or option customers' orders, or who solicits or accepts discretionary accounts or pool participations, would not be required to register as an introducing broker. Similarly, a commodity trading advisor which "guides" its clients' accounts by means of a systematic program that recommends specific transactions[11] and which is compensated other than on a per-trade basis (as, for example, by an incentive or a fixed monthly fee) would not be required to register as an introducing broker. These exclusions from the definition of "introducing broker" are, however, limited to the activities specified therein. Thus, for example, while a commodity pool operator which only operated commodity pools would not be required to register as an introducing broker, under these rules that same commodity pool operator would not be authorized to solicit or accept orders for an FCM unless it were also registered as an introducing broker or, in the case of an individual, as an AP of that FCM.

Some of the commentators noted that the definition of introducing broker should also exclude those persons who solicit or accept orders in a clerical capacity or who refer customers on an occasional basis and without compensation. The Commission believes that each of these suggestions has merit and has modified the definition of introducing broker to exclude those persons whose solicitation or acceptance of customer' or option customers' orders is solely clerical[12] or who are not compensated, directly or indirectly,[13] for their activities as an introducing broker.

The Commission's staff has received a number of informal inquiries as to whether a person who receives "split" commissions or a referral fee must, in all instances, be registered as an introducing broker. The Commission has previously given notice that if it were to adopt such a rule, it would provide affected persons who did not qualify for the Commission's April 7, 1983 "no-action" position for introducing brokers[14] adequate time in which to comply with that requirement.[15] As indicated above, a number of these persons will be excluded from the definition of introducing broker and will not, therefore, be required to register as such; others, such as those individuals who are registered in certain specified capacities with the National Association of Securities Dealers, may be exempt from registration in appropriate cases.[16] To provide the persons now covered by the amended definition adequate time in which to register, the Commission will not take any action to enforce the registration requirements with respect to any person who must now register under these rules as an introducing broker and who: (1) Is already registered with the Commission in some other capacity, and (2) files a completed application for registration as an introducing broker (including the form 1–FR, Part A (net capital computation) or Part B (guarantee agreement)) with the NFA not later October 31, 1983, which is

[8] *See* Commission rules 4.21(a)(7), 4.21(a)(14), 4.31(a)(4) (17 CFR 4.21(a)(7), 4.21(a)(14), 4.31(a)(4)).

[9] See Commission rules 4.21(a)(3) and 4.31(a)(5) (17 CFR 4.21(a)(3), 4.31(a)(5)). The Commission has nonetheless amended those rules explicitly to require the disclosure of any such conflicts.

[10] The Commission was particularly concerned that such an agent could register as a CTA and thereby evade the requirements that would otherwise be applicable to an introducing broker. Although, as discussed below, the Commission has modified its proposal in this regard, the Commission has directed its staff to scrutinize closely the manner and method by which such CTAs conduct business to ensure that they are not, in fact, "engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery" or for any commodity option traded on or subject to the rules of a contract market and are not, therefore, required to register as an introducing broker. *See* § 1.3(mm).

[11] *See* Commission rule 4.10(g)(2) (17 CFR 4.10(g)(2)).

[12] The Commission anticipates that the standards previously articulated in staff interpretations of the clerical capacity exception contained in Section 4k(1) of the Act would generally be applicable to this exclusion from the definition of introducing broker. *See, e.g.*, Interpretive Letter No. 76–18, Comm. Fut. L. Rep. (CCH) ¶20,210; Interpretive Letter No. 77–6, Comm. Fut. L. Rep. (CCH) ¶20,430; F. White & E. Lyon, *Report for the Commodity Futures Trading Commission: Questions Concerning the Registration of Associated Persons* (Projecter ±204), at 9–12 (April 10, 1975).

[13] Indirect compensation could include, among other items, forms of "soft" compensation such as research.

[14] 48 FR 15890 (April 13, 1983).

[15] 48 FR 19362, 19383 (April 29, 1983).

[16] *See* §§ 3.12(h)(2), 3.16(a)(5). An exemption from AP registration does not, in itself, exclude an individual from the definition of "introducing broker." As already discussed, however, the definition of introducing broker does not include many of the persons who would have been required to register as an introducing broker under proposed § 1.57(b).

ninety days after the adoption of these regulations. This latter "no-action" position will terminate upon the registration of that person as an introducing broker or upon notice from the Commission's Division of Trading and Markets or from the National Futures Association that the "no-action" position has been terminated.

The Commission also proposed to limit the exemption from CTA registration for introducing brokers to those introducing brokers which neither directed not guided clients' commodity interest accounts. Proposed § 4.14(a)(6). The Commission explained that its proposal was consistent with the recent amendments to the Act which, absent a regulatory exemption, would have required most introducing brokers to register as CTAs,[17] even in those cases "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."[18]

Those persons who commented on this portion of the Commission's proposal suggested that the Commission instead adopt a rule which would conform the regulatory structure for introducing brokers and their APs to that which is applicable to FCMs and their associated persons. In particular, the commentators noted that under the Commission's proposal, an introducing broker who formerly engaged in business as an agent of an FCM and who may not have been required to furnish the Disclosure Document or maintain the records specified in Commission rules 4.31 and 4.32 (17 CFR 4.31, 4.32) would now be required immediately to compile a composite "track record" of all customer accounts which had been directed by the agent during the preceding three years.[19] These commentators further noted that it was not uncommon for those agents to have employed APs who were individually registered as CTAs or to have purchased research reports from independent CTAs or from their clearing FCM which were then distributed to the agent's customers and that it would be extremely difficult to appropriately disclose past performance in such cases.

The commentators accordingly suggested that the Commission provide an exemption from CTA registration if the advisory activities of an introducing broker are "solely incidental" to the introducing broker's business. Such an exemption would be comparable to the exclusion of FCMs from the definition of "commodity trading advisor" contained in Section 2(a) of the Act. The Commission agrees in principle with these commentators and has adopted an exemption from CTA registration for any registered introducing broker whose "trading advice is [issued] solely in connection with its business as an introducing broker." Section 4.14(a)(6).[20] This exemption from registration parallels the already-existing exemption from CTA registration for associated persons (§ 4.14(a)(3))[21] and, the Commission believes, more precisely delineates the intended scope of this exemption than does the somewhat broader "solely incidental" exemption suggested by the commentators. The Commission will, however, monitor the use of these new registration categories and, if it determines that CTAs are registering as introducing brokers to avoid their disclosure obligations, the Commission will take appropriate measures to remedy any problems that may result from such a practice.

The Commission has interpreted its earlier "no-action" position for agents of FCMs who wished to continue to operate as introducing brokers (rather than as APs or branch offices of an FCM) to allow the APs of those agents to remain associated with an FCM even if they were not included in what would be otherwise denominated as a branch office if, among other conditions, the APs were compensated directly by the FCM.[22] The Commission issued that interpretation because it appeared that a "not insubstantial" number of country elevators and cash grain merchants who had formerly done business as agents of FCMs might not want to become introducing brokers or to do business in the name of a futures commission merchant as a branch office. The Commission believed that such interpretive advice was appropriate in light of the fact that persons in that situation might have difficulty deciding whether to apply for introducing broker status in the absence of final rules, particularly inasmuch as their activities as agents and associated persons are "often incidental to [their] principal business. . . ." The Commission indicated, however, that it "will continue to consider the appropriateness of this interpretation as well as whether and in what manner it should be continued when the Commission adopts final rules relating to introducing brokers and their associated persons."[23]

The Commission has carefully considered this matter in view of the comments that addressed this issue and its experience in the administration of its "no-action" position and has determined that the continuation of this interpretive position is unwarranted. The rules which the Commission is now adopting make certain special allowances for country elevators[24] and have been otherwise simplified to facilitate compliance by affected persons. As discussed more fully below, persons who formerly operated as agents of an FCM must elect either to operate as an introducing broker or as a branch office of an FCM or, in the case of an individual, as an AP of an FCM or introducing broker. The principal feature of the Commission's temporary "branch office interpretation" was that an introducing broker for which an FCM assumed full responsibility would not have to meet the capital requirements that would otherwise be applicable to introducing brokers. The alternative capital requirement for introducing brokers (*i.e.*, the guarantee agreement) permits a similar relationship but, the Commission believes, is more fully consonant with the requirements of the Futures Trading Act of 1982 which specifically contemplate the separate existence and business identity of introducing brokers upon the elimination of the former satutory category of "agents" of FCMs.

In this connection, the Commission has also adopted a rule which specifies that each branch office of a Commission registrant must use the name of the firm of which it is a branch and hold itself out to the public under that name. Section 166.4. This rule is intended to eliminate any remaining uncertainty in this area.[25] The Commission also wishes to confirm, in response to questions which have been posed informally to its staff on several occasions, tha an associated person *must* be situated in either the home office or designated branch office of the registrant and that each such office must have either a

[17] Futures Trading Act of 1982, Pub. L. No. 97-444, § 201(2), 96 Stat. 2297-98 (1982).

[18] 48 FR 14933, 14936 (April 6, 1983).

[19] Section 4.31(a) requires only those CTAs which are registered or required to be registered to furnish a Disclosure Document to their prospective clients.

[20] An introducing broker which was exempt from registration as a CTA would nonetheless remain subject to the provisions of Section 4*o* of the Act. *See* Commission rule 4.15 (17 CFR 4.15).

[21] The Commission wishes to emphasize that this latter exemption for associated persons is available to *all* APs (as defined in § 1.3(aa)) and is not limited, as some commentators assumed, only to the APs of futures commissions merchants.

[22] 48 FR 19362 (April 29, 1983).

[23] *Id.* at 19362-63.

[24] *See, e.g.*, § 1.10(i) (financial report filing option for country elevators).

[25] See, e.g., Section 4h of the Act (7 U.S.C. 6h); 48 FR 15890, 15892 n. 16 (April 13, 1983).

branch office manager of designated supervisor.[26]

In this connection, the Commission has become aware of various situations in which a registrant will compensate some other person for the referral of customers. These arrangements include the use of "equity raisers," as well as less formalized relationships in which a registrant will pay either a "finder's" (referral) fee or a percentage of the Commissions generated by the trading activity of the referred customer or client. The Commission does not object to these practices as long as the persons who are so compensated are properly registered. The following examples are intended to illustrate further the Commission's interpretation of the requirements of the Act and the regulations thereunder in certain situations; [27] additional examples, relating to the exemptions from AP registration now being adopted by the Commission and to APs' dual and multiple associations are provided elsewhere in this **Federal Register** notice.

(1) As a service offered to it customers, an independent "financial manager" recommends certain CTAs to its customers based upon the financial manager's assessment of the customer's investment strategies, net worth, and other factors and the CTAs, qualifications and performance. If the financial manager is compensated on a per-trade basis by the CTAs it recommends, it must register an AP of those CTAs (if the financial manager is an individual) or as an introducing broker (if the financial manager is not an individual). If it is compensated by its own clients or by the CTAs on other than a per-trade basis, the financial manager must itself be registered as a CTA (unless it is exempt from registration as such under Section 4m of the Act). The individual employees of the financial manager who solicit customers for referral to the "outside" CTAs must be registered as APs of the financial manager (if the financial manager is itself registered as an introducing broker or a CTA) or as APs of the outside CTAs (if the financial manager is itself an AP).

(2) A financial manager researches the qualifications and performance ("track records") of independent trading advisors for FCMs. The financial manager, for a per-trade fee paid by those FCMs, then recommends CTAs for inclusion on the FCMs' "approved list" of outside CTAs [28] but does not have any contact with customers. The financial manager need not register as an introducing broker or (if an individual) as an AP of the FCM as it does not refer orders or solicit customers.

(3) A commodity trading advisor sells subscriptions to an advisory newsletter and also provides its clients with access to a "hotline" which provides current market quotations and buy/sell recommendations—*i.e.*, it is not managing accounts pursuant to a power of attorney. Upon request, the CTA or its employees will provide its clients with the name of an FCM (or introducing broker) which can execute customer's orders. If the CTA is compensated by the FCM or introducing broker on a per-trade basis, the CTA must register as an introducing broker and its employees must register as APs of the introducing broker. (If the CTA is an individual, both the CTA and its employees may instead register as APs of the FCM or introducing broker to whom they are making the referrals.) If, however, the CTA is directly compensated by its customers for those referrals, its CTA registration will be deemed to be sufficient and registration as an introducing broker will not be required.

(4) Both an FCM and its APs receive trailing commissions for selling a public commodity pool underwritten by another firm. No additional registration is required of either the FCM or the AP because the receipt of a trailing commission for such services is consistent with their registrations as an FCM and associated person, respectively.

B. Associated Persons

The Commission proposed, with certain exceptions, to make the APs of introducing brokers, CTAs, and CPOs subject to the same "sponsorship" standards and fingerprinting requirements as APs of FCMs. Proposed § 3.12. The Commission did not receive any comments specifically addressing that portion of its proposal. The Commission did, however, receive several comments which suggested that it was inappropriate to prohibit APs from being associated with more than one CTA or with more than one CPO. Some of these commentators further objected to what they perceived to be unnecessary duplication of registration requirements in those cases where an AP would be associated with more than one sponsor. The Commission has carefully considered these comments in light of the requirements established by the Futures Trading Act of 1982 and, as discussed in greater detail below, has modified its regulations to establish certain special procedures for the registration of APs of CTAs and CPOs and, in particular, for those APs of CTAs and CPOs who are already registered as associated persons in some other capacity. *See* Section 3.16(e).[29]

The rules for the registration of APs which the Commission is now adopting nonetheless adhere to the principles of "sponsorship" first established by the Commission in December 1980.[30] These standards are now being made applicable to the APs of FCMs and introducing brokers and, with certain exceptions relating to the reporting of dual and multiple associations, to the APs of CTAs and CPOs as well. To accommodate the changes necessary to permit certain dual and multiple associations, the Commission has determined to amend § 3.12, the regulation which presently governs the registration of APs of FCMs, as proposed but to make it applicable only to the APs of FCMs and the APs of introducing brokers; the registration of APs of CTAs and CPOs will now be governed by new § 3.16. Despite this change, the regulations now being adopted by the Commission establish identical standards in those cases where an individual is applying for registration as an AP for the first time, regardless of whether the AP will be associated with an FCM or introducing broker (§ 3.12(c)) or with a CTA or CPO (§ 3.16(c)).[31]

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[26] FCMs, introducing brokers, CTAs and CPO may supplement their applications for registration (Form 7–R) to designate a branch office by the filing of a Form 3–R.

[27] These examples are intended to be illustrative only. Any determination as to whether a person must register with the Commission, and in which capacity, of course, must depend upon all of the particular circumstances surrounding such person's commodity-related activities.

[28] The Commission understands the term "approved list" to refer to those situations where an FCM permits its associated persons to refer those customers who seek to have their accounts managed or guided only to those CTAs, not affiliated with the FCM, who are on the firm's "approved list." The Commission further understands that the existence of an "approved list" does not operate to preclude a customer from independently selecting a CTA to manage or guide trading in the customer's account.

[29] One of the commentators further suggested that the Commission "grandfather" existing principals of CTAs and CPOs from having to register as associated persons. The Commission believes that such a measure is unnecessary inasmuch as those persons have presumably already filed applications for AP registration under the terms of the Commission's "no-action" position for the APs of CTAs and CPOs (48 FR 16879 (April 20, 1983)). Furthermore, and as discussed below, any CTA or CPO which is registered in an individual capacity (*i.e.*, as a sole proprietorship) will be exempt from registration as an AP of a CTA or CPO, respectively. Section 3.16(a)(2).

[30] *See* 45 FR 80485 (December 5, 1980).

[31] Introducing brokers will, however, file registration materials, including applications for AP registration, with the National Futures Association. *See* § 3.2(a). *See also* 48 FR 15940 (April 13, 1983).

Similarly, where an AP is no longer associated with a sponsoring FCM, introducing broker, CTA, or CPO, the standards and procedures for the expedited re-registration of that individual will be identical for all categories of AP registration. Sections 3.12(d), 3.16(d). Where, however, an already-registered AP wishes to become simultaneously associated with a CTA or CPO, the Commission has established special procedures for the reporting of that simultaneous association. Each of these situations is described in detail below.

Initial registration. Except in those cases where a Form 3–R is being filed by a CTA or CPO to report the association with that CTA or CPO of an already-registered AP, the sponsor of an AP's application for registration is required to make certain certifications regarding the applicant. Specifically, the sponsoring FCM, introducing broker, CTA or CPO must 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).[32] Sections 3.12(c)(1)(i), 3.16(c)(1)(i). In this connection, the Commission wishes to clarify, in response to the concern expressed by one of the commentators, that this regulation applies equally to all APs—regardless of whether they are denominated by the sponsor as partners, officers, employees, consultants, agents or independent contractors (or any similar term).[33] Sections 3.12 and 3.16 require the sponsor to certify that it has "hired or . . . *otherwise employed*" an associated person.[34] The latter phrase—which was originally included in the Commission's regulations to cover those situations where a partner of an FCM was also an associated person—is not limited to common law employer-employee relationships, but also includes any relationship or association which requires AP registration.

Sections 3.12(c)(1)(ii) and 3.16(c)(1)(ii) require the sponsor 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 does not apply, however, in the case of "grandfathered" APs of FCMs 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 a sponsoring FCM.) Sections 3.12(c)(1)(iii) and 3.16(c)(1)(iii) further require 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.[35]

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.[36] Furthermore, the Commission anticipates that the continued upgrading of quality overall among registrants will lower costs by reducing turnover of personnel, lost business due to customer dissatisfaction, and litigation arising from the acts of employees.[37] The regulations do not prescribe procedures which must be employed by the sponsor prior to making the required certifications. The Commission contemplates, however, that sponsors will use methods comparable to those customarily employed by the financial community for sensitive positions and may contract with investigative agencies to perform some or all of the screening functions. Although the Commission does not object to such a practice, it nonetheless remains the sponsor's responsibility to assure itself of the accuracy of the representations that are made to the Commission.

The Commission recognizes 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 4–6 weeks—the amount of time which may be needed by a sponsor to complete its background checks on the applicant. The Commission is, therefore, extending to all categories of APs the provision which permits a sponsor to submit the Form 8–R without the required "Sponsor's Certification" as long as that Certification is submitted at a later date. This "dual processing" allows the Commission to commence its background checks of the applicant [38] while the sponsor conducts its own screening of the applicant prior to its submission of a completed Sponsor's Certification. *See* §§ 3.12(c)(2), 3.16(c)(2). An AP will not be registered, however, until that Certification has been submitted.

With certain exceptions, each Form 8–R submitted in connection with the registration of an AP must be accompanied by a fingerprint card. Sections 3.12(c)(3), 3.12(d)(3), 3.16(c)(3), 3.16(d)(3). A person who is simultaneously applying for AP registration in more than one capacity, however, will only be required to file a single fingerprint card and would not, as one of the commentators assumed, be required to file a fingerprint card for each such capacity.[39] (In those relatively

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[32] If, after the filing of a Form 8–R, the applicant either fails to become associated with the sponsor or if that relationship is terminated, the sponsor must promptly report that fact to the Commission, or in the case of an AP of an introducing broker, to the NFA. Section 3.31(c)(1).

[33] Sections 4k (1), (2), and (3) of the Act (7 U.S.C. 6k (1), (2), (3)), Pub. L. 97–444, § 212, 96 Stat. 2303–05, provide that unless an individual is registered as an associated person of a particular registrant, it is unlawful for that individual to be associated in any of the following capacities with:

(1) A futures commission merchant as a partner, officer, or employee (or any 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' or option 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 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.

Id.; see § 1.3(aa).

[34] Sections 3.12(d)(1)(i), 3.16(d)(1)(i); *see* §§ 3.12(c)(1)(i), 3.16(c)(1)(i).

[35] 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. If, for example, an AP applicant or registrant answered "Yes" in response to any of those questions, the sponsor is 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 the Commission's regulations 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 regulations do 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); 48 FR 14933, 14937 n.32 (April 6, 1983).

[36] 45 FR 18356, 18357 (March 20, 1980); 45 FR 80485, 80488 (December 5, 1980); 48 FR 14933, 14937 (April 6, 1983).

[37] *Id.*

[38] The Commission and the NFA screen applicants and principals with the Federal Bureau of Investigation and the Securities and Exchange Commission ("SEC") and, where necessary, conducts or causes to be conducted further investigations of the individual's fitness.

[39] Similarly, a person who was simultaneously filing as a principal and as an associated person would only have to file a single fingerprint card.

rare cases where an AP will have different sponsors for each capacity of AP registration—as, for example, where a CPO has a separate CTA subsidiary—the application for registration as an AP of a CPO on Form 8–R or Form 8–S should be accompanied by a Form 3–R listing that individual as an AP of the CTA. Both the CTA and the CPO will then be the sponsors of, and responsible for, the associated person. *See* § 3.16(e)(2).)

Expedited AP registration procedures. Proposed § 3.12(d) would have extended the expedited registration procedure which is presently available to APs of FCMs to applicants for AP registration in any capacity. Specifically, the Commission's proposal would have allowed any person whose AP registration had terminated within the preceding sixty days, as well as any person whose registration as an AP was still in effect, to use this expedited procedure. Thus, for example, an individual who was already registered as an AP of a CTA could use this expedited procedure to become immediately registered as an AP of an FCM. Similarly, an AP of an FCM whose registration had terminated within the preceding sixty days could, under the Commission's proposal, have filed Form 8–S to become an AP of either another FCM or to become an AP of an introducing broker, CTA or CPO.

These expedited procedures allow an eligible individual to become registered as an AP of a 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 must personally certify that his AP registration in any capacity is neither suspended nor revoked, that he qualifies for expedited registration, 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. Within sixty days of the filing of the Form 8–S, the AP and the sponsor must complete and the sponsor must file with the Commission a completed Form 8–R (including the "Sponsor's Certification" described above), the registration fee and a fingerprint card.[40]

[40] No fingerprint card is required, however, in those cases where the Forms 8–S and 8–R are being filed prior to the first expiration of that individual's registration as an associated person of an FCM subsequent to July 1, 1982 and the AP is remaining under the sponsorship of an FCM.

The Commission has refined its proposal in light of the special procedures, discussed below, which have been established for the reporting of dual and multiple associations of APs of CTAs and CPOs. As revised, an AP who wishes to become associated with an FCM or with an introducing broker may still use Form 8–S—both in the case where that individual remains registered as an AP of a CPO or CTA and where that individual's prior AP registration in any capacity has terminated within the preceding sixty days.[41] By comparison, however, an individual who wishes to become asssociated with a CTA or a CPO would be required to file Form 8–S (and, within sixty days, a Form 8–R, a fingerprint card, and the registration fee) only in those cases where the AP is no longer associated with any category of registrant; as described more fully below, APs who remain registered as such must file a Form 3–R to become associated with a CTA or CPO.

Multiple associations. Proposed § 3.12(f) would have prohibited an AP from being associated with more than one registrant in any capacity. Thus, while an AP would have been permitted to become associated with up to four sponsors (one FCM, one introducing broker, one CTA, and one CPO), he would not have been allowed to be an AP with any two registrants in the same category (*e.g.*, two FCMs or two CPOs). The Commission explained that its proposal was consistent with the then-existing rule which prohibited an AP from being associated with more than one FCM and that, in the Commission's view, "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.[42] The Commission specifically requested 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 for APs of commodity trading advisors and APs of commodity pool operators permitted by Sections 4k (2) and (3) of the Act.[43]

[41] In those instances where an AP was registered as such prior to July 1, 1982 and has not yet re-registered under the sponsorship of a futures commission merchant, the sponsoring FCM must file either a completed Form 8–R or a Form 8–S on or before the scheduled expiration date of the AP's registration. Where the FCM does elect to file the Form 8–S (as, for example, where it may not have completed its processing of the Form 8–R prior to the expiration date), it must file the completed Form 8–R within the ensuing sixty days.

[42] 48 FR 14933,14939 (April 6, 1983) (footnote omitted).

The Commission received several comments on this portion of its proposal. Some of the commentators strongly supported the Commission's proposal and noted that it would be difficult to supervise and monitor an AP's activities if the AP were permitted to have several employers. Other commentators, however, noted that it is not uncommon for persons who will now be required to register as APs of CTAs or CPOs to work for several firms at one time. Some of these CTAs and CPOs maintained that, because of the relatively limited scale of their operations, it would be prohibitively expensive for them to retain a full-time sales force and that, of necessity, they entered into contractual arrangements whereby an individual or firm generates potential clients or pool participants for several CTAs and CPOs at the same time. These commentators argued that this practice is actually advantageous to potential clients and pool participants because it has the practical effect of offering them a wider choice of investment alternatives than would otherwise be available if they were solicited by an AP whose sole allegiance was to a particular CTA or CPO.

The Commission has carefully considered each of these comments as well as its experience with the existing restriction on the APs of FCMs[44] and has refined the final rule in a manner which it believes will accommodate these concerns as well as the Commission's desire to assure that responsibility for an AP's conduct is clearly delineated and that APs continue to remain fit for registration. Specifically, the Commission has determined to continue to prohibit APs from being associated with more than one FCM and has similarly determined to preclude APs from associating with more than one introducing broker. As noted above, those commentators who supported the Commission's proposal noted that it would be difficult to ascribe responsibility in cases where an AP is working for different sponsors. The Commission believes this comment has merit, particularly in light of the

[43] Id.

[44] For example, the Commission's staff, acting pursuant to delegated authority (*see* § 3.12(g)), has granted petitions for exemption from the prohibitions contained in § 3.12(f) in certain limited circumstances, subject to appropriate conditions—such as joint and several liability—in cases where an AP sought to be associated with two FCMs. *See also* 48 FR 4650 (February 2, 1983).

similarity between the functions of introducing brokers and FCMs, and has therefore determined also to preclude APs from being simultaneously associated with an FCM and with an introducing broker. Section 3.12(f) (1), (2).

As noted earlier, the Commission has determined to allow APs of CTAs and CPOs to be associated with more than one CTA or CPO (or with a CTA and a CPO) under certain conditions, including that all such dual and multiple associations must be reported to the Commission on Form 3–R. Similarly, the association with a CTA or CPO of an individual who is already registered as an AP of an FCM or introducing broker must be reported on Form 3–R. The filing of such a Form 3–R will constitute a certification that the commodity trading advisor or commodity pool operator has verified that the AP is currently registered as an associated person in *any* capacity (*i.e.*, as an AP of an FCM, introducing broker, CTA or CPO) and that the AP is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act.

Furthermore, the filing of such a Form 3–R will constitute an acknowledgment by the CTA or CPO that in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator will be jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account, or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to the trading advisor or pool operator and any other CTAs or CPOs with which the AP is associated.[45] Section 3.16(e)(2)(i). This latter condition has been included because of the Commission's concern that in cases where an AP is engaged in soliciting clients for more than one CTA or in soliciting pool participants for more than one CPO, it could be difficult not only to assign responsibility to a particular trading advisor or pool operator for any misrepresentations or omissions made by the AP in the course of that solicitation, but also to conduct audits for these purposes. (For example, if an AP were to represent that the risks of commodity trading can be eliminated completely by the use of "stop-loss" orders,[46] it would be difficult for the customer solicited by that AP to prove in any subsequent dispute that the representations on which the customer relied were made on behalf of the trading advisor who ultimately managed that customer's account.) The Commission understands that this latter requirement may limit these multiple associations but, in view of the substantial regulatory benefits from such a provision, does not believe that it will unnecessarily restrict common industry practices.

An AP who is already registered in some other capacity and for whom a CTA or CPO now files a Form 3–R will be registered as an AP of that CTA or CPO and will remain so registered as long as he remains associated with that sponsor. Section 3.16(b). Thus, for example, an AP of a CTA who becomes associated with a CPO will also be registered as an AP of that CPO. Even if the AP later leaves the CTA's employment, he will remain registered under the sponsorship of the pool operator as long as he continues to be associated with that CPO. Because such an AP will not be required to file a Form 8–R or a fingerprint card when he becomes associated with the CPO—unlike the APs of FCMs or introducing brokers who register under the expedited procedures provided by § 3.12(d) [47]—persons who are APs of more than one CTA or CPO (or who are already registered as APs of an FCM or introducing broker when they become associated with a CTA or CPO) will be periodically required to file a fingerprint card beginning approximately two years after they first become associated with a CTA or CPO. This procedure for the fingerprinting of APs with multiple associations is intended to permit the Commission or its designee to confirm an AP's continued fitness for registration. Section 3.16(e)(2) (ii).[48]

Even though the Commission has adopted this special procedure to accommodate the diverse arrangements by which some registrants and, in particular, CTAs and CPOs solicit and conduct business, the Commission nonetheless agrees with those commentators who were concerned that allowing certain types of dual and multiple associations could have the effect of diffusing an AP's sponsors' supervisory responsibilities to the point where it could become impossible to ascertain who was responsible for the AP's conduct. In particular, the Commission was concerned that allowing an AP to engage in certain parallel types of activity on behalf of different sponsors could result in situations where each sponsor would attempt to disavow any responsibility for the AP by asserting that the wrongful acts or omissions of the associated person were not attributable to that sponsor but rather to the AP's other employers. For this reason, and as explained above, such multiple associations will be permitted only where an AP soliciting for two or more CTAs or CPOs will, to the extent that a client or pool participant is solicited for those CTAs or CPOs, be the joint and several responsibility of each such trading advisor or pool operator.

The Commission has similar concerns with respect to the solicitation of discretionary accounts and pool participations by APs of FCMs or introducing brokers who, absent appropriate limitations, could be simultaneously associated with a CTA or CPO. The Commission recognizes, however, that it is customary for an FCM, to the extent that it recommends CTAs to its customers, to provide the names of several trading advisors and separately, to allow other registered CTAs not on the FCMs' "approved list" to manage customers' accounts pursuant to a power of attorney. The Commission has, therefore, adopted a rule which prohibits an AP from being associated with an FCM and a CTA where that FCM solicits or intends to solicit clients or prospective clients for that trading advisor. In such a case, however, an AP associated with the FCM may solicit customers for any trading program recommended by the FCM without having to register as an AP of the CTAs which will be managing the customers' accounts. Section 3.12(f)(3). The Commission has adopted a similar rule with respect to introducing brokers and CTAs. Section 3.12(f)(7). For the same reasons, the Commission has decided to prohibit an AP from being simultaneously associated with a CTA and with an FCM or introducing broker for which the FCM or introducing broker will carry or introduce clients' or prospective clients' discretionary accounts (§§ 3.12 (f)(4), (f)(8)).

[45] The terms "customer" and "option customer," as defined in Commission rules 1.3(k) and 1.3(jj) (17 CFR 1.3(k), (jj)), include discretionary account clients and pool participants.

[46] *See* Commission rule 1.55(b) (17 CFR 1.55(b)).

[47] A number of the commentators supported the Commission's proposal to allow APs to become associated with CTAs and CPOs upon the filing of a Form 3–R. The Commission has declined, however, to adopt the suggestion of some of those commentators that APs who are already registered in any capacity be allowed to add additional associations without an immediate review of their continued fitness for registration. *See* 48 FR 14933, 14938 (April 6, 1983); 45 FR 80485, 80487 (December 5, 1980).

[48] *See generally* 45 FR 18356, 18356–57 & n.5 (March 20, 1980); 45 FR 80485, 80487 (December 5, 1980).

The Commission is adopting similar limitations on the ability of an AP to be associated with a CPO and with an FCM or introducing broker. The Commission recognizes that it would be impractical to register all of an FCM's or introducing broker's APs with each CPO for whom the FCM or introducing broker carried or introduced accounts. Thus, and as with the solicitation of discretionary accounts by an AP of an FCM or of an introducing broker, an AP who solicits pool participations for an FCM or introducing broker will not be permitted to be associated with a CPO which will operate a pool solicited by the FCM or introducing broker; such an AP will be deemed to be associated solely with the FCM or introducing broker, and not with the pool operator. Sections 3.12 (f)(5), (f)(9). Finally, an AP will not be allowed to become associated with a CPO and an FCM or introducing broker for which the FCM or introducing broker will carry or introduce the account of a commodity pool operated by that pool operator (§§ 3.12 (f)(6), (f)(10)).

Exemptions from AP registration. Proposed § 3.12(h) would have established certain limited exemptions from AP registration in addition to those established by Section 4k of the Act. Sections 4k(1)–(3) of the Act exempt any individual who is registered as an FCM, floor broker, or introducing broker from AP registration in any capacity while Sections 4k(2) and 4k(3) further exempt CPOs and CTAs from having to register as APs of commodity pool operators and commodity trading advisors, respectively. As described more fully below, the Commission has substantially expanded upon its proposal and has augmented these statutory exemptions to eliminate entirely the need for AP registration in appropriate cases.

For example, the Commission's proposal would have exempted from registration as an AP of a commodity pool operator any individual who is already registered with the National Association of Securities Dealers ("NASD") as a registered representative or registered principal. As the Commission observed at that time:

> [S]ome CPOs register their pool offerings with the Securities and Exchange Commission 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. . . .
>
> 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. 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. 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 and Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, 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.[48]

The commentators generally supported the Commission's proposal but noted that the proposed exemption would be nullified if the persons who would otherwise be exempt from registration as APs of CPOs nonetheless had to register in some other capacity. As noted above, the Commission has modified the definition of "introducing broker" to exclude any associated person acting in his capacity as an AP, regardless of whether that associated person is registered or exempt from registration (§ 1.3(mm)). The Commission is also broadening the exemption for these NASD registrants so that they will be exempt from AP registration in all capacities (*i.e.*, as an AP of an FCM, introducing broker, CTA or CPO) as long as the exempted individual's only commodity-related activity is the solicitation of funds, securities or property for a participation in a commodity pool (or the supervision of any person or persons so engaged) and that activity is conducted pursuant to that individual's NASD registration. Thus, this exemption will not be available to any individual who is engaged in any other activities which are subject to regulation by the Commission. Sections 3.12(h)(2), 3.16(a)(5).

[48] 48 FR 14933, 14939 (April 6, 1983) (footnotes omitted).

In addition, it has come to the attention of the Commission that individuals who are engaged exclusively in the offer and sale of certain types of offerings under the NASD's "direct participation program" [50] may be registered with the NASD as "limited representatives" or "limited principals." [51] The Commission believes that the considerations articulated above would apply equally to these latter classes of NASD registrants and has accordingly expanded this exemption from AP registration.

At the same time, however, the Commission wishes to emphasize that its grant of exemption from registration for these APs does not mean that other provisions of the Act, in particular Section 4b and 4*o*, are not applicable to these individuals. They also remain subject to enforcement proceedings brought under Sections 6, 6b or 6c of the Act and private actions brought under Section 22. Moreover, the Commission intends to monitor the activities of these exempt individuals and will consider amending its regulations to remove this exemption if conditions warrant.

The Commission has also exempted CTAs from registration as APs of CTAs and has exempted CPOs from registration as APs of CPOs. Section 3.16(a)(2). The Commission has further exempted any individual who is already exempt from registration as a CTA or CPO pursuant to certain of the Commission's Part 4 rules from registration as an AP of a CTA or from registration as an AP of a CPO, respectively. Section 3.16 (a)(3), (a)(4). Neither of these exemptions would apply, however, if the person who was exempt from registration was respectively associated with a CTA or CPO which was not itself exempt from registration or which had registered as a CTA or CPO notwithstanding the availability of those exemptions from registration. Finally, one of the commentators noted that it is not uncommon for commodity pools to be operated by more than one CPO and that, in such a case, it did not appear to be necessary to require an AP to register under the sponsorship of each of those pool operators. The Commission agrees and has provided an exemption for any such individual who is registered as an

[50] The Commission understands the term "direct participation program" to refer to those offerings which provide for flow-through tax consequences regardless of the structure of the legal entity or the vehicle for distribution. NASD Rules of Fair Practice, Article III, section 34(d)(2), NASD Manual (CCH) ¶ 2191, at 2109-33—2109-34.

[51] *Id.*, Article I, Schedule C, Part II, section 2(c) and Part I, section 2(d), NASD Manual (CCH) ¶ 1102A, at 1054 and 1050-51.

AP of any one of the pool's CPOs. Section 3.16(a)(6). Each of the CPOs will, however, be fully responsible for the conduct of those APs with respect to the sale of units in that commodity pool.

The following chart and examples illustrate the application of these requirements:

AP still associated with and registered as AP of—	AP intends to become simultaneously associated with—			
	FCM	IB	CTA	CPO
FCM	Not allowed	Not allowed	CTA files Form 3-R. § 3.16(e). (*But see* § 3.12(f).)	CPO files Form 3-R. § 3.16(e). (*But see* § 3.12(f).)
IB	§ 3.12(f)	§ 3.12(f)		
CTA	FCM files Form 8-S/8-R, FP card, fee.	IB files Form 8-S/8-R, FP card, fee.	CTA files Form 3-R.	CPO files Form 3-R.
CPO	§ 3.12(d)	§ 3.12(d)	§ 3.16(e)	§ 3.16(e)

Note.—An AP whose registration has terminated within the last 60 days must use Form 8-S to become re-registered as an AP except: (1) if he remains registered as an AP with another sponsor, he can use Form 3-R to become associated with a CTA or CPO (see chart); and (2) an AP of an FCM who was registered prior to July 1, 1982 may associate with another FCM upon the filing of a Form 3-R until that prior registration expires, at which time the AP must be re-registered under § 3.12 (c) or (d).

(1) An AP of an FCM terminates his employment with that FCM and, within sixty days, becomes associated with another sponsoring FCM. The AP will be re-registered upon the mailing to the Commission by the new FCM of a Form 8-S. The new sponsor must also file a Form 8-R, fingerprint card, and the registration fee for the AP within sixty days. Section 3.12(d). The same requirements would apply if, after leaving the FCM, the AP became associated with a CTA, CPO, or introducing broker (except that the introducing broker would file the Forms, fingerprint card, and any fee with the National Futures Association). Sections 3.16(d) (CTA, CPO), 3.12(d) (introducing broker).

(2) An AP of a CTA wants to become simultaneously associated with another CTA. The second CTA files a Form 3-R to report that association. Section 3.16(a)(2).

(3) An AP of a CTA wants to become simultaneously associated with a CPO. The CPO files a Form 3-R to report that association. Section 3.16(e)(2).

(4) Each of the three general partners of a commodity pool is registered as a CPO. An individual who is registered under §§ 3.16 (c), (d), or (e) as an AP of any of CPO "A" need not re-register as an associated person of the other two commodity pool operators, "B" and "C." If that AP later intends to solicit pool participants for CPOs, "B" and "D," his registration as an AP of "A" is not sufficient and he must re-register under the sponsorship of either "B" or "D." Section 3.16(a)(6).

(5) An AP of an FCM (or introducing broker) wishes to continue his employment with the FCM (or introducing broker) and also become associated with a CTA. The CTA must file a Form 3-R to report that association. Section 3.16(e)(2). Note, however, that § 3.16(e)(1) incorporates the prohibitions on dual and multiple associations contained in § 3.12(f)(3)-(4) (and, for introducing brokers, §§ 3.12(f)(7)-(8)), so that the AP could not be simultaneously associated with the FCM or introducing broker and with the CTA if the FCM or introducing broker solicits, or intends to solicit, clients for the CTA or carries or introduces, or intends to carry or introduce, the CTA's clients' or prospective clients' discretionary accounts.

(6) An AP of a CTA wishes to become associated with a CPO while remaining an AP of an FCM or introducing broker. The CPO files a Form 3-R to report that association (§ 3.16(e)(2)) if the AP is, in fact, not prohibited by §§ 3.12(f)(5)-(6) or §§ 3.12(f)(9)-(10) from becoming associated with the CPO.

(7) An AP of a CTA or CPO wants to become simultaneously associated with an FCM. The FCM must file a Form 8-S (and, within sixty days, a Form 8-R, fingerprint card, and the registration fee) if that simultaneous association is not prohibited by § 3.12(f). Section 3.12(d).

(8) The facts are the same as in Example (7), above, except that the AP intends to become associated with an introducing broker. If the AP is, in fact, permitted to become associated with the introducting broker while remaining associated with the CTA or CPO (*see* § 3.12(f)), the introducing broker would file the Forms and related materials with NFA.

(9) An AP of an FCM or introducing broker recommends CTAs on the FCMs or introducing broker's "approved list." The AP is deemed to be associated solely with the FCM or introducing broker and does not register as an AP of those CTAs. Section 3.12 (f)(3), (f)(7).

(10) An AP of an FCM or introducing broker solicits commodity pool participations on behalf of that FCM or introducing broker. The AP is deemed to be associated solely with the FCM or introducing broker and does not register as an AP of the CPO(s) which will be operating the pool. Section 3.12 (f)(5), (f)(9).

(11) An AP of an FCM wants to "moonlight" by working for a CTA. The CTA files a Form 3-R to report that association but may hire the AP only if the FCM by whom the AP is also employed does not solicit for the CTA or carry accounts managed by the CTA. Sections 3.16(e), 3.12(f)(3)-(4).

(12) An individual employed by a broker-dealer is registered with the NASD as a "registered representative." That individual may solicit commodity pool participations and receive trailing commissions in connection with that pool offering without having to register as an AP (§§ 3.12(h)(2), 3.16(a)(5)) or as an introducing broker (§ 1.3(mm)).

(13) A CPO is exempt from registration pursuant to Commission rule 4.13 (17 CFR 4.13) and has not, therefore, registered as a CPO. The persons who solicit for that pool operator are not required to register as APs of that CPO. Section 3.16(a)(4).

(14) A CTA who advises 15 or fewer persons at any one time hires an individual to solicit discretionary accounts. Because that solicitation is inconsistent with the CTA's "not hold[ing] himself out to the public as a commodity trading advisor"—which is necessary for the exemption from CTA registration contained in Section 4m(1) of the Act (7 U.S.C. 6m(1)) to apply—a CTA must register as such and the solicitor must register as an AP.

(15) An introducing broker has been operating as such pursuant to the Commission's "no-action" position. Because that introducing broker has already filed a Form 7-R, a "transfer" list for its APs, and Form 8-Rs and fingerprint cards for those principals who were not already registered as APs,[53] it need not refile those Forms. The introducing broker must, however, file a Form 1-FR with the NFA and the appropriate regional office of the Commission (*see* § 1.10(c)) within ninety days after these regulations become effective. (That Form 1-FR must adequately demonstrate the introducing broker's compliance with either (1) the $20,000 minimum capital requirement set forth in § 1.17(a)(1)(ii) or (2) the alternate capital requirement set forth in § 1.17(a)(2)(ii)—*i.e.*, a guarantee

[53] *See* 48 FR 15890, 15893 (April 13, 1983).

agreement.) Furthermore, the introducing broker will be required to file appropriate applications for any new APs and, thereafter, to renew its registration.

(16) An introducing broker is registered after having submitted evidence of compliance with the Commission's minimum financial requirements. *See* Example (15), above. Until January 31, 1984, the introducing broker may hire new APs by filing, in accordance with the requirements of temporary rule § 3.12a–(T), a Form 3–R for APs which are already registered as APS of an FCM. The introducing broker does not have to file Forms 8–S or 8–R, a fingerprint card, or the registration fee for any such AP.

(17) An AP has been employed by a CTA pursuant to the Commission's "no-action" procedures. That AP now wishes to leave the CTA and become employed by an introducing broker. The introducing broker may use the expedited (Form 8–S) re-registration procedure provided by § 3.12(d) only if the AP has already been registered as an AP of the CTA or in some other capacity of AP registration.

(18) The facts are the same as in Example (17), above, except that the AP intends to work simultaneously for two CTAs. The AP does not qualify for the Form 3–R notification procedure provided by § 3.16(e) if he is not yet registered. In such a case, the AP would be an applicant for initial registration and would have to file a Form 8–R, fingerprint card and the registration fee. Section 3.16(c).

(19) A corporation has two subsidiaries, one of which is registered as a CTA while the other is registered as a CPO. If an AP is going to work for both of the subsidiaries, either one may act as the AP's initial sponsor. If the CTA makes the necessary certifications on Form 8–R or Form 8–S, a Form 3–R should be filed simultaneously (attached to the Form 8–R or 8–S) to reflect the association of the AP with the CPO. The CPO would then also be the AP's sponsor (§ 3.1(c)) and the AP would be registered as an associated person of both the CTA and the CPO. (The same Form 8–R, 8–S, or 3–R can be used to sponsor an AP in more than one capacity only where the sponsor is itself registered in more than one capacity under the same name.)

(20) An FCM is also registered as a CPO. When it files applications for registration of behalf of its APs, it indicates only that the APs will be associated with the FCM. Section 3.12(f)(5)–(6). (Form 8–Rs submitted for its principals, however, should indicate that the individuals in question will be affiliated with both entities.)

Petitions for exemption. The Commission recognizes that there may nonetheless be instances where the application of these rules may have collateral consequences which are unnecessary to the Commission's regulatory objectives. Because it is impossible for the Commission to anticipate the circumstances in which its rules may work a hardship that is unrelated to its goals of verifying an applicant's fitness for registration and customer protection, the Commission has extended to all APs and their sponsors the ability to petition for an exemption from any aspect of the AP registration rules. Sections 3.12(g), 3.16(g). Any such petition must, however, establish with particularity why an applicant should be exempted from the requirements of those sections and why such an exemption would not be contrary to the public interest and the purposes of the provision (*e.g.*, the prohibitions on dual and multiple associations) from which exemption is sought.

C. *Other Registration Regulations*

Processing by the National Futures Association. As discussed above, the Commission has authorized the National Futures Association to receive and process applications for registration filed by introducing brokers and the APs of introducing brokers. Section 3.2 (formerly designated as § 3.4) has, therefore, been amended to indicate specifically that NFA will, in almost all cases, have the responsibility that would otherwise be exercised by the Commission with respect to these registration categories.[53] For convenience of reference, a number of the Commission's other regulations have been similarly amended to make specific reference to NFA.[54]

Although the Commission contemplates that NFA will ultimately assume the registration responsibilities for additional categories of registrants, there will nonetheless be instances during this interim period where both the Commission and NFA are processing applications and related materials for different registration capacities and, therefore, where an applicant or registrant will be required to filed the same documents with both the Commission and NFA. The Commission has therefore adopted a rule which will allow any person who would otherwise have to file the identical materials with both the Commission and NFA to submit in lieu of two sets of Forms one original Form and a photocopy of the Form if the photocopy contains an original (*i.e.*, manual) signature and date. Section 3.2(b). Thus, for example, a corporation which wished to apply for registration as an introducing brokers and as a CPO could file an original Form 7–R with the Commission and a photocopy of that Form with NFA. Similarly, to the extent the firm's principals were not "grandfathered" from the requirement to file Form 8–Rs and fingerprint cards, original Forms and fingerprints could be filed with the Commission and signed copies could be filed with the NFA.

Registration expiration. The Commission has previously deferred the expiration date of FCM and floor broker registrations from December 31, 1982 to March 31, 1983 and from December 31, 1983 to March 31, 1984. 47 FR 52954, 52955 (November 23, 1982). The Commission has now made this change in the registration cycle permanent, so that all FCM and floor broker registrations will expire on March 31st (rather than December 31st) of each year. Section 3.2(d). The registration of CTAs and CPOs will continue to expire on June 30th while the registration expiration date of introducing brokers will be determined by NFA, as will that of any other categories of registrant other than associated persons (*see* §§ 3.12(b), 3.16(b)), where registration processing is performed by the NFA.

Fingerprinting. The Commission is also making 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. As the Commission explained when it proposed those rule changes, although the Commission had previously determined to "grandfather" any individual who had a "current" Form 8–R (or the former Form 94) on file with the Commission on July 1, 1982 (the date those rules first became effective), it had come to the attention of the Commission that this latter exemption was somewhat broader than originally contemplated. Specifically, the former 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 have been interpreted to allow an individual who had a 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

[53] For example, the Commission, at least for the time being, is retaining the exclusive authority to permit an introducing broker to withdraw from registration pursuant to § 3.33.

[54] *See, e.g.*, §§ 1.10, 1.12, 1.16, 3.12, 3.15, 3.30, 3.31.

file an updated Form 8–R and fingerprint card. The Commission therefore proposed to amend the definition of the term "current" 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. The Commission did not receive any comments on that portion of its proposal and is adopting those rules and rule amendments with only minor changes.[55] Specifically, those rules have been modified to include references to § 3.16, the newly-adopted rule relating to the registration of APs of CTAs and CPOs. Section 3.15, which establishes procedures for the registration of introducing brokers, has also been further modified to require the filing of applications for registration and related materials with the NFA rather than with the Commission.

Section 3.21 has similarly been amended to refer to introducing brokers and the new categories of associated persons as well as to the processing of registration applications by the National Futures Association. That rule already allows the filing of a photocopy of an applicant's or principal's fingerprint card (and criminal history sheet, if any) in certain instances where an individual was simultaneously fingerprinted for a position which requires registration with both the Commission and, for example, a securities industry self-regulatory organization such as the NASD.[56] The Commission is now extending the applicability of that rule to provide comparable relief in those cases where an individual has recently been registered in one capacity (*e.g.*, as an AP of a CTA) and shortly thereafter decides to apply for registration in another capacity which would otherwise require him to be fingerprinted (*e.g.*, as an AP of an FCM).[57]

Changes and corrections; notices of termination. Section 3.30, which merely makes explicit a registrant's or principal's continuing duty to furnish a current address for receipt of communications from the Commission, has been amended to add references to introducing brokers and to specify that this obligation applies regardless of whether the application for registration (or in the case of a principal, the biographical supplement filed on Form 8–R) was filed with the Commission or with the NFA. Section 3.30 further provides, however, that communications relating to the registration of an associated person may be transmitted to the AP's sponsor, a measure which was supported by the commentators. *See also* § 3.4(b).

The Commission had proposed to amend § 3.33, which relates to withdrawal from registration, only to provide that an introducing broker which is seeking to withdraw its registration must supply a form 1–FR with its request for withdrawal. In view of the amendments to the Commission's minimum financial and related reporting requirements that have now been adopted by the Commission for "guaranteed" introducing brokers, the Commission has further amended that rule to provide an FCM which is a party to a guarantee agreement and which seeks to withdraw from registration must first have made arrangements for the termination of any such agreement in accordance with the provisions of § 1.10(j). Section 3.33(b)(7)(vi). The Commission has also amended § 3.33(c) to make clear that introducing brokers which are securities brokers or dealers or which are country elevators may file a copy of the reports they would otherwise be allowed to file if they had chosen to remain registered, in lieu of form 1–FR.

Proposed § 3.31(d) would have required any CTA or CPO which allows an AP who is already registered in some other capacity to become associated with the CTA or CPO upon the filing of a Form 3–R. As discussed earlier, that requirement has been included in the regulation governing the registration of APs of CTAs and CPOs (*see* § 3.16(e)(2)); the Commission is, therefore, amending § 3.31 only to incorporate appropriate references to introducing brokers and the new categories of associated persons and to the filing of registration materials relating to introducing brokers and their APs with the National Futures Association.

One commentator requested that the Commission clarify at what point an associated person is deemed to be "terminated" for purposes of § 3.31(c)(1), which requires an AP's sponsor to notify the Commission (or, in the case of an introducing broker, the NFA) of that termination. In particular, this commentator asked if an AP who receives "trailing" commissions resulting from the sale of commodity pool participations continues to be associated with the FCM, introducing broker, or pool operator or whether, once the AP has ceased the actual solicitation of pool participations, the AP is deemed to be no longer associated with the sponsor. The Commission interprets Section 4k of the Act to require the registration, as an associated person, of any individual who receives trailing commissions unless that person would otherwise be exempt from registration.[58] Under the Commission's rules, such an AP would be required to remain registered as an AP of the sponsor as long as he continued to receive such commissions and as long as he remained associated with that sponsor (*i.e.*, for future offerings). Section 3.16(b). The CPO would not, therefore, have to file a notice of termination on either Form 8–T or U–5 at the time solicitations were ended if the AP did not then cease to be associated with the CPO.[59] The Commission wishes to emphasize, however, that the duty to apprise the Commission (or the NFA) of changes, corrections, and terminations does *not* apply where an AP is exempt from registration and has not so registered. Thus, for example, if participation in a commodity pool was solicited for CPO by an NASD registered representative, the CPO would not have to notify the Commission that the unregistered AP was no longer associated with the pool operator when the offering closed.

"Transfer" of APs. When it proposed rules for the registration of introducing brokers and the APs of introducing brokers, CTAs, and CPOs, the Commission recognized that many APs were associated with an FCM through an agent and that, absent appropriate relief, these APs would have to re-register if the agent itself became registered as an introducing broker. *See* proposed §§ 3.12 (a), (b). The Commission therefore proposed to allow an AP to "transfer" his registration, on a one-time basis, from an FCM to an introducing broker, CTA, or CPO. Proposed § 3.12a–(T). The Commission explained that its proposal would eliminate the need for these APs to be formally re-registered and would

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[55] *See* §§ 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); 3.15 (a)(2)(i), (c)(1) (introducing brokers).

[56] *See* 45 FR 80485, 80487 & n.18 (December 5, 1980).

[57] In those cases where the individual is now applying for registration as an FCM, floor broker, CTA, CPO, or introducing broker or where the individual will merely be a principal of such an applicant or registrant, a second fingerprint card would not be required. *See* §§ 3.10 (a)(2)(ii), (c)(2) (FCMs); 3.11(b)(2) (floor brokers); 3.13 (a)(2)(ii), (c)(2) (CTAs); 3.14 (a)(2)(ii), (c)(2) (CPOs); 3.15 (a)(2)(ii), (c)(2) (introducing brokers).

[58] The Commission similarly interprets Section 4k to require the registration as an AP of any individual who makes representations to existing discretionary account clients or pool participants to encourage their continued participation in a discretionary account program or a commodity pool.

[59] Section 3.31(c) formerly required registrants to report the termination of an AP or principal within 10 days. The Commission has now amended that rule to extend the reporting period to 20 days.

therefore make unecessary the filing of a Form 8–S, Form 8–R, fingerprint card, and registration fee for each of the APs.

The Commission is now adopting that rule with certain modifications. Specifically, the Commission has decided to allow registered APs to use these special provisions to transfer their registrations not only from an FCM to an introducing broker, but also from an introducing broker to an FCM. For example, an introducing broker who has been operating under the Commission's "no-action" position may now find that it is unnecessary to register as an introducing broker; in such an instance, an AP of that introducing broker could "transfer" his registration from that introducing broker to a futures commission merchant even if the FCM had not previously sponsored the associated person.[60] The Commission has determined, however, not to make similar provisions for the APs of CTAs and CPOs as proposed. Although some CTAs and CPOs were formerly designated as agents of FCMs, the Commission believes that the relatively limited number of instances where this special "transfer" provision would be of use is outweighed by the additional costs that would have to be incurrred by the Commission in order to make the necessary additional changes in its computerized registration processing system.

The Commission further anticipates that to the extent that introducing brokers are also registered as CTAs or CPOs, their APs generally will not be permitted to be registered in both capacities (*see* §§ 3.12(f), 3.16(e)(1)) and that this "transfer" provision would, therefore, be unnecessary.

Registration of foreign persons. The Commission and its staff have periodically received inquiries as to whether persons who are engaged in activities which would require registration if conducted in this country are nonetheless required to register if they confine their activities to areas outside the United States.[61] The Commission has previously indicated with respect to the APs of futures commission merchants that it believe that, given this agency's limited resources, it is appropriate at this time to focus [the Commission's] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such areas. Any person who solicits or accepts orders from within, or from any person residing within, the United States, its territories, or possessions, or who supervises any person or persons so engaged, however, would be required to register. . . .[62]

Similarly, a foreign broker would generally not need to register as an introducing broker. Although these persons will not be required to register with the Commission, they do remain subject to applicable portions of the Commission's reporting requirements (17 CFR Parts 15–21). Affected persons should also be aware that the Commission views advertising to be a form of solicitation, so that a person who employs any form of advertising medium which can reasonably be expected to reach persons residing within the United States, its territories, or possessions will, absent some other exemption, be required to register in an appropriate capacity.

III. Minimum Financial and Related Reporting Requirements for Introducing Brokers

A. Principal Revisions to Proposed Rules

The Commission proposed 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 new capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).[63]

The proposed minimum adjusted net capital level would effectively have been $25,000, however, since all introducing brokers must join NFA in order for their customers' accounts to be carried by an NFA member FCM.[64] The Commission also proposed a financial "early warning" requirement for introducing brokers, similar to the early warning requirement which applies to FCMs, which would have required an introducing broker to give notice and file monthly financial reports if its adjusted net capital fell below 150 percent of the required minimum amount.[65] That proposed rule would effectively have required an introducing broker to maintain adjusted net capital of $37,500 if it wanted to file only quarterly or semiannual financial reports.

A majority of the commentators addressed the proposed minimum adjusted net capital requirement for introducing brokers, and most of these commentators stated that the proposed requirement was excessive. Several alternatives were suggested, including a lower required minimum dollar amount of adjusted net capital; permitting an introducing broker to operate without any net capital of its own provided an FCM assumed complete financial responsibility for the commodity-related activities of the introducing broker under a guarantee agreement or by creating a "non-proprietary branch office" of the FCM; and reducing or eliminating the early warning level of adjusted net capital for introducing brokers.

The Commission has carefully considered the comments upon the financial requirements for introducing brokers and it has also undertaken its own review of the matter, mindful of the fact that the minimum financial requirements for introducing brokers should "effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable yet . . . not be so onerous as to constitute a barrier to the entry into, or continuation in, the commodities industry."[66] The Commission also weighed Congress' statement that a purpose of minimum financial requirements for introducing brokers should be " 'to guarantee accountability and responsible conduct of [introducing brokers].' "[67] The Commission has determined, following its consideration of the comments and its own review of the issues, to make the following revisions to the proposed financial requirements in the final rules contained herein:

1. The basic minimum adjusted net capital requirement for introducing brokers will be $20,000 instead of $25,000;

2. There will be no financial early warning level of adjusted net capital for introducing brokers; the combination of

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[60] Although an AP may use the registration "transfer" provided by § 3.12a–(T) only once, an AP may also re-register as an AP of an FCM, introducing broker, CTA, or CPO by using Form 8–S (§§ 3.12(d), 3.16(d)) and as an AP of a CTA or CPO by using Form 3–R (§ 3.16(e)).

[61] *See, e.g.*, 45 FR 80845, 80490 (December 5, 1980); Interpretive Letter 76–5, Comm. Fut. L. Rep. (CCH) ¶ 20,147; Interpretive Letter 76–21, *id* ¶ 20,222. *See also* Interpretive Letter 75–12, *id.* ¶ 20,099.

[62] 45 FR 18356, 18360 (March 20, 1980); *see* 45 FR 80485, 80490 (December 5, 1980).

[63] Proposed § 1.17(a)(1)(ii), 48 FR 14933, 14960 (April 6, 1983).

[64] *See* Commission rule 170.15, 48 FR 26304 (June 7, 1983), which becomes effective on August 8, 1983, and which generally requires all FCMs to join a registered futures association, *and* NFA Bylaw 1101, which generally prohibits NFA members from doing any customer business with firms which are not members of a registered futures association.

[65] Proposed § 1.12(b)(2), 48 FR 14933, 14959 (April 6, 1983).

[66] 48 FR 14933, 14956 (April 6, 1983).

[67] 48 FR 14933, 14942 (April 6, 1983), quoting S. Rep. No. 384, 97th Cong., 2d Sess. 41 1982).

this change and the change referred to in item #1 above effectively reduces the minimum adjusted net capital required to be maintained by an introducing broker from the proposed $37,500 to $20,000;

3. An alternative adjusted net capital requirement has been adopted which will allow an introducing broker to operate without any net capital of its own if it enters into a guarantee agreement with an FCM;

4. An introducing broker or applicant therefor will be able to include as a current asset for purposes of computing net capital 50 percent of the value of a guarantee or security deposit with an FCM which carries or intends to carry accounts for the customers of the introducing broker; and

5. An introducing broker or applicant therefor which is also a country elevator will have the option of complying with financial reporting requirements by filing a copy of a financial report prepared by a grain commission firm.

The Commission also wishes to emphasize the fact that "introducing broker" is a new registrant category, and that the Commission will monitor closely the appropriateness of the minimum financial requirements for introducing brokers and make adjustments as necessary.

B. Basic Minimum Adjusted Net Capital and Related Financial Reporting Requirements

The basic minimum adjusted net capital requirement for introducing brokers is effectively $20,000 or, if the introducing broker is also a securities broker or dealer, any higher amount of net capital required by the SEC.[68] An introducing broker which is operating pursuant to a guarantee agreement with an FCM, which will be described more fully below, need not maintain any net capital of its own, unless it is also a securities broker or dealer, in which case it must maintain the minimum amount of net capital required by the SEC.[69]

Any particular firm's minimum capital requirement will therefore depend upon whether it is also a securities broker or dealer and if so, whether it engages in a general securities business or is an introducing securities broker, as well as whether the firm has entered into a guarantee agreement. If the introducing broker or applicant for registration as an introducing broker is not engaged in the securities business, its minimum adjusted net capital requirement is $20,000 if it has not entered into a guarantee agreement with an FCM, and zero if it has entered into such an agreement. If the firm is engaging in a general securities business, its adjusted net capital requirement is $25,000 whether or not it has entered into a guarantee agreement with an FCM, because the SEC minimum requirement for such a firm is $25,000. If the firm is an introducing securities broker, its minimum adjusted net capital requirement is $20,000 if it has not entered into a guarantee agreement with an FCM (the higher CFTC requirement), and $5,000 if it has entered into such an agreement (the higher SEC requirement).

With respect to financial reporting forms, the Commission stated, in its release announcing the proposed rules for introducing brokers, that:

> 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 [designated self-regulatory organizations], 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 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.[70]

The Commission received a few comments on this issue, some of which suggested that introducing brokers be permitted to file a "short form" financial report. The Commission has reevaluated this matter and has determined that an introducing broker will generally be required to use form 1–FR for its financial reporting, for the reasons set forth above.[71]

The Commission has, however, modified the instructions to form 1–FR to make it clear that certain items do not apply to introducing brokers, including the items relating to customer funds, customer accounts and non-customer accounts. For instance, introducing brokers are not required to complete the schedule of segregation requirements and funds on deposit in segregation, since introducing brokers will obviously have none. Those introducing brokers which use form 1–FR should complete the form in accordance with the instructions thereto. The additional instructions regarding items which do not apply to introducing brokers, as well as the additional filing options which are available, should alleviate the financial reporting burden on introducing brokers. The Commission also notes in this regard that several FCMs do not have entries for many of the items on the form 1–FR.[72]

The Commission is adopting, as proposed, an amendment to § 1.10(h) to permit an introducing broker or applicant for registration as an introducing broker which is also registered with SEC as a broker or dealer to have the option of filing a copy of its Financial and Operational Combined Uniform Single Report under

[68] As the Commission stated when it established a "no-action" mechanism as an interim step for those firms which formerly were "agents" of FCMs and which have elected to become introducing brokers, such firms have until October 31, 1983 (90 days following the adoption of these rules) to achieve, and demonstrate (by means of a certified financial report), compliance with the minimum financial requirements for introducing brokers. *See* 48 FR 15890, 15892, 15893 (April 13, 1983). An applicant for registration as an introducing broker which was not formerly an "agent" of an FCM and which has not been operating pursuant to the Commission's "no-action" position for such "agents," must demonstrate compliance with the minimum financial requirements with its application for registration. The certified financial report required to be filed by an applicant for registration as an introducing broker must be filed with NFA, and a copy must be sent to the regional office of the Commission nearest the principal place of business of the applicant. Section 1.10(c).

[69] The minimum dollar amount of net capital which must be maintained by the broker or dealer which engages in a general securities business is $25,000, and an introducing securities broker or dealer must maintain $5,000. 17 CFR 240.15c3–1 (a)(1) and (a)(2) (1982). Securities brokers or dealers may have to maintain net capital in excess of the minimum dollar amount based either on their amount of aggregate indebtedness or aggregate debit items. 17 CFR 240.15c3–1 (a) and (f) (1982).

[70] 48 FR 14933, 14947–48 (April 6, 1983).

[71] As discussed more fully below, an introducing broker which is also a securities broker or dealer may file a copy of its FOCUS Report, Part II or Part IIA (*See* § 1.10(h)), and an introducing broker which is also a country elevator may file a financial report prepared by a grain commission firm in accordance with § 1.10(i), in lieu of form 1–FR. As noted above, an introducing broker operating pursuant to a guarantee agreement has no financial reporting requirement.

[72] The changes to the form 1–FR which have been necessitated by the amendments to the regulations discussed herein, except for the guarantee agreement, 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. The guarantee agreement is contained in what is denoted as Part B of form 1–FR, and a specimen guarantee agreement is published at the end of this release. Part A of form 1–ER previously constituted the entire form.

the Securities Exchange Act of 1934 ("FOCUS Report") in lieu of form 1–FR. If the introducing broker or applicant therefor is engaged in a general securities business, it may file a copy of the FOCUS Report, Part II; if the introducing broker or applicant therefore is a securities introducing broker, it may file a copy of the FOCUS Report, Part IIA.[73] The filing option is 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 or applicant therefor would be able to use the FOCUS Report, Part II or Part IIA, in lieu of form 1–FR, as is without modification.[74]

The Commission is also adding another financial reporting filing option, which will be available to an introducing broker or applicant therefor which is also a country elevator, but which is not also a securities broker or dealer. One commentator stated that the proposed requirement that an applicant for registration as an introducing broker file, with its initial application for registration, a form 1–FR certified by an independent public accountant, and the proposed requirement that a registered introducing broker file a form 1–FR as of the firm's fiscal year-end which is so certified, would be unduly burdensome to a firm which is a country elevator, in view of the nature of a country elevator's primary business and the fact that most country elevators are located in rural areas and most certified public accountants are located in metropolitan areas. The commentator also stated that country elevators frequently provide the best way for farmers to hedge their grain sales, an important function of futures markets, and that such market participation should not be eliminated.

The commentator proposed an alternative financial reporting requirement for an introducing broker or applicant therefor which is also a country elevator, based on the requirement of the Commodity Credit Corporation of the United States Department of Agriculture for financial statements submitted pursuant to a Uniform Grain Storage Agreement.[75] Upon review of that comment letter, and following discussions between Commission staff and staff of the United States Department of Agriculture, the Commission has determined to adopt the commentator's suggested alternative in essentially the form presented. The financial statements submitted pursuant to a Uniform Grain Storage Agreement may be submitted in lieu of form 1–FR provided that all information which is required to be furnished on and submitted with form 1–FR is provided with such financial statements, including a statement of the computation of the minimum capital requirements pursuant to § 1.17. Also, the country elevator's balance sheet must be presented in a format as consistent as possible with the form 1–FR, and a reconciliation must be provided reconciling such balance sheet to the statement of the computation of the minimum capital requirement pursuant to § 1.17. Section 1.10(i).[76]

Section 1.10(b)(1) generally requires introducing brokers, as well as FCMs, to file financial reports on a quarterly basis, with the report filed as of the firm's fiscal year-end certified by an independent public accountant. However, § 1.10(b)(3) and § 1.52 permit the filing of financial reports on a semiannual basis if the rules of a firm's designated self-regulatory organization so provide. As stated above, the Commission assumes that all introducing brokers will join the NFA. The Commission, however, has also amended § 1.52(a), as discussed more fully below, to require contract markets which elect to establish a category of membership for introducing brokers to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers, and thereby to become an introducing broker's designated self-regulatory organization. If an introducing broker's designated self-regulatory organization adopts rules which are approved by the Commission to permit the filing of semiannual, rather than quarterly, financial reports by member introducing brokers, such introducing brokers which are not operating pursuant to a guarantee agreement would only have to file financial reports on a semiannual basis. Otherwise, quarterly financial reports will be required.

The Commission had assumed when it proposed rules for introducing brokers that, under present circumstances, only the NFA would conduct financial surveillance of introducing brokers, and § 1.52(a) was proposed to be amended to require only self-regulatory organizations other than a contract market (*i.e.*, NFA) to adopt and submit for Commission approval rules perscribing minimum financial and related reporting requirements for all of its members who are registered introducing brokers. *See* 48 FR 14933, 14964 (April 6, 1983). One contract market addressed this matter by stating:

> We commend the Commission for proposing to amend Regulation § 1.52 to require self-regulatory organizations *other than* contract markets to adopt and submit for Commission approval minimum financial and reporting requirements for introducing brokers. As the Commission realizes, contract markets may not find it cost-effective and efficient to undertake financial surveillance of the few introducing brokers who may be members of the contract market, while registered futures associations will have large numbers of members who are introducing brokers, and, therefore, can perform these functions much more efficiently. However, [we believe] that the Commission should make it clear that contract markets may, in their discretion, adopt financial and reporting requirements for introducing brokers who are members of those contract markets. (Emphasis in original.)

In light of this comment, the Commission has determned to adopt further amendments to § 1.52(a) which state that each contract market which elects to have a category of membership for introducing brokers must adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers. No contract market is required to have an introducing broker membership category. However, a contract market

[73] 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) has been clarified to allow any FCM or introducing broker, or any applicant for registration in either category, to file Part II or Part IIA of the FOCUS Report, as appropriate.

[74] In connection with the expansion of the filing option to allow the filing of Part IIA of the FOCUS Report, the Commission has added § 145.5(d)(i)(D) and § 147.3(b)(4)(i)(A)(*4*) to its regulations under the Freedom of Information Act and Government in the Sunshine Act, respectively. Those new paragraphs provide for nonpublic treatment of the FOCUS Report, Part IIA, to the same exent as presently provided for the FOCUS Report, Part II. 17 CFR 145.5(d)(1)(i)(C) and 147.3(b)(4)(i)(A)(*3*) (1982).

[75] The Unites Stated Department of Agriculture regulations relating to becoming and remaining an approved grain warehouse are set forth at 7 CFR 1421.5551–1421.5558 (1983).

[76] In connection with the additional filing option available to an introducing broker or applicant therefore which is also a country elevator, the Commission has added § 145.(d)(1)(i)(E) and § 147.3(b)(4)(i)(A)(*5*) to its regulations under the Freedom of Information Act and Government in the Sunshine Act, respectively. Those new paragraphs provide for nonpublic treatment of the financial report filed pursuant to §1.10(i) to the same extent as presently provided for the form 1–FR and the FOCUS Report, Part II. 17 CFR 145.5(d)(1)(i)(B) and (C) and 147.3(b)(4)(i)(A)(*2*) and (*3*) (1982).

which elects to have an introducing broker membership category must adopt and submit for Commission approval financial rules for such members within 90 days of establishing such a membership category.

To recapitulate, the minimum adjusted net capital, financial early warning, and financial reporting requirements for an introducing broker or applicant for registration as an introducing broker can be summarized by reference to the following chart:

FINANCIAL REQUIREMENTS FOR INTRODUCING BROKERS OR APPLICANTS THEREFOR

Is the firm also a securities broker or dealer?			Has the firm entered into a guarantee agreement?		Is the firm also a country elevator?		Then the firm has the following requirements:		
General	Introducing	Neither	Yes	No	Yes	No	Minimum adjusted net capital	Early warning level	Financial reporting
		X		X		X	$20,000	20,000	Form 1-FR.[1]
		X	X			X	0	0	None.[1]
		X		X	X		20,000	20,000	Form 1-FR or Grain Commission Firm Report.[1]
		X	X		X		0	0	None.[1]
X				X		X	25,000	30,000	Form 1-FR or Focus, Part II.[1]
X			X			X	25,000	30,000	Focus, Part II.
X				X	X		25,000	30,000	Form 1-FR or Focus, Part II.
X			X		X		25,000	30,000	Focus, Part II.
	X			X		X	20,000	20,000	Form 1-FR or Focus, Part IIA.[1]
	X		X			X	5,000	6,000	Focus, Part IIA.[1]
	X			X	X		20,000	20,000	Form 1-FR or Focus, Part IIA.
	X		X		X		5,000	6,000	Focus, Part IIA.

[1] Most likely combinations.

C. Alternative Adjusted Net Capital Requirement

Several commentators suggested an alternative to the proposed minimum adjusted net capital requirement for introducing brokers whereby an FCM carrying the accounts of the customers of an introducing broker would assume full responsibility for the obligations of the introducing broker. The introducing broker would register as such and would be subject to fitness standards, recordkeeping requirements and other regulations affecting introducing brokers, but would not have to maintain any of its own net capital. This approach, where an FCM would be expressly responsible for the obligations of the introducing broker, which is roughly equivalent to the situation which prevailed under the former system of "agents" of FCMs, was referred to by various commentators as a "guarantee agreement plan" or the "non-proprietary branch office" concept.

The Commission has considered those comments carefully and, although the Commission has revised the proposed basic minimum adjusted net capital requirement as described above, the Commission recognizes that there may be firms, particularly among the former "agents" of FCMs, which wish to operate as introducing brokers without maintaining any of their own net capital and without having the responsibility for submitting certified financial statements or filing other financial reports. The Commission has therefore adopted an alternative net capital requirement for introducing brokers which provides that if an introducing broker is operating pursuant to a guarantee agreement with an FCM, the introducing broker will not have to maintain any of its own net capital, unless the firm is also a securities broker or dealer, in which case the net capital requirements of the SEC would apply. Sections 1.3(nn) and 1.17(a)(2)(ii). An introducing broker operating pursuant to a guarantee agreement with an FCM (unless the firm is also a securities broker or dealer) is exempt from the financial reporting requirements of § 1.10, the requirements for notification of undercapitalization or of a material inadequacy in the accounting system contained in § 1.12, the requirements pertaining to qualifications and reports of independent public accountants in § 1.16, and the financial recordkeeping requirements of § 1.18.

The guarantee agreement is contained in Part B of form 1-FR, which is available from the Commission upon request, and it provides that the FCM which is a party thereto guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Act and the rules, regulations and orders promulgated thereunder. A specimen copy of the guarantee agreement is printed at the end of this release.

The purpose of the guarantee agreement is to enable the introducing broker to meet the alternative adjusted net capital requirement, and to protect the customers of the introducing broker. An FCM which enters into such an agreement is not precluded from entering into a separate indemnification agreement with the introducing broker whereby the introducing broker agrees to indemnify the FCM for obligations which the FCM satisfies under the guarantee agreement, nor is the FCM precluded from seeking contribution from the introducing broker.[77] The Commission also assumes that an FCM which enters into a guarantee agreement with an introducing broker will require the introducing broker to introduce all of its accounts to that FCM.[78] However, these matters are left to the parties to arrange.

The Commission believes that the alternative adjusted net capital requirement embodied in the guarantee agreement is consistent with two of the factors upon which an adjusted net capital requirement for introducing brokers should be based: (1) Insuring that introducing brokers are not judgment proof; and (2) providing coverage for potential liabilities of introducing brokers arising from business operations and customer relations.[79] The Commission believes that the other factors to which it has previously referred with respect to establishing an adjusted net capital requirement for introducing brokers (encouraging introducing brokers to employ the appropriate personnel to

[77] The accounting treatment of the guarantee agreement and of an indemnification agreement are discussed below.

[78] An introducing broker which meets the basic minimum adjusted net capital requirement may have its customers' accounts carried by more than one FCM.

[79] 48 FR 14933, 14942 (April 6, 1983).

safeguard their stake in their businesses, insuring that introducing brokers have a sense of commitment and obligation to their businesses sufficent to produce responsible and reliable operations, and strengthening supervision of, and responsibility for, sales practices) have been accounted for to a large extent by the Commission's amendment to § 166.3, which is discussed more fully below, to explicitly require introducing brokers to supervise those acting on their behalf.

D. Requirements for and Conditions Affecting a Guarantee Agreement

The requirements for a guarantee agreement are set forth in §1.10(j). As noted above, the prescribed form of a guarantee agreement which will satisfy the alternative adjusted net capital requirement set forth in § 1.17(a)(2)(ii) is contained in Part B of form 1–FR. The names of the introducing broker and the futures commission merchant must be filled in and the agreement must be dated and signed, in a manner sufficient to be binding under local law, by an appropriate person on behalf of each party. Each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the firm. An appropriate person for purposes of signing the guarantee agreement, as well as any other notice relating to the agreement, shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation. The agreement may be signed in counterparts. Section 1.10(j)(1).

Any registered FCM can enter into a guarantee agreement with an introducing broker, except for an FCM which knows or should have known that its adjusted net capital is below the financial early warning level, or an FCM against whom is filed, on or after the effective date of § 1.10(j), an adjudicatory proceeding brought by or before the Commission pursuant to Sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act.[80] Section 1.10(j)(2). Those prohibitions only prevent an FCM from signing a new guarantee agreement, and the occurrence of either event does not abrogate existing guarantee agreements or relieve an FCM from any liability on an existing agreement. Also, the prohibition contained in § 1.10(j)(2)(ii), relating to adjudications, applies prospectively only, that is, to actions filed after the effective date of § 1.10(j). Thus, an FCM with an action or actions pending against it, all of which were filed prior to such effective date, may currently enter into a gurantee with an introducing broker.

A guarantee agreement submitted in connection with an initial application for registration as an introducing broker shall become effective upon the granting of registration to the introducing broker, and a guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties. Such date must be stated in the agreement. Section 1.10(j)(3).

A guarantee agreement will expire if the introducing broker fails to renew its registration, or if the introducing broker's registration is suspended, revoked or withdrawn, as of the date of such failure, suspension, revocation or withdrawal. A guarantee agreement will also expire if the FCM fails to renew its registration,[81] or if the FCM's registration is suspended or revoked,[82] but under any of those circumstances, the expiration of the guarantee agreement does not become effective until 30 days after such failure, suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization. Section 1.10(j)(4). The purpose of that 30-day period is to permit the introducing broker that period of time to either raise its own net capital in order to meet the basic adjustment net capital requirement (*i.e.*, $20,000), or to enter into a new guarantee agreement with another FCM. During that 30-day period, the introducing broker is still a party to a guarantee agreement which remains in effect, so the introducing broker will not be considered undercapitalized. *See* § 1.17(a)(2)(ii). However, since the FCM's registration is no longer in effect during that 30-day period, the FCM cannot do business as an FCM, and since the introducing broker probably would only have had its customers' accounts carried by that FCM, the introducing broker will probably not be able to do business as an introducing broker either. There should therefore be no additional liability created for the FCM during that 30-day period. An introducing broker will have a similar 30-day period in which to either raise the required minimum amount of adjusted net capital or to enter into a new guarantee agreement with another FCM without being considered undercapitalized if the FCM, for good cause shown,[83] gives written notice at any time of its intention to terminate the guarantee agreement. Section 1.10 (j)(5)(ii) and (j)(8)(ii).

A guarantee agreement may also be terminated by mutual written consent of the parties, by either party giving written notice of its intention to terminate the agreement at least 30 days prior to the proposed termination date (no good cause need be shown in that case), or by the introducing broker, for good cause shown, giving written notice of its intention to terminate the guarantee agreement. Section 1.10(j)(5).

If the guarantee agreement does not expire or is not terminated in accordance with the provisions of § 1.10(j) (4) or (5), it shall remain in effect indefinitely. The Commission wishes to make clear that the termination of a guarantee agreement by an FCM or by an introducing broker, or the expiration of such an agreement, does not relieve any party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement. Section 1.10(j)(6).

An introduing broker or applicant therefore may only enter into a guarantee agreement with an FCM which carries or intends to carry accounts for the customers of the introducing broker, and an introducing broker may not simultaneously be a party to more than one guarantee agreement. However, an introducing broker which is a party to an existing agreement which is about to be terminated or is about to expire could enter into a new agreement which would become effective after the existing agreement is terminated or after it expires. Section 1.10(j)(7). Such a new guarantee agreement must be filed with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) on or before 10 days prior to the effective date of the

[80] 7 U.S.C. 9, 13b, 13a–1, 13a–2, 12a or 13 (1976 & Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, sections 219, 220, 221, 223, 224, and 225, 96 Stat. 2308–09, and 2310–18 (1983).

[81] An FCM's registration will most likely not be coextensive with that of an introducing broker, since an FCM's registration expires as of March 31 of each year (§ 3.2(d)), and it is anticipated that introducing brokers will be registered for a period of approximately one year from the granting of registration.

[82] With respect to an FCM seeking to withdraw its registration, a request for withdrawal of registration by an FCM which is a party to a guarantee agreement must be accompained by a statement that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) not more than thirty days after the filing of the request for withdrawal. *See* § 3.33(b)(7)(vi).

[83] Examples of good cause would include a material change in the ownership, management or control of the introducing broker, or the filing by the Commission of an adjudicatory proceeding against the introducing broker.

termination or expiration of the existing agreement, or at such other period of time as the Commission and the designated self-regulatory organizations of the introducing broker and of the FCM which is a party to the new agreement may allow for good cause shown. Another alternative would be for the introducing broker to raise its own net capital. If the introducing broker chose to do so, it would have to file a form 1–FR (uncertified) with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) on or before 10 days prior to the effective date of the termination or expiration of the existing agreement, or at such other period of time as the Commission and the introducing broker's designated self-regulatory organization may allow for good cause shown. If the introducing broker files such form 1–FR, the introducing broker must also file a form 1–FR, certified by an independent public accountant, as of the day following the date of termination or expiration of the guarantee agreement. The form 1–FR certified by an independent public accountant must be filed with the introducing broker's designated self-regulatory organization (with a copy to the regional office of the Commission nearest the principal place of business of the introducing broker) not more than 45 days after the date for which the report is made. If the introducing broker does not enter into a guarantee agreement with a new FCM, and does not raise its own net capital, it must cease doing business as an introducing broker on or before the effective date of the termination or expiration of the existing guarantee agreement. Section 1.10(j)(8).

To recapitulate the mechanics of the guarantee agreement, consider what would happen if firm "IB," an applicant for registration as an introducing broker, and futures commission merchant "FCM" sign a guarantee agreement on September 1, 1983, which is filed with NFA on that date together with IB's registration application.[84] If IB is granted registration as an introducing broker on November 1, 1983, the guarantee agreement becomes effective on that date. Any of the following circumstances may occur, with the indicated consequences:

1. On December 1, 1983, FCM's adjusted net capital falls below the early warning level—the agreement remains in effect (FCM may not enter into any new agreements while its adjusted net capital remains below the early warning level).

2. On December 1, 1983, the Commission brings an adjudicatory proceeding against FCM—the agreement remains in effect (FCM may not enter into any new agreements while the proceeding is pending).

3. On December 1, 1983, IB's registration is suspended or revoked—the agreement expires as of December 1, 1983.

4. On December 1, 1983, IB files a request for withdrawal of its registration, which becomes effective on December 31, 1983—the agreement expires as of December 31, 1983.

5. On March 31, 1984, FCM fails to renew its registration, or such registration is suspended or revoked—the agreement expires as of April 30, 1984 (provided FCM's registration has not been renewed or reinstated prior to April 30, 1984).

6. On May 1, 1984, FCM and IB mutually consent to terminate their agreement—the agreement terminates as of the date agreed upon by the parties.

7. On May 1, 1984, IB or FCM notifies the other party of its intention to terminate the agreement as of May 31, 1984—the agreement terminates as of May 31, 1984 (the notice could specify a termination date later than May 31, 1984, but termination could not be sooner than that date).

8. On May 1, 1984, FCM notifies IB of its intention to terminate the agreement on May 2, 1984 for good cause shown—the agreement terminates as of May 2, 1984, but IB will not be considered undercapitalized unless it does not enter into a new guarantee agreement, or it does not raise the required minimum dollar amount of adjusted net capital ($20,000), by June 1, 1984.

9. On May 1, 1984, IB notifies FCM of its intention to terminate the agreement on May 2, 1984, for good cause shown—the agreement terminates on May 2, 1984.

10. On October 31, 1984, IB fails to renew its registration—the agreement expires as of October 31, 1984.

To reiterate, the following events have the following results with respect to a guarantee agreement:

Event	Result
1. FCM's adjusted net capital falls below early warning level.	Agreement remains in effect (FCM can enter into no new agreements).
2. Proceeding instituted against FCM.	Agreement remains in effect (FCM can enter into no new agreements).
3. IB's registration is suspended, revoked or withdrawn or IB fails to renew its registration.	Agreement expires as of date of suspension, revocation, withdrawal or failure.
4. FCM's registration is suspended or revoked or FCM fails to renew its registration.	Agreement expires 30 days after such suspension, revocation or failure.
5. Mutual consent to termination.	Agreement terminates as of mutually agreed upon date.
6. IB wants to terminate: a. No good cause shown; b. Good cause shown.	a. Agreement terminates upon 30 days notice to FCM. b. Agreement terminates as of date stated by IB.
7. FCM wants to terminate: a. No good cause shown; b. Good cause shown.	a. Agreement terminates upon 30 days notice to IB. b. Agreement terminates as of date stated by FCM, but IB not considered undercapitalized for 30 days thereafter.
8. None	Agreement continues indefinitely.

E. Computation of Adjusted Net Capital

The minimum amount of adjusted net capital which must be maintained by an introducing broker which is not operating pursuant to a guarantee agreement is set forth in § 1.17(a)(1)(ii), which is discussed above. In order for such an introducing broker to compute its actual adjusted net capital and thus determine whether it is complying with the minimum adjusted net captial requirement, the introducing broker will have to follow the provisions set forth in the remainder of § 1.17. Most of those provisions have not been amended and will 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 which do not intend to operate pursuant to a guarantee agreement with an FCM should become familiar with all aspects of § 1.17.[85] A description of the provisions of § 1.17, relating to such items as definitions for purposes of § 1.17, current assets, liabilities, adjustments to net capital (also known as "safety factor charges" or "haircuts"), the debt-equity requirement, withdrawal of equity capital, consolidation of assets and liabilities of a subsidiary or affiliate, and subordination agreements, was set forth in the release announcing the proposed rules for introducing brokers. 48 FR 14933, 14943–47 (April 6, 1983).

The final rules governing the computation of adjusted net capital for introducing brokers contain a few differences from the proposed rules. The

[84] A copy of the guarantee agreement must also be sent to the regional office of the Commission nearest the principal place of business of the applicant for registration as an introducing broker.

[85] Section 1.17 may be found at 17 CFR 1.17 (1982), as amended herein and *as amended by* 47 FR 22352 (May 24, 1982), 47 FR 41513 (September 21, 1982) *and* 47 FR 56996 (December 22, 1982).

principal difference is a new § 1.17(c)(2)(ix), which will permit an introducting broker or applicant for registration as an introducing broker to include as a current asset for purposes of computing net capital 50 percent of the value of a guarantee or security deposit with an FCM which carries or intends to carry accounts for the customers of the introducing broker.[86] The remaining 50 percent will be treated as a noncurrent asset. Several commentators expressly objected to the fact that introducing brokers, like FCMs, would generally be able to include only "unencumbered" assets when computing net capital. Particular attention was directed to a guarantee or security deposit which FCMs may require from an introducing broker before they will agree to carry accounts of the introducing broker's customers. (Many FCMs required such a deposit from their former "agents," and some of these were substantial.) The Commission has reevaluated this matter and has determined to revise its proposal, which would have prohibited an introducing broker from treating any portion of a guarantee or security deposit with an FCM as a current asset, so that an introducing broker may treat 50 percent of such a deposit as a current asset, even though it could be considered encumbered to some extent.[87] The Commission also wishes to point out that a free credit balance in an introducing broker's trading account carried by an FCM is considered to be a current asset of the introducing broker.

The other differences between the proposed rules and the final rules concerning computation of adjusted net capital for introducing brokers relate to the adjustements to net capital for undermargined accounts. Since the Commission has determined, for the reasons discussed in the next two paragraphs, that an introducing broker may not carry proprietary accounts [88] or foreign futures accounts for customers, the haircuts for undermargined accounts will apply only to FCMs. *See* § 1.17(c)(5)(viii) and (ix).

The Commission's proposals would have placed no restrictions on an introducing broker with respect to trading for its own account, carrying and clearing proprietary accounts or soliciting or accepting orders and funds from customers for purposes of trading in foreign futures. However, the Commission expressed its concern 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. In its proposal, the Commission expressed concern that the introducing broker could have a much greater financial exposure if it chose to engage in some or all of those activities, and also noted that the SEC is more restrictive on those matters with respect to securities introducing brokers.[89] For all of these reasons, the Commission specifically requested comment on whether the permissible activities of introducing brokers should be further restricted.[90]

Most of the comments received on this issue favored no restrictions on the ability of an introducing broker to trade for its own account, to carry and clear proprietary accounts, or to solicit or accept orders and funds from customers for purposes of trading in foreign futures. However, two commentators expressed their opposition to permitting introducing brokers to engage in activities beyond trading for their own account. One of those commentators stated that "introducing brokers should be prohibited from carrying *any* account, including house or other proprietary accounts and non-regulated commodity accounts for trading in foreign futures contracts." (Emphasis in original.) The commission has considered these comments and has determined that while there will be no restrictions upon an introducing broker trading for its own account,[91] an introducing broker will not be permitted to carry proprietary accounts or accounts in foreign futures, for the reasons referred to in the preceding paragraph. Section 1.57(b).

F. Accounting Treatment for Indemnification and Guarantee Agreements

In its release containing the proposed rules for introducing brokers, the Commission stated the following with respect to indemnification agreements between introducing brokers and FCMs:

> 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 acutal liability, the introducing broker would have to estimate the amount of actual liability and record that amount on its books. 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.[92]

The commentators who addressed themselves to this issue generally supported the Commission's proposed accounting treatment of an indemnification agreement, and the Commission has determined to treat such an agreement in accordance with its proposal. The Commission has also determined that an FCM must treat a guarantee agreement in a similar manner. The FCM must reflect the fact that it has entered into a guarantee agreement with one or more introducing brokers in a footnote to its financial statements, but while the FCM's liability under a guarantee agreement remains contingent, it need not affect directly the FCM's computation of net capital.

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[86] The security or guarantee deposit could be accumulated from commissions due the introducing broker which are withheld by the FCM, provided the introducing broker and the FCM follow the provisions relating to withheld commissions which are set forth in the Division of Trading and Markets Financial and Segregation Interpretation No. 3—Secured Receivables. *See* 1 Comm. Fut. L. Rep. (CCH) ¶ 7113 (May 9, 1979). Fifty percent of such withheld commissions could be treated as a current asset of the introducing broker.

[87] By comparison, FCMs may not include guarantee deposits with other FCMs as current assets; only guarantee deposits with clearing organizations and stock in clearing organizations to the extent of its margin value may be treated as current assets by FCMs. Section 1.17(c)(2)(viii).

[88] Of course, an introducing broker and any persons who would be considered proprietary (*see* 17 CFR 1.3(y) (1982) with respect to the introducing broker may trade their own accounts on a fully-disclosed basis with an FCM. If the FCM has no ownership interest in the introducing broker, and there is no other relationship which is referred to in § 1.3(y) between the introducing broker, or persons employed by the introducing broker, and the FCM any such account should be treated as a customer account by the FCM.

[89] 17 CFR 240.15c3-1(a)(2) (1982).

[90] 48 FR 14933, 14934, 14944, (April 6, 1983).

[91] Unless the introducing broker has membership trading privileges at the exchange where its trades are executed, its account will be carried by an FCM. If an introducing broker does trade for its own account, it will be subject, as is an FCM which trades for its own account, to the safety factor charges for those positions which are set forth in paragraphs (c)(5) (x), (xi) and (xii) of § 1.17.

[92] 48 FR 14933, 14944 (April 6, 1983) (footnote omitted).

However, if a contingent liability appears likely to become an actual liability, the FCM must estimate the amount of actual liability and record that amount on its books.

The Commission wishes to note one other matter with respect to the accounting treatment of a guarantee agreement. Section 1.17(f) (17 CFR 1.17(f) (1982)) sets forth the provisions relating to consolidation of financial statements, and states in pertinent part as follows:

> Every applicant or registrant, in computing its net capital . . . must . . . consolidate in a single computation, assets and liabilities of any subsidary or affiliate for which it guarantees, endorses or assumes directly or indirectly the obligations or liabilities. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the applicant or registrant may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (f)(2) of this section.

The mere fact that an FCM enters into a guarantee agreement with an introducing broker will not, without more, trigger the provisions of § 1.17(f). Consolidation is only made with a firm which is a subsidiary or affiliate, which means that there must be some type of common ownership interest.[93] If the FCM has not ownership interest in the introducing broker, consolidation is not required, even if the FCM enters into a guarantee agreement with the introducing broker.[94] The guarantee agreement is not a financial payment guarantee, but is instead of the nature of a performance guarantee.

G. Financial Early Warning System

The Commission proposed to amend § 1.12(b) so that the financial early warning system for introducing brokers would be essentially similar to the system which applies to FCMs. The proposed early warning level of adjusted net capital for introducing brokers was the greater of: (1) 150 percent of the required minimum dollar amount which, based on the proposed required minimum dollar amount of adjusted net capital of $25,000, would have been $37,500, or (2) if the firm were also a securities broker or dealer, any higher amount required by the SEC's early warning system.

If the Commission's proposal had been adopted, an introducing broker which failed to maintain adjusted net capital equal to or in excess of the early warning level would have been required to make the same filings as an FCM. The firm would have been required 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 been required 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 had elapsed during which the firm's adjusted net capital was at all times equal to or in excess of the early warning level. Each of those financial reports would have been required to have been filed within thirty calendar days after the end of the month for which the report was being made.[95]

The Commission recognized when it proposed a financial early warning system for introducing brokers which would be similar to that which applies to FCMs that there are certain significant differences between the operations of FCMs and introducing brokers, and the Commission therefore requested specific comments on this matter. Commentators were requested to consider the following factors. The financial 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 introduces customer accounts to a clearing broker.[96] 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 were to establish 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 divert regulatory resources to firms which do not necessarily require enhanced surveillance from those firms which may require closer scrutiny. Commentators were also requested to address whether other elements of the early warning system, relating to maintenance of books and records and to material inadequacies in the accounting system, should apply to introducing brokers.

The Commission also suggested certain alternatives to its proposed early warning system for introducing brokers. One alternative set forth was an early warning level of adjusted net capital of 120 percent of the required minimum dollar amount, rather that the proposed 150 percent, which would be the same as it is for introducing securities brokers. Another alternative presented was to require only notice of undercapitalization, and to have no higher early warning level of adjusted net capital for introducing brokers. 48 FR 14933, 14951–52 (April 6, 1983).

One commentator supported the proposed early warning level of adjusted net capital for introducing brokers of 150 percent of the required minimum amount, but the majority of commentators addressing this issue were opposed to that. Various alternatives were presented by commentators. The commentator who supported the 150 percent early warning level also suggested that §§ 1.16(e)(2) and 1.12(d) be revised to require introducing brokers to notify any FCM

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[93] This meaning of the term affiliate is also relevant to the use of that term in § 1.3(y) regarding proprietary accounts.

[94] FCMs will be required to list the names of all introducing brokers with which they have entered into guarantee agreements that are currently in effect at the end of the Statement of the Computation of the Minimum Capital Requirements on form 1–FR.

[95] Several commentators objected to what they described as a requirement for "monthly audits" of introducing brokers. The Commission never proposed such a requirement. An introducing broker which is not operating pursuant to a guarantee agreement must submit a certified financial report with its application for registration and, once registered, a certified year-end financial report. These requirements are the same as those applicable to FCMs. An introducing broker operating pursuant to a guarantee agreement will not need to file certified financial reports, and a special provision is available to an introducing broker which is also a country elevator. Section 1.10(i). No monthly audits are required for any introducing broker, nor were any monthly audits proposed. In addition, no monthly financial reports will be required because the financial early warning provision of § 1.12(b) is not being adopted for introducing brokers. If that provision had been adopted, *uncertified* monthly financial reports would have been required for those introducing brokers whose adjusted net capital was below the early warning level.

[96] 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 6⅔ percent of AI and the early warning level is 8⅓ 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 if 5 percent of ADI.

carrying accounts introduced by the introducing broker of any material inadequacies discovered by the introducing broker or by its independent public accountant. Two other commentators also expressed support for requirement that notice of a material inadequacy be provided to the carrying FCM. One of those two other commentators also favored requiring the introducing broker to notify its carrying FCMs when it became undercapitalized. One commentator suggested that the early warning level of adjusted net capital for introducing brokers should be 120 percent of the required minimum dollar amount. Another commentator favored retaining the notification requirement if an introducing broker's adjusted net capital fell below 150 percent of the required minimum dollar amount (and extending such notification to FCMs carrying accounts of the introducing brokers), but deleting the monthly reporting requirement.

The Commission has reviewed these comments and undertaken its own reconsideration of the issue of a financial early warning system for introducing brokers. The Commission recognizes that the principal purpose of the financial early warning system is to provide time for the Commission and the self-regulatory organizations to take protective action to insure the safety of customer funds and the integrity of the marketplace,[97] and the Commission also recognizes that introducing brokers cannot accept customer funds. The Commission believes that the goal of the financial early warning system can best be achieved and the limited resources of the Commission and the self-regulatory organizations can best be utilized by limiting the application of the financial early warning systems to those firms which do accept customer funds, the FCMs. Accordingly, the Commission has determined that an introducing broker will only be required to give notice when it is undercapitalized. Section 1.12(a). No notice and no monthly financial reports will be required when an introducing broker's adjusted net capital falls below 150 percent of the required minimum amount, so § 1.12(b) will not apply to introducing brokers.[98] However, an introducing broker will have to give notice and file a follow-up written report if it fails to make or keep current the books and records required to be maintained by the regulations promulgated under the Act, or if it discovers or is notified by an independent public accountant of a material inadequacy in its accounting system, its internal accounting controls, or its procedures for safeguarding customer and firm assets. Section 1.12 (c) and (d).[99]

The Commission agrees with those commentators who suggested that notices and reports which an introducing broker is required to file pursuant to § 1.12 should also be sent to any FCM which is carrying accounts for customers of the introducing broker, and § 1.12(g) has been amended accordingly. Every notice which an introducing broker would have to file under paragraphs (a), (c) or (d) of § 1.12 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 NFA, to the designated self-regulatory organization, if any, to any FCM which is carrying to accounts for customers of the introducing broker, 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. Section 1.12(g).

H. Additional Financial Information

The Commission is delegating to the NFA the function of processing applications for registration filed by introducing brokers applicants and by applicants for registration as associated persons of introducing brokers, in accordance with statutory authority provided in the Futures Trading Act of 1982.[100] All materials relating to an application for registration must be sent to NFA including, in the case of an applicant for registration as an introducing broker, the firm's financial report. A copy of the firm's financial report must also be sent to the regional office of the Commission nearest the principal place of business of the applicant. Section 1.10(c).

The Commission is also amending § 1.10(b)(4) to make it clear that when the NFA reviews an application for registration as an introducing broker, the NFA will stand in the place of the Commission and will be able to request that such an applicant provide additional financial information. Currently, § 1.10(b)(4) allows the Commission or any self-regulatory organization of which an applicant or registrant is a member to request additional financial information. The Commission assumes that NFA will review a firm's application for registration as an introducing broker and the firm's application for membership in NFA simultaneously, and §1.10(b)(4) is being amended to eliminate any possible confusion which could arise as to whether NFA can request additional financial information from a firm applying for registration as an introducing broker which was not yet a member of NFA, and for which NFA was therefore not yet the firm's designated self-regulatory organization.[101]

I. Customer Funds

Section 1.57(a)(1) provides that each introducing broker must open and carry each customer's and option customer's account with a carrying FCM on a fully-disclosed basis (*i.e.*, the customer has an account in his own name at the FCM). The definition of the term "introducing broker" states in part that an introducing broker "does not accept any money, securities, or property (for extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts." [102] A customer or option customer of an introducing broker should transmit the funds necessary to margin his positions directly to the FCM carrying his account, even though his orders may be transmitted through the introducing broker. The Commission recognizes, however, that there may be occasions when a customer or option

[97] *See* 48 FR 14933, 14950 (April 6, 1983); 42 FR 31740 (June 22, 1977).

[98] The Commission is making a minor technical amendment to § 1.12(b), which will only affect FCMs, to correct an error made when the Commission amended § 1.12(b) last year. 47 FR 41513, 41516 (September 21, 1982). The phrase "the greatest of," which was inadvertently included at the beginning of § 1.12(b)(1), has now been correctly placed at the end of the introductory portion of § 1.12(b).

[99] A more complete description of those provisions may be found in the release announcing the proposed rules for introducing brokers. *See* 48 FR 14933, 14951 (April 6, 1983).

[100] *See* Futures Trading Act of 1982, Pub. L. No. 97-444, sections 224(6) and 233(5), 96 Stat. 2315, 2321, which adds new sections 8a(10) and 17(o) to the Commodity Exchange Act (to be codified at 7 U.S.C. 12a(10) and 21(o)).

[101] A firm which has applied for registration as an introducing broker and for membership in NFA, and which NFA has determined will become an NFA member upon notification to NFA that it has been granted registration by the Commission, can be considered to be a member of a self-regulatory organization for purposes of the minimum adjusted net capital requirement, and thus subject the $20,000 minimum requirement, rather than the $40,000 requirement for non-members. *See* § 1.17(a)(1)(ii) and (a)(3); *see also* 48 FR 8435 (March 1, 1983) (statement of staff interpretative position affording FCM applicants similar treatment).

[102] Futures Trading Act of 1982, Pub. L. No. 97-444, section 201(1), amending section 2(a) of the Commodity Exchange Act (to be codified at 7 U.S.C. 2); § 1.3(mm).

customer will deliver a check payable to the FCM to an introducing broker. An introducing broker will not be precluded from either depositing such a check in a qualifying bank account, or forwarding such a check to the FCM carrying the account of the customer or option customer, provided all of the following conditions are met:

(1) The futures commission merchant carrying the customer's or option customer's account authorizes the introducing broker, in writing, to receive a check in the name of the futures commission merchant, and the introducing broker retains such written authorization in its files in accordance with 17 CFR 1.31 (1982);

(2) The check is payable to the futures commission merchant carrying the customer's or option customer's account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) A qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to commodity or option customers of the futures commission merchant carrying the customer's or option customer's account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's or option customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and the regulations promulgated thereunder.[103]

An introducing broker may not handle cash, securities or property from customers or option customers, and any withdrawals which a customer or option customer wishes to make from his account must be disbursed by the FCM. An introducing broker cannot have authority to issue checks in the FCM's name, and an introducing broker cannot accept a check payable to the introducing broker from a customer or option customer. However, if an introducing broker is also a securities broker or dealer and a customer or option customer also has a securities account with the introducing broker, the customer or option customer may authorize the introducing broker to transfer funds directly from his securities account to the FCM carrying his commodity account.

[103] Section 1.57(c).

IV. Amendments to Existing Regulations

CTA/ERISA fiduciary. The Commission proposed to modify slightly the statutory definition of "commodity trading advisor" to specify that, with respect to any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), only "the named fiduciary" of such a plan would be excluded from the definition of a CTA. Proposed § 1.3(bb)(v). The Commission explained that its proposal was "intended to make clear that only those persons who meet the statutory definition of an ERISA trustee (*see* 29 U.S.C. 1002(21)) and are subject to another regulatory framework covering their fiduciary activities may be excluded" from that definition and the Commission's regulatory program for CTAs.[104] The Commission's proposal was consistent with its interpretation of the statutory use of the definite article ("the" fiduciary of an ERISA defined benefit plan), reflecting a Congressional intention to exclude such plans from the CTA definition. The Commission has now further broadened that exclusion to provide similar relief for the trustee of any such plan [105] or any fiduciary whose sole business is to advise that plan.[106]

Transaction records. The Commission is adopting amendments to § 1.35 essentially in the manner proposed. Introducing brokers are subject to the general recordkeeping requirement of § 1.35(a), which also applies to FCMs and contract market members, which requires that records be kept of all transactions relating to the introducing broker's business of dealing in commodity futures, commodity options and cash commodities. An introducing broker should have fewer transactions and fewer records relating to each transaction than an FCM due to the differences in the nature of their businesses, so an introducing broker should have a much lighter recordkeeping burden than an FCM. An introducing broker will receive customer orders, as will an FCM, and an introducing broker is required, as is an FCM, to prepare a time-stamped record of each customer order.[107] Section 1.35(a–1)(1). However, because introducing brokers are not allowed to carry customer accounts or to accept customer funds, introducing brokers are not required to prepare the financial or contract ledgers which FCMs and clearing members of contract markets are required to keep by paragraphs (b)(1) and (b)(2) of § 1.35.

The other transaction record which introducing brokers will be required to keep is a daily record or journal of all customer trades. Section 1.35(b)(3). The Commission is adopting that proposal with one minor revision. An introducing broker must include in its daily record or journal, in addition to the information set forth in § 1.35(b)(3) (i) and (ii), the FCM carrying the account for which each transaction was executed on that day. Section 1.35(b)(3)(iii). An introducing broker whose customers' accounts are carried by only one FCM may simply note that in its daily record or journal. However, an introducing broker whose customers' accounts are carried by more than one FCM must include in its daily record or journal which FCM carries the account for which each transaction was executed on that day.

Guarantee against loss. The Commission is adopting, as proposed, an amendment to § 1.56, which relates to the prohibition of guarantees against loss, so that it applies 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,[108] that introducing brokers should not be able to represent that they will guarantee a customer against loss. No comments were received on this matter.

Transmission of orders. Proposed § 1.57(a)(2) would have required an introducing broker to transmit promptly all orders either to a carrying futures commission merchant or to "a floor broker, if the introducing broker identifies its carrying futures commission merchant." One commentator responded that the Commission should also allow an

[104] 48 FR 14933, 14952 n.105 (April 6, 1983).

[105] *See* H.R. Rep. 565 (Part 1), 97th Cong., 2d Sess. 52 (1982).

[106] Fiduciaries which engage in other advisory activities may nonetheless be exempt from registration as a CTA pursuant to 4m(1) of the Act (7 U.S.C. 6m(1)). *But see* CFTC v. Savage, 611 F.2d 270, 280 (9th Cir. 1979).

[107] The only commentator who directly addressed this issue supported "the formalization of recording and maintaining customer orders" by introducing brokers.

[108] 46 FR 62841 (December 29, 1981).

introducing broker to transmit its orders to a member of a contract market if the introducing broker identified the member which will clear the trade. This commentator noted that this modification would allow an introducing broker to contact a floor broker directly even where the carrying FCM is not a clearing member of the exchange or, alternatively, would allow the introducing broker to place its orders with a member of the exchange in cases where the carrying FCM was not itself an exchange member. In each such case, however, the introducing broker would then be in a position to identify to the floor broker or the clearing member only the omnibus account of its carrying futures commission merchant, rather than the individual, fully-disclosed account of its customer or option customer. Such a practice would not only violate the provisions of § 1.35(a-1), but could lend itself to certain abusive practices such as the unlawful allocation of trades within that omnibus account. The Commission has, therefore, clarified its rule to specify that an introducing broker may transmit customer and option customer orders to a floor broker only where the introducing broker identifies the customer or option customer account at its carrying futures commission merchant and that FCM is also the clearing member with respect to the customer's or option customer's order.

CPO/CTA disclosure. The Commission is adopting, as proposed, amendments to §§ 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 also amending §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker. The Commission did not propose such amendments because, when the proposals were announced, the Commission expressed its belief that such amendments were 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* 17 CFR 4.21(h) and 4.31(g).[109] However, in response to one commentator who requested that, for the sake of clarity, the Commission amend §§ 4.21 and 4.31 to require explicitly that CPOs and CTAs disclose any conflict of interest involving an introducing broker, the Commission has determined to so amend §§ 4.21 and 4.31.

Market surveillance. The Commission is adopting, in essentially the form proposed, amendments to certain of the 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, an introducing broker which introduces an account of any foreign broker or trader is deemed to be an agent of the foreign broker and its customers and an agent of the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission. Although the futures commission merchant effecting a transaction for a foreign account will also continue to be the agent of both a foreign broker and its customers and of a foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission, the Commission has amended § 15.05 because it believes that there may be instances in which service on the foreign parties can be better effected through the introducing broker. The Commission has also amended §§ 21.01, 21.02 and 21.03 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 are obligated to provide certain information upon special call, as set forth in those rules, and introducing brokers are prohibited from accepting any orders from customers who do not respond to selected special calls issued pursuant to § 21.03.

Three commentators requested that the Commission clarify the procedures it intends to follow under § 15.05(b) regarding service of communications on a foreign broker, a customer of a foreign broker or a foreign trader. Those commentators also asked specifically whether, with respect to an introduced account, an FCM which receives any communication by or on behalf of the Commission for service upon a foreign broker, a customer of a foreign broker, or a foreign trader will be deemed to have fulfilled its obligations under § 15.05(b) by transmitting the communication to the introducing broker which indroduced the account. As stated above, the Commission has amended § 15.05 so that the Commission will have the flexibility of serving a foreign party through either an FCM or an introducing broker. The Commission will determine, on a case-by-case basis, whether it believes that service can be better effected by an FCM or by an introducing broker. The Commission wishes to emphasize, however, that whether the Commission transmits a communication for service upon a foreign party to an FCM or to an introducing broker, the FCM or introducing broker is obligated to make service of that communication upon the foreign party. An FCM receiving such a communication from the Commission cannot fulfill its obligation under § 15.05(b) merely by transmitting the communication to the introducing broker, nor may an introducing broker receiving such a communication from the Commission fulfill its obligation merely by transmitting the communication to the FCM.

Two of the three commentators who commented on § 15.05(b) also commented on § 15.05(c), which requires that FCMs and introducing brokers inform foreign parties of the requirements of § 15.05 before opening accounts, or before effecting transactions in existing accounts for such foreign parties. The commentators requested a clarification as to whether, with respect to an introduced account, the FCM or the introducing broker would be responsible for informing the foreign party of the requirements of § 15.05. As is the case with the risk disclosure statements required to be furnished and acknowledged in accordance with § 1.55 and § 33.7, it is the introducing broker's responsibility, under § 15.05(c), to inform the foreign party of the requirements of § 15.05. The Commission also wishes to make it clear, however, that an FCM may not ignore the activities of an introducing broker which has introduced accounts to the FCM and, depending upon the facts in a particular case, an FCM may have some liability for such introducing broker's non-compliance with its obligations under § 15.05(c). The Commission further wishes to note that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, the introducing broker's obligations under § 15.05(c), among other things.

Those two commentators also requested that the Commission clarify the procedures which it intends to follow under Part 21 of the regulations with respect to special calls for information regarding introduced accounts. The Commission's procedures will be similar to those discussed above

[109] 48 FR 14933, 14953 (April 6, 1983).

relating to service upon foreign parties under § 15.05(b). The Commission will determine, on a case-by-case basis, whether it believes that the information which it seeks can be obtained more expeditiously through the FCM or through the introducing broker, and the special call will be made accordingly. The FCM or the introducing broker receiving a special call for information must respond to that call, and neither an FCM nor an introducing broker will be in compliance with the special call provisions merely by transmitting the special call for information to the other firm.

The Commission has made two other minor amendments to its market surveillance regulations. Section 17.01(b)(12) has been amended to require that when a special account which is also an introduced account is reported to the Commission for the first time, the FCM making the report must include the name and business telephone number of the introducing broker which introduced the account. Section 18.04(a)(7) has been amended to require a reporting trader to include in the statement of reporting trader, if the reporting trader has accounts introduced by more than one introducing broker which clears accounts through the same FCM, the names and locations of all such introducing brokers, as well as the name of the reporting trader's account executive at each of those introducing brokers.

Options. The Commission stated the following with respect to exchange-traded options when it announced the proposed rules for introducing brokers:

> [U]ntil 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.[110]

The Commission received a substantial number of comments on this issue, and those commentators unanimously recommended that the Commission allow introducing brokers to engage in the solicitation and acceptance of orders for exchange-traded options. Some of those commentators stated that introducing brokers should be permitted to engage in exchange-traded option activities on the condition that the FCMs carrying the accounts of the introducing brokers' customers take responsibility for the option-related activities of the introducing brokers and their associated persons until such time as the NFA is able to regulate those persons directly.

The Commission has reviewed the comments on this issue and has undertaken its own reconsideration of the matter. The Commission has determined to permit introducing brokers and their associated persons to engage in the solicitation or acceptance of orders for exchange-traded options if any of the following conditions are met:

1. The NFA, or another registered futures association, adopts rules which are approved by the Commission, to govern the commodity option related activity of its member introducing brokers;

2. A contract market of which an introducing broker is a member adopts rules which the Commission approves to govern the commodity option related activity of its member introducing brokers; [111] or

3. The introducing broker is operating pursuant to a guarantee agreement, and the FCM which is a party to that agreement is a member of a self-regulatory organization which adopts rules which the Commission approves to govern the commodity option related activity of the introducing broker which is a party to that agreement.

Section 33.3(b)(1) (ii) and (iii). The rules which are adopted and submitted for Commission approval must provide for regulation of the commodity option related activity of introducing brokers in a manner equivalent to that required of contract markets with respect to their member FCMs, and must generally incorporate the standards set forth in § 33.4 (b) and (c).[112] The Commission believes that the amendment to § 33.3(b)(1) should permit those introducing brokers which want to solicit or accept orders for exchange-traded options to do so. The Commission further believes that such an amendment is necessary to preserve the structure of the option pilot program and to retain the requirement that, in addition to the Commission, there be a self-regulatory organization with responsibility over the sales practices of all persons engaged in exchange-traded option transactions. This position is consistent with the Commission's commitment to Congress to assure that the exchange-traded option pilot program is limited so that, as required by statute, it may be regulated successfully.[113]

The Commission has adopted certain other amendments to the rules governing the pilot program in exchange-traded options. One is an amendment to § 33.4(b)(4), which concerns the rules that a self-regulatory organization must adopt regarding option customer complaints. Each self-regulatory organization participating in the exchange-traded option pilot program must adopt and submit for Commission approval a rule which states that if an FCM is carrying an option customer's account which has been introduced to it by an introducing broker, and the option customer makes a written complaint, or an oral complaint which results in or which would result in an adjustment to the account in an amount in excess of one thousand dollars, the FCM will have to record, in addition to other information, the name of the introducing broker. Section 33.4(b)(4)(ii). The FCM will not, however, have to record the name of the introducing broker's associated person who serviced the account; that will be the responsibility of the introducing broker. The Commission also wishes to note, however, that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, such obligation.[114]

The Commission is also amending § 33.8 to extend to introducing brokers the current requirement applicable to FCMs regarding promotional material. Introducing brokers must retain, in accordance with the provisions of 17 CFR 1.31 (1982), the general rule relating to maintenance of required books and records, all promotional material provided, either directly or indirectly, to

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[110] 48 FR 14933, 14952 (April 6, 1983).

[111] A contract may elect to create a membership category for introducing brokers, and if the contract market does so elect, it may adopt and submit for Commission approval rules to govern the commodity option related activity of its member introducing brokers. There is, however, no requirement that a contract market create a membership category for introducing brokers, and there is also no requirement that a contract market adopt and submit rules to govern the commodity option related activity of its member introducing brokers. The requirements relating to options are to be contrasted with those relating to minimum financial and related reporting requirements. *See* § 1.52(a). If a contract market elects to have a category of membership for introducing brokers, it must adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for its member introducing brokers.

[112] 17 CFR 33.4 (b) and (c) (1982), *as amended by* 47 FR 56996, 57017 (December 22, 1982).

[113] *See* Section 4c(c) of the Act (7 U.S.C. 6c(c) Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(3), 96 Stat. 2301 (1983). In keeping with the spirit of that statutory requirement, the Commission is transmitting a copy of these regulations to the appropriate Congressional oversight committees.

[114] *See also* § 1.37(a), which requires that a record be made of the person who has solicited and is responsible for each option customer's account. An FCM need only record the name of the introducing broker which has introduced an introduced account; the introducing broker must record the name of its associated person who has solicited and is responsible for the option customer's account. However, an FCM which has entered into a guarantee agreement with an introducing broker should be aware of its responsibility as referred to above.

option customers, as well as the true source of authority for the information contained therein.

With respect to dealer options, the Commission stated when it proposed rules for introducing brokers [115] that an introducing broker will not be authorized to engage in dealer option transactions conducted pursuant to the provisions of Section 4c(d) of the Act [116] and Part 32 of the Commission's regulations.[117] The Commission also noted that the Futures Trading Act of 1982 in no way altered the previously-existing statutory proscriptions on who may offer and sell dealer options to the public. Although Section 4c(d) of the Act refers specifically to FCMs as the persons authorized to offer and sell dealer options, Commission rule 32.12 allowed for the possibility that an agent of an FCM would do so. In light of this, some commentators favored permitting introducing brokers to engage in dealer option transactions. The Commission, however, does not believe it is advisable to develop rules to permit introducing brokers to offer and sell dealer options at this time. The Commission therefore has not amended Part 32 of the regulations although it may reconsider this issue at a later date.

The Commission is also adopting, as proposed, an amendment to § 1.19 which extends to introducing brokers the prohibition on granting commodity options currently applicable to FCMs, except for options which are traded on or subject to the rules of a contract market.

Option and futures disclosure. In addition to the amendments to the rules governing the pilot program in exchange-traded options discussed above (§§ 33.3, 33.4 and 33.8), the Commission has also amended the disclosure rules contained in § 33.7. Those amendments generally either add a reference to introducing brokers where there is already a reference to FCMs, or extend a disclosure requirement which currently applies only to FCMs to introducing brokers as well. *See* the introductory paragraph of § 33.7(b), and paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv), (b)(2)(vii), (c), (e), (f) and (g) of § 33.7.

The Commission is also amending § 33.7(a) to read, in pertinent part, as follows (amendments are italicized):

> No futures commission merchant *or, in the case of an introduced account, no introducing broker* may open *or cause the opening of* a commodity option account for an option customer unless the futures commission merchant *or introducing broker* (1) furnishes the option customer with a separate written disclosure statement as set forth in this section and (2) receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement. The disclosure statement and the acknowledgment shall be retained by the futures commission merchant *or the introducing broker* in accordance with § 1.31 of this chapter. . . .

The purpose of the amendment is to make it clear that for an introduced option account, it is the introducing broker's responsibility to furnish the option customer with the required written disclosure statement, and it is also the introducing broker's responsibility to receive, and retain, and acknowledgment signed and dated by the option customer that he received and understood the disclosure statement.

The Commission has also amended § 1.55(a), relating to the disclosure statement required to be furnished in connection with the opening of a commodity futures account, in a similar fashion. Certain commentators had requested clarification on this issue. The Commission once again wishes to make it clear, however, that an FMC may not ignore the activities of an introducing broker which has introduced accounts to the FCM and, depending upon the relationship of the FCM to the introducing broker, the FCM may be liable for such introducing broker's failure to provide the disclosures required by § 33.7(a) or § 1.55(a). An example of such a relationship would be one where the FCM accepts orders directly from the customer. The Commission further wishes to note, as it stated above with respect to §§ 15.05(c), 33.4)(b)(4)(ii) and 1.37(a), that an FCM which has entered into a guarantee agreement with an introducing broker thereby guarantees performance by the introducing broker of, and shall be jointly and severally liable for, the introducing broker's disclosure obligations under §§ 15.05(c), 33.7(a) and 1.55(a), among other things.

The Commission recognizes that certain introducing brokers will be firms which were previously "agents" of FCMs. Such firms may have customers who opened accounts while such firms were "agents" of FCMs. If those customers continue to have their accounts carried by the same FCM after the former "agent" becomes registered as an introducing broker, such customers would not need to be furnished with the disclosure statements required by § 33.7 or § 1.55, provided the introducing broker obtains from the FCM, and retains in accordance with the provisions of § 1.31, the signed and dated customer acknowledgments previously executed by those customers. If the introducing broker cannot obtain the customer acknowledgments, or copies thereof, for an existing account, it must furnish the customer with new disclosure documents and receive and retain the required acknowledgments signed and dated by the customer. If the introducing broker is not required to furnish new disclosure statements to existing customers, it must notify its customers and option customers of its change in status from "agent" of an FCM to introducing broker, as required by Section 4h of the Act, which provides that:

> It shall be unlawful for any person falsely to represent such person to be a member of a contract market or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any contract market.[118]

Of course, when soliciting any new or prospective customers and option customers, an introducing broker must also accurately describe its status.

The Commission also recognizes that the option disclosure statement required by § 33.7 is especially detailed and comprehensive, and that it needs very few changes as a result of the inclusion within the pilot program of introducing brokers as firms which can solicit or accept option orders. *See* the introductory paragraph of § 33.7(b), as well as paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv) and (b)(2)(vii) of § 33.7. Introducing brokers may, therefore, want to use the document currently being used by FCMs. This practice is acceptable because providing the required disclosures to option customers and prospective option customers is the obligation of both FCMs and introducing brokers although, with respect to introduced accounts, the disclosure obligation is the responsibility of the introducing broker in the first instance. Of course, introducing brokers may develop their own option disclosure statement to meet the requirements of § 33.7, but they may find it advantageous to provide an option disclosure statement which is

[115] *See* 48 FR 14933, 14952 (April 6, 1983).

[116] 7 U.S.C. 6c(d) (Supp. V 1981), *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97-444, section 206(4), 96 Stat. 2301 (1983).

[117] 17 CFR Part 32 (1982), *as amended by* 47 FR 56996, 57016 (December 22, 1982).

[118] Futures Trading Act of 1982, Pub. L. No. 97-444, section 210, 96 Stat. 2302-03 (1983).

substantially similar to such a statement being provided by an FCM, so long as all of the requirements of § 33.7 are met. An FCM and an introducing broker may agree contractually as to how required disclosures will be provided to option customers and prospective option customers. The Commission wishes to make it clear, however, that such an agreement will not determine the regulatory obligations of the parties, which are determined by the Act and the rules, regulations and orders promulgated thereunder.

As stated above, the option disclosure statement needs very few changes as a result of the inclusion within the pilot program of introducing brokers as firms which can solicit or accept option orders. The Commission is also aware that previously-adopted amendments to the option disclosure statement necessitated by the inclusion within the pilot program of options on physicals will ultimately require amendments to that statement prior to the commencement of trading in options on physicals. The Commission has previously taken a "no-action" position with regard to the amendments necessitated by the inclusion of options on physicals until the Commission designates one or more exchanges as contract markets for the trading of options on physicals.[119] The Commission does not believe that it is necessary for an FCM which does not carry introduced option customer accounts to amend the option disclosure statement at this time to refer to introducing brokers and to make additional amendments at a later date to reflect the inclusion of options on physicals in the Commission's option pilot program. Accordingly, the Commission has modified its no-action position referred to above, and the Commission will deem such an FCM to be in compliance with the requirements of § 33.7(a) if, subsequent to the effective date of the amendments to § 33.7 discussed herein, the FCM continues to provide to its prospective option customers an option disclosure statement that has not been amended to reflect the revisions that are made necessary by the trading of options on physicals and by the inclusion of introducing brokers as firms which can solicit or accept option orders. This no-action position will terminate, however, when the Commission designates one or more exchanges as contract markets for the trading of options on physicals. All FCMs will then be required to provide the same option disclosure statement meeting all of the requirements of § 33.7(b), irrespective of whether a particular FCM intends to offer options on physicals to its option customers and irrespective of whether a particular FCM intends to have option customer accounts introduced to it by an introducing broker. Introducing brokers can also defer including references to options on physicals in their option disclosure statement until the Commission designates one or more exchanges as contract markets for the trading of options on physicals.

Trading standards. The Commission has amended, in the form proposed, its trading standards regulations in Part 155 to make them applicable to introducing brokers. Such requirements for introducing brokers are comparable to those for FCMs. The Commission also has made minor amendments, in the form proposed, to § 155.3, which sets forth the trading standards for FCMs, to make appropriate references to introducing brokers. These matters are described more fully in the release announcing the proposed rules for introducing brokers.[120] No comments were received on these matters.

Customer protection rules. When it announced the proposed rules for introducing brokers, the Commission stated its assumption that some customers may grant discretion to introducing brokers to make trades for them.[121] The Commission therefore proposed 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, and thereby allow a customer to authorize an introducing broker or its associated person to make trades for the customer.

The Commission is adopting the amendment to § 166.2 as proposed. One commentator requested that the Commission clarify whether an FCM will be required to verify that a customer has authorized the introducing broker or an associated person of the introducing broker to effect a transaction when the FCM receives an order from the introducing broker or the associated person of the introducing broker representing that customer. Although an FCM generally will not be expected to contact the customer of an introducing broker directly to determine whether that customer has authorized the introducing broker or the associated person of the introducing broker to place an order, if the introducing broker or its associated person is engaged in unauthorized trading, depending upon all the facts and circumstances, the FCM could also be liable for defrauding the customer, or for aiding and abetting such unlawful activity by the introducing broker or its associated person.

The commentator who addressed § 166.2 also addressed § 166.3, as did five other commentators. These commentators stated that introducing brokers should expressly be required to supervise the commodity-related activities of their personnel, and that FCMs should not be required to supervise the commodity-related activities of an introducing broker which introduces accounts to the FCM, or the commodity-related activities of anyone acting on behalf of such an introducing broker. Four of those commentators also stated that §166.3 should be further amended expressly to require introducing brokers and FCMs carrying accounts for customers of introducing brokers contractually to allocate between themselves their respective responsibilities. One of those commentators further suggested that a brief description of the respective responsibilities of the introducing broker and the FCM for an introduced account should be included on monthly and confirmation statements provided to customers.

The Commission has added the word "introduced" to § 166.3 to make clear that an introducing broker, like all other Commission registrants except associated persons with no supervisory duties, must diligently supervise the commodity-related activities of persons acting on its behalf. The Commission's position with respect to the FCM's supervisory responsibilities, which is similar to its position regarding § 166.2, is that generally an FCM will not be required to supervise the commodity-related activities of an introducing broker which has introduced accounts to the FCM, or the commodity-related activities of anyone acting upon behalf of such an introducing broker. However, if it could be shown that the introducing broker were a *de facto* branch office of the FCM, or an agent of the FCM (in the common law sense of that term), the FCM would be deemed to have supervisory responsibility. Again, the result will depend upon all of the facts of a particular situation, and will necessarily need to be determined on a case-by-case basis.

[119] 47 FR 56996, 57001 (December 22, 1982).

[120] *See* 48 FR 14933, 14954 (April 6, 1983).

[121] 48 FR 14933, 14954 (April 6, 1983). The Commission further stated that such a grant of discretion would require the introducing broker to register also as a commodity trading advisor under proposed § 4.14(a)(6). As adopted, however, § 4.14(a)(6) exempts an introducing broker from the requirement to register as a commodity trading advisor if its trading advice "is solely in connection with its business as an introducing broker."

The Commission has determined not to adopt the suggestion of certain commentators that an introducing broker and the FCM carrying accounts of its customers be required to enter into agreements relating to their respective responsibilities for introduced accounts. As the Commission stated when it announced the proposed rules for introducing brokers, the Commission assumes that introducing brokers and FCMs will enter into such agreements. 48 FR 14933, 14944 (April 6, 1983). The Commission wishes to make it clear that such agreements will not determine the regulatory obligations of the parties, which are determined by the Act and the rules, regulations and orders promulgated thereunder. Such agreements, may, however, provide a basis for indemnification or contribution between the parties in the event that there is found to have been a violation of the Act or a rule, regulation or order promulgated thereunder.

The Commission also has determined not to adopt the suggestion of a commentator that a brief description of the respective responsibilities of the introducing broker and the FCM for an introduced account be included on monthly and confirmation statements provided to customers. The Commission has, however, amended §§ 1.33 and 1.46 to require each monthly statement, each confirmation statement, and each purchase-and-sale statement issued for an introduced account to show that the account for which the FCM is providing the statement was introduced to the FCM by an introducing broker, and the names of the FMC and introducing broker involved. (The Commission also is aware that FCMs often include on the confirmation and purchase-and-sale statements a telephone number to call in the event of an error on such statements. The Commission recommends that, in the case of introduced accounts, the FCM and introducing broker agree, and so advise the customer, whether errors should be reported to the introducing broker or directly to the FCM.)

The Commission wishes to note certain other issues relating to monthly, confirmation, and purchase-and-sale statements for introduced accounts. The Commission agrees with the commentator who stated that those required statements must be sent directly from the FCM carrying the account to the customer, and not simply to the introducing broker. The FCM may, in its discretion, send a copy of a statement to the introducing broker, but the primary statement must be sent directly to the customer. The Commission therefore disagrees with another commentator who stated that an FCM should be able to carry an introduced account even if the introducing broker merely provides the FCM with a number of "d/b/a" designation for the account. The obligations of § 1.37(a) apply both to FCMs and to introducing brokers. An FCM must keep a record for each account which it carries, including introduced accounts, which shows, among other things, the true name and address of the person for whom such account is carried. Similarly, an introducing broker must keep a record for each account which it introduces which shows, among other things, the true name and address of the person for whom such account is introduced. Therefore, for introduced accounts, both the FCM and the introducing broker must keep a record of the customer's name and address. Neither the FCM nor the introducing broker may contractually delegate to the other firm this obligation under § 1.37(a). An FCM will have the name and address of the customer on whose behalf it is carrying an introduced account in its records, and it must issue directly to that customer the monthly, confirmation, and purchase-and-sale statements required by §§ 1.33 and 1.46.

The Commission also has determined to adopt a new § 166.4 regarding branch offices. The Commission adopted this rule in response to a comment requesting clarification of the status of a branch office, and because the Commission has determined that such a rule will serve to further clarify the responsibility of registrants for their branch offices and, as such, will serve as a customer protection. The rule reads as follows:

> Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

NFA rules. The Commission is adopting, in the form proposed, two amendments to 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 have been eliminated so that the new categories discussed herein, as well as any additional categories created in the future, will be included. The second amendment adds a new § 170.10 relating to proficiency examinations and permits 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 registration in a particular capacity, yet performed the functions of a person registered in such capacity, a futures association can require that person to meet training standards and pass a proficiency examination related to that exempted capacity.

V. Related Matters

A. Regulatory Flexibility Act Analysis

FCMs, CPOs and floor brokers. When the Commission proposed rules relating to introducing brokers and the APs of introducing brokers, CTAs and CPOs, the Chairman certified, on behalf of the Commission and pursuant to the Regulatory Flexibility Act ("RFA"),[122] that if the regulations were promulgated as proposed, there would not be a significant economic impact on a substantial number of small entities. 48 FR 14933, 14956 (April 6, 1983). In this connection, the Commission noted its previous determination that registered FCMs and registered CPOs are not "small entities" for purposes of that Act (47 FR 18618 (April 30, 1982)) and that the requirements of the RFA therefore do not apply to those entities. The Commission further noted that 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 Act, as amended by the Futures Trading Act of 1982, and that the economic effect on floor brokers of both provisions, if adopted, would be minimal.[123] The Commission did not receive any comments with respect to the proposed fingerprinting requirement for floor brokers and it is adopting that rule as proposed. Consistent with the Commission's statements at the time it proposed increased registration fees, the Commission has continued to develop data and information with a view to determining more precisely the actual costs to the Commission of processing applications for registration. As noted above, the registration fees have been

[122] 5 U.S.C. 601 *et seq.*

[123] The Commission stated in its RFA policy statement that, with respect to floor brokers, RFA determinations should be made in the context of rule proposals specifically affecting them. 47 FR 18618, 18620 (April 30, 1982).

revised accordingly to reflect the Commission's actual costs.

Commodity trading advisors. As with floor brokers, the Commission similarly decided in its RFA 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 analyze the economic impact on CTAs of any such rule at that time.[124] In this regard, and for the same reasons stated above with respect to floor brokers, the Commission does not consider either the registration fee or the fingerprinting requirement for certain CTAs upon re-entry into the business following a lapse of registration to have a significant economic impact on such persons.

The Commission also proposed, however, to require those CTAs which are compensated either 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. As noted earlier in this **Federal Register** notice, this position was consistent with prior staff interpretations that persons who operated in such a manner were "agents" of FCMs. The Commission therefore proposed, in light of the legislative history of the Futures Trading Act of 1982, to require persons who continued to operate in this manner to register as introducing brokers. Specifically, the Commission stated in its proposal that it believed that it was necessary to include within the introducing broker category those CTAs which, in essence, solicit or accept customer orders on behalf of one or more FCMs in order to avoid having a category of registrants which would function in a manner similar to that of an introducing broker but which would not have any minimum capital requirements. The Commission further indicated at that time, however, that an alternative to introducing broker registration is available to those small CTAs which do business as sole proprietorships in that any such person 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 requirements) unnecessary. The Commission wishes to emphasize that this alternative is still available for those CTAs which would otherwise be required to register as introducing brokers under these rules as adopted.

More significantly, and in response to the comments received as well as its further consideration of this issue, the Commission has determined to revise the introducing broker definition to exclude from its scope a CTA which solely manages discretionary accounts pursuant to a power of attorney, regardless of whether that CTA is registered or exempt from registration as a CTA. Furthermore, the revised definition also excludes from the definition of "introducing broker" any CTA which, acting in its capacity as such, does not receive per-trade compensation. Of course, a CTA which does not come within the introducing broker definition is not required to register as such. The Commission has also reduced the need for certain persons to register in two capacities by revising its proposal so that introducing brokers who direct or guide a client's commodity interest account generally will not also have to register as CTAs. Instead, the Commission has adopted a rule which exempts an introducing broker from the requirement to register as a CTA if its trading advice is solely in connection with its business as an introducing broker.

As discussed in greater detail elsewhere in this **Federal Register** notice, the Commission believes that these modifications are consistent with the scope of the term "introducing broker" and are necessary to preclude avoidance of the scheme of regulation of introducing brokers contemplated by the Futures Trading Act of 1982. At the same time, these modifications will greatly minimize "dual registration" obligations and avoid undue regulatory burdens for those persons which do register with the Commission in both categories. Indeed, as noted in the Commission's proposal, the regulations which govern the operations and activities of CTAs and introducing brokers neither conflict nor are inconsistent. Thus, in the relatively small number of instances in which a person may be required to register as both a CTA and as an introducing broker, any overlap between the two sets of regulatory requirements would generally mean that a particular function—such as the maintenance of books and records—need not be performed twice.

Introducing brokers. The Commission proposed for purposes of the RFA and future rulemakings that introducing brokers should not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.[125] The Commission specifically requested comments from any firm which believed that these rules would have a significant economic impact on a substantial number of small entities. In this regard, several commentators expressed concern that the Commission's proposal could, in some circumstances, have an impact on certain small entities, such as a country elevator or a CTA which may share in brokerage commissions with an FCM on only a few commodity accounts. In accordance with the objectives of the RFA, the Commission has sought throughout this rulemaking proceeding to develop a regulatory framework for introducing brokers which is responsive to the function, purposes, and size of the entity being regulated and, as discussed below, has further evaluated that portion of its proposal that would have established a uniform policy under which introducing brokers would not be considered to be small entities in any circumstances. For the reasons set forth in this release, and in particular as discussed below, the Commission has adopted these rules to minimize any impact which might have otherwise resulted had the Commission's proposal been adopted without revision.

The Commission has decided, as with floor brokers and CTAs, to evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at that time.[126] Specifically, the Commission recognizes that the introducing broker definition, even as narrowed to exclude certain persons,[127] undoubtedly encompasses many business enterprises of variable size.[128] The Commission therefore believes that adequate consideration of the economic impact on those introducing brokers which may be small businesses may be given only in the context of a particular rule proposal which affects such

[124] 47 FR 18618, 18620 (April 30, 1982).

[125] 48 FR 14933, 14955 (April 6, 1983). *See also* 47 FR 16618, 18619 (April 30, 1982).

[126] *See* 47 FR 18618, 18620 (April 30, 1982).

[127] For example, as noted above, the vast preponderance of CTAs which solely manage discretionary accounts are excluded from the introducing broker definition.

[128] Approximately 650 individuals and firms have applied for the Commission's "no-action" position for introducing brokers. The Commission recognizes, however, that not all of these persons will ultimately become so registered. (For example, some of those applicants have since applied for registration as an FCM. Other applicants may now determine, in light of these final rules, that registration as an introducing broker is unnecessary.) The Commission cannot, therefore, determine specifically at this time how many persons will become registered as introducing brokers.

persons. For example, a proposed rule may only provide for a prohibition on certain activities which does not impose any significant regulatory burdens or may affect only introducing brokers which engage in certain activities (*e.g.*, the marketing of exchange-traded options). Conversely, another rule proposal may establish new regulatory requirements applicable to all introducing brokers. As explained below, and throughout this release, the Commission has evaluated the impact of these rules upon introducing brokers which also considering the Congressional mandate to provide an adequate regulatory structure for introducing brokers [129] and has developed significant alternatives which will minimize any significant economic impact upon these entities.

With respect to the proposed regulations, concerns were expressed regarding two areas of the Commission's requirements which might affect small entities—the appropriate level of minimum adjusted net capital and the reporting of an introducing broker's compliance with those financial requirements.[130] In response to these concerns, the Commission has provided a variety of significant alternative methods by which compliance with these requirements may be achieved. The Commission is convinced that these alternative measures will provide affected persons with the maximum possible flexibility as to the manner and form of operation while remaining consistent with the Commission's objectives of customer protection and financial stability for introducing brokers.

1. *Alternatives to minimum capital requirement.* With respect to the minimum capital requirements for introducing brokers, the Commission noted in its proposal that Congress clearly intended that minimum capital requirements, similar to those which are in effect for FCMs, be prescribed for introducing brokers. The Commission further observed that such requirements were meant to apply, regardless of the size of the firm, because of the nature of the relationship between an introducing broker and its customers and the consequent need for an introducing broker to have sufficient capital to meet its obligations and to maintain its financial stability.[131] As such, the provisions of the Futures Trading Act of 1982 and the Commission's final regulations do not contain variable minimum financial requirements which are related to the size or the number of customers of a particular firm, but rather are uniform in scope. Indeed, the Commission's rules do not provide for differential capital and other requirements precisely because those rules merely set forth *minimum* standards with which all introducing brokers must comply.[132]

The Commission has nevertheless carefully considered several alternatives to a minimum capital requirement for introducing brokers in a further effort to minimize any significant economic impact on small entities without vitiating the purposes of these financial requirements. In this regard, the Commission notes that in proposing its rules it recognized that the amount of required minimum net capital must not only "effectuate the Congressional purpose that introducing brokers have a sufficient reserve of capital to remain economically viable" but also "not be so onerous as to constitute a barrier to the entry into, or continuation in, the commodities industry." 48 FR 14933, 14956 (April 6, 1983). Consistent with the requirements of the RFA, the Commission has taken into consideration, in both proposing and adopting these rules, the impact of minimum capital requirement on persons which have previously been engaged in business as agents of FCMs and, as noted above, has also considered various alternatives designed to minimize any significant economic impact of these rules.

For example, and as discussed in greater detail above, the Commission has reduced the capital requirement for introducing brokers to $20,000 from the proposed $25,000 level. In this connection, the Commission understands that some FCMs required their former "agents" to deposit with the FCM sums substantially in excess of $25,000 in order to indemnify the FCM for claims filed against it by customers of the agent and for deficits in those customers' accounts. The Commission has further determined to permit an introducing broker or applicant therefor to include as a current asset for purposes of computing net capital 50% of the value of such a guarantee or security deposit. This would not have been the case under the original proposal because such restricted capital would not ordinarily be considered "good" capital under the Commission's net capital rules. In addition, introducing brokers will be permitted, as the Commission proposed, to meet the capital requirement by obtaining funds pursuant to a satisfactory subordination agreement. The Commission also has determined that introducing brokers generally need not be subject to the Commission's financial "early warning" system, effectively reducing the proposed minimum capital requirement from $37,500 to $25,000 and eliminating the need to file monthly reports if the introducing broker's capital fell below $37,500.

Moreover, the Commission has adopted an alternative capital requirement which provides that an introducing broker need not maintain its own capital if it is operating pursuant to a guarantee agreement with an FCM under which a carrying FCB will be permitted to assume regulatory and financial responsibility for the activities of the introducing broker. Although the introducing broker would still have to register as such and would remain subject to fitness standards, recordkeeping requirements and those other regulations which apply uniformly to all introducing brokers, that introducing broker would not be subject to annual certified audits of its financial statements nor would such an introducing broker be required to file interim financial reports. Under this approach, an introducing broker who either cannot meet, or does not choose to meet, the capital requirements that would otherwise be applicable will nonetheless be able to continue to operate as an independent business. Taken together, these alternatives and others discussed throughout this release will greatly minimize any significant economic impact on those introducing brokers which may be small entities.

The Commission has also considered, and rejected, other standards and regulatory initiatives which, in the absence of impediments to their successful implementation, could serve as additional alternative methods of compliance for affected persons. For example, the Commission considered the probable availability and expense of

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[129] *See, e.g.*, S. Rep. No. 384, 97th Cong., 2d Sess. 111 (1982); H.R. Rep. No. 565, 97th Cong., 2d Sess., Part 1 at 49 (1982).

[130] Another concern expressed by potential introducing brokers was the adequacy of notice of the Commission's proposal. First, the Commission's porposal was published in the **Federal Register** to provide notice to all potentially affected parties. Second, immediately after publication of that **Federal Register** notice, the Commission sent a letter to all registered futures commission merchants to advise those FCMs and their agents of the Commission's proposal and of the Commission's "no-action" position. In this connection, the Commission has deferred for a 90-day period the effectiveness of the minimum capital requirements with respect to those firms which met the conditions of the no-action position.

[131] *See, e.g.*, H.R. Rep. No. 565, 97th Cong., 2d Sess. 49 (1982). *See generally* 48 FR 14933, 14955–56 (April 6, 1983).

[132] The Commission has, however, provided an alternative to compliance with the minimum capital requirement for an introducing broker which enters into a guarantee agreement.

third-party bonds as an alternative means of satisfying the minimum financial requirements. The Commission determined, however, not to require fidelity bonding because such bonds are not generally available to firms engaged exclusively in the solicitation and acceptance of orders for commodity futures or option trading.[133]

The Commission has also previously considered the alternative of an insurance program for commodity customers similar to that provided by the Securities Investor Protection Corporation for securities customers in lieu of a minumum capital requirements. Because introducing brokers will not hold customer funds, the Commission does not believe that such a program would provide a satisfactory alternative. Such an insurance program, if feasible, generally would insure only against customer losses due to the insolvency of the insured firm. Therefore, the type of customer losses likely to be generated by introducing brokers, such as those resulting from fraudulent sales practices, would not be covered.

2. *Alternatives to reporting and other requirements.* One commentator, as noted above, stated that certain of the Commission's financial reporting requirements would be unduly burdensome to an introducing broker which is also a country elevator. The commentator noted that country elevators frequently provide the best means for farmers to hedge their grain sales, an important function of futures markets, and that such market participation should not be impeded. In this regard, the Commission has provided an additional filing option for such persons by permitting them to comply with the Commission's financial reporting requirements through the submission of reports which are already required to be prepared in connection with the Uniform Grain Storage Agreements administered by the Commodity Credit Corporation of the United States Department of Agriculture. The Commission has also modified its reporting requirements to permit introducing brokers that are also securities brokers or dealers to satisfy certain of these requirements by filing with the Commission a copy of certain reports which such firms are required to file with the Securiites and exchange Commission. Further, as previously noted, the Commission has determined that introducing brokers need not be subject to the Commission's financial "early warning" system, thus eliminating the need to file monthly reports if the introducing broker's capital fell below 150 percent of the minimum capital requirement.

The Commission has also taken other steps to minimize any disruption to existing business activities of persons registered or required to be registered with the Commission. Specifically, as indicated earlier, the Commission is adopting a temporary regulation (§ 3.12a(T)) which will allow an introducing broker to "transfer" the registration of its APs to or from an FCM without having to file application forms, fingerprint cards, or the registration fee for those APs; deferring for 90 days the effective date of the capital requirement for introducing brokers operating pursuant to the Commission's "no-action" position; providing those persons who formerly operated as agents several alternatives (*i.e.*, branch office or AP of an FCM, introducing broker with minimum capital requirement, and introducing broker with alternative capital requirement); and allowing those persons who did not qualify for the Commission's introducing broker "no-action" position and who now must register as introducing brokers because of the form in which they are compensated up to 90 days in which to apply for registration. Thus, and as the foregoing discussion makes clear, these regulations provide affected individuals and forms with adequate time and a larger measure of flexibility in selecting among the various methods by which they may choose to structure their business operations so as to comply with the requirements contained herein.

B. Effective Date

Section 4(c) of the Administrative Procedure Act (5 U.S.C. 553(d)) specifies generally that rules promulgated by an agency may not be made effective less than 30 days after publication except "for good cause." The Commission finds that good cause exists to make the rules contained herein effective upon the date of publication because the adoption of these rules is necessary to allow persons who were not formerly registered with the Commission and who have not qualified (or who have ceased to qualify) for an appropriate "no-action" position to now apply for registration.[134] Moreover, persons subject to the existing "no-action" positions of the Commission will not be prejudiced by immediate effectiveness of these rules, since the Commission's "no-action" positions will continue for such persons for a period of time sufficient to enable compliance with these rules.

As noted above, Congress considered implementation of these rules to be a significant addition to the existing regulatory structure under the Act. In this respect, the Commission will continue to monitor the effect of these rules and will consider such revisions to the system being adopted hereing as may be appropriate.

C. Paperwork Reduction Act

The Commission has submitted pertinent portions of these rules to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

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.

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[133] In addition, the Commission believes that practical considerations resulting from the nature of commodity futures trading militate against the probable effectivess of a third-party bonding alternative. First, fidelity bonds currently available only insure the firms; they do not cover third-party claims. Second, there are no bonds available to cover misrepresentation or fraud; existing bonds in the securities industry cover only embezzlement or theft of funds. Third, the fact that potential losses may be so great in relation to total premiums collected for bonding undoubtedly would complicate premium setting and would tend to ensure high premiums Also, because of the relatively small number of firms in the business, an industry-wide bonding requirement might not compensate for the high degree of risk in individual cases and, even if bonds were available, premiums would likely be prohibitive.

[134] The Commission's "no-action" position for introducing brokers was limited to those individuals and firms which had been designated as an "agent" of an FCM on April 7, 1983. 48 FR 15890, 15891, 15892 (April 13, 1983). The Commission's "no-action" position further specified that an introducing broker operating under that "no-action" position will not be able to hire new APs "prior to the time it is formally registered as an introducing broker" (*id.* at 15893); an introducing broker cannot, however, be registered as such until the rules contained herein are made effective. The Commission's "no-action" position for the APs of CTAs and CPOs similarly provided that, with certain limited exceptions, a CTA or CPO could not hire new associated persons "until the Commission makes effective appropriate regulations." 48 FR 16879, 16880 (April 20, 1983).

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 17

Futures commission merchants, Introducing brokers, Reporting requirements.

17 CFR Part 18

Futures commission merchants, Introducing brokers, reporting requirements, Reporting traders.

17 CFR Part 21

Special calls for information, Introducing brokers.

17 CFR Part 33

Commodity exchange designation procedures, Commodity options, introducing brokers, Promotional material, Risk disclosure statement, Self-regulatory organization.

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, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 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 be authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends 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 amended by revising paragraphs (aa), (bb), and (ff) and by adding paragraphs (mm) and (nn) 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' or option 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, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (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: (1) Any person who, for compensation or profit, whether direct

or indirect, is engaged in soliciting or in accepting orders (other than in a clerical capacity) 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; and (2) includes any person required to register as an introducing broker by virtue of Part 33 of this chapter: *Provided,* That the term "introducing broker" shall not include: (i) any futures commission merchant, floor broker, or associated person, acting in its capacity as such, regardless of whether that futures commission merchant, floor broker, or associated person is registered or exempt from registration in such capacity; (ii) any commodity trading advisor, which, acting in its capacity as a commodity trading advisor, is not compensated on a per-trade basis or which solely manages discretionary accounts pursuant to a power of attorney, regardless of whether that commodity trading advisor is registered or exempt from registration in such capacity; and (iii) any commodity pool operator which, acting in its capacity as a commodity pool operator, solely operates commodity pools, regardless of whether that commodity pool operator is registered or exempt from registration in such capacity.

(nn) *Guarantee agreement.* This term means an agreement of guaranty in the form set forth in Part B of form 1–FR, executed by a registered futures commission merchant and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in § 1.17(a)(2)(ii).

2. Section 1.10 is amended by revising the section heading and paragraphs (a)(2), (a)(3), (b)(1), (b)(3), (b)(4), (c), (d)(1), (d)(2), (e), (g), and (h), and by adding paragraphs (i) and (j), to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2)(i) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as a futures commission merchant and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either: (A) 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 (B) 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 assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) Except as provided in paragraphs (a)(3), (h) and (i) of this section, each person who files an application for registration 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: (A) 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 (B) 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, or (C) a guarantee agreement. Each person filing in accordance with paragraphs (a)(2)(ii)(A) or (B) of this section must include with such financial report a statement describing the source of his current assets 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)(i) 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. Each such person who files an application for registration as a futures commission merchant 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.

(ii) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another introducing broker. (A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer, at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a form 1–FR as of the first monthend following the date on which his registration is approved. Such form 1–FR must be filed not more than 45 days after the date for which the report is made. (B) Each such person who succeeds to and continues the business of an introducing broker which was operating pursuant to a guarantee agreement and which was not also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement or a form 1–FR with his application for registration. If such person files a form 1–FR with his application for registration, such person must also file a form 1–FR, certified by an independent public accountant, as of the date registration is granted. The form 1–FR certified by an independent public accountant must be filed with the National Futures Association not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1) Except as provided in paragraphs (b)(3), (h) and (i) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, 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 4f(2) 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.

(4) Upon receiving written notice from any representative of the Commission or any self-regulatory organization of which it is a member, an applicant or registrant must, monthly or at such times as specified, furnish the Commission and the self-regulatory organization, if any, requesting such information with a form 1–FR and/or such other financial information as requested by the representative of the Commission or the self-regulatory organization. In addition, upon receiving written notice from any representative of the National Futures Association, an applicant for registration as an introducing broker, except for such an applicant which has filed concurrently with its application for registration a guarantee agreement and which is not also a securities broker or dealer, must, monthly or at such times as specified, furnish the National Futures Association and the Commission with a form 1–FR and/or such other financial information as requested by the representative of the National Futures Association. Each such form 1–FR or such other information must be furnished within the time period specified in the written notice.

(c) *Where to file reports.* The reports provided for in this § 1.10 will be considered filed when received by the regional office of the Commission nearest the principal place of business of the applicant or registrant and by the designated self-regulatory organization, if any, except that reports required to be filed by this § 1.10 by an applicant for registration as an introducing broker will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant: *Provided, however,* That information required of an applicant or registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission.

(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, or, in the case of an applicant for registration as an introducing broker, the National Futures Association, 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, or does not so notify the National Futures Association, 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, or, in the case of an applicant for registration as an introducting broker, the National Futures Association, 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.* (1) 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.

(2) 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.

(3) All of the copies of the financial report filed pursuant to paragraph (i) of this section will be public: *Provided, however,* That if the balance sheet and the statement of the computation of the minimum capital requirements pursuant to § 1.17 are bound separately from the other financial statements, footnote disclosures and schedules contained in such financial report, 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.

(4) 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.

(5) The independent accountant's opinion, the grain commission firm's opinion, and a guarantee agreement 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), (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.

(i) *Filing option available to an introducing broker or applicant for registration as an introducing broker which is also a country elevator.* Any introducing broker or applicant for registration as an introducing broker which is also a country elevator but which is not also a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b) and (c) of this section) a copy of a financial report prepared by a grain commission firm which has been authorized by the Deputy Vice President of the Commodity Credit Corporation of the United States Department of Agriculture to provide a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, and which complies with the standards for independence set forth in § 1.16(b)(2) with respect to the registrant or applicant: *Provided, however,* That all information which is required to be furnished on and submitted with form 1–FR is provided with such financial report, including a statement of the computation of the minimum capital requirements pursuant to § 1.17: *And, provided further,* That the balance sheet is presented in a format as consistent as possible with the form 1–FR and a reconciliation is provided reconciling such balance sheet to the statement of the computation of the minimum capital requirements pursuant to § 1.17. Attached to each financial report filed pursuant to this paragraph (i) must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained therein 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.

(j) *Requirements for guarantee agreement.* (1) A guarantee agreement filed pursuant to this section must be signed in a manner sufficient to be a binding guarantee under local law by an appropriate person on behalf of the futures commission merchant and the introducing broker, and each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the futures commission merchant or introducing broker and is such an appropriate person. For purposes of this paragraph (j), an appropriate person shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation.

(2) No futures commission merchant may enter into a guarantee agreement if:

(i) It knows or should have known that its adjusted net capital is less than the amount set forth in § 1.12(b); or

(ii) On or after the effective date of this paragraph (j), there is filed against the futures commission merchant an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of Sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act.

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(4)(i) If the introducing broker fails to renew its registration, or if such registration is suspended, revoked, or withdrawn in accordance with the provisions of § 3.33 of this chapter, the guarantee agreement shall expire as of the date of such failure, suspension, revocation or withdrawal.

(ii) If the futures commission merchant fails to renew its registration, or if such registration is suspended or revoked, the guarantee agreement shall expire 30 days after such failure, suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

(5) A guarantee agreement may be terminated at any time during the term thereof:

(i) By mutual written consent of the parties, signed by an appropriate person on behalf of each party, with prompt written notice thereof, signed by an appropriate person on behalf of each

party, to the Commission and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker;

(ii) For good cause shown, by either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker; or

(iii) By either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, at least 30 days prior to the proposed termination date, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant and the introducing broker.

(6) The termination of a guarantee agreement by a futures commission merchant or an introducing broker, or the expiration of such an agreement, shall not relieve either party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement.

(7) An introducing broker may not simultaneously be a party to more than one guarantee agreement: *Provided, however,* That the provisions of this paragraph (j)(7) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant if the introducing broker or the futures commission merchant which is a party to the existing agreement has provided notice of termination of the existing agreement in accordance with the provisions of paragraph (j)(5) of this section, and the new guarantee agreement does not become effective until the day following the date of termination of the existing agreement: *And, provided further,* That the provisions of this paragraph (j)(7) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant if the futures commission merchant which is a party to the existing agreement ceases to remain registered and the existing agreement would therefore expire in accordance with the provisions of paragraph (j)(4)(ii) of this section.

(8)(i) An introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission and the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or a form 1-FR. If the introducing broker files such form 1-FR, the introducing broker must also file a form 1-FR, certified by an independent public accountant, as of the day following the date of termination or expiration of the guarantee agreement. The form 1-FR certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

(ii) Notwithstanding the provisions of paragraph (j)(8)(i) or of § 1.17(a), an introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or § 1.17(a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new guarantee agreement or a form 1-FR. If the introducing broker files a form 1-FR, the introducing broker must also file a second form 1-FR, certified by an independent public accountant, as of the day on which the first form 1-FR is filed. The form 1-FR certified by an independent public accountant must be filed with the designated self-regulatory organization not more than 45 days after the date for which the report is made.

3. Section 1.12 is amended by revising the section heading and paragraphs (a), the introductory paragraph of (b), (b)(1) and (g) 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 who files an application for registration as a futures commission merchant, and each person registered as an introducing broker or who files an application for registration as an introducing broker (except for an introducing broker or applicant for registration as an introducing broker operating pursuant to, or who has filed concurrently with its application for registration, a guarantee agreement and who is not also a securities broker or dealer), 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 is that such applicant's or registrant's adjusted net capital is less than required by § 1.17 or by such other capital rule, identifying the applicable capital rule. This notice must be given within 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) 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:

(1) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i);

* * * * *

(g) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) must be filed with the regional office of the

Commission for the region in which the applicant or registrant has its principal place of business, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer. In addition, every notice and written report which an introducing broker or applicant for registration as an introducing broker is required to give or file by paragraphs (a), (c) and (d) of this section also must be filed with the National Futures Association, with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Further, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, D.C. Each statement of financial condition, each statement of the computation of the minimum capital requirements pursuant to § 1.17, and each schedule of segregation requirements and funds on deposit in segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of these regulations, unless otherwise indicated.

* * * * *

4. Section 1.16 is amended by revising paragraphs (c)(5), (d), (e)(2) and (f)(1) and by adding a new paragraph (h) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(c) * * *

(5) *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 objectives.* (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.

(e) * * *

(2) If during the course of an audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, in the internal accounting control, in the procedures for safeguarding customer or firm assets, or as otherwise defined in paragraph (d) of this section, he must call such inadequacies to the attention of the applicant or registrant, who has the responsibility to inform the Commission and the designated self-regulatory organization, if any, in accordance with paragraphs (d) and (g) of § 1.12: *Provided, however,* That if the applicant or registrant is an introducing broker or applicant for registration as an introducing broker, such firm also has the responsibility to inform the National Futures Association, the designated self-regulatory organization, if any, and every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. The applicant or registrant must also furnish the accountant with a copy of said notice to the Commission within 3 business days. If the accountant fails to receive such notice from the applicant or registrant within 3 business days, or if he disagrees with the statements contained in the notice of the applicant or registrant, the accountant must inform the Commission and the designated self-regulatory organization, if any, by reporting the material inadequacy and, in the case of an applicant or registrant which is an introducing broker or applicant for registration as an introducing broker, the accountant must also inform the National Futures Association, the designated self-regulatory organization, if any, and every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker, within 3 business days thereafter. Such report from the accountant must, if the applicant or registrant failed to file a notice, describe the material inadequacies found to exist. If the applicant or registrant filed a notice, the accountant must file a report detailing the aspects, if any, of the

applicant's or registrant's notice with which the accountant does not agree.

(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 the applicant's or registrant's 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 futures commission merchant) the segregation requirements of Section 4d(2) of the Act and these regulations, or has any significant financial or recordkeeping problems?

* * * * *

(h) *Exemption for introducing broker or applicant therefor.* The provisions of this section do not apply to an introducing broker which is operating pursuant to a guarantee agreement, nor do such provisions apply to an applicant for registration as an introducing broker who files concurrently with such application a guarantee agreement, provided such introducing broker or applicant therefor is not also a securities broker or dealer.

5. Section 1.17 is amended by revising the section heading and paragraphs (a) and (c)(2)(viii), redesignating paragraph (c)(2)(ix) as paragraph (c)(2)(x) and adding a new paragraph (c)(2)(ix), and revising paragraphs (c)(4)(ii), (c)(4)(iii), (c)(5)(iii), (c)(5)(v), (c)(5)(viii), (c)(5)(ix), (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)(i) 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) $20,000 ($40,000 for each person registerd 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)).

(2)(i) 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

(ii) The minimum requirements of paragraph (a)(1)(ii) of this section shall not be applicable to an introducing broker which elects to meet the alternative adjusted net capital requirement for introducing brokers by operating pursuant to a guarantee agreement which meets the requirements set forth in § 1.10(j). Such an introducing broker shall be deemed to meet the adjusted net capital requirement under this section so long as such agreement is binding and in full force and effect, and, if the introducing broker is also a securities broker or dealer, it maintains the amount of net capital required by Rule 15c3–1(a) of the Securities and Exchange Commission (17 CFR 240.15c3–1(a)).

(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 in its discretion 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 in its discretion 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 futures 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) * * *

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(viii) Include guaranteee deposits with clearing organizations and stock in clearing organizations to the extent of its margin value;

(ix) In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker; and

(x) Exclude exchange memberships.

* * * * *

(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));

* * * * *

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures accounts and commodity option customer accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade of if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding three business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding three business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(viii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to the asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of the asset after application of the percentage deductions specified in this paragraph (c)(5);

(ix) In the case of a futures commission merchant, for undermargined commodity futures and commodity option noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding two business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* to the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(ix). In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of such asset after application of the percentage deductions specified in this paragraph (c)(5);

* * * * *

(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 a "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, of 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 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)(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 dollars 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 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 of 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, if such person is an introducing broker or applicant for registration as an introducing broker and is also a country elevator and he files a financial report in accordance with § 1.10(i), 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 (b) by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. An introducing broker or applicant for registration as an introducing broker which is also a country elevator may meet the computation requirements of this paragraph (b) by means of a monthly financial report completed in accordance with § 1.10(i). 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, commending the first monthend after the date the application for registration is filed.

(c) The provisions of this section do not apply to an introducing broker which is operating pursuant to a guarantee agreement, nor do such provisions apply to an applicant for registration as an introducing broker who files concurrently with such application a guarantee agreement, provided such introducing broker or applicant therefor is not also a securities broker or dealer.

7. Section 1.19 is revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission or 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 1.33 is amended by adding paragraph (f) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(f) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the futures commission merchant is providing the statement was introduced by an introducing broker and the names of the futures commission merchant and introducing broker.

9. Section 1.35 is amended by revising paragraphs (a), (a–1)(1), the introductory text of (b) and (b)(3) to read as follows:

§ 1.35 Records of cast commodity, futures, and option transactions.

(a) *Futures commission merchants, introducing broker, 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, 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:

* * * * *

(3) A record or journal which will separetely show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; and

(iii) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant carrying the account for which each commodity futures and commodity option transaction was executed on that day.

Provided, however, That where reproductions on microfilm are substituted for hard copy in accordance with the provisions of § 1.31(b), the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request by any representative of the Commission or the U.S. Department of Justice.

* * * * *

10. Section 1.37 is 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, introducing broker, 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 or introduced for the option customer.

* * * * *

11. Section 1.46 is amended by revising paragraph (a)(4) and the concluding paragraph of (a) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) * * *

(4) Sells a put or call option for the account of any option customerr when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold

* * * * *

shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the

transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

* * * * *

12. Section 1.52 is 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 contract market which elects to have a category of membership for introducing brokers 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, except that such a requirement shall not apply to an introducing broker which is operating pursuant to a guarantee agreement and which is not also a securities broker or dealer: *And, 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) Fosters 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.

13. Section 1.55 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a) No futures commission merchant or, in the case of an introduced account, no 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.

14. Section 1.56 is amended by revising paragraphs (b), (c) and the introductory text 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 the acts or practices described in paragraph (b) of this section.

(d) This section shall not be construed to prevent a futures commissin merchant or introducing broker from:

* * * * *

15. Section 1.57 is added to 17 CFR Part 1 to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) Each introducing broker must—

(1) Open and carry each customer's and option customer's account with a carrying futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all customer and option customer orders to: (i) A carrying futures commission merchant; or (ii) a floor broker, if the introducing broker identifies its carrying futures commission merchant and that carrying futures commission merchant is also the clearing member with respect to the customer's or option customer's order.

(b) An introducing broker may not carry proprietary accounts, nor may an introducing broker carry accounts in foreign futures.

(c) An introducing broker may not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts of customers or option customers, or any money, securities or property accruing as a result of such trades or contracts: *Provided, however,* That an introducing broker may deposit a check in a qualifying account or forward a check drawn by a customer or option customer if:

(1) The futures commission merchant carrying the customer's or option customer's account authorizes the introducing broker, in writing, to receive a check in the name of the futures commission merchant, and the introducing broker retains such written authorization in its files in accordance with § 1.31;

(2) The check is payable to the futures commission merchant carrying the customer's or option customer's account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) For purposes of this paragraph (c), a qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to commodity or option customers of the futures commission merchant carrying the customer's or option customer's account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's or option customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and these regulations.

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a.

17. Section 3.1 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 3.1 Definitions.

* * * * *

(b) *Current.* As used in §§ 3.10–3.16, 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 or introducing broker, or the commodity trading advisor or commodity pool operator, which makes the certification required by §§ 3.12 or 3.16, respectively, for the registration of an associated person of such sponsor.

18. Section 3.4 is redesignated as § 3.2 and, as redesignated, is amended to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

(a) With respect to the registration of introducing brokers and the associated persons of introducing brokers, the registration functions of the Commission set forth in this section and in §§ 3.12, 3.15, 3.21, 3.31, and 3.32 shall be performed by the National Futures Association.

(b) Notwithstanding any other provision of this Part, a registrant, applicant for registration, or principal may, to the extent these regulations would otherwise require the filing of any Form 3–R, 7–R, 8–R, 8–S, or 8–T, or any Schedule or supplement thereto, fingerprint card, or any other document required by these regulations to be filed with both the Commission and with the National Futures Association, file the original Form, Schedule, supplement, fingerprint card, or other document with either the Commission or the National Futures Association, respectively, if (1) a legible, accurate, and complete photocopy of that Form, Schedule, supplement, fingerprint card, or other document is filed simultaneously with the National Futures Association or the Commission, respectively, and (2) each photocopy contains an original signature and date in each place where such signature and date is required on the original Form, Schedule, supplement, fingerprint card, or other document.

(c) Upon receipt of an application for registration or renewal thereof, the Commission or the National Futures Association 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 or the National Futures Association will notify the sponsor.

(d) The registration of each futures commission merchant and floor broker shall expire on the thirty-first day of March following the date on which registration was granted.

19. Section 3.2 is redesignated as Section 3.4 and, as redesignated, is amended to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, floor broker, associated person, commodity trading

advisor, commodity pool operator, and introducing broker must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided further,* That except as may be provided 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.

20. Section 3.10 is 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 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, 3.15, or 3.16.

* * * * *

(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 paragraph (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, 3.15, or 3.16: *Provided,* That the futures commission merchant must notify the Commission within twenty days of the name of such added principal on Form 3–R.

* * * * *

21. Section 3.11 is 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, 3.15, or 3.16.

* * * * *

22. Section 3.12 is amended by revising the section heading and by revising paragraphs (a), (b), the introductory paragraph of (c), (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 a new paragraph (h) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant or with an introducing broker as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant or introducing broker in accordance with the procedures in paragraph (c) or (d) of this section, except that this section does not preclude any associated person of a futures commission merchant who was so registered on July 1, 1982 from continuing to act as an associated person of a futures commission merchant 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 paragraphs (d) and (f) of this section, application for registration as an associated person of a futures commission merchant or introducing broker must be on Form 8–R, completed and filed 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 sponsoring futures commission merchant as an associated person;

(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 that 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 for that purpose by the Commission or by the National Futures Association, 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 sponsoring futures commission merchant as an associated person.

(4) When the Commission or the National Futures Association 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) Except as provided in paragraph (f) of this section, 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, and who becomes associated with a sponsoring futures commission merchant or introducing broker which makes the certification provided by paragraph (d)(1)(i) of this section (or, in the case of an associated person of a futures commission merchant, is associated with a futures commission merchant which makes the certification provided by paragraph (d)(1)(i) of this section on or prior to the first expiration of that person's registration as an associated person subsequent to July 1, 1982) will be registered as, and in the capacity of, an associated person of such sponsor upon the mailing by that sponsor to the Commission, or in the case of an associated person of an introducing broker, upon the mailing by that introducing broker to the National Futures Association, 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 or, if the sponsor is an introducing broker, with the National Futures Association, a Form 8–R in accordance with the instructions thereto. The Form 8–R must contain the certifications required by paragraphs (c)(1)(ii) through (c)(1)(iv) of this section and must be accompanied by the fingerprint card provided by the Commission or by the National Futures Association for 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 sponsoring futures commission merchant 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—

(1) More than one futures commission merchant or with more than one introducing broker;

(2) A futures commission merchant and an introducing broker;

(3) A futures commission merchant and a commodity trading advisor for which that futures commission merchant solicits or intends to solicit clients or prospective clients: *Provided,* That a person registered as an associated person of a futures commission merchant who solicits clients by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;

(4) A futures commission merchant and a commodity trading advisor for which that futures commission merchant carries or introduces, or intends to carry or introduce, clients' or prospective clients' discretionary accounts;

(5) A futures commission merchant and a commodity pool operator for which that futures commission merchant solicits or intends to solicit funds, securities, or property: *Provided,* That a person registered as an associated person of a futures commission merchant who solicits funds, securities, or property by, for, or on behalf of that futures commission merchant, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the futures commission merchant;

(6) A futures commission merchant and a commodity pool operator for which that futures commission merchant carries or introduces, or intends to carry or introduce, the account of a commodity pool operated by that commodity pool operator;

(7) An introducing broker and a commodity trading advisor for which that introducing broker solicits or intends to solicit clients or prospective clients: *Provided,* That a person registered as an associated person of an introducing broker who solicits clients by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker;

(8) An introducing broker and a commodity trading advisor for which that introducing broker introduces, or intends to introduce, clients' or prospective clients' discretionary accounts;

(9) An introducing broker and a commodity pool operator for which that introducing broker solicits or intends to solicit funds, securities, or property: *Provided,* That a person registered as an associated person of an introducing broker who solicits funds, securities, or property by, for, or on behalf of that introducing broker, or supervises any person or persons so engaged, shall in such a case be deemed to be associated solely with the introducing broker; or

(10) An introducing broker and a commodity pool operator for which that introducing broker introduces, or intends to introduce, the account of a commodity pool operated by that commodity pool operator.

(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 an 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 as the Commission may find appropriate.

* * * * *

(h) *Exemption from registration.* A person is not required to register as an associated person of a futures commission merchant or as an associated person of an introducing broker if that person is:

(1) Registered with the Commission as a futures commission merchant, floor broker, or as an introducing broker; or

(2) Is engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative, or limited principal, and that person does not engage in any other activity subject to regulation by the Commission.

23. Section 3.12a–(T) is added to 17 CFR Part 3 to 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 registered associated person of a registered futures commission merchant will be registered as an associated person of a registered introducing broker, and any registered associated person of an introducing broker will be registered as an associated person of a registered futures commission merchant, if the futures commission merchant and the introducing broker submit to the Commission, not later than January 31, 1984, a statement, signed and dated by the futures commission merchant and by the introducing broker, 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 introducing broker or futures commission merchant with which the associated person will be associated as an associated person 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 from the futures commission merchant to the introducing broker or from the introducing broker to the futures commission merchant, be registered as associated persons of the introducing broker or futures commission merchant, respectively, and will remain registered in such capacity in accordance with the provisions of § 3.12(b) as if the introducing broker or futures commission merchant 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 as associated persons of the introducing broker or futures commission merchant in accordance with the procedures specified in § 3.12.

(c) An introducing broker may not use the provisions of this § 3.12a–(T) more than once nor may the registration of an associated person be transferred more than once pursuant to the provisions of this section.

24. Section 3.13 is 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, 3.15, or 3.16.

* * * * *

(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, 3.15, or 3.16: *Provided,* That the commodity trading advisor must notify the Commission within twenty days of the name of such added principal on Form 3–R.

25. Section 3.14 is 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, 3.15, or 3.16.

* * * * *

(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 paragraph (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, 3.15, or 3.16: *Provided,* That the commodity pool operator must notify the Commission within twenty days of the name of such added principal on Form 3–R.

26. Section 3.15 is added to 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 National Futures Association 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 National Future Association 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, 3.15, or 3.16.

(b) *Renewal of registration.* Application for renewal of registration as an introducing broker must be on Form 7–R, completed and filed with the National Futures Association 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 paragraph (a) or (b) of this section, the applicant or registrant must file a Form 8–R with the National Future Assoication. 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 National Future Association 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, 3.15, or 3.16: *Provided,* That the introducing broker must notify the National Future Association within twenty days of the name of such added principal on Form 3–R.

27. Section 3.16 is added to 17 CFR Part 3 to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

(a) *Registration required.* Except as otherwise provided in § 3.12(f) or in paragraph (e) of this section, it shall be unlawful for any person to be associated with a commodity trading advisor or with a commodity pool operator as an associated person unless that person:

(1) Is registered under the Act as an associated person of the sponsoring commodity trading advisor or commodity pool operator in accordance with the procedures in paragraph (c) or (d) of this section;

(2) Is registered (i) as a futures commission merchant, floor broker, or introducing broker, (ii) as a commodity trading advisor, if that person is associated with a commodity trading advisor, or (iii) as a commodity pool operator, if that person is associated with a commodity pool operator;

(3) Is exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1) or § 4.14(a)(2) of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(3) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity trading advisor (i) which is not exempt from registration pursuant to the provisions of § 4.14(a)(1) or § 4.14(a)(2) of his chapter or (ii) which is registered as a commodity trading advisor notwithstanding the availability of that exemption;

(4) Is exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(4) shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator (i) which is not exempt from registration pursuant to the provisions of § 4.13 of this chapter or (ii) which is registered as a commodity pool operator notwithstanding the availability of that exemption;

(5) Is enaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or supervises any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative, or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(6) Where a commodity pool is operated or to be operated by two or more commodity pool operators, is registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraph (c), (d), or (e)(2) of this section: *Provided,* That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), or (e)(2) 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, each of the associated person's sponsors.

(c) *Application for initial registration.* Except as otherwise provided in paragraphs (d) and (e) of this section, application for initial registration as an associated person of a commodity trading advisor or commodity pool operator must be on Form 8–R, completed and filed in accordance with the instructions thereto.

(1) No person will be registered as an associated person in accordance with this paragrpah (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;

(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 that Form 8–R, or in the records and documents obtained in support of the certifications required by this section.

(2) The certification required by paragraph (c)(1) of this section may be submitted with the Form 8–R or may be submitted separately at a later date.

(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 for that purpose by the Commission.

(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) Except as otherwise provided in paragraph (e) of this section, any person who is no longer registered as an associated person in any capacity and who becomes associated with a sponsoring commodity trading advisor or commodity pool operator which makes the certification provided by paragraph (d)(1)(i) of this section within sixty days after the termination of that person's registration as an associated person, will be registered as, and in the capacity of, an associated person of such sponsoring commodity trading advisor or commodity pool operator 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;

(iii) That such person is eligible to be registered in accordance with this paragraph (d);

(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 for that purpose.

(e) *Reporting of dual and multiple associations.* (1) No person may be simultaneously associated with—

(i) A commodity trading advisor and with a futures commission merchant or an introducing broker in violation of § 3.12(f);

(ii) A commodity pool operator and with a futures commission merchant or an introducing broker in violation of § 3.12(f); or

(iii) A sponsoring commodity trading advisor or commodity pool operator and any other sponsor other than in accordance with the provisions of paragraph (e)(2) of this section.

Provided, however, That the provisions of this paragraph (e)(1) shall not apply to any person who is exempt from registration as an associated person of a commodity trading advisor or as an associated person of a commodity pool operator pursuant to the provisions of paragraphs, (a)(2) through (a)(6) of this section if that person is not otherwise required to register as an associated person of a commodity trading advisor or as an associated person of a commodity pool operator.

(2)(i) A person who is already registered as an associated person in any capacity may become associated with a commodity trading advisor or with a commodity pool operator if that commodity trading advisor or commodity pool operator files with the Commission a Form 3–R in accordance with the instructions thereto. Such filing shall constitute a certification that the commodity trading advisor or commodity pool operator has verified that the associated person is currently registered as an associated person in any capacity and that the associated person is not subject to a statutory disqualification as set forth in Section 8a(2) of the Act, and an acknowledgment that in addition to its responsibility to supervise that associated person, the commodity trading advisor or commodity pool operator is jointly and severally responsible for the conduct of the associated person with respect to the solicitation of any client's or prospective client's discretionary account or the solicitation of funds, securities, or property for a participation in a commodity pool, with respect to any customers or option customers common to it and any other commodity trading advisors or commodity pool operators with which the associated person is associated. Upon receipt by the Commission of such a Form 3–R, the associated person named therein shall be registered as an associated person of the sponsoring commodity trading advisor or commodity pool operator.

(ii) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of this

paragraph (e)(2) shall be required, upon receipt of notice from the Commission or its designee, to file with the Commission or its designee the registrant's fingerprints on a fingerprint card provided by the Commission or its designee for that purpose as well as such other information as the Commission or its designee may require. In addition to or in lieu of the requirements of § 3.22, the Commission or its designee may require such a filing every two years, or at such greater period of time as the Commission may deem appropriate, after the associated person has become associated with a commodity trading advisor or with a commodity pool operator in accordance with the requirements of this paragraph (e)(2).

(f) *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.

(g) *Petitions for exemption.* (1) Any person adversely affected by the operation of this § 3.16 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 an 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 as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to this paragraph (g).

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (g)(2)(i) of this section.

28. Section 3.21 is revised 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, 3.15, or 3.16 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 if 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 or the National Futures Association 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 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.

29. Section 3.30 is revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission.

The 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 or with the National Futures Association 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 or with the National Futures Association.

30. Section 3.31 is amended by revising paragraphs (a), (b), (c)(1), and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) 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 therto 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 twenty days after the occurrence of either of the following, file a notice thereof with the Commission or, in the case of an introducing broker, with the National Futures Association, 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)(i) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, or commodity pool operator must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the Commission.

(ii) Each person registered as, or applying for registration as, an introducing broker must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

31. Section 3.32 is amended by revising paragraph (a) to read as follows:

§ 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;

* * * * *

32. Section 3.33 is amended by revising paragraphs (b)(7)(iv) and (b)(7)(v), by adding paragraph (b)(7)(vi), and by revising paragraph (c) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) * * *

(7) * * *

(iv) In the case of a commodity pool operator, that all interests in, and assets of, any commodity pool have been redeemed, distributed, or transferred, on behalf of the participants therein, and that there are no obligations to such participants outstanding;

(v) The nature and extent of any pending customer, option customer or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer or commodity pool participant claims against the registrant; and

(vi) In the case of a futures commission merchant which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration.

(c) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement 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: *Provided, however,* That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of form 1–FR: *And, provided further,* That if such introducing broker is also a country elevator, it may file a copy of a financial report prepared by a grain commission firm (in accordance with § 1.10(i) of this chapter), in lieu of form 1–FR. Any financial report submitted pursuant to this paragraph (c) must contain 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

33. Section 4.14 is 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 is 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 the person's trading advice is solely in connection with its business as an introducing broker.

* * * * *

34. Section 4.21 is amended by revising paragraphs (a)(1)(vii), (a)(3)(i)(E), (a)(3)(i)(F), by adding paragraphs (a)(3)(i)(G) and (a)(3)(i)(H), by revising the concluding paragraph of paragraph (a)(3)(i), paragraphs (a)(13)(i)(E) and (a)(13)(i)(F), and by adding paragraphs (a)(13)(i)(G) and (a)(13)(i)(H) to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(1) * * *

(vii) If known, the name of the futures commission merchant through which the pool will execute its trades and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant; and

* * * * *

(3) * * *

(i) * * *

(E) Any futures commission merchant through which the pool's trades will be executed;

(F) Any principal of the futures commission merchant;

(G) Any introducing broker through which the pool will introduce its trades to the futures commission merchant; or

(H) Any principal of the introducing broker.

included in the description of such conflict shall be any arrangement whereby the commodity pool operator, commodity trading advisor, or the principals thereof may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant or from the introduction of the pool's account to a futures commission merchant by an introducing broker.

(13) * * *

(i) * * *

(E) The pool's futures commission merchant;

(F) Any principal of the pool's futures commission merchant;

(G) The pool's introducing broker, if applicable; and

(H) Any principal of the pool's introducing broker.

* * * * *

35. Section 4.23 is 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.

* * * * *

36. Section 4.31 is amended by revising paragraphs (a)(1)(iv), (a)(5)(i)(C), (a)(5)(i)(D), the concluding paragraph of paragraph (a)(5)(i), paragraphs (a)(7)(i)(C), and (a)(7)(i)(D), and by adding paragraphs (a)(7)(i)(E) and (a)(7)(i)(F) to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(1) * * *

(iv)(A) The name of the futures commission merchant with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant with which it will maintain its account, the commodity trading advisor must make a statement to that effect; and

(B) The name of the introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the commodity trading advisor must make a statement to that effect; and

* * * * *

(5) * * *

(i) * * *

(C) Any futures commission merchant with which the client will be required to maintain its commodity interest account and any principal of the futures commission merchant; or

(D) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant and any principal of the introducing broker.

Included in the description of such conflict shall be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant or the introduction of that account through an introducing broker.

* * * * *

(7) * * *

(i) * * *

(C) The futures commission merchant with which the client will be required to maintain its commodity interest account;

(D) Any principal of the futures commission merchant;

(E) The introducing broker through which the client will be required to introduce its account to the futures commission merchant; and

(F) Any principal of the introducing broker.

* * * * *

37. Section 4.32 is 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

38. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 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 6(a) of the Act, 7 U.S.C. 8;

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

39. Section 15.00 is 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.

* * * * *

40. Section 15.05 is 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 or cause to be opened a futures or options contract account for, or to effect or cause to be effected 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 the opening of an account for the foreign broker or foreign trader or the effecting of a transaction 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 NW., 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 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

41. Section 17.01 is amended by revising paragraph (b)(12) to read as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(12) The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker which introduced the account.

* * * * *

PART 18—REPORTS BY TRADERS

42. Section 18.04 is amended by revising paragraph (a)(7) to read as follows:

§ 18.04 Statement of reporting trader.

* * * * *

(a) * * *

(7) The names and locations of all futures commission merchants, introducing brokers, and foreign brokers through whom accounts owned or controlled by the reporting trader are carried or introduced at the time of filing a Form 40, if such accounts are carried through more than one futures commission merchant or foreign broker or carried through more than one office of the same futures commission merchant or foreign broker, or introduced by more than one introducing broker clearing accounts through the same futures commission merchant, and

the name of the reporting trader's account executive at each firm or office of the firm.

* * * * *

43. Part 21 is retitled to read as follows:

PART 21—SPECIAL CALLS

44. Section 21.01 is 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.

45. Section 21.02 is 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

* * * * *

46. Section 21.03 is amended by revising paragraphs (a), (b), the introductory paragraph of (e), the introductory paragraphs of (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 provides 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 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

47. Section 33.3 is amended by revising paragraphs (b)(1)(i)(B) and (b)(1)(ii), by adding paragraph (b)(1)(iii), and by revising paragraph (b)(2) to read as follows:

§ 33.3 Unlawful commodity option transactions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Is a member of a futures association registered under Section 17 of the Act which has adopted rules which the Commission has approved under Section 17(j) of the Act and, in addition to the requirements of that Section, has determined to provide for the regulation of the commodity option related activity of its member futures commission merchants in a manner equivalent to that required of contract markets under these regulations; or

(ii) Registered as an introducing broker under the Act, and either:

(A) Is a member of a futures association registered under Section 17 of the Act which has adopted rules which the Commission has approved under Section 17(j) of the Act, or is a

member of a contract market which has adopted rules which the Commission has approved under Section 5a(12) of the Act, and which, in addition to the requirements of those Sections, has determined to provide for the regulation of the commodity option related activity of its member introducing brokers in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(B) Is operating pursuant to a guarantee agreement, and the futures commission merchant which has signed such agreement is a member of a self-regulatory organization that has adopted rules which the Commission has approved that provide for the regulation of the commodity option related activity of the introducing broker in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(iii) An individual registered as an associated person of a specified person registered as a futures commission merchant or as an introducing broker under the Act who meets the requirements of paragraph (b)(1)(i) or (b)(1)(ii), respectively, of this section, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked.

(2) Any person registered or required to be registered as a futures commission merchant or as an introducing broker under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction, or the supervision of any person or persons so engaged, if such person knows or should have known that such other person is or was not registered as required by this Part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

48. Section 3.4 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(b) * * *

(4) * * *

(ii) Make and retain a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced, the account, a general description of the matter complained of, and what, if any, action was taken by the futures commission merchant in regard to the complaint; and

* * * * *

49. Section 33.7 is amended by revising paragraph (a), the introductory paragraph of paragraph (b), and paragraphs (b)(2), (b)(2)(iii), (b)(2)(iv), (b)(2)(vii), (c), (e), (f) and (g) to read as follows:

§ 33.7 Disclosure.

(a) No futures commission merchant or, in the case of an introduced account, no introducing broker may open or cause the opening of a commodity option account for an option customer unless the futures commission merchant or introducing broker (1) furnishes the option customer with a separate written disclosure statment as set forth in this section and (2) receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement. The disclosure statement and the acknowledgment shall be retained by the futures commission merchant or the introducing broker in accordance with §1.31 of this chapter. The disclosure statement must be as set forth in paragraph (b) of this section, double spaced (except for paragraphs (b)(2)(i) through (b)(2)(viii) under "Description of Commodity Options" which may be single spaced), typed or printed in type of not less than 10-point size, and, where indicated, in all capital letters.

(b) The disclosure statement must read as follows:

OPTIONS DISCLOSURE STATEMENT

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT") OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN "OPTION ON A PHYSICAL COMMODITY"). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET THE OPTION POSITION OR TO EXERCISE THE OPTION. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT OR THE INTRODUCING BROKER. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

Contents of Disclosure Statement

1. Some of the risks of option trading
2. Description of commodity options
3. The mechanics of option trading
4. Margin requirements
5. Profit potential of an option position
6. Deep-out-of-the-money options
7. Glossary of terms

* * * * *

(2) *Description of commodity options.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option and the underlying futures contract or underlying physical commodity involved. The futures commission merchant or the introducing broker is required to provide, and the individual contemplating an option transaction

should obtain, a description of the following:

* * * * *

(iii) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise. (The latest time on an expiration date when an option may be exercised may vary; therefore, option market participants should ascertain from their futures commission merchant or their introducing broker the latest time the firm accepts exercise instructions with respect to a particular option.);

(iv) A description of the purchase price of the option including the premium, commissions, costs, fees and other charges. (Since commissions and other charges may vary widely among futures commission merchants and among introducing brokers, option customers may find it advisable to consult more than one firm when opening an option account.);

* * * * *

(vii) A clear explanation and understanding of any clauses in the option contract and of any items included in the option contract explicitly or by reference which might affect the customer's obligations under the contract. This would include any policy of the futures commission merchant or the introducing broker or rule of the exchange on which the option is traded that might affect the customer's ability to fulfill the option contract or to offset the option position in a closing purchase or closing sale transaction (for example, due to unforeseen circumstances that require suspension or termination of trading); and

* * * * *

(c) Prior to the entry of the first commodity option transaction for the account of an option customer, a futures commission merchant or an introducing broker, or the person soliciting or accepting the order therefor, must provide an option customer with all of the information required under the disclosure statement: *Provided*, The limitations, if any, on the transfer of an option customer's account to a futures commission merchant other than the one through whom the commodity option transactions are to be executed must be provided in writing: *Provided further*, That the futures commission merchant or the introducing broker, or the person soliciting or accepting the order therefore, must provide current information to an option customer if the information provided previously has become inaccurate.

* * * * *

(e) A futures commission merchant and an introducing broker must establish the necessary procedures and supervision to ensure compliance with the requirements of this section.

(f) This section does not relieve a futures commission merchant or an introducing broker from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective option customers even if the information is not specifically required by this section.

(g) For purposes of this section, neither a futures commission merchant nor an introducing broker shall be deemed to be an option customer.

50. Section 33.8 is revised to read as follows:

§ 33.8 Promotional material.

Each futures commission merchant and each introducing broker shall retain, in accordance with § 1.31 of this chapter, all promotional material it provides, directly or indirectly, to option customers as well as the true source of authority for the information contained therein.

PART 145—COMMISSION RECORDS AND INFORMATION

51. Section 145.5 is amended by adding paragraphs (d)(l)(i)(D) and (d)(l)(i)(E) to read as follows:

§ 145.5 Nonpublic matters.

* * * * *

(d) * * *
(l) * * *
(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 § 1.10(h) of this chapter, if the procedure set forth in § 1.10(g) of this chapter 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 § 1.16(c)(5) of this chapter;

(E) The following portions, and footnote disclosures thereof, of the financial report filed pursuant to § 1.10(i) of this chapter, if the procedure set forth in § 1.10(g) of this chapter is followed: All information except for the balance sheet, the grain commission firm's opinion, and the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this chapter;

* * * * *

PART 147—OPEN COMMISSION MEETINGS

52. Section 147.3 is amended by adding paragraphs (b)(4)(i)(A)(*4*) and (b)(4)(i)(A)(*5*) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *
(4) * * *
(i) * * *
(A) * * *

(*4*) 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 § 1.10(h) of this chapter, if the procedure set forth in § 1.10(g) of this chapter 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 § 1.16(c)(5) of this chapter;

(*5*) The following portions, and footnote disclosures thereof, of the financial report filed pursuant to § 1.10(i) of this chapter, if the procedure set forth in § 1.10(g) of this chapter is followed: all information except for the balance sheet, the grain commission firm's opinion, and the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this chapter;

* * * * *

PART 155—TRADING STANDARDS

53. Section 155.1 is 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.

54. Section 155.3 is 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 any 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 of all written records prepared upon the receipt of orders for such account pursuant to paragraph (c)(2) of this section.

* * * * *

55. Section 155.4 is added 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 autorized 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

56. The authority citation for Part 166 is revised to read as follows:

Authority: 7 U.S.C. 4, 6b, 6c, 6g, 6h, 6*l*, 6*o*, 12a, and 23.

57. Section 166.2 is 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 precises 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.

58. Section 166.3 is revised to read as follows:

§ 166.3 Supervision.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

59. Section 166.4 is added to read as follows:

§ 166.4 Branch offices.

Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

PART 170—REGISTERED FUTURES ASSOCIATIONS

60. The authority citation for Part 170 is 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

61. Section 170.2 is 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.

62. Section 170.10 is added to 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.

Form 1–FR—[Amended]

63. Form 1–FR is amended by adding a Part B which will read as follows (Form 1–FR is not included in the Code of Federal Regulations):

Guarantee Agreement

In consideration for the introduction of customer and option customer accounts by ("IB"), an introducing broker, to ("FCM"), a futures commission merchant registered with the Commission as such, and in satisfaction of the adjusted net capital requirements with which the introducing broker otherwise would have to comply pursuant to Commission Regulation §1.17, 17 CFR 1.17, the futures commission merchant guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Commodity Exchange Act, as it may be amended from time to time, and the rules, regulations and orders which have been or may be promulgated thereunder with arespect to the solicitation of and transactions involving all customer and option customer accounts of the introducing broker entered into on or after the effective date of this agreement.

This guarantee agreement shall be enforceable regardless of the subsequent incorporation, merger or consolidation of either the futures commission merchant or the introducing broker, or any change in the composition, nature, personnel or location of the futures commission merchant or the introducing broker.

For purposes of this agreement only, the futures commission merchant shall be deemed to be the agent of the introducing broker upon whom process may be served in any action or proceeding against the introducing broker under the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

The futures commission merchant acknowledges that at the time of execution of this guarantee agreement there are not any conditions precedent, concurrent or subsequent affecting, impairing or modifying in any manner the obligations of the futures commission merchant hereunder, or the immediate taking effect of this agreement as the entire agreement of the futures commission merchant with respect to guaranteeing the introducing broker's obligations as set forth herein to the Commission and to the introducing broker's customers and option customers under the Commodity Exchange Act.

If this guarantee agreeement is filed in connection with an application for initial registration as an introducing broker, this agreement shall be effective as of the date registration is granted to the introducing broker. If this guarantee agreement is filed other than in connection with an application for initial registration as an introducing broker, it shall be effective as of the date agreed to by the futures commission merchant and the introducing broker as set forth below.

This guarantee agreement is binding and is and shall remain in full force and effect unless terminated in accordance with the rules, regulations or orders promulgated by the Commission with respect to such terminations. Termination of this agreement will not affect the liability of the futures commission merchant with respect to obligations of the introducing broker incurred on or before the date this agreement is terminated.

Dated:

Futures Commission Merchant _____

By:

_____

Sole Proprietor _____
General Partner _____
Chief Financial Officer _____
Chief Executive Officer _____

Dated:

Introducing Broker _____

By:

_____

Sole Proprietor _____
General Partner _____
Chief Financial Officer _____
Chief Executive Officer _____

Effective date:

* * * * *

Issued inWashington, D.C. on July 29, 1983, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-21004 Filed 8-2-83; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 3

Qualification for "No-Action" Position Regarding Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Rule-related notice of qualification for "no-action" position.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is publishing a list compiled by the National Futures Association ("NFA") of those former "agents" of futures commission merchants ("FCMs") which the NFA has determined qualify for the Commission's "no-action" position regarding the new registration category denoted "introducing broker." The procedures for obtaining that "no-action" position were set forth in a letter dated April 7, 1983 which the Commission transmitted to all registered FCMs, and additional notice thereof was published in the **Federal Register.** 48 FR 15890 (April 13, 1983).

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033K Street N.W., Washington, D.C. 20581. Telephone (202) 254–9703.

SUPPLEMENTARY INFORMATION: The Futures Trading Act of 1982 amended the Commodity Exchange Act ("CE Act") to eliminate, as of May 11, 1983, the former statutory category of unregistered "agents" of FCMs and to require such agents to register under the CE Act either as introducing brokers or, in the case of individuals as associated persons ("APs") of an FCM or of an introducing broker. *See* Futures Trading Act of 1982, Pub. L. No. 97–444, §§ 201, 207, 212 and 239, 96 Stat. 2297, 2302, 2303–05, 2327 (1983). However, when the Commission proposed rules to govern the new registration category of introducing broker (48 FR 14933 (April 6, 1983)), the Commission recognized that the former unregistered agents would not be able to become registered under the CE Act until the Commission adopted appropriate regulations and the processing of applications for

registration was completed. (The Commission adopted final rules to govern introducing brokers and associated persons of introducing brokers on July 29, 1983.) The Commission therefore sent a letter dated April 7, 1983 to all registered FCMs to advise those FCMs and their agents of procedures adopted by the Commission which, if complied with in every respect, would allow agents and the APs employed by agents to continue in business as introducing brokers and as APs of an FCM or as APs of an introducing broker, respectively. The Commission also published a notice of the procedures for obtaining that "no-action" position from the Commission in the **Federal Register** (48 FR 15890 (April 13, 1983)), as well as a subsequent interpretation of that "no-action" position (48 FR 19362 (April 29, 1983)). The Commission's letter to the FCMs stated that "[t]he Commission will publish in the **Federal Register** a list of all applicants who qualify for a nonaction position with respect to their registration as introducing brokers." 48 FR 15890, 15893 (April 13, 1983).

The Commission authorized the NFA, in accordance with statutory authority provided in the Futures Trading Act of 1982, to perform the registration processing functions associated with the "no-action" position which would otherwise have been performed by the Commission. *See* Futures Trading Act of 1982, Pub. L. No. 97–444, Section 224(6), 96 Stat. 2315, which adds new Section 8a(10) to the CE Act (to be codified at 7 U.S.C. 12a(10)). (The Commission has also authorized the NFA to perform the registration processing functions relating to applications for registration as an introducing broker or as an AP of an introducing broker filed by persons who were not previously agents of FCMs or employees of such agents.) The NFA has compiled a list of those former agents of FCMs which NFA has determined clearly qualify for the Commission's "no-action" position regarding introducing brokers. That list, which is set forth below, was compiled by NFA as of 2 p.m., Central Time, on July 22, 1983, and contains only those persons deemed clearly eligible for the "no-action" position by NFA. The Commission has not independently verified the accuracy of the list compiled by NFA.

The Commission wishes to remind those persons whose names appear on the list compiled by NFA that the Commission's "no-action" position will terminate automatically if an applicant for registration as an introducing broker fails to achieve and demonstrate compliance with the minimum financial requirements for introducing brokers by October 31, 1983. The basic minimum financial requirement is the greater of $20,000 of adjusted net capital or, if the firm is also a securities broker or dealer, the amount of net capital required by the securities and Exchange Commission ("SEC"). Compliance with the basic minimum adjusted net capital requirement must be demonstrated by filing a certified financial report. An applicant for registration as an introducing broker may comply with the alternative minimum adjusted net capital requirement by entering into a guarantee agreement with an FCM. A certified financial report or a guarantee agreement must be filed by an applicant for registration as an introducing broker with the NFA and a copy of the that report must be sent to the regional office of the Commission nearest the principal place of business of the applicant.

Furthermore, the Commission's "no-action" position may be terminated by notice from the Commission's Division of Trading and Markets or from the NFA. Finally, the "no-action" position will terminate upon the introducing broker's registration under the CE Act.

The NFA has determined that the following firms and individuals are clearly qualified for the Commission's "no-action" position regarding introducing brokers:

Abele, Ted. M., D.B.A. Amer. Agrinomics
ACLI Government Securities, Inc.
ACLI International Incorporated
Adams, Harkness & Hill, Inc.
Adams, James, Foor & Company, Inc.
Advance Trading, Inc.
Advanced Commodity Systems Corp.
Affiliated Investors Service Inc.
Affiliated Security Brokers
Ag Com, Inc.
Ag Marketing Inc.
Ag-Com Inc.
Agmark Inc.—IND
Agmark, Inc.
Agri-Hedging, Inc.
Agri-Market Research, Inc.
Agricultural Consultants Inc.
Agrifutures Inc.
Alabama Farm Bureau Service, Inc.
Albert, Dave Commodities
Alcom Investments Inc.
All West Commodities Inc.
Allister, McMillan & Brookes
Alpha Com
Amendt, George E. Company
American Futures Corporation
American International Commodities Corp.
American Transeuro Corporation
Americom Corporation
Andover Commodities Inc.
Andrews Commodities
Anglo-American Investment Corporation
Apache Marketing Corporation
Arbor Trading
Arlington-Interurban Securities
Arnet-McCabe & Co., Inc.
Atlanta Commodity Corporation
Aud, Dennis W.
Austin, Gordon Company
Austin-Cooper Commodities, Inc.
B & J Commodities—CO
B & L Commodities Inc.
Bachman & Associates
Bacon Whipple & Co., Inc.—NY
Bacon Whipple & Co., Inc.—CHI
Baird, Robert W. & Co., Inc.
Baker, James & Co.
Barclay Investments Inc.
Barrington Trading Co.
Basin Commodities
Bassett Commodities
Baum & Company, George K.
Becker Commodites Inc.
Benchmark Investments of Colorado Inc.
Bertoncini, Michael
Betar, Waddell & Company
BGD Corporation
Birkhofer & Company, Inc.
Bishop, Kevin J.
Black, James L & Company
Blalock & Blevin Futures Services
Blasdel & Company, Inc.
Bloch Co., Ted C.
Boddicker, James A.—c/o Heinold Comm.
Boice-Roberts Company
Bonnett, John Associates,
Booge Commodities Inc.
Borderline Commodities
Branch Cabell & Co.
Brean Murray Foster Securities
Britton Brokerage Group
Broder Oil Futures, Inc.
Brook Commodities
Brown, David I. & Associates
Brown, R. H. Investments, Inc.
Brungardt Commodities
Buckley, Zwick Co.
Buinauskas, Peter L. & Co.
Bull Market Commodities Inc.
Butler Commodities, Ltd.
Buttonwood Securities Corp. of Mass.
Buys-MacGregor, MacNaughton-Greenawalt
C & C Commodities
C.D.F. Inc, D.B.A. Murlas Cmdts of Boston
Cactus Commodities Inc.
California Securities Corporation
Cambridge Commodities Company
CAMPCO, Inc.
Cannarsa Investments, David
Capital Resources, Inc.
Capitol Commodities
Capitol Commodity Services, Inc.
Caprock Securities
Carpenter Commodities
Carper, Douglas E. & Company
Cascade-Alaska Broker Services, Inc.
Cash Futures & Options Inc.
Castellano, Michael J.
Centennial Commodities Inc.
Central Iowa Trading Co.
Central States Commodities
Central States Commodities—NE
Central States Commodities—CHGO
Ceres Management Co.
Certified Commodities, Inc.
CFI Investment Company
Chicago Commodities, Inc.
Chicago Commodity Corp.
Chicago Futures Trading Corporation
Choban, Paul Commodities
Chowanoc Managment Co., Inc.

Churchill Commodities, Ltd.
Clark & Associates Securities, Inc.
Clark Commodities—KY
Clarke Commodities—TX
Clayton Brown & Assoc. Inc.
Clayton, Frank Associates
Climbing Hill Commodities
Collins, Locke & Lasater, Inc.
COM-PAC Corporation, The
COMMAC Inc.
Commodities Inc.
Commodities of Willmar, Inc.
Commodity Brokerage Services Inc.
Commodity Brokerage, Inc.
Commodity Consultants
Commodity Corp. of Ann Arbor, Inc.
Commodity Corporation of America
Commodity Counselors
Commodity Futures Inc.—CAL
Commodity Futures of Morris
Commodity Futures, Inc.—SD
Commodity Hedgers and Traders, Inc.
Commodity Hedgers, Inc.—ARK
Commodity Hedgers, Inc.—IND
Commodity Investment Corp.—ME
Commodity Investments Corporation—OK
Commodity Investor Services, Inc.
Commodity Investors Partnership
Commodity Marketing Corporation
Commodity Markets International
Commodity Partnership, The
Commodity Research Inc.
Commodity Research Institute, Ltd.
Commodity Specialists
Commodity Spreads Corporation
Commodity Strategist, Inc.
Commodity Technology, Inc.
Commodity Trading & Services
Commodity Trading & Services Co., Inc.
Commodity Trading Co.—ARK
Commodity Trading Corp.—ME
Commodity Transaction Corporation
Commonwealth Commodities Int'l Ltd.
Computech Commoditites
Computech Investment Mgmt., Inc.
Computer Resource Associates
Comsec Investor Services, Inc.
Connecticut Commodities Corporation
Continental American Securities, Inc.
Conway, Luongo, Williams, Inc.
Cooper Commodities
Corna & Co., Inc.
Couch Cattle Co.
Countryside Commodities
Creecy, David A.
Crestwood Capital Management
Croft, Dennis H.
CSCPRM, Inc.
Cybermetrex, Inc.
D & R Commodities
D.O.E., Inc.
DACO, Inc.
Dakota Commodities, Inc.—ND
Dakota Commodities, Inc.—SD
Dana Futures Corp. of Iowa
Data Trend Commodities Inc.
Dekker, Robert H.
Delta Commodities of Rochester
DeNigris, Paul R. & Co. Inc.
Denver Grain Company Inc.
Devick, Randall J, Jr.
Dillon-Gage Inc. of Fort Worth
Dillon-Gage Inc. of Dimmitt
Doft & Co. Inc.
Dominion Reserve Investments, Inc.
Dostal, Georgee
Dratel Group Inc., The
Duzan, Dayrel
Eagan & Company, Inc.
Econalyst Research
Elgland Commodities
Emcor Eurocurrency Management Corp.
Envest Oil Co. Inc.
Equity Development Corporation
Equity Futures Company, The
F. L. Trading Co.
Fabers Futures Inc.
Fairfield Investors Service, Inc.
Farmers Grain & Livestock Corp.
Farmland Commodities Corp.
Financial Profiles
First Affiliated Securities, Inc.
First Equity Corporation of Florida
First Financial Mgmt. Corp.
First Futures of Chicago, Inc.
First Invest
First Los Angeles Cmdts. & Stocks Inc.
First Manhattan Commodities Corp.
First Nat'l Commodities of America, Inc.
First National Investment Group
First New York Resource Mgt. Corp.
First of Michigan Corporation
First Securities of West Monroe, Inc.
First Texas Securities, Inc.
Fitzgerald, DeArman & Roberts, Inc.
Flowers Trading Co.
Foremost Futures
Foster Investments
Freisen, Richard Commodities
Fridlund Securities Co.
Friedlander, Burton & Co., Inc.
Friesen, Jack Inc.
Funding Brokerage Service Inc.
Future Funding Consultants
Futures & Cash Commodities Inc.
Futures Management Company
Futures Technology, Inc.
Futures Trading Co., Inc.
G & L Sales
Gaston Commodities, Inc.
Gelber Group, Inc.
Gianis & Co. Incorporated
GIC Securities, Inc.
Gilbert, Doniger & Co., Inc.
Gilford Securities Incorporated
Gliksman Securities Corp.
Glover-Olson Ltd.
Golden Bull (USA) Ltd.
Goldust Orient Investment, Inc.
Gorian Thornes Inc.
Gottsch Feeding Corp.
Granite Business Research, Inc.
Great American Securities, Inc.
Great Divide Commodities
Great MidWest Commodities Corporation
Great Western Commodities
Green, George E. Investments
Greenleaf Investment Inc.
Greenstone Corporation
Greentree Commodities Corp.
Grenel & Co.
Grubb Grain
Gruntal & Company
Hagerty, Stewart and Associates, Inc.
Hamershlag, Kemper & Co.
Handwerker, W. P. & Co., Inc.
Hanifen Imhoff Inc.
Hannig & Associates Commodities, Inc.
Hansen, Arthur W.
Harper Trade Company
Hartman & Associates, Inc., David P.
Harwell & Company
Heartland Securities, Inc.
HEB Commodities Corporation of America
Hedge Central Inc.
Hedgers Inc.
Heimann Commodities
Heitschmidt, Roger W.
Hemisphere Consultants, Inc.
Henke Commodities
Henley, Dan & Co.
Hepworth & Brenc Inc.-c/o S. W. Securities
Herdon Commodities
Hess-Stephenson Co.
Hickey Associates
Hicks, Slattery & Co., Inc.
High Plains Commodities, Inc.
Hildebrand & Associates
Hilton & Rush Company
HJK & Associates, Inc.
Hollander & Feuerhaken
Holleman Company, Inc., The
Holmquist Commodities, Inc.
Howard, Richard
Hummer & Co., Wayne
Hunt/Martin & Assoc.
Hunter, Michael Enterprises Inc.
Huntsman, Joe
Illinois Securities & Commodities
Indiana Trading Company
Individual's Securities Ltd.
Integrated Investment Systems, Inc.
Intercontinent Capital Management, Inc.
International Futures, Ltd.
International Investment Services (Overseas), Inc.
Intertrade, Inc.
Investment Network, Ltd.
Investors Commodity Services
Investors Financial Services, Inc.
Iole Enterprises, Inc.
Jack White 7 Company Inc.
Jackson, Wall & Spring Investments, Inc.
Janney Montgomery Scott, Inc.
Jefferies & Company
Jefferson, Daniel
Jesup & Lamont Securities Co. Inc.
JJB Hillard W. L. Lyons, Inc.
Jobel Financial Company
Johnson & Miller Inc.
Johnson Lane Space Smith & Co.
Johnson, Richard S.
Johnson, Tobias D., d.b.a Comm. Chart Trad.
Joliet Commodities
Jordan-Brown Commodities
Joyce, John Commodities
K-Shan Commodities
Kadel Commodities
Kall & Co., Inc.
Kamen Commodities, Arnold D.
Kass, Kenneth & Co., Inc.
Kendall Rand Co.
Key, D. C.
Knox, Robert G. Corporation
Kozney Commodities
Kriesa, Michael C.
Kroll Commodity Strategies, Inc.
Krusen Capital Management, Inc.
La Salle Street Securities
Lachman & Associates, Inc.
Lafferty, R. F. & Co., Inc.
Lamker Corporation
Lark, Gary T., Inc.
Larsh, Richard L.
Lasser Marshall, Inc.
LaVelle, Richard J.
Lawrence Co., Bruce

LCM Commodities & Marketing, Inc.
Leach & Associates
Lehman Brothers Kuhn Loeb Inc.
Leslie Commodities Inc.
Lewis, R. Securities Inc.
Lippolts, The
Lohse-Strom Commodities, Inc.
Longhorn Commodities, Inc.
Lorance Commodities
Lovett, Mitchell, Webb, Inc.
Loving Financial Management, Inc.
Lydia Soybean, Inc.
M & M Associates
Mac-Per-Wolf Co.
Mach, Harvey
Maclaskey, Myron R.
MAG Financial Services Ltd.
Mages and Johnson Inc.
Malibu Pacific Corp.
Manchester Commodity Corporation
Manley, Bennett, McDonald & Co.
Marcom Securities Inc.
Market Trends & Timing
Marketmakers
Marlow, Dennis Inc.
Marshall Wright Financial, Inc.
Marvel Commodities, Inc.
Master Commodities Inc.
McBride Enterprises
McClone Commodities
McClure Commodities Inc.
McKeany-Flavell Company Inc.
McLean Trading Co.
McNicholl, James Albert
Meier, Robert H. & Associates
Meierfeld S., Inc.
Metamora Elevator Co., The
Meyers, D. S. & Co., Inc.
Meyers, H. J. & Co.
Mickelson Commodities
Midland Commodities—MO
Midland Commodities, Inc.—CHGO
Midwest Commodity Futures, Inc.
Midwest Commodity Merchants & Traders
Midwest Discount Securities, Inc.
Midwest Livestock Marketing Systems, Inc.
Miller Commodity Corporation
Miller, Jr., Walter Benjamin
Minden Commodities, Inc.
Monson Trading Co. Inc.
Monticello Commodities
Morgan, Myers & ReBar, Inc.
Morrison, Schulte & Co. Inc.
MRD Commodities
MTM Commodities Inc.
Murlas Commodities of LeGrand, Inc.
Murlas Commodities of Long Island, Inc.
Murlas Commodities of Sacramento, Inc.
Murlas Commodities of Southfield, Inc.
Murlas Commodities of Sterling, Inc.
Murlas Commodities of Washington, Inc.
Murlas Commodities of Willmar, Inc.
Napoli Drive Consultants Inc.
National Producers Service Company
Neal Investment Services, Inc.
Newhard, Cook & Company, Inc.
Newport Commodities
Niemi, Martin C.
Noble House Group, Inc., The
Noble, Charles
North American Commodity Reserve
North American Investment Corporation
North Central Commodities
North Iowa Commodities, Ltd.
North Western OK Commodities, Inc.
Northern Illinois Commodities, Inc.
Northfield Investments, Inc.
Northwest Commodities Inc.
Northwest Hedging Inc.
Nowlin & Co., Jack A.
Nutt, J. W. Company
O'Brien & Associates, Inc.
O-M Corporation
Octa Trading Inc.
Oehlert Commodities
Old Colony Investment Co. Inc.
Old West Commodities
Olsen, Ronald H. Futures International
Omaha Commodities Services, Inc.
Omni Busch Inc.
Omnibus, Inc., d.b.a. Murlas Comm. of Miami
Open Range Commodities of Hoxie
Oppenheimer & Co., Inc.
Ottawa Brokerage Co.
Ovest Securities, Inc.
P & P Trading Co., Inc.
Pacific Securities Inc.
Palmer, Wayne, D.B.A. Murlas Commodities of Caldwell
Panhandle Commodity Futures, Inc.
Parker Robinson Ltd.
Parkes, James J.
Patton, Steve & Company
Peck, Andrews Associates Inc.
Pennyslvania Group Inc., The
Peter Marcy Inc.
Peterson, Gordon & Company, Inc.
Phoenix Futures Advisory Corporation
Plains Distributing Co.
Poole, Ken Inc.
Poser, Duane
Prairieland Investment Co.
Printon Kane Commodities Corporation
Pro-Mark, Inc.
Procom, Inc.
PROCOMCO
Professional Commodity Investor & Hedge
Professional Commodity Services, Inc.
Professional Grain Marketing Associate
Prospect Capital
Pullman Commodities
PVT Corporation
Quad Commodities, Inc.
Quinn & Co., Inc.
R & H Market Services, Inc.
R-L-D Commodities
Ragan, David Lyle
Rainey Commodities, Inc.
Randy's Commodities
Raymond Jones Investments, Inc.
Reardon, F. J., Inc.
REFCO Int'l Futures—New York Inc.
Reno Commodities
Republic Commodities
Richardson, Dennis H.
Roach Ag Marketing Ltd.
Rockford Futures
Rockwell Investments, Inc.
Rogge, Dwaine W.
Rorer & Company Inc. Edward C.
Rotan Mosle, Inc.
S.M.A. Futures Inc.
Sacks, J. & Associates
Salcedo Company
Sand Mountain Commodities
Santa Barbara Securities
Sarten Commodities
Saul Stone of Larned
Savant Commodities
Schaenen, Jacobs Etheredge & Co. Inc.
Schlabs & Hysinger Commodity Service
Schoff & Baxter, Inc.
Schuster & Associates
SCI Commodities Inc.
Scott Commodities Corp.
Scottsdale Commodities
Searle Marketing Service, Inc.
Securities-West, Inc.
Seifert, Robert J. & Assoc.
Sentra Securities Corp.
Shaine, H. B. Inc.
Shalowitz Commodities
Show Investment Corporation
Schultz Commodities
Sierra Valley, Inc
Siglin Enterprises
Simmons, James B.
Sinclair, James E.
Singer, Engler & Kupfer Securities, Inc.
SKKK Trading Corp.
Com-Stock Trading, Ltd.
Smith, Rod Brokerage
Sotos Commodities
Southern Commodities Corporation
Southland Securities of Texas, Inc.
Southwest Securities, Inc.
Sparks Commodities, Inc., Robert B.
Spencer, JM & Co.
St. Peter Commodity
State Line Commodities, Inc.
Sterling Management, Ltd.
Stewart-Miller Inc.
Stifel Nicolaus & Co. Inc.
Stone Advisory Corp.
Strasbourger Pearson Tulcin Wolff Inc.
Strine Farm Management & Appraisals, Inc.
Strode, Ronald E.
Summit Commodities, Inc.
Sutro & Company, Incorporated
Sween, Gregory H.
Swing Comodities
T.H.D., Inc.
Taylor, James B.
TBCO, Inc.
Texas Securities Inc.
Thallon & Co., John
Thayer Trading
Thomte Trading Co. Inc
Tipton Commodities
Titan Trading Group Inc.
TMAC, Inc.
Toepke Commodities Corp.
Tomlinson Commodities, Inc.
Top O' Texas Commodities, Inc.
Torosa, Inc.
Tradestar Corp.
Tradex Brokerage Service Inc.
Trend Research International
Trendata Investment Ser. Inc.
Tri-County Commodities, Inc.
TWP Financial Corporation
Tyson & Taylor, Inc.
U.S. Futures Corporation
Underhill Associates, Inc.
United Futures Group, Inc.
Universal Commodities
Vanek, Gregory T.
Vincent, Burton J., Chesley & Co.
Vining-Sparks Securities, Inc.
W.W. Cattle Company
Waddell & Reed
Walker Smith Enterprises, Inc.
Wall Street South, Commodities Group, Inc.
Warsaw Commodities Inc.
Wear, Richard F.
WEBCO Commodities Inc.
Weber, Hall, Sale & Associates, Inc.

Webster's Commodity Service
Wedbush, Noble, Cooke, Inc.
Weed, A.J. & Co. Inc.
Wendell Financial Services, Inc.
Weskan Cattle Co.
West African Mines
West Coast Trading Co.
West Port Commodities, Inc.
West Texas Commodities Corp.
Westberry, Henry L.
Western Commodities Inc.
Western Commodities, Inc.—MT
Western Investors, Inc.
Western Iowa Farms Co.
White Commercial Corp.
White, Robert T. Jr.
White, Ken Commodities, Inc.
Whitlock, Emmet & Co., Inc.
Will-O Corporation
Willowcreek Monetary, Ltd.
Wilmot, Fred W.
WILPADCO, Inc.
Wilshire Trading Co., Inc.
Wilson-Ross Commodities
Wisconsin Discount Commodity Corp.
Wise Friedman Incorporated
Wisner Commodities
World International Trading
Worley Commodities, Philip M.
Worthington Commodity Brokerage
Wright, Commodities Dan
York Securities, Inc.
Young, Cooper & Cooper Commodity Co.
Zellman Commodities
Zeunert, Robert H.
Zwilinger & Associates

List of Subjects in 17 CFR Part 3

Introducing brokers.

Issued in Washington, D.C. on July 29, 1983 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-21003 Filed 8-2-83; 8:45 am]

BILLING CODE 6351-01-M

federal register

Wednesday
August 3, 1983

Part IV

Environmental Protection Agency

Proposed Federal Assistance Limitations and Construction Moratorium; Eleven States

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AMS-FRL 2328-S]

Federal Assistance Limitations and Construction Moratorium; Notice of Proposed Actions

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to find that ten states have failed to implement portions of their approved 1979 State Implementation Plan (SIP) revisions. The ten states have not implemented motor vehicle inspection and maintenance (I/M) programs as required by their 1979 SIP's.

EPA is also proposing to restrict federal funding and to limit construction in each of these States. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area in which a State or local government has failed to implement an approved or promulgated SIP. Section 173(4) and 40 CFR 52.24 (1981) impose a ban on construction and modification of major stationary sources of pollution in areas where the SIP has not been implemented.

More detailed information on each State subject to these proposed actions is contained in the individual notices following this preamble.

DATE: Written comments must be submitted by September 19, 1983. EPA will schedule public hearings on this proposed action if requested during the public comment period and will announce the date and location of each hearing in the **Federal Register.**

ADDRESSES: Copies of the SIP revisions, documents containing EPA policy, and other information relevant to this proposed action are available for public inspection during normal business hours at the appropriate EPA Regional Offices, for which addresses appear in the individual notices following this notice. EPA may charge a reasonable fee for copying. Written comments should be sent to the appropriate designated EPA Regional official listed in the individual notices for each State.

FOR FURTHER INFORMATION CONTACT: The apropriate EPA Regional official designated in the individual State notices that follow this general notice.

SUPPLEMENTARY INFORMATION:

1. Background

The Clean Air Act Amendments of 1970 required each State to submit a SIP to provide for attainment and maintenance of each of the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 added a new Part D to the Act which requires States to revise SIPs for any area which has not yet attained the NAAQS. The revised plans were required to be submitted by January 1, 1979 to meet specific requirements outlined in sections 172 and 173 of the Act, and generally to provide for attainment of the primary NAAQS by December 31,1982.

For areas where a State demonstrated that it could not attain the primary ozone or CO standards by 1982, section 172(a)(2) authorized an extension of the attainment deadline to not later than the end of 1987. If an extension was granted, the State had to meet additional statutory requirements, including those of section 172(b)(11). Section 172(B)(11)(B) requires the State to submit a schedule for implementation of an I/M program in the area with the extended attainment deadline. Under EPA policy, all required I/M programs had to be implemented no later than December 31, 1982. See the July 17, 1978 memorandum on "Inspection/Maintenance Policy" from Assistant Administrator David Hawkins to the Regional Administrators.

EPA approved, for 28 States and the District of Columbia, 1979 SIPs that included extension of the CO/ozone attainment deadline until 1987 and schedules for implementation of I/M programs.

In March 1982, EPA proposed to find that the Commonwealth of Pennsylvania was not implementing the I/M programs required under its 1979 SIP. See 47 FR 9477 (March 5, 1982). EPA's proposal was based on the enactment of a measure prohibiting the Commonwealth's executive branch from expending any funds to implement I/M programs. EPA has not yet taken final action on this proposal. Because there have been recent I/M-related developments in Pennsylvania, and because EPA is now proposing additional alternatives on I/M implementation and funding restrictions, EPA is today reopening the public comment period on that proposed action.

By letters dated April 30, 1982, EPA notified eleven State Governors that they had not reached major milestones for implementing I/M that were set out in their 1979 SIP's, and, since it appeared that the December 31, 1982 deadline for implementation of I/M would not be met, EPA intended to make findings of nonimplementation. The letters also apprised the States of the potential consequences under the Act if the nonimplementation findings were made, and asked the States to apprise EPA of any reasons why such findings should not be made.

On June 21, 1982, EPA sent a twelfth letter notifying the Governor of Maryland that as of June 1, 1982, when he signed into law a bill that delayed final implementation of Maryland's I/M program until July 1, 1983, Maryland apparently was not implemeting its SIP. As in the April 30, 1982 letters to eleven other States, EPA notified Maryland of its intent to propose a finding of nonimplementation, and requested the State to submit any information relating to such a finding.

Each State responded to EPA's letter of notification. Only one State, North Carolina, started its I/M program by the December 31, 1982 deadline. The States of Ohio and Kentucky submitted modeling studies in December 1982 which appear to demonstrate attainment of the NAAQS for CO and O_3 by 1982 in all areas in Ohio and in Boone, Campbell and Kenton counties in Kentucky. EPA has proposed to approve their demonstrations and to find that these areas are no longer subject to the I/M requirement.

None of the remaining nine States submitted information showing that they were, in fact, implementing the I/M portions of their SIP's on schedule, and Kentucky did not submit such information with regard to Jefferson County. Therefore, EPA is proposing here to find that they have failed to implement portions of approved 1979 SIPs.

In addition, in January 1983, EPA received information indicating that the Memphis urban area in Tennessee failed to meet the December 31, 1982 I/M implementation date. Consequently, EPA also is proposing a finding of nonimplementation for the Memphis area. By this notice and the State-specific notice that follows, EPA invites the Governor of Tennessee and other interested parties to submit comments on the Memphis situation during the comment period announced today.

In summary, EPA is proposing to find that the following ten states, in addition to Pennsylvania, have not implemented the I/M portions of their SIPs: Maryland, Kentucky, Tennessee, Illinois, Indiana, Michigan, Wisconsin, Texas, Missouri and Nevada. Separate **Federal Register** notices that discuss the I/M situation in each State follow this general notice.

2. Withholding Clean Air Act Funds for Failing To Implement

Section 105 of the Clean Air Act authorizes EPA to award federal funds to air pollution control agencies to assist them in developing and maintaining their programs. Under section 302(b), "air pollution control agencies" are State, local, or interstate agencies with powers or duties relating to the prevention and control of air pollution. In some States, EPA awards funds directly to both State and local government agencies. In other States, EPA only awards funds directly to State agencies.

Section 175 of the Act authorizes EPA to award funds to local agencies with transportation or air quality planning responsibilities to assist them in developing SIP revisions required under Part D. Since all funds appropriated under this section were obligated by EPA as of September 30, 1980, and no additional appropriations have been made, section 175 grants are not affected by this proposal.

Section 176(b) prohibits EPA from making grants under the Clean Air Act in an area in which a State, local government or regional agency is not implementing any requirement of an approved or promulgated SIP, including any requirement for a revised SIP.

Where EPA awards funds directly to both the State and local levels of government, and each level of government has different SIP responsibilities, EPA interprets section 176(b) to allow continued funding to the level of government which has no authority to implement the SIP requirement in question. *See* 47 FR 9477 (March 5, 1982).

EPA is proposing to withhold all section 105 funds that would be awarded after final action on this proposal from the ten States that did not implement approvable I/M programs by the December 31, 1982 deadline as required by their SIP's and are still not fully implementing those programs. The extent to which funds are withheld will vary for each State, depending upon which level of government is responsible under the SIP for implementation of the I/M program and the size of the urbanized area in which I/M is required. As noted above, EPA interprets section 176(b) as permitting EPA to continue to directly fund agencies of local government that are not responsible for implementation of an I/M program. EPA believes that it is authorized to continue making grants to all agencies in areas other than the urbanized areas for which the SIP contains an I/M program.

One method that EPA is proposing to use to calculate the extent of Clean Air Act funding limitations in each State is based on the proportion of the State's population residing in the urbanized area in which I/M is required. *See* 44 FR 20376, nt. 22 (April 4, 1979). This approach was applied in EPA's proposal to withhold certain section 105 grants from the State of Pennsylvania. *See* 47 FR 9477 (March 5, 1982). The population residing in the urbanized area will be determined by the 1970 Census.

There are two alternative formulas that can be applied to determine the population-based funding limitation. The first, which EPA is proposing to apply, would add all Clean Air Act funds which would normally be awarded to all levels of government in the State, and would withhold from that total a percentage which is equal to the percentage of the State's population residing in the nonimplementation I/M urbanized areas. Direct grants made to local government agencies responsible for I/M implementation would be affected first, with any remaining restrictions to be applied against State funds. If the State is the only level of government responsible for I/M implementation, EPA would subtract from the amount to be withheld from the State any funds that are granted directly to local government agencies in the urbanized area. As stated above, EPA believes that these funds are exempt from the restrictions.

The second method would consider only those funds received directly by the State and would separately exempt or withhold entirely any direct local grants. For example, if the State is the only responsible level of government, that proportion of the State funds equal to the percentage of State population residing in the I/M area will be withheld, while no direct local government grants will be affected. If both the State and local governments are responsible, the local grants would be withheld in their entirety, while that proportion of the State funds equal to the percentage of State population residing in the I/M area would be withheld.

EPA prefers the first formula because it automatically accounts for reductions in States' allocation of State funds to local areas that receive direct grants as well. In those areas where funds are granted directly to both State and local governments, the State would not necessarily reserve a portion of its funds for the local area equal to the population ratio in that area, since the local area already has received separate funding. Since the second formula assumes that the State would do that, it would tend to overstate the amount of State funds allocated for use in the I/M area. By considering all grants awarded to all levels of government in a State as the basis for funding restrictions, EPA's proposal is designed to avoid overstating the percentage of State funds that could be withheld under a method based on population distribution.

There is, in addition, an alternative proposal not based strictly on a population-based formula. This method would withhold those funds equal to the amount needed to carry out the SIP. That is, funds equal to the amount needed to implement an I/M program would be withheld. Again, agencies of local government that are not responsible for implementation of the I/M program would not be affected. This alternative has the benefit of imposing a sanction on recalcitrant areas without causing other (non-I/M) air quality projects to be discontinued.

3. Construction Moratorium

Section 173(4) provides that a moratorium on the construction of new major stationary sources and the modification of existing major stationary sources applies in any area where a State is not carrying out an approved plan. EPA has incorporated this construction moratorium into each State's SIP. See 40 CFR 52.24(b) (1981). Both the statue and the regulation make the ban pollutant-specific. For example, if a State fails to carry out the ozone portion of its SIP, only the construction of hydrocarbon (ozone precursor) sources is prohibited.

4. Relationship to Actions Proposed on February 3, 1983

The restrictions on Clean Air Act funds and the construction bans discussed above are being proposed because the States (or local governments) appear to have failed to carry out schedules or commitments contained in their 1979 SIPs. Among the actions required under the approved schedules or commitments were the submittal of major elements needed to implement I/M programs.

The submittal of I/M program elements is also required under another Clean Air Act requirement. Each of the extension areas for which findings are proposed today was also required by section 172(c) of the Act to submit by July 1, 1982 a supplemental SIP revision containing enforceable measures to assure attainment by 1987. Program elements that meet EPA's I/M policy are needed to satisfy this SIP submittal requirement. Thus, a failure to submit

I/M program elements could represent both a failure to implement a 1979 plan and a failure to submit a supplemental 1982 plan.

The Clean Air Act applies a second set of construction and funding restrictions to areas which fail to submit approvable 1982 plans. Section 110(a)(2)(I), like section 173(4), imposes a construction moratorium and section 176(a), like section 176(b) requires limitations on Federal funding. Section 176(a) applies the funding restrictions to highway projects as well as air programs.

On February 3, 1983, EPA proposed to disapprove the supplemental SIP revisions for each of the extension areas for which action is proposed today. *See* 48 FR 5022. EPA found that each of these supplemental revisions lacked some of the critical elements needed for an approvable I/M program. Some of the revisions also had other deficiencies not related to I/M. As explained in the general preamble to the February 3, 1983 proposals on these supplemental SIP revisions (45 FR 4972), final disapproval would trigger a construction ban under section 110(a)(2)(I) and could lead to the imposition of funding restrictions under section 176(a).

Thus, today's proposals address the States' failure to implement approved 1979 SIP requirements, and the resulting construction and funding restrictions of section 176(b) and 173(4), while the February 3 proposed SIP disapprovals address the States' failure to submit approvable 1982 SIP's which triggers the restrictions of sections 176(a) and 110(a)(2)(I). Some areas may ultimately be subject to funding restrictions under both section 176(b) and section 176(a).

5. Request for Comment

EPA requests comment on its proposal to withhold, under section 176(b), Clean Air Act funds from States that have not implemented required I/M programs, and on the proposed formula for determining the amount of funds to be withheld. Comments on the alternative formulas or suggestions for other methods of calculation also are invited.

Of course, a State would avoid imposition of the sanctions if EPA were able to find that it was implementing the SIP. One obvious approach would be that, in order for sanctions to be avoided or removed, a State must demonstrate full implementation of the SIP by submitting evidence that the I/M program has been started and is fully operational. Under this approach, if such a demonstration were not made before EPA takes final action on this proposal, the sanctions would be imposed upon publication of the final agency determination on implementation.

As an alternative approach, EPA is also proposing to find that a State may demonstrate implementation of its SIP by submitting evidence to EPA that it has taken concrete steps toward starting its I/M program in an expeditious manner. For example, in the case of a centralized I/M program, if a State were to show that it has awarded essential contracts or has begun construction of facilities, or in the case of a decentralized program, a State's licensing of testing facilities, EPA could consider such steps to be sufficient to avoid immediate imposition of the sanctions. Under the circumstances, EPA could keep this proposal active pending continued positive steps by the State toward program start-up, but could impose sanctions if progress falters. On the other hand, if a State merely submitted a promise to EPA to move forward in carrying out its I/M commitments, EPA would not deem this sufficient evidence of SIP implementation.

For those States where funding sanctions are imposed because such evidence is not submitted before EPA makes a final determination on the applicability of the sanctions, EPA is interested in removing the funding limitations and construction moratorium as quickly as possible. Accordingly, the Agency is proposing to remove the sanctions without further notice and opportunity for comment if a State submits evidence to EPA that shows that it is implementing its SIP. On a case-by-case basis, EPA would apply the same criterion for what consititutes implementation as that adopted in making its finding of nonimplementation.

EPA requests comments on the proposed alternative criteria for determining SIP Implementation and on its proposal to dispense with further notice and opportunity for comment in removing sanctions from the States.

6. Regulatory Impact

Under the Regulatory Flexibility Act, 5 U.S.C 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(6), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If EPA takes final action on the proposed finding of nonimplementation, a moratorium on construction and modification of major stationary sources of the pollutant for which an attainment extension was granted for a specific area will go into effect. A major stationary source for this purpose is any source which emits, or has the potential to emit, 100 tons per year or more of the relevant pollutant. *See* 40 CFR 52.24(f)(5) (1981). The moratorium would also prohibit major modifications, which are any physical changes in the operation of a source that would result in a significant net increase of a pollutant. *See* 40 CFR 52.24(f)(6) (1981). Thus, some small entities might be affected by final Agency action.

EPA has in the past made efforts to quantify the impacts of Clean Air Act rules on the construction and modification of sources but has been unable to do so. EPA's lack of success is due in part to the need to obtain information on future plans for business growth. This information is difficult to obtain, as businesses are understandably reluctant to make their plans public. Consequently, EPA is making no quantified assessment of the potential economic impact on small entities from today's proposal.

Final action on today's proposals also could result in withholding of portions of section 105 funds from certain areas. However, since today's proposals do not affect any areas with populations of less than 50,000, the governmental entitites affected by any funding limitations do not fall within the definition of "small entities."

Additionally, although EPA believes that a final action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the construction moratorium and the section 176(b) funding restrictions are automatic and mandatory whenever the Agency determines that an approved or promulgated SIP is not being implemented in a nonattainment area.

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major since it will not have an economic impact exceeding $100 million per year. The section 105 funds potentially affected by this proposal do not exceed $100 million, and EPA expects that only a portion of the total funds would be affected as a result of final action on this proposal.

List of **Subjects in 40 CFR Part 52**

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

(Sec. 110, 172, 173(4), 176(b), and 301, Clean Air Act (42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601))

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-21008 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL 2328-5a]

Federal Assistance Limitations and Construction Moratorium; State of Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Illinois has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions were approved to meet the January 1979 deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a State or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The approved Illinois SIP contains a schedule for implementation of a contractor-operated, centralized I/M program in the Chicago and East St. Louis areas by December 31, 1982; however, the final implementation date of December 1982 was not met.

As a result, EPA is today proposing to find that the State of Illinois is no longer implementing its approved ozone (O_3) and carbon monoxide (CO) SIPs in these areas. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in these areas.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATES: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESSES: Written comments or requests for public hearings should be sent to Randolph Cano, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Air Programs Branch, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Illinois submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the Chicago area and that the O_3 stantard could not be attained 1982 in the East St. Louis area. Consequently, Illinois requested an extension for attainment of the CO and/or O_3 standards in these areas. As required by section 172(b)(11)(B), Illinois also submitted a schedule for the implementation of I/M in these areas.

On February 21, 1980 (45 FR 11472), EPA approved Illinois's revised SIP for O_3 and CO, including the extension requests and the I/M schedule.

The Illinois SIP submittal contained certification that the State has sufficient legal authority to implement and enforce an I/M program and contained a schedule for the completion of all actions necessary to implement the program by December 31, 1982.

The basis for the State's certification of legal authority is the Illinois Environmental Protection Act, which gives the Pollution Control Board the authority to adopt regulations requiring the inspection of any vehicle which may cause or contribute to air pollution.

The approved I/M implementation schedule contains a commitment by the Illinois Environmental Protection Agency to develop an I/M regulatory proposal and to submit it to the Pollution Control Board in 1980. In addition, the schedule for implementation of a contractor-operated, centralized program includes, among other things, the following important milestones: issuance of a request for bids by March 1980; award of the contract by November 1980; and State adoption of rules and regulations by December 1981. The best evidence available to EPA indicates that the State has failed to complete these milestones and that, consequently, the final implementation date of December 1982 has not been met.

Because of apparent delays in Illinois meeting its schedule, on April 30, 1982, EPA sent a letter to the Governor of Illinois, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Illinois was no longer meeting its SIP commitments regarding its I/M program. A response dated May 21, 1982, was received from the Illinois Environmental Protection Agency, but the response did not include any information to show that Illinois was, in fact, implementing the I/M portion of its SIP.

B. Proposed Findings and Action

Based on Illinois's failure to meet its approved I/M schedule, EPA is proposing to find that Illinois is no longer implementing and carrying out its approved O_3 and CO plans in the Chicago and East St. Louis areas.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Illinois Environmental Protection Agency, the State agency which has I/M SIP responsibilities in the Chicago and East St. Louis areas. EPA is not proposing to withhold any funds to be used in areas to the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of

nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the Chicago area and of hydrocarbons in the East St. Louis area. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas. However, since a construction ban has been in effect in these areas since May 26, 1981, *See, Citizens for a Better Environment v. EPA*, 649 F.2d 522 (7th Cir. 1981)), there would not be any practical effect if such a ban were imposed as a result of this proposal.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Illinois is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983. As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20209 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AMS-FRL-2328-5b]

Federal Assistance Limitations and Construction Moratorium; State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Indiana has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The approved Indiana SIP contains a schedule for implementation of a contractor-operated, centralized I/M program in Clark, Floyd, Lake and Porter Counties by December 31, 1982; the final implementation date of December 1982 was not met.

As a result, EPA is today proposing to find that the State of Indiana is no longer implementing its approved ozone (O_3) and carbon monoxide (CO) SIPs in these areas. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in these areas.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESSES: Written comments or requests for public hearings should be sent to Gary Gulezian, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604.

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

SUPPLEMENTARY INFORMATION

A. Background

Pursuant to section 172(a)(2) of the Clean Air Act, the State of Indiana submitted a Part D SIP which demonstrated that the O_3 standard could not be attained by 1982 in Clark, Floyd, Lake and Porter Counties (the Indiana portions of the greater Louisville and Chicago areas). It also demonstrated that the CO standard could not be attained by 1982 in a portion of Lake County. Consequently, Indiana requested an extension for attainment of the O_3 and CO standards in these areas. As required by section 172(b)(11)(B), Indiana also submitted a schedule for the implementation of I/M in these areas.

On January 2, 1981 (46 FR 36), EPA approved Indiana's revised SIP for O_3 and CO, including the extension requests and the I/M schedule.

The approved Indiana SIP contains a commitment and schedule for implementation of a contractor-operated, centralized I/M program in the Indiana portions of the greater Louisville and Chicago areas by December 31, 1982. The schedule includes, among other things, the following important milestones: adoption of rules and regulations by January 1981; issuance of a request for bids by February 1981; and award of contract by August 1981. Although Indiana promulgated its I/M regulations on June 1, 1981, the best evidence available to EPA indicates that the final implementation date of December 1982 was not met. On April 15, 1983, the Indiana legislature passed House Enrolled Act No. 1840 which prohibits the State Board of Health from contracting with any private concern, and stipulates that any such testing shall be conducted by students of Indiana Vocation Technical College.

Because of apparent delays in Indiana meeting its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Indiana, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Indiana was no longer meeting its SIP commitments regarding its I/M program. A response dated May 28, 1982 was received from the Governor; however, the response did not include any information to show that Indiana was, in fact, implementing the I/M portion of its SIP.

B. Proposed Findings and Action

Based on Indiana's failure to meets its approved I/M schedule, EPA is

proposing to find that Indiana is no longer implementing and carrying out its approved O_3 and CO plans in Clark, Floyd, Lake and Porter Counties.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discused below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Indiana Air Pollution Control Board, the State agency which has I/M SIP responsibilities in Clark, Floyd, Lake and Porter Counties. EPA is not proposing to withhold any funds to be used in areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons in Clark, Floyd, Lake and Porter Counties and of CO in the portion of Lake County designated nonattainment for that pollutant. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Indiana is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.* appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20210 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5c]

Federal Assistance Limitations and Construction Moratorium; State of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Kentucky has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under Section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The approved Kentucky SIP calls for the implementation by January 1, 1983, of an I/M program to attain the ozone O_3 and carbon monoxide (CO) standards in Jefferson County. Nevertheless, the program was not implemented by January 1, 1983.

As a result, EPA is today proposing to find that the State of Kentucky is no longer implementing its approved O_3 and CO SIPs in this area. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in this area.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing on this proposed action, if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESSES: Written comments or requests for public hearings should be sent to Tom Lyttle, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Tom Lyttle, Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, GA 30365, 404/881-2864.

SUPPLEMENTARY INFORMATION

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Kentucky submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the Jefferson County Area. Consequently, Kentucky requested an extension for attainment of the O_3 and CO standards in this area. As required by section 172(b)(11)(B), Kentucky also submitted a schedule for the implementation of I/M in this area.

On August 7, 1981, (46 FR 40188 and 46 FR 40186), EPA approved Kentucky's revised SIP for Jefferson County for O_3 and CO, respectively, including the extension requests and the I/M schedule.

The approved Kentucky SIP contains a commitment and schedule for the implementation of a contractor operated, centralized program by January 1, 1983 in Jefferson County. The implementation schedule contains several significant interim milestones, including: (1) Adoption of regulations by March 18, 1981; (2) issuance of a request for proposal (RFP) to potential contractors by April 1, 1981; and (3) award of a contract for operation of the program by August 19, 1981.

Because of apparent delays in meeting this schedule, on April 30, 1982, EPA sent a letter to the Governor of Kentucky, notifying him of the apparent situation of nonimplementation and of

EPA's intention to publish a notice proposing to find Kentucky was no longer meeting its SIP commitments regarding its I/M program. A response was received from the Kentucky Department of National Resources and Environmental Protection, but the response did not include any information to show that Kentucky was, in fact, implementing the I/M portion of its SIP.

Although some progress has been made since then, the I/M program was not implemented by January 1, 1983, as required. The latest information currently available to EPA is that the Air Pollution Control Board of Jefferson County has signed a contract with Gordon Industries and that the I/M program will be under way in Louisville by January 1, 1984.

B. Proposed Findings and Action

Based on Kentucky's failure to meet its approved I/M schedule, EPA is proposing to find that Kentucky is no longer implementing its approved O_3 and CO plans in the Jefferson County area.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public documents, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. *Cut-off of Clean Air Act Funds*

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air funds from the Kentucky Department of Natural Resources and Environmental Protection and the Air Pollution Control District of Jefferson County, the State and local agencies which have I/M SIP responsibilities in the Jefferson County area. EPA is not proposing to withhold any funds to be used in areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. *Construction Moratorium*

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the Jefferson County area. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Kentucky is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register**.

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-21008 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5d]

Federal Assistance Limitations and Construction Moratorium; State of Maryland

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Maryland has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

Maryland's approved SIP for ozone (O_3) and carbon monoxide (CO) requires implementation of I/M on January 1, 1983 in the Metropolitan Baltimore Intrastate Air Quality Control Region (AQCR) and the National Capital Interstate AQCR. On June 1, 1982, Governor Hughes signed a bill which delayed implementation of the I/M program until July 1, 1983.

Because Maryland has failed to implement an I/M program by January 1, 1983, as required, EPA is today proposing to find that the State of Maryland is no longer implementing its O_3 and CO SIPs in these areas. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in these areas.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing on this proposed action, if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearings should be sent to Bernard E. Turlinski, Environmental Protection Agency, Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Bernard E. Turlinski, Environmental Protection Agency, Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-8334.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Maryland submitted a

Part D SIP which demonstrated that the O_3 standard could not be attained by 1982 in Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties in the Metropolitan Baltimore Intrastate AQCR, and in Montgomery and Prince Georges Counties in the National Capital Interstate AQCR, and that the CO standard could not be attained by 1982 in Transportation District 118 (generally corresponding to the Baltimore central business district) in the Metropolitan Baltimore Intrastate AQCR, and in Election Districts 2, 6, 12, 16, 17, and 18 in Prince Georges County and Election Districts 4, 7, and 13 in Montgomery County in the National Capital Interstate AQCR. Consequently, Maryland requested an extension for attainment of the O_3 and CO standards in these areas. As required by section 172(b)(11)(B), Maryland also submitted a schedule for the implementation of I/M in these areas.

On August 12, 1980 (45 FR 53460) EPA approved Maryland's revised SIP for O_3 and CO, including the extension requests and the I/M schedule.

The approved Maryland SIP contains a commitment and schedule for implementation of a contractor-operated, centralized I/M program by December 31, 1982 in the Baltimore area and in the Maryland suburbs of Washington, D.C. In March, 1982, the Maryland General Assembly enacted Senate Bill No. 34 which provided for a delay in the implementation of the I/M program until at least July 1, 1983. Governor Hughes signed Senate Bill No. 34 into law on June 1, 1982.

On June 21, 1982, EPA sent a letter to the Governor of Maryland, notifying him that this action created an apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Maryland was no longer meeting its SIP requirements regarding its I/M program.

By letter dated July 1, 1982, Governor Hughes advised EPA that the legislative delay had necessitated contract renegotiations and would require a revised schedule for implementation. A subsequent letter dated July 15, 1982 was sent by the Governor, but neither letter included any information to show that Maryland was, in fact, implementing the I/M portion of its SIP. The State did not, in fact, start its program by December 31, 1982. A revised schedule with a start-up date of July 1983 or later would not be consistent with EPA's policy requiring I/M implementation by January 1, 1983 or with the State's commitment to implement a program by December 31, 1982.

In its 1983 session, the Maryland Legislature established a new start date of January 1, 1984 for the I/M program. The best information currently available to EPA is that the State is working toward implementation of the program at that time.

B. Proposed Findings and Action

Based on Maryland's failure to meet its approved I/M schedule, EPA is proposing to find that Maryland is no longer implementing and carrying out its approved O_3 and CO plans in the affected areas. The statutory bases for EPA's proposal to make the nonimplementation finding and to impose the funding limitations and construction moratorium are discussed in the general notice of proposed rulemaking appearing separately in today's **Federal Register.**

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of publish comments, if no resolution is reached, EPA will public a Notice of Final Rulemaking in the **Federal Register,** imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Maryland Air Management Administration, the State agency which has I/M SIP responsibilities in the affected areas. EPA is not proposing to withhold any funds to be used in the areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the affected areas. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Maryland is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register,** EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.,* appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20212 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5e]

Federal Assistance Limitations and Construction Moratorium; State of Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Michigan has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean

Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The approved Michigan SIP contains a commitment and schedule for implementation of a decentralized I/M program in the Detroit area by October 1981. The best evidence available to EPA indicates that Michigan has not begun the I/M program and, consequently, is failing to implement its approved ozone (O_3) and carbon monoxide (CO) SIPs in the Detroit area.

As a result, EPA is today proposing to find that the State of Michigan is no longer implementing its approved O_3 and CO SIPs in this area. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in this area.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearings should be sent to Gary Gulezian, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Michigan submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the Detroit area. Consequently, Michigan requested an extension for attainment of the O_3 and CO standards in this area. As required by section 172(b)(11)(B), Michigan also submitted a schedule for the implementation of I/M in this area.

On May 6, 1980 (45 FR 29790), EPA approved Michigan's revised SIP for O_3 and CO, including the extension requests and the I/M schedule.

The approved Michigan SIP contains a commitment and schedule for implementation of a decentralized I/M program in the Detroit area by October 1981. The implementation schedule includes the following important dates: (1) January 1981—rules officially promulgated; (2) June 1981—inspection station licensing begins; and (3) October 1981—initiation of mandatory inspection and maintenance for all persons required to register vehicles on and after January 1, 1982.

Although the rules and regulations for the program were developed by the State Departments of State and Natural Resources, they have never been approved by the Joint Legislative Rules Committee. The best evidence available to EPA indicates that Michigan has also failed to complete any of the remaining milestones and, consequently, is failing to implement its approved O_3 and CO SIPs in the Detroit area.

Because of the apparent delays in Michigan meetings its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Michigan, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Michigan was no longer meeting its SIP commitments regarding its I/M program. A response dated May 26, 1982 was received from the Governor; however, no information was submitted to show that Michigan was, in fact, implementing the I/M portion of its SIP.

B. Proposed Findings and Action

Based on Michigan's failure to meet its approved I/M schedule, EPA is proposing to find that Michigan is no longer implementing and carrying out its approved O_3 and CO plans in the Detroit area.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. *Cut-off of Clean Air Act Funds.* Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Michigan Department of Natural Resources, the State agency which has I/M SIP responsibilities in the Detroit area. EPA is not proposing to withhold any funds to be used in areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. *Construction Moratorium.* Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the Detroit area. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Michigan is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.* appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601).

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20213 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AMS-FRL-2328-5f]

Federal Assistance Limitations and Construction Moratorium; State of Missouri

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Missouri has failed to implement a motor vehicles inspection and mainttenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

Missouri's approved 1979 SIPs provide for implementation of a mandatory I/M program as one of the control measures needed to attain the ozone (O_3) and carbon monoxide (CO) ambient air quality standards in the St. Louis area. This program was to have begun on January 1, 1982, but the State has not yet implemented it.

As a result, EPA is today proposing to find that the State of Missouri is no longer implementing its approved O_3 and CO SIPs in this area. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply it this area.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearings should be sent to Wayne Leidwanger, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne Leidwanger, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Missouri submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the St. Louis area. Consequently, Missouri requested an extension for attainment of the O_3 and CO standards in this area. As required by section 172(b)(11)(B), Missouri also submitted a schedule for the implementation of I/M in this area.

On April 9, 1980 (45 FR 24140) and on March 16, 1981 (46 FR 16895), EPA approved Missouri's revised SIPs for O_3 and CO, including the extension requests and the I/M schedule.

The I/M schedule submitted by Missouri and approved by EPA outlined two alternatives. Schedules for both centralized and decentralized programs were established. These schedules complied with EPA's memorandum of February 21, 1979, which set forth EPA's policy on I/M implementation. In a report to the Missouri Legislature on December 1, 1980, the Missouri Department of Natural Resources specified that a decentralized program was to begin January 1, 1982, in accordance with SIP and EPA's policy.

The best information available to EPA indicates that most of the major milestones leading to initiation of the program have been missed and that the program did not begin on January 1, 1982, as required.

Because of the apparent delays in Missouri meeting its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Missouri notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Missouri was no longer meeting its SIP commitments regarding its I/M program. A response dated May 24, 1982 was received from the Governor; however, no information was submitted to show that Missouri was, in fact, implementing the I/M portion of its SIP. Some progress toward implementation has been made side then, but the I/M program has not yet been implemented. The best information currently available to EPA is that the State is now working toward final implementation of its I/M program by January 1, 1984.

B. Proposed Findings and Action

Based on Missouri's failure to meet its I/M schedule, EPA is proposing to find that Missouri is no longer implementing and carrying out its approved O_3 and CO plans in the St. Louis area.

During the public comment period, EPA will consider any comments on the issues of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Missouri Department of Natural Resources, the Missouri agency which has I/M SIP responsibilities in the St. Louis area. EPA is not proposing to withhold any funds to be used in areas of the state which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the St. Louis area. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Missouri is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed

rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20214 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5g]

Federal Assistance Limitations and Construction Moratorium; State of Nevada

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Nevada has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

Section 172(b)(11)(B) of the Clean Air Act, as amended, requires the implementation of an I/M program in areas where a state demonstrates that the National Ambient Air Quality Standards (NAAQS) for ozone and/or carbon monoxide (CO) cannot be met by December 31, 1982. The approved Nevada SIP (46 FR 21758; April 14, 1981, 46 FR 45605; September 14, 1981) makes this demonstration of nonattainment for CO in the Truckee Meadows and Las Vegas Valley areas. The approved SIP also provides for State implementation of a mandatory annual I/M program in these two areas on July 1, 1981, unless the Board of County Commissioners for either Washoe County (Truckee Meadows) or Clark County (Las Vegas Valley) adopt ordinances which require I/M implementation by the State prior to July 1, 1981.

The State of Nevada has apparently not implemented mandatory annual I/M programs in Washoe and Clark Counties as required by the approved Nevada SIP. As a result, EPA is today proposing to find that the State of Nevada is no longer implementing its CO SIP in these areas. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in the Truckee Meadows and Las Vegas Valley nonattainment areas.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearing should be sent to Jerry Clifford, A-2, Air Programs Branch, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Jerry Clifford, A-2, Air Programs Branch, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974-7655.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Nevada submitted a Part D SIP which demonstrated that the CO standard could not be attained by 1982 in the Truckee Meadows and Las Vegas Valley nonattainment areas. Consequently, Nevada requested an extension for attainment of the CO standard in these areas. As required by section 172(b)(11)(B), Nevada also submitted a schedule for the implementation of I/M in these areas.

On April 14, 1981 (46 FR 21758) and September 14, 1981 (46 FR 45605), EPA approved Nevada's revised SIP for CO including the extension requests and the I/M schedule.

On December 29, 1978, the Governor of Nevada submitted statutes and regulations which together provided for the implementation of an I/M program in portions of Nevada, including the Truckee Meadows and Las Vegas Valley nonattainment areas. The legislation and supporting regulations established, in progressive steps, a mandatory annual I/M program for all used light-duty vehicles being registered or reregistered in counties with more than 100,000 population. The Air Quality Regulations for Mobile Equipment, also submitted on December 29, 1978, provided that, on or after July 1, 1979, such vehicles in Clark (Las Vegas Valley) and Washoe (Truckee Medows) Counties must have evidence of compliance with State exhaust emission standards.

Revised legislation submitted to EPA on July 24, 1979 changed the mandatory I/M start date and provided for implementation or after July 1, 1981. Because the July 1, 1981 start date did not affect the ability of the program to achieve the required emission reductions by 1987, EPA approved the revision and incorporated it into the Nevada SIP on April 14, 1981 (46 FR 21758). Although the approved legislation did not require start-up until July 1, 1981, it allowed the Board of County Commissioners for either Clark or Washoe County to require, by county ordinance, State implementation of the program by a specified date before July 1, 1981.

Since EPA's approval of the I/M implementation schedule, the Nevada Legislature, once again, delayed the mandatory start date from July 1, 1981 to July 1, 1983. This new legislation, however, also provided the Board of County Commissioners with the option to require State implementation of the I/M program by a specified date before July 1, 1983.

EPA I/M policy requires that decentralized I/M programs begin operation by December 31, 1981. Even though the revised legislation changed the mandatory start date of the program to July 1, 1983, the County Commissioners were given the opton of requiring the program to start earlier. Therefore, despite the change in the legislation, conformance to EPA's policy was still possible.

Although the mandatory I/M start date was changed to July 1, 1983, the approved Nevada SIP has not been subsequently revised and still requires I/M implementation by July 1, 1981.

(Even if revised, the latest approvable start date for the program would be December 31, 1981.) The Board of County Commissioners for Clark and Washoe Counties have not adopted ordinances requiring State I/M implementation before July 1, 1983 and mandatory annual I/M is not currently being implemented in either county.

Because of the apparent delays in Nevada meeting its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Nevada, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Nevada was no longer meeting its SIP commitments regarding its I/M program. A response dated June 2, 1982 was received from the Clark County Health District; however, no information was submitted to show that Nevada was, in fact, implementing the I/M portion of the SIP.

In its 1983 legislative session, the Nevada Legislature delayed the mandatory start date from July 1, 1983 to October 1, 1983. The best information currently available to EPA is that the State is working toward implementation of the I/M program at that time.

B. Proposed Findings and Action

Based on Nevada's apparent failure to meet its approved I/M schedule, EPA is proposing to find that Nevada is no longer implementing and carrying out its approved CO plans in the Truckee Meadows and Las Vegas Valley nonattainment areas.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementating its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. *Cut-off of Clean Air Act Funds*

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Nevada Department of Conservation and Natural Resources, the Clark County Health District and the Washoe County District Health Department, the State and local agencies eligible to receive Clean Air Act funds for air quality planning in the Truckee Meadows and Las Vegas Valley nonattainment areas. EPA is not proposing to withhold any funds to be used in areas of the state which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. *Construction Moratorium*

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of CO in the Truckee Meadows and Las Vegas Valley nonattainment areas. This ban will apply to all major CO sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Nevada is no longer implementing its approved CO plan. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983. As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register**.

List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172, 173(4),176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4) 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20215 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5h]

Federal Assistance Limitations and Construction Moratorium; State of Pennsylvania

AGENCY: Environmenal Protection Agency.

ACTION: Notice reopening comment period.

SUMMARY: On March 5, 1982 (47 FR 9477) the Administrator proposed to find that the Commonwealth of Pennsylvania was no longer implementing its ozone and carbon monoxide State Implementation Plans (SIPs) in the Pittsburgh, Philadelphia and Allentown-Bethlehem-Easton areas. That proposed action resulted from action by the Pennsylvania legislature to prohibit the expenditure of public funds to implement a motor vehicle inspection/maintenance (I/M) program, a program required by the approved SIPs, in those areas. Because there have been recent developments related to the I/M program in Pennsylvania, and because EPA is now proposing both new criteria for determining SIP implementation and additional alternatives for determining the amount of funds to be withheld in areas where findings of nonimplementation are affirmed, EPA is reopening the public comment period on that proposed action.

DATES: Written comments must be submitted by September 19, 1983. EPA will schedule public hearings on the proposed action if requested during the public comment period and will announce the date and location of any hearings in the **Federal Register**.

ADDRESSES: Written comments should be sent to Sheldon M. Novick, Regional Counsel, Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Sheldon M. Novick, Regional Counsel, Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-9821.

SUPPLEMENTARY INFORMATION:

On March 5, 1982, the Agency proposed to find that the Commonwealth of Pennsylvania was no

longer implementing its ozone and carbon monoxide SIPs in Pittsburgh, Philadelphia and Allentown-Bethlehem-Easton because of apparent nonimplementation of the I/M program in these areas. At that time, EPA established a 20-day public comment period and announced that a public hearing would be held if requested.

Since EPA received requests for a hearing, a public hearing was announced on June 15, 1982 (47 FR 25743) and held in Philadelphia on August 20, 1982. In both the March 5, 1982 proposed action and the August 20, 1982 notice of public hearing, details of Pennsylvania's failure to implement I/M and of the consequences of a failure to implement a Part D SIP are discussed. In the March 5, 1982 proposed action, EPA proposed a specific level of funding limitation to be imposed in Pennsylvania if a final finding of nonimplementation was made.

In a general notice of proposed rulemaking which appears separately in today's **Federal Register**, EPA is requesting comment on what criteria to apply for determining whether a State is implementing its SIP and several alternatives for determining the extent of funding limitations to be applied in States where EPA makes findings of nonimplementation. Once a method of determining the amount of such limitations is chosen, EPA will apply it to Pennsylvania, as well as to other affected States, to determine the amount of funds to be withheld. Since EPA's March 5 proposal did not include a request for comment on either of these issues, the Agency believes that it is appropriate to reopen the comment period to allow Pennsylvania and other interested parties to submit comments and information on these issues.

Providing an opportunity for submission of additional information on Pennsylvania's I/M status is especially appropriate here, where there have been several recent developments with regard to Pennsylvania's I/M program. The State legislature passed and the Governor signed into law on May 4, 1983, a bill to restore the funding for the I/M program. In addition, a new I/M schedule has been adopted by the State which calls for the final implementation of the I/M program by June, 1984. In light of these developments, the Agency believes that it is appropriate to reopen the public comment period on the proposed withholding of funds from Pennsylvania.

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172 and 301, Clean Air Act; 42 U.S.C. 7410, 78502, and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20216 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5i]

Federal Assistance Limitations and Construction Moratorium; State of Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Tennessee has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The 1979 SIP revisions approved by EPA for Nashville and Memphis contain schedules and commitments to implement I/M programs. Nevertheless, the programs were not implemented in these areas by December 31, 1982, as required.

As a result, EPA is today proposing to find that the State of Tennessee is no longer implementing its approved carbon monoxide (CO) SIPs in Nashville and Memphis. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in both areas.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing on this proposed action, if requests for a public hearing are received during the comment period.

DATES: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearings should be sent to Ron McHenry, Environmental Protection Agency, Region IV, 345 Courtland St., N.E., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Ron McHenry, Environmental Protection Agency, Region IV, 345 Courtland St., N.E., Atlanta, GA 30365, 404/881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Tennessee submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the Nashville-Davidson County area and that the CO standard could not be attained by 1982 in the Memphis-Shelby County area. Consequently, Tennessee requested an extension for attainment of the O_3 and CO standards in Nashville and for attainment of the CO standard in Memphis. As required by section 172(b)(11)(B), Tennessee also submitted a schedule for the implementation of I/M in both areas.

On August 13, 1980 (45 FR 53809) and September 2, 1981 (46 FR 43970), EPA approved Tennessee's revised SIPs for O_3 and/or CO for Nashville and Memphis, respectively, including the extension requests and the I/M schedules. In its 1982 SIP submittal, Tennessee demonstrated that the ozone standard could be met in Nashville by December 31, 1982; therefore, an extension for the ozone standard was no longer needed in Nashville.

The 1979 SIP revision approved by EPA for Nashville in August 1980 contained a schedule and commitment to implement I/M by December 31, 1982. Primary milestones in the 1979 SIP schedule include: (1) Development and issuance of RFP—January 1981; (2) award to contractor(s)—April 1981; (3) initiation of construction of facilities—July 1981; (4) completion of construction of facilities—August 1982; and (5) completion of equipment purchase and delivery of equipment—August, 1982.

In March 1981, the Nashville Metropolitan Council deferred indefinitely a resolution authorizing implementation of the Metropolitan Health Department's I/M regulations and proposed enforcement mechanism. As a result, the State did not meet its SIP commitment and schedule for full implementation of an I/M program in Nashville by December 31, 1982. The Metropolitan Council passed resolutions authorizing implementation of regulations and registration enforcement in May and June 1983, respectively.

Because of Nashville's apparent delays in meeting its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Tennessee, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Tennessee was no longer meeting its SIP commitments regarding its I/M program. A response dated May 27, 1982 was received from the Governor; however, no information was submitted to show that Tennessee was, in fact, implementing the I/M portion of its SIP in Nashville.

The approved SIP for the Memphis-Shelby County area contains a schedule and commitment to implement an I/M program by December 31, 1982 in conjunction with the Memphis-Shelby County centralized vehicle safety inspection program. Due to apparent delays in finalizing the Memphis I/M equipment specifications and in awarding the final equipment contract, the I/M program was not implemented in Memphis by December 31, 1982, as required. Consequently, it appears that Tennessee is not implementing on schedule the I/M portion of its approved CO SIP in Memphis. The best information currently available to EPA is that the I/M program will be under way in Memphis by August 1983.

B. Proposed Findings and Action

Based on Tennessee's failure to meet its approved I/M schedules in Nashville and Memphis, EPA is proposing to find that Tennessee is no longer implementing and carrying out its approved CO plans in the Nashville-Davidson County and Memphis-Shelby County areas.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds.

Pursuant to Section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Tennessee Air Pollution Control Division, the Nashville-Davidson County Metropolitan Health Department, and the Memphis-Shelby County Metropolitan Health Department, the State and local agencies which have I/M SIP responsibilities in the Nashville-Davidson County and the Memphis-Shelby County areas. EPA is not proposing to withhold any funds to be used in other areas of the State. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium.

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of CO in the Nashville-Davidson county and Memphis-Shelby County area.

This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Tennessee is no longer implementing its approved CO plans in Nashville and Memphis. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.* appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20217 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AMS-FRL-2328-5]

Federal Assistance Limitations and Construction Moratorium; State of Texas

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Texas has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The 1979 revisions to the Texas SIP for control of ozone (O_3) contained legislative provisions that directed the Texas Air Control Board (TACB) to prepare for an I/M program in Harris County to allow for full implementation of the program by December 31, 1982. TACB subsequently committed in its 1982 SIP to implement portions of a parameter inspection program in Harris County on January 1, 1983. EPA has proposed to disapprove that parameter inspection program (48 FR 5114, February 3, 1983). Because Texas has only implemented portions of its program at this time, it appears that the SIP deadline for full implementation of an approvable program by December 31, 1982 was not met.

As a result, EPA is today proposing to find that the State of Texas is no longer implementing its approved 1979 O_3 SIP in Harris County. If EPA takes final action affirming this finding, funding limitations and a construction moratorium will apply in this area.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATES: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESSES: Written comments or request for public hearings should be sent to Jack Divita, Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Dolores S. Johnson, Environmental Protection Agency, Region, VI, 1201 Elm St., Dallas Texas 75270, (214) 767–9861.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 172(a) of the Act, the State of Texas submitted a Part D SIP which demonstrated the the O_3 standard could not be attained by 1982 in Harris County. Consequently, Texas requested an extension for attainment of the O_3 standard in this area. On December 18, 1979 (44 FR 74830), EPA approved the portions of Texas' revised SIP for O_3 relating to the 1987 extension request and the provisions for an I/M program in Harris County, which included a final implementation deadline of December 31, 1982.

In 1980, the TACB conducted a pilot I/M program in Harris County and investigated alternative I/M program designs. The report on the pilot study to the Texas legislature stated that I/M could not be recommended as a prudent air pollution control strategy for Harris County but that I/M legislation should be considered in view of the threat of sanctions. The Texas legislature adjourned in 1981 without passing additional legislation.

By early 1982, it appeared that the State had ceased to prepare for implementation of an I/M program since certain actions, such as prepartion of rules and regulations and requests for proposals for contractor assistance, had not been completed. Because of the apparent delays, EPA sent a letter to the Governor of Texas on April 30, 1982, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Texas was no longer meeting its 1979 SIP commitments regarding I/M.

The Governor responded to the EPA Administrator in a June 3, 1982 letter indicating that evidence could be provided to show that the State was continuing to work on the I/M situation.

In the meantime, on May 25, 1982, the TACB submitted to EPA a draft 1982 O_3 SIP for Harris County which included provisions for a vehicle parameter inspection program. Additional necessary information was provided up until December 9, 1982 when a final revision to the 1982 O_3 SIP for Harris County was submitted to EPA.

On February 3, 1983 (48 FR 5114), EPA published a notice of proposed rulemaking proposing to find that the State's parameter inspection program does not satisfy the requirements for "reasonably available control measures" and "reasonably available control technology" in Section 172 (b)(2) and (b)(3) of the Clean Air Act. It appears that the State's program cannot achieve a minimum reduction of 25 percent in hydrocarbon exhaust emissions from light-duty vehicles by December 31, 1987, as required by EPA policy. Consequently, EPA proposed to disapprove this portion of the 1982 O_3 SIP for Harris County. Additional information on the parameter I/M program is included in the February proposal. In addition, in the 1982 SIP submittal the State did not commit to begin implementing all aspects of the program by January 1, 1983. This schedule demonstrates that Texas is not meeting its commitment for full implementation by the end of 1979.

B. Proposed Findings and Action

Based on Texas' apparent failure to meet its 1979 SIP commitment, EPA is proposing to find that Texas is no longer implementing and carrying out its approved O_3 plan in Harris County.

During the public comment period, EPA will consider any comments on the issue of whether the State is meeting its commitment for full implementation in the approved 1979 plan. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that an I/M program is being fully implemented and carried out in accordance with EPA's requirements, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds

Pursuant to section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Texas Air Control Board, the State agency which has I/M SIP responsibilities in Harris County. EPA is not proposing to withhold any funds to be used in areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses the applicable requirements of the Clean Air Act and alternative formulas for calculating the amount of funds to be withheld.

2. Construction Moratorium

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons in Harris County. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Texas is no longer implementing its approved O_3 plan. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register**.

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b), and 7601)

Dated: July 20, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-20218 Filed 8-2-83; 8:45 am]

BILING CODE 6560-50-M

40 CFR Part 52

[AMS-FRL-2328-5k]

Federal Assistance Limitations and Construction Moratorium; State of Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: EPA is proposing to find that the State of Wisconsin has failed to implement a motor vehicle inspection and maintenance (I/M) program as required by its State Implementation Plan (SIP) revisions that were approved to meet the January 1979 planning deadline under section 172 of the Clean Air Act. Section 176(b) of the Clean Air Act requires EPA to withhold Clean Air Act funds from any area where a state or local government has failed to implement an approved or promulgated State Implementation Plan (SIP). Section 173(4) and 40 CFR 52.24 impose a moratorium on the construction of major new stationary sources and major modifications of existing stationary sources in any area where EPA finds that a state is not carrying out an approved Part D SIP.

The approved Wisconsin SIP contains legal authority and a commitment to implement a contractor-operated, centralized I/M program in the greater Milwaukee area by December 31, 1982. The best evidence available to EPA indicates that the State has failed to implement its program by December 31, 1982, as required.

As a result of this action, EPA is today proposing to find that the State of Wisconsin is no longer implementing its approved ozone (O_3) and carbon monoxide (CO) SIPs in this area. If EPA takes final action affirming these findings, funding limitations and a construction moratorium will apply in this area.

EPA is providing a 45-day comment period on this proposed action. EPA will hold a public hearing if requests for a hearing are received during the comment period.

DATE: Written comments or requests for public hearings must be submitted by September 19, 1983.

ADDRESS: Written comments or requests for public hearings should be sent to Gary Gulezian, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a)(2) of the Act, the State of Wisconsin submitted a Part D SIP which demonstrated that the O_3 and CO standards could not be attained by 1982 in the Milwaukee area. Consequently, Wisconsin requested an extension for attainment of the O_3 and CO standards in this area. As required by section 172(b)(11)(B), Wisconsin also submitted a schedule for the implementation of I/M in this area.

On May 6, 1981 (45 FR 25294), EPA approved Wisconsin's revised SIPs for O_3 and CO, including the extension requests and the commitment to implement and I/M program.

Because of apparent delays in Wisconsin meeting its I/M schedule, on April 30, 1982, EPA sent a letter to the Governor of Wisconsin, notifying him of the apparent situation of nonimplementation and of EPA's intention to publish a notice proposing to find that Wisconsin was no longer meeting its SIP commitments regarding its I/M program. A response dated May 28, 1982 was received from the Governor; however, no information was submitted to show that Wisconsin was, in fact, implementing the I/M portion of its SIP. The program was not implemented by December 31, 1982, as required; nevertheless, there has been some recent progress toward implementation of the I/M program. On December 10, 1982, the Wisconsin Department of Transportation signed a contract with Hamilton Test Systems for the implementation of a centralized I/M program in southeastern Wisconsin. This contract calls for final implementation of the I/M program on or before April 2, 1984.

B. Proposed Findings and Action

Based on Wisconsin's apparent failure to meet its I/M commitment, EPA is proposing to find that Wisconsin is no longer implementing and carrying out its approved O_3 and CO plans in the Milwaukee area.

During the public comment period, EPA will consider any comments on the issue of whether the State is implementing its approved plans. If, prior to EPA's final action on this matter, the State can satisfactorily demonstrate that the I/M provisions of its SIP are being implemented and carried out, EPA will withdraw this proposal.

After the close of the comment period and evaluation of public comments, if no resolution is reached, EPA will publish a Notice of Final Rulemaking in the **Federal Register**, imposing the federal assistance limitations and construction moratorium, as discussed below. The federal assistance limitations and the construction moratorium would both be effective upon publication of the Notice of Final Rulemaking.

1. Cut-off of Clean Air Act Funds.

Pursuant to Section 176(b) of the Act, EPA is proposing to withhold Clean Air Act funds from the Wisconsin Department of Natural Resources, the State agency which has I/M SIP responsibilities in the Milwaukee area. EPA is not proposing to withhold any funds to be used in other areas of the State which do not need I/M. The general notice of proposed rulemaking appearing separately in today's **Federal Register** discusses various proposed formulas for determining the amount of funds to be withheld.

2. Construction Moratorium.

Pursuant to section 173(4) of the Act and 40 CFR 52.24, a finding of nonimplementation will bring into effect a ban on construction of major new stationary sources and major modifications of existing stationary sources of hydrocarbons and CO in the Milwaukee area. This ban will apply to all major sources and modifications which have not yet received preconstruction permits required under the State's new source review program for nonattainment areas.

C. Request for Comment

EPA is soliciting comment on its proposed finding that Wisconsin is no longer implementing its approved O_3 and CO plans. EPA will consider all comments received within 45 days of the publication of this notice (comment deadline is September 19, 1983). As part of the general notice of proposed rulemaking appearing separately in today's **Federal Register**, EPA is also soliciting comments on proposed formulas for determining the amount of air grant funds to be withheld and on when the funding limitations and construction moratorium, if imposed, should be removed.

D. Regulatory Impact

A discussion of applicable requirements of Executive Order 12291 and the Regulatory Flesibility Act, 5 U.S.C. 600 *et seq.* appears in the general notice of proposed rulemaking that appears separately in today's **Federal Register.**

List of Subjects in 40 CFR Part 52

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

(Sec. 110, 172, 173(4), 176(b), and 301, Clean Air Act; 42 U.S.C. 7410, 7502, 7503(4), 7506(b) and 7601)

Dated: July 20, 1983.

Willian D. Ruckelshaus,

Administrator.

[FR Doc. 83-20219 Filed 8-2-83; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
August 3, 1983

Part V

Department of Education

Office of Elementary and Secondary Education

Indian Fellowship Program; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 263

Indian Fellowship Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues these regulations to provide appropriate criteria for awarding Indian Fellowships, and to reduce burdens upon applicants by clarifying the regulations governing the Indian Fellowship Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice T. Ford, Coordinator, Indian Fellowship Program, U.S. Department of Education, 400 Maryland Avenue, S.W. (FOB–6, Room 2147) Washington, D.C. 20202. Telephone: (202) 245–8840.

SUPPLEMENTARY INFORMATION: The Indian Fellowship Program was originally authorized under Pub. L. 92–318, the Indian Education Act, Section 423, as amended by Pub. L. 93–380 in 1974 and was amended by the Education Amendments of 1978, Pub. L. 95–561, Section 1152, 20 U.S.C. 3385b. Proposed amended regulations were published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 10, 1983 (48 FR 10280–10283). The preamble to the NPRM fully described the background and major issues.

These final regulations provide for the distribution of program funds to Indian students by awarding fellowships in order to enable them to pursue a course of study leading toward a postbaccalaureate degree in medicine, law, education, and related fields; or an undergraduate or graduate degree in engineering, business adminstration, natural resources, and related fields.

These final regulations implement the provisions of Section 423 of the Indian Education Act as amended by Section 1152 of the Education Amendments of 1978.

The application notice that established the closing date for transmittal of Fiscal Year 1983 applications, published in the **Federal Register** on March 16, 1983 (48 FR 11146–11147), advised applicants to prepare new applications in accordance with the March 10, 1983 proposed regulations.

Potential applicants were additionally advised that if there were any substantive changes in the final regulations they would be afforded the opportunity to amend their applications. There are only minor changes in the final regulations, which do not necessitate any amendments to these applications.

The Department of Education received public comments on the proposed regulations. Following is a summary of those comments and the Secretary's responses:

Subpart A—General

Section 263.2 Who is an eligible applicant for financial assistance?

Comment. One commenter asked what is anticipated to be the effect of eliminating from the description of eligible applicants those residing in the United States "for other than temporary purpose."

Response. No change has been made. It is not anticipated that this change will significantly alter the population to be served by this program.

Comment. One commenter asked what is anticipated to be the effect of rendering ineligible anyone who has received a "terminal graduate or postbaccalaureate degree" in any of the eligible fields of study.

Response. No change has been made. In the Secretary's opinion, an applicant with a terminal graduate or postbaccalaureate degree in any of the eligible fields has already accomplished the purpose of this program. By eliminating these applicants, additional Indian students can be trained in these areas of critical need. It is not anticipated, however, that this change will affect substantially the students who will be served by this program.

Comment. One commenter asked what is anticipated to be the effect of requiring graduate student Fellows to be recognized by the institution of higher education as a degree candidate.

Response. No change has been made. In addition to this requirement, the regulations also state in § 263.1 that the purpose of the fellowship program is to enable Indian students to pursue a course of study leading to an undergraduate or graduate level degree. In our attempt to eliminate ambiguities and clarify certain aspects of the statute, we are requiring Fellows to be recognized by the institution of higher education as degree candidates. This requirement should eliminate from the program students who are less likely to receive a degree in one of the eligible fields of study.

Comment. One commenter asked what is the anticipated effect of the requirement to demonstrate financial aid need.

Response. No change has been made. By requiring applicants to demonstrate financial aid need, Fellows will receive a fellowship award on the basis of actual financial need. It is anticipated that this will reduce the average amount of fellowship awards and enable more Indian students to receive fellowships.

Section 263.4 What are the allowable fields of study?

Comment. Several commenters recommended that certain fields of study be included, either in their own right, or as related to one or more of the eligible fields specified in the Act. The recommended fields were history, anthropology, social sciences, special education, vocational education, early childhood education, bilingual education, and educational administration.

Response. No change has been made. Section 423 of the Indian Education Act lists the six eligible fields and allows awards in "related fields." None of the recommended fields is included in the statutory list. Applications for fellowships in related fields of study in addition to those listed will be reviewed on a case-by-case basis, as provided in § 263.4(c).

Comment. One commenter recommended that "education" as a field and "education" as a profession be reconciled.

Response. No change has been made. The Secretary interprets the statutory reference to Fellows in the field of education to be limited to students working toward a degree in education.

Section 263.5 What does a fellowship award include?

Comment. One commenter questioned the deletion of an allowance for reasonable cost for necessary research in cases of extreme hardship.

Response. A change has been made. Research expenses in cases of extreme hardship has been added as an allowable expense in § 263.3.

Comment. One commenter asked if loans will be used in the calculation of the student's available financial assistance.

Response. A change has been made. The definition of "resources" in § 263.3 has been rewritten to clarify that the regulations do not include loans in the calculation of the student's available financial assistance.

Section 263.6 Application contents: Evidence that the applicant is Indian.

Comment. One commenter asked what specific documentation will now be required since the proposed

regulations delete the detailed descripition of the documentation required. The commenter also asked: "How will that differ from requirements under the current regulations? How will the applicants know what documentation is required?"

Response. No change has been made. The regulations do not contain the detailed description of documentation required as evidence that the applicant is Indian because that specific documentation is not mandated by the statute. However, examples of acceptable documentation have been included in the application instructions to assist the applicant.

Section 263.9 Application contents: Evidence of financial aid need.

Comment. One commenter asked how changing the weight of financial aid need from a 20 point criterion in judging an application into a threshold requirement for a receipt of a fellowship would alter the current evaluation process and the administration of this program.

Response. No change has been made. The current regulations list financial need as a criterion worth 20 points, but the regulations do not require specific information concerning the applicant's needs and resources. By changing financial need from an evaluation criterion worth 20 points to an eligibility requirement, and clearly specifying the information that is required, the Indian Education Programs office can make a better assessment of the financial need of applicants. This will result in more efficient use of program funds and the savings can be used for awarding additional fellowships. The evaluation criteria will allow the program to fund applicants based on their academic status and leadership potential and will decrease the funding of Fellows who are less likely to succeed academically.

Comment. One commenter recommended that provisions be developed that would address whether these fellowships supplement Bureau of Indian Affairs' (BIA) awards or whether BIA awards supplement the fellowships, and said that as now proposed, it is possible that an applicant's funding to (from) either program could be dependent upon which program supplements which.

Response. No change has been made. The program staff coordinates the funding of students with the BIA and other funding sources to assure that the students receive adequate funding while not being overfunded.

Comment. One commenter stated concern about the requirement that the student submit a detailed financial statement, and could only agree if the admitting university is allowed to specifiy the financial aid information related to the student's financial aid package.

Response. No change has been made. The applicant is required to submit certain financial information in the application, and may seek assistance from the university or anyone else who can assist in compiling the information. The admitting university cannot specify the necessary financial aid information because the Department needs to receive consistent information on all applicants. In addition, students often receive awards directly without the knowledge of the university.

Comment. One commenter recommended that the Secretary be allowed latitude for funding those applicants who are not eligible for the Pell Grant assistance due to parental income, but are unable to provide the assessed parental contribution because of ongoing family expenses.

Response. No change has been made. The Secretary allows the awarding of fellowships to students who do not qualify for Pell Grants. There is no assessed parental contribution in determining the amount of fellowship awards, but actual family contributions are considered.

Section 263.10 Application contents: Other information.

Comment. One commenter asked how will promulgation of the requirement for (1) three letters of assessment; (2) an "educational commitment essay;" (3) evidence of awards, honors, etc.; and (4) standardized test scores differ from the current administration of this program.

Response. A change has been made. This section has been eliminated because the same information is required by § 263.12. Under the current administration of the program there is no specific requirement for an applicant to submit three letters of assessment or an educational commitment essay. These items are required as a result of the new evaluation criteria which are intended to provide for an improved evaluation of the applicant's potential.

Subpart B—How Are Fellows Selected?

Section 263.11 What priorities may the Secretary establish?

Comment. One commenter recommended that each allowable field of study be guaranteed some level of funding each year since each of these fields has been identified as an area where there are shortages of Indian professionals.

Response. No change has been made. The Secretary recognizes that each of the allowable fields has been identified as an area where there are shortages. The Secretary also recognizes that funds are more readily available to students in some of these fields than in others. Therefore, it may be necessary to establish priorities among the allowable fields of study. The Secretary also will have the discretion to target funds to those areas in which there is the greatest shortage of Indians.

Comment. One commenter recommended that priorities should be established and revised with the full participation of the public, and at a minimum this should include publication of comments in the **Federal Register** at least one year in advance for their adoption.

Response. No change has been made. The allowable fields of study are mandated by statute. Any priorities that are selected will be announced in the application notice published in the **Federal Register.** The Secretary cannot publish priorities a year in advance because budget constraints are not always established that far in advance.

Section 263.12 What priority is given to certain applicants?

Comment. One commenter indicated that this section is identical to § 263.11 of the current regulations.

Response. No change has been made. Section 263.12 of the proposed regulations (redesignated § 263.13 of these regulations) is substantively the same as § 263.11 of the current regulations.

Section 263.13 How does the Secretary evaluate applications?

Comment. One commenter recommended that paragraph (c)(3)(ii) of this section which requires that one letter of assessment be from "a school principal, counselor, or coordinator of a program funded under Part A of the Indian Education Act" be revised to allow applicants greater flexibility in submitting letters of recommendation.

Response. A change has been made. Submission of a letter of assessment from an academic advisor has been added to paragraph (c)(3)(ii) of this section to allow flexibility.

Comment.

One commenter indicated that there does not appear to be a criterion in the proposed regulations which parallels the "Indian Service" component which is a 30 point factor in the current regulations, and that the mention of "Indian Service" in the proposed regulations under "commitment" is considerably weaker

than in the current regulations. The commenter asked what effect this will have.

Response. No change has been made. The "Indian Service" component in the current regulations is vague and has been difficult to apply. By requiring applicants to submit an educational commitment essay, the Secretary expects that a better evaluation can be made of the applicant's potential and his or her commitment to the Indian community.

Subpart C—What Conditions Must Be Met by Fellows?

Section 263.21 Required certification of information.

Comment. One commenter asked how requiring proof of information, including a copy of the applicant's Federal Income Tax form on request of the Secretary, alters current administration of the program.

Response. No change has been made. Current regulations do not contain administrative procedures for obtaining complete information on an applicant's financial aid need, or verifying that and other information. This section will provide the Secretary with the necessary mechanism so that information in the application can be properly verified.

Response. No change has been made. Current regulations do not contain administrative procedures for obtaining complete information on an applicant's financial aid need, or verifying that and other information. This section will provide the Secretary with the necessary mechanism so that information in the application can be properly verified.

Section 263.22 Time period for fellowship.

Comment. One commenter asked what the requirements for continuation applications and demonstration of "continued financial aid need" involve, how will this differ from current administration of the program, and will addition of these requirements add considerably to the burdens on the educational institutions and the recipients?

Response. No change has been made. A continuation application has always been required by the program for continued funding. However, it is not stated in the current regulations. This requirement was placed in the regulations to provide the Fellow with a clear understanding of what is necessary to receive continued funding.

In order to demonstrate continued financial aid need, the applicant will be required to submit a financial statement with each continuation application. The financial statement will disclose the applicant's financial resources and expenses. Applicants who have filed an adequate financial statement with their institutions of higher education do not need to fill out additional statements. A copy of that statement may be submitted with the fellowship application.

The current regulations do not require for a continuation award specific information concerning an applicant's needs and resources. This change will enable the program to make awards that will be based upon each student's needs and actual resources; therefore, funds may be available for awards to a larger number of students. It is not anticipated that these requirements will normally add substantially to the burdens on either the applicant or the educational institution.

Comment. One commenter asked why the proposed regulations limit fellowships for a master's degree program to two years.

Response. No change has been made. Fellowships for a master's degree program are limited to two years because that is the amount of time usually necessary to complete a master's degree when a student is full-time and is carrying a full course load. In order to receive a Fellowship, a fellow must be a full-time student and carry a full course load.

Section 263.23 Responsibilities of a Fellow.

Comment. One commenter asked what is the significance of adding the requirement for completion of at least one academic term. What is the expected effect?

Response. No change has been made. By requiring the completion of one full academic term during the first year of the award, the Fellow cannot delay indefinitely entering the institution of higher education and funds will not be idle at the institution. This requirement is also advantageous to the Fellow because a leave of absence cannot be approved unless the institution certifies that he or she is eligible to resume his or her course of study at the end of the leave of absence. The institution normally will not give this certification unless the Fellow has completed one academic term. This requirement will have the effect of ensuring that Fellowship recipients enter school and use the award, or relinquish the award so that the funds can be made available to another applicant.

Section 263.26 Requirements for an alternate Fellow.

Comment. One commenter recommended that this section be reworded to allow the Secretary to award unexpended funds to an alternate applicant at any institution instead of at the institution where the award was vacated.

Response. No change has been made. Fellowships that are declined before September 30 are awarded to alternate applicants at any institution. Fellowships are usually not vacated or discontinued until after September 30 which is the deadline for making awards. Consequently, the award is given to an alternate at the institution that already has the unexpended funds.

Subpart D—Who is Responsible for the Administration of Grant Payments?

Section 263.31 Disbursement of funds.

Comment. One commenter recommended that paragraph (a) be revised to disburse funds directly to the individual applicant since his understanding of § 263.1 and § 263.2 is that the Fellowship Program makes awards to individual qualified applicants for their use in pursuing their studies. To disburse funds directly to an institution indicates something else.

Response. No change has been made. Sections 263.1 and 263.2 do not specify how the funds will be disbursed. By disbursing the funds, in the Fellow's name, directly to the institution where a Fellow is enrolled, the Secretary is providing a fellowship to that individual as stated in § 263.1.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have significant economic impact on a substantial number of small entities. These regulations apply to fellowship applicants and individuals who are not classified as small entities.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

Information requirements contained in these regulations (sections 263.6 through 263.9) have been approved by the Office of Management and Budget under the provisons of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned an OMB control number. This control number appears as a citation following the appropriate paragraphs.

List of Subjects in 34 CFR Part 263

Colleges and universities, Education, Engineers, Health Professions, Indian education, Law, Natural resources, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in the parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.087; Indian Fellowship Program)

Dated: July 28, 1983.

T. H. Bell,

Secretary of Education.

Part 263 of Title 34 of the Code of Federal Regulations is revised as follows:

PART 263—INDIAN FELLOWSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—What Should the Application Contain?

Subpart C—How Does the Secretary Select Fellows?

Subpart D—What Conditions Must Be Met by Fellows?

Subpart E—Who Is Responsible for Grant Payments?

Authority: Sec. 423 Indian Education Act, as amended (20 U.S.C. 3385b), unless otherwise noted.

Subpart A—General

§ 263.1 What is the Indian Fellowship Program?

The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

(a) A postbaccalaureate degree in medicine, law, education, and related fields as described in § 263.4(a) (1) through (3) and (c); or

(b) An undergraduate or graduate degree in business administration, engineering, natural resources, and related fields as described in § 263.4(b) (1) through (3) and (c).

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

(a) In order to be eligible for a fellowship an applicant must be—

(1) An Indian as defined in § 263.3;

(2) A United States citizen; and

(3)(i) Currently in attendance or accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields or related fields listed in § 263.4; and

(ii) Recognized by that institution as a degree candidate.

(b) An applicant must not have obtained a terminal graduate or postbaccalaureate degree in one of the fields listed in § 263.4.

(c) An applicant must have demonstrated financial aid need, as defined in § 263.3.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.3 What definitions apply to the Indian Fellowship Program?

The following definitions apply to the Indian Fellowship Program:

Department means the U.S. Department of Education.

Dependent care means the care of minor children who reside with the Fellow.

Expenses means tuition and required fees, required university health insurance, room and board at or near the institution, travel and necessary research in cases of extreme hardship, instructional supplies, and dependent care associated with attendance at an institution of higher education.

Fellow means the recipient of a fellowship under the Indian Fellowship Program.

Fellowship means an award under the Indian Fellowship Program.

Financial aid need means the difference between a student's expenses for the academic year and his or her resources.

Full course load means the number of credit hours which the institution requires of a full-time student.

Full-time student means a student who—

(a) Is a degree candidate;

(b) Carries a full course load; and

(c) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of 2.0 on a 4.0 gradepoint scale in which failing grades are computed as a part of the average.

Indian means any individual who is—

A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(b) A decendant, in the first or second degree, of any individual described in paragraph (a) of this definition;

(c) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(d) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

Indian tribe means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

Institution of higher education means that term as defined in 34 CFR 250.4.

Resources means income, savings, spouse's income, family contributions, and other sources of financial aid, other than loans.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of a fellowship award which is used for personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree and awarded by an institution of higher education.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.4 What are the allowable fields of study?

(a) The following are allowable fields and related fields of study for a postbaccalaureate degree under this program:

(1) Medicine, including fields related to medicine, such as—

(i) Veterinary medicine;

(ii) Nursing;

(iii) Dentistry;

(iv) Optometry or ophthalmology;

(v) Biochemistry;

(vi) Pharmacy;

(vii) Nutrition; and

(viii) Clinical psychology.

(2) Law.

(3) Education, including fields related to education such as—

(i) Computer science; and

(ii) Technology.

(b) The following are allowable fields and related fields of study for an undergraduate or graduate degree under this program:

(1) Business Administration, including fields related to business administration such as—

(i) Accounting;

(ii) Economics;

(iii) Computer science and technology;

(iv) Public administration; and

(v) Mathematics.

(2) Engineering, including fields related to engineering such as—

(i) Architecture;

(ii) Urban or rural planning; and

(iii) Communication Technology.

(3) Natural Resources, including fields related to natural resources such as—

(i) Agricultural science;

(ii) Forestry;

(iii) Horticulture;

(iv) Hydrology;

(v) Fisheries;

(vi) Environmental or earth sciences;

(vii) Geology or geogphysics;

(viii) Oceanography;

(ix) Marine biology;

(x) Mining;

(xi) Chemical and petroleum refining; and

(xii) Metallurgy.

(c) The Secretary considers, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study in addition to those listed in paragraphs (a) and (b) of this section.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to but not more than, the difference between the student's resources, including other sources of financial aid, and the student's expenses, as defined in § 263.3. The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other resources of the student in meeting these expenses.

(b) The Secretary announces for each field of study the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the **Federal Register.**

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart B—What Should the Application Contain?

§ 263.6 Application contents: evidence that the applicant is Indian.

An application must contain evidence that the applicant is Indian as defined in § 263.3 of this part.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

§ 263.7 Application contents: evidence of admission or attendance.

(a) An application must contain evidence that the applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4.

(b) An applicant who has not yet been accepted for admission may submit an application that the Secretary may consider, provided that the applicant is accepted by an accredited institution of higher education by a date to be specified by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.8 Application contents: transcripts.

(a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.9 Application contents: evidence of financial aid need.

(a) An applicant shall demonstrate a need for financial assistance beyond commitments of personal resources, other educational grants, scholarships, Pell Grants, and work study programs to enable him or her to meet allowable expenses for attending an institution of higher education full-time.

(b) To demonstrate need for financial assistance, the applicant must submit the following:

(1) Information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(2) Letters of commitment from granting sources of other financial aid.

(3) Evidence of other pending applications for financial aid.

(4) A copy of the Graduate and Professional Schools Financial Aid Statement (GAPSFAS), the American College Testing Program's Student Need Analysis Statement (Family Financial Statement), or a similar complete statement of financial resources that has been submitted to the institution of higher education.

(Indian Education Act, Section 423; 20 U.S.C. 3385b) (Approved by the Office of Management and Budget Control No. 1800-0020)

Subpart C—How Does the Secretary Select Fellows?

§ 263.11 What priorities may the Secretary establish?

(a) Each year the Secretary may establish priorities among the allowable fields of study described in § 263.4.

(b) The Secretary announces the priorities selected and the approximate amount of funds reserved for any combination of the various fields or related fields of study in the application notice published in the **Federal Register.**

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.12 How does the Secretary evaluate applications?

(a) The Secretary evaluates an application on the basis of the criteria listed in paragraphs (c) and (d) of this section, in addition to the priority points awarded under § 263.13. The maximum possible point range for each criterion is stated in parentheses. The number of points the Secretary awards for each

criterion depends on how well the application addresses all of the factors of that criterion. The total number of points available under the criteria in this section is 100.

(b) The Secretary evaluates and ranks an application with other applications for the same field and related fields.

(c) *Academic record and leadership potential.* (70 points)

(1) The Secretary considers the quality of the applicant's academic record and the applicant's potential for success in his or her field of study by reviewing the items in paragraphs (c) (2) and (3) of this section. The Secretary awards up to 35 points for paragraph (c)(2) and up to 35 points for paragraph (c)(3).

(2) The Secretary reviews the applicant's grade and standardized test scores, such as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievements tests.

(3) The Secretary reviews documentation of any leadership positions held by the applicant while in school and three letters of assessment that address the applicant's potential for success and leadership in his or her field of study.

The applicant must submit one letter from each of the following groups:

(i) A teacher or instructor of the applicant;

(ii) A school principal, counselor, coordinator of a program funded under Part A of the Indian Education Act, or an academic advisor; and

(iii) A parent committee member of an Indian Education Act, Part A, project, tribal council member, advisor or civic leader who has observed the applicant in educational, social, or civic activities.

(d) *Commitment.* (30 points)

(1) The Secretary considers the applicant's commitment by reviewing an educational commitment essay written by the applicant. The Secretary awards up to 30 points for this criterion.

(2) In reviewing the essay, the Secretary looks for—

(i) The applicant's ability to write clearly;

(ii) How well and the extent to which the applicant expresses a commitment of pursuing his or her chosen field of study; and

(iii) The extent to which the essay explains how participation in the fellowship program will enable the applicant to achieve his or her potential and assist him or her in providing leadership to the Indian Community.

§ 263.13 What priority is given to certain applicants?

The Secretary shall award 15 additional points beyond those awarded under § 263.12 to applicants who apply for graduate fellowships in the fields of business administration, engineering, natural resources, and related fields.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart D—What Conditions Must Be Met by Fellows?

§ 263.21 Required certification of information.

To verify the accuracy of the information provided in the application, the applicant, if requested, shall provide all information and documents, including a copy of his or her and spouse's Federal Income Tax return. The applicant's failure to provide the requested information and documents invalidates the application.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.22 Time period for a fellowship.

(a) The Secretary awards a fellowship for a period of time—

(1) Not to exceed four academic years for an undergraduate or doctorate degree; and

(2) Not to exceed two academic years for a master's degree.

(b) The Secretary reviews the status of each Fellow at the end of each year and continues support only if the Fellow—

(1) Has complied with the Indian Education Act and applicable regulations;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded;

(3) Has submitted a noncompeting continuation application requesting additional support; and

(4) Has demonstrated continued financial aid need.

(c) A fellowship terminates when the Fellow receive the degree being sought.

(d) A Fellow who received an undergraduate degree may seek support under this program to pursue a graduate level or postbaccalaureate degree by submitting a new application.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.23 Responsibilities of a Fellow.

A Fellow shall—

(a) Start school during the first year of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term at that institution;

(c) Request a leave of absence from the Secretary for any interruption in his or her program of academic studies;

(d)(1) Submit to the Secretary within 60 days from the start of each academic year, a current financial report that has been reviewed and signed by the financial aid officer at the institution of higher education.

(2) The financial report must state all sources and amounts of financial assistance received by the Fellow for the academic year for which the fellowship applies; and

(e) Report to the Secretary any changes in academic or financial status.

(Indian Education Act, Section 324; 20 U.S.C. 3385b)

§ 263.24 Leave of absence requests.

(a) A Fellow may request a leave of absence from the Secretary for a period not longer than 12 months.

(b) The Secretary permits a leave of absence only if the institution certifies that the Fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.25 Discontinuation of fellowship payments.

(a) The Secretary may discontinue the fellowship, if the Fellow—

(1) Fails to comply with the provisions under this Part, including failure to obtain an approved leave of absence under § 263.24, or with the terms and conditions of the fellowship award;

(2) Fails to disclose any information which substantially affects his or her financial status; or

(3) Fails to report any change in his or her academic status.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the Fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

§ 263.26 Requirements for an alternate Fellow.

If a fellowship is vacated or discontinued, the Secretary may award the unexpended funds from that fellowship to an alternate applicant at that institution, for a period of study which does not exceed the term of the original fellowship.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

Subpart E—Who is Responsible for Grant Payments?

§ 263.31 Disbursement of funds.

(a) Funds are disbursed directly to the institution of higher education where a Fellow is enrolled. Stipends shall be distributed to Fellows in installments by the institution. No fewer than two installments per academic year shall be made. If the fellowship is vacated or discontinued, the Secretary selects an alternate Fellow at that institution or the institution must return the unexpended funds.

(b) A Fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends, that has been received, as determined by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

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federal register

Wednesday
August 3, 1983

Part VI

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Reference Methods; Nitrogen Oxide Emissions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[AD-FRL 2394-2]

Standards of Performance for New Stationary Sources, Reference Methods; Nitrogen Oxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The purpose of this action is to propose "Method 7B, Determination of Nitrogen Oxide Emissions from Stationary Sources—Ultraviolet Spectrophotometric Method," which is to be added to Appendix A of 40 CFR Part 60.

This method was developed to be used as an alternative to promulgated Method 7 and would, at present, apply to nitric acid plants (Subpart G) only. It offers improvements over Method 7 in that the sample analytical time is shortened and precision is improved.

DATE: *Comments.* Comments must be received on or before October 8, 1983.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 25, 1983. A public hearing will be held on September 8, 1983 beginning at 10.00 a.m. Persons interested in attending the hearing should call Mrs. Naomi Durkee at 919 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testomony must contact EPA by September 1, 1983.

ADDRESS: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–83–20, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Environmental Research Center Auditorium, corner of Hwy. 54, Alexander Drive Research Triangle Park, North Carolina. Persons interested in attending the hearing should call Mrs. Naomi Durkee at (919) 541–5578 to verify that a hearing will occur. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket No. A–83–20, containing material relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 514–2237.

SUPPLEMENTARY INFORMATION: Method 7B is being proposed because it offers less analytical time and better precision than Method 7. This method utilizes the evacuated flask sampling procedure outlined in Method 7 of Appendix A, but the recovered sample is then analyzed by ultraviolet spectrophotometry

This method is being proposed as an alternative to Method 7. It would apply to nitric acid plants only.

Miscellaneous

This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on small entities because this rulemaking involves an alternative method.

This proposed rule has been exempt from review under Executive Order 12291.

This proposed rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

Dated July 27, 1983.

William D. Ruckelshaus,

Administrator.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended as follows:

§§ 60.73 and 60.74 [Amended]

1. By amending §§ 60.73 and 60.74 by removing the number "7 or 7A" and inserting, in its place, "7, 7A, or 7B" in the following places:

a. 40 CFR 60.73(a)

b. 40 CFR 60.74 (a)(1) and (b)

2. By amending Appendix A by adding a new method as follows:

Appendix A

* * * * *

Method 7B. Determination of Nitrogen Oxide Emission From Stationary Sources

(Ultraviolet Spectrophotometry)

1. *Applicability and Principle*

1.1 Applicability. This method is applicable to the measurement of nitrogen oxides emitted from nitric acid plants. The range of the method as outlined has been determined to be 57 to 1500 milligrams NO_x (as NO_2) per dry standard cubic meter, or 30 to 786 ppm NO_x (as NO_2), assuming corresponding standards are prepared.

1.2 Principle. A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution, and the nitrogen oxides, except nitrous oxide, are measured by ultraviolet absorption.

2. *Apparatus*

2.1 Sampling. Same as Method 7, Section 2.1.1 through Section 2.1.11.

2.2 Sample Recovery. The following equipment is required for sample recovery:

2.2.1 Wash Bottle. Polyethylene or glass.

2.2.2 Volumetric Flasks. 100-ml (one for each sample).

2.3 Analysis. The following equipment is needed for analysis:

2.3.1 Volumetric Pipettes. 5-, 10-, 15-, and 20-ml to make standards and sample dilutions.

2.3.2 Volumetric Flasks. 1000- and 100-ml for preparing standards and dilution of samples.

2.3.3 Spectrophotometer. To measure ultraviolet absorbance at 210 nm.

2.3.4 Analytical Balance. To measure to within 0.1 mg.

3. *Reagents*

Unless otherwise indicated, all reagents are to conform to the specifications established by the committee on analytical reagents of the American Chemical Society, where such specification are available. Otherwise, use the best available grade.

3.1 Sampling. To prepare the absorbing solution, add 20 ml of 30 percent hydrogen peroxide to approximately 500 ml of water in a 1000-ml volumteric flask. Cautiously add 2.8 ml of concentrated H_2SO_4 to the flask, and make to 1 liter volume. The absorbing solution should not be exposed to extreme heat or direct sunlight and should be used within 1 week of its preparation.

3.2 Sample Recovery. Same as for Method 7, Section 3.2.2.

3.3 Analysis. Same as for Method 7, Section 3.3.4, 3.3.5, and 3.3.7 with the addition of the following:

3.3.1 Working Standard KNO_3 Solution. Dilute 10 ml of the standard solution to 1000 ml with water. One milliliter of the working standard is equivalent to 10 ug nitrogen dioxide (NO_2).

3.3.2 Absorbing Solution. Same as in Section 3.1.

3.3.3 Quality Assurance Audit Samples. Nitrate samples prepared in glass vials by the Environmental Protection Agency (EPA), Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina. Each set will consist of two vials with two unknown concentrations. When making compliance determinations, obtain the audit samples from the Quality Assurance Management office at each EPA regional office.

4. *Procedures*

4.1 Sampling. Same as Method 7, Sections 4.1.1 and 4.1.2.

4.2 Sample Recovery. Let the flask sit for a minimumn of 16 hours, and then shake the contents for 2 minutes. Connect the flask to a mercury filled U-tube manometer. Open the valve from the flask to the manometer, and record the flask temperature (T_f), the barometric pressure, and the difference between the mercury levels in the manometer. The absolute internal pressure in the flask (P_f) is the barometric pressure less the manometer reading.

Transfer the contents of the flask to a 100-ml volumetric flask. Rinse the flask times three with 10-ml portions of water, and add to the volumetric flask. Dilute to 100 ml with water. Mix thoroughly. The sample is now ready for analysis.

4.3 Analysis. Pipette a 20-ml aliquot of sample into a 100-ml volumetric flask. Dilute to 100 ml with water. The sample is now ready to be read by ultraviolet spectrophotometry. Using the blank as zero reference, read the absorbance of the sample at 210 nm.

4.4 Audit Analysis. With each set or sets of compliance samples, analyze two unknown audit samples in the same manner as the samples to evalute the technique of the analyst and the standards preparation. The same person, reagents, and analytical system shall be used both for each set or sets of compliance determination samples and the EPA audit samples. If this condition is met for compliance samples that are analyzed frequently, it is only necessary to analyze the audit samples once per quarter.

Calculate the concentration in mg/m^3 using the specified gas volume in the audit instructions.

(**Note.**—Acceptability of the audit samples may be obtained immediately by reporting the audit and compliance results by telephone.)

Include the results of both audit samples with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency.

5. *Calibration*

Same as Method 7, Section 5.1 and Sections 5.3 through 5.6 with the addition of the following:

5.1 Determination of Spectrophotometer Standard Curve. Add 0.0 ml, 5 ml, 15 ml, and 20 ml of the KNO_3 working standard solution (1 ml = 10μg NO_2) to a series of five 100-ml volumetric flasks. To each flask, add 5 ml of absorbing solution. Dilute to the mark with water. The resulting solutions contain 0.0, 50, 100, 150, and 200 μg NO_2, respectively. Measure the absorbance by ultraviolet spectrophotometry at 210 nm, using the blank as a zero reference. Prepare a standard curve plotting absorbance vs μg NO_2. Note: If other than 20-ml aliquot of sample is used for analysis, then the amount of absorbing solution in the blank and standards must be adjusted such that the same amount of absorbing solution is in the blank and standards as is in the aliquot of sample used. Calculate the spectrophotometer calibration factor as follows:

$$1K_c = \frac{A_1 2A_2 + 3A_3 + 4A_4}{A_1^2 + A_2^2 + A_3^2 + A_4^2} \quad \text{[Eq. 7B-1]}$$

5.2 Spectrophotometer Calibration Quality Control. Multiply the absorbance value obtained for each standard by the K_c factor (least squares slope) to determine the calculated mass of NO_2 for each standard. These calculated values should not differ from the actual value (i.e. 50, 100, 150, 200 μg NO_2) by more than 7 percent for three of the four standards.

6. *Calculations*

Same as Method 7, Sections 6.1, 6.2, and 6.4 with the addition of the following:

6.1 Total μg NO_2 Sample.

$$m = 5 K_c AF \quad \text{[Eq. 7B-2]}$$

Where:

5 = 100/20, the aliquot factor. Note: If other than 20-ml aliquot is used for analysis, the factor 5 must be replaced by a corresponding factor.

6.2 Relative Error (RE) for Quality Assurance Audits.

$$RE = \frac{C_a - C_s}{C_s} \times 100 \quad \text{[Eq. 7B-3]}$$

Where:

C_a = Determined audit concentration.
C_s = Actual audit concentration.

7. Bibliography

1. National Institute for Occupational Safety and Health Recommendations for Occupational Exposure to Nitric Acid. In: Occupational Safety and Health Reporter. Washington, D.C. Bureau of National Affairs, Inc. 1976. p. 149.

2. Rennie, P.J., A.M. Sumner, and F.B. Basketter. Determination of Nitrate in Raw, Potable, and Waste Waters by Ultraviolet Spectrophotometry. Analyst. *104*:837. September 1979.

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Part VII

Department of Energy

Defense Programs; Proposed Changes in Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 710

Defense Programs; Proposed Changes in Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend 10 CFR Part 710, entitled, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material" to delegate the authority to suspend DOE access authorization to the Managers of its Field Operations. Under the existing regulation, only the Assistant Secretary for Defense Programs has the authority to suspend an individual's access authorization in those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization.

DOE proposes to establish a policy wherein the processing of applications for security clearance or access authorization for individuals who have been convicted of felony crimes and who are currently serving probation or parole may be withheld pending the completion of the probation or parole.

DOE also proposes to assign to the Managers of its Field Operations the preparation of notification letters, which enumerate the charges against the individual and explain the individual's rights under DOE access authorization procedures.

Finally, DOE proposes to impose time frames for completion of certain actions throughout its administrative review process.

DATE: Comments must be received on or before September 2, 1983.

ADDRESS: Written comments should be directed to the Director, Office of Safeguards and Security, U.S. Department of Energy, Washington, DC 20545, Attn: Mr. Martin J. Dowd.

FOR FURTHER INFORMATION CONTACT: Mr. Martin J. Dowd, Director, Division of Security, Office of Safeguards and Security, U.S. Department of Energy, Washington, DC 20545 (301/353–4642).

Mrs. Elayne Bartner, Office of General Counsel, U.S. Department of Energy, Room 6A–211, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585 (301/252–8618).

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written comments with respect to the proposed amendments to the address provided. Comment should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "10 CFR Part 710". It is requested that fifteen copies of any written comments be provided, where possible, in order to ensure expeditious consideration of the comments within DOE.

If any person, when commenting, wishes to file a document with DOE claiming that some or all of the information contained in the document is exempt from mandatory public disclosure under the Freedom of Information Act (5 U.S.C. 552, as amended), or is otherwise exempt from public disclosure, there must be an indication in writing as to which information is claimed to be confidential, accompanied by the justification for nondisclosure. DOE retains the right to make its own determination regarding any claim of confidentiality.

In accordance with 501(c)(1) of the DOE Organization Act, 42 U.S.C. 7101(c), DOE has determined that these regulations present no substantial issue of fact or law, and are unlikely to have a substantial impact on the nation's economy or large number of individuals or businesses. Accordingly, no public hearing is required.

E.O. 12291 Federal Regulation: The Department has determined, in accordance with Executive Order 12291, that this is a nonsignificant regulation for the following reasons: It has no more than a minimal effect upon the objectives of national energy policy or energy statutes, the economy, competition, the quality of the environment, state and local government programs and existing regulatory program of DOE or other executive agencies; it will not impose new compliance and reporting burdens nor add to existing requirements; it is not a matter of major concern to the President or Congress; it will not require substantial DOE resources to develop and enforce it; and substantial public comments are not anticipated.

Regulatory Flexibility Act: The Department has also certified that this regulation will not have a significant economic impact on a substantial number of small entities; thus, a small entity flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96–354) is not required.

National Environmental Policy Act of 1969: It is hereby determined that this revision of the regulation does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Paperwork Reduction Act of 1980: There are no changes in the information collection requirements of the parts of Title 10 as amended. All reporting locations, forms and content are unchanged.

List of Subjects in 10 CFR Part 710

Classified information, Security measures.

Authorities

Authority: Sec. 145, 68 Stat. 942, as amended; 42 U.S.C. 2165; sec. 161, 68 Stat. 948, as amended; 42 U.S.C. 2201, E.O. 10450, 3 CFR 1949–1953 comp., p. 398, as amended, 3 CFR, Chap. IV; sec. 204(c), 38 Stat. 1237; 42 U.S.C. 5814; sec. 105(a), 88 Stat. 1238; 42 U.S.C. 5815.

Dated at Washington, DC, this 27th day of July, 1983.

Herman E. Roser,

Assistant Secretary for Defense Programs.

In consideration of the foregoing, it is proposed to amend 10 CFR Part 710 as follows:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES FOR SPECIAL NUCLEAR MATERIAL

1. Section 710.4 is revised to read as follows:

710.4 Policy.

(a) It is the policy of DOE to carry out its responsibility for the security of the energy research and development programs in a manner consistent with traditional American concepts of justice. To this end, the Secretary has established criteria for determining eligibility for access authorization and will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) In instances where the individual has been convicted of a felony crime, and is currently serving court ordered probation or parole, the DOE may withhold processing applications for security clearance or access authorization until such time as the individual completes serving the probation or parole.

2. Section 710.5 is amended by adding a new paragraph (i):

710.5 Definitions.

* * * * *

(i) Throughout this part the use of the male gender shall include the female gender.

3. Section 710.10 is amended by revising paragraph (c) to read as follows:

710.10 Application of the criteria.

* * * * *

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as substantially derogatory and shall create a question as to the individual's eligibility for access authorization. The Manager of Operations may authorize an interview with the individual, or other investigation as deemed appropriate, and on the basis of such interview and/or investigation, may authorize the granting of access authorization. If the question as to the individual's eligibility is not resolved through interview, additional investigation, or when applicable, through a psychiatric evaluation, the Manager of Operations will forward the individual's case to the Director, Office of Safeguards and Security, DOE. The Director, Office of Safeguards and Security, DOE, may authorize: (1) The granting of access authorization, (2) such other investigation as the Director deems appropriate, or (3) the institution of the procedures set forth in § 710.20 et seq. The Director, Office of Safeguards and Security, must authorize one of these options within 30 days from the receipt of the case from the Manager of Operations, unless an extension is made by the Deputy Assistant Secretary for Security Affairs.

4. Section 710.21 is revised to read as follows:

710.21 Suspension of access authorization.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the Manager of Operations shall determine whether the individual's access authorization should be suspended pending the final determination resulting from the operations of the procedures provided in this part. In making the determination, the Manager of Operations shall consider such factors as the seriousness of the derogatory information developed, the possible access of the individual to classified information of significant quantities of special nuclear material, and the individual's opportunity by reason of the individual's position to commit acts adversely affecting the national security. The access authorization of an individual shall not be suspended except by direction of the Manager of Operations. Following the decision to suspend the individual's access authorization, the Manager of Operations shall immediately notify the Assistant Secretary for Defense Programs through the Director, Office of Safeguards and Security. In addition, the Manager, within 10 days of the date of suspension shall submit a request for authority to conduct a hearing to the Director, Office of Safeguards and Security. This request should also contain an explanation of the basis for the suspension.

5. Section 710.22 is revised to read as follows:

710.22 Notice to individual.

When the Director, Office of Safeguards and Security, has directed the institution of these administrative review procedures with respect to an individual's questioned eligibility for access authorization (as per § 710.10(c)), the Manager of Operations shall prepare a notification letter, approved by the local Office of Chief Counsel, for delivery to the individual within 30 days of the receipts of such directive from the Office of Safeguards and Security, unless an extension has been authorized by the Director, Office of Safeguards and Security. Where practicable, such letter shall be presented to the individual in person. The letter shall state:

6. Section 710.27 is amended by revising paragraphs (a), and (j) to read as follows:

§ 710.27 Conduct of proceedings.

(a) The proceedings shall be conducted by the Hearing Officer in an orderly, impartial, and decorous manner with every effort made to protect the interest of the Government and of the individual in determining the truth of the allegations. Hearings shall commence within 90 days from the date the individual's request for hearing is received. This period can only be extended with the approval of the Director, Office of Safeguards and Security, Headquarters, who will consider the effect of such extension on the interests of both the government and the individual. In performing duties, the Hearing Officer shall always bear in mind and make clear to all concerned that the proceeding is an administrative hearing and not a trial.

* * * * *

(j) The Hearing Officer shall endeavor to obtain all the facts that are reasonably available in order to arrive at recommendations. If, prior to or during the proceedings, in the opinion of the Hearing Officer the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Hearing Officer shall recommend to the Manager of Operations concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of Counsel. If, in the opinion of the Hearing Officer, the circumstances of such amendment may involve undue hardships to the individual because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

* * * * *

7. Section 710.28 is amended by revising paragraph (d) to read as follows:

§ 710.28 Recommendation of the Hearing Officer.

* * * * *

(d) The Hearing Officer's recommendation shall be submitted to the Manager of Operations, accompanied by a statement of the findings and reasons supporting the Hearing Officer's conclusions within 30 days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Safeguards and Security.

8. Section 710.30 is amended by revising paragraph (a) to read as follows:

§ 710.30 Actions on Recommendations.

(a) The signed report of the Hearing Officer containing findings, supporting reasons, conclusions and recommendations, shall be submitted to the Manager of Operations, together with the hearing record, within 30 days of the Hearing Officer's receipt of the hearing transcript or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Safeguards and Security.

* * * * *

9. Section 710.31 is amended by revising paragraph (d) to read as follows:

§ 710.31 Recommendation of the DOE Personnel Security Review Examiners.

* * * * *

(d) After consideration, each Examiner shall individually prepare a report of findings and recommendations and submit the report in writing to the Assistant Secretary for Defense Programs. These findings and recommendations shall be fully supported by stated reasons for their conclusions. Except in those cases where the Personnel Security Review Examiners have requested additional information as provided for in paragraph (a) or (b) of this section, the Personnel Security Review Examiners shall submit their report of findings and recommendations to the Assistant Secretary for Defense Programs within 45 days of their receipt of each case, unless an extension is granted by the Deputy Assistant Secretary for Security Affairs.

10. A new § 710.39 is added:

§ 710.39 Time frames.

Statements of time established for processing aspects of a case under this part are the agency's desired time frames in implementing the procedures set forth in this part. They shall have no impact upon the final disposition of an access authorization by the Assistant Secretary for Defense Programs, and confer no rights upon an individual whose eligibility for, or suspension of, access authorization is being considered.

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List of Public Laws

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.J. Res. 258/Pub. L. 98-62 Designating August 3, 1983, as "National Paralyzed Veterans Recognition Day". (July 29, 1983; 97 Stat. 300) Price: $1.50

H.R. 3069/ Pub. L. 98-63 Supplemental Appropriations Act, 1983. (July 30, 1983; 97 Stat. 301) Price: $3.75